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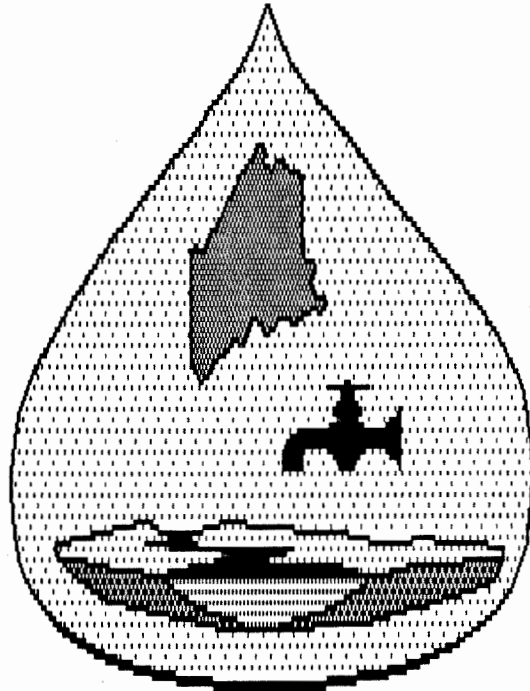
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# **PUBLIC LAWS RELATING TO WATER**



## **APPENDIX A**

### **REPORT OF THE LEGAL FRAMEWORK SUBCOMMITTEE**

### **MAINE WATER RESOURCES MANAGEMENT BOARD**

**JANUARY, 1991**

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APPENDIX A

WATER LAW IN MAINE - 1990

PUBLIC LAWS RELATING TO WATER

REPORT OF THE LEGAL FRAMEWORK SUBCOMMITTEE

MAINE WATER RESOURCES MANAGEMENT BOARD

November 20, 1990

MAY 13 1991



## ACKNOWLEDGEMENTS

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(TITLE 7)  
(AGRICULTURE AND ANIMALS)

(PART 1-B)  
(AROOSTOOK COUNTY WATER AND SOIL MANAGEMENT)  
(PROGRAM)

(CHAPTER 11)  
(AROOSTOOK COUNTY WATER AND SOIL MANAGEMENT)  
(PROGRAM)

7 § 331. Legislative findings

The Legislature finds that:

1. **Agriculture; unique component of economy.** Agriculture, and particularly the production and marketing of potatoes, is a significant and unique component of the economy of the State as a whole and particularly the economy of northern Maine. A strengthened Aroostook agriculture benefits the entire State by enhancing the State's economy and encouraging improvement and stabilization of our land and water resources for the benefit of the people of this State.

2. **Decline of potato production.** Maine led the nation in potato production until 1957. The loss of traditional markets due to changing consumer demands and increased competition from other areas, including the irrigated western United States, has resulted in a steady decline of potato production. Expanding marketing opportunities exist for both fresh and processed potatoes, but entry into these markets depends on production of a consistently high quality product at a competitive price. Improvements in quality and yields require improved conservation practices and management of water resources.

3. **Absence of appropriate conservation practices.** Of the 240,000 acres of cropland in Aroostook County, 194,000 acres are considered highly erodible. The absence of appropriate conservation practices on this highly erodible land results in polluted rivers, streams and lakes and potentially endangered water supplies, fish and wildlife. Poor conservation practices also lead to decreasing soil productivity.

4. **Technology of supplemental water application.** There are many unanswered questions about the technology of supplemental water application to row crops in the northeastern United States, including crop response to irrigation, economic returns from irrigation and the availability of and impact on ground and surface waters as a result of irrigation.

5. **Possible improvements.** The United States Army Corps of Engineers completed a study of the St. John River Basin, including most of Aroostook County, which suggests that it is possible to improve both the agricultural industry and environmental quality through cropland irrigation and improved agricultural conservation practices.

6. **Federal funds.** The United States Congress has authorized the expenditure of \$3,400,000 in federal funds to implement a program of research and education in order to demonstrate the cropland irrigation and conservation techniques described in the Army Corps of Engineers' "Feasibility Report for Cropland Irrigation and Conservation Research/Demonstration Program." The United States Congress has required that an amount equal to 35% of available federal funds be provided from other sources to match any federal appropriation.

7. **Coordinated approach.** Maine will benefit from a coordinated approach to securing the funds necessary to match the Army Corps of Engineers' authorization and from working with the Army Corps of Engineers to implement this water and soil management program.

7 § 332. Aroostook Water and Soil Management Board

1. **Membership.** The Aroostook Water and Soil Management Board, as established by Title 5, section 12004-G, subsection 4, shall consist of the following: The Chair of the Maine Potato Board; one person designated by the Maine Potato Board who shall be a farmer with irrigation experience; a representative of each of the 3 Aroostook County Soil and Water Conservation Districts chosen by the boards of supervisors of the 3 districts, each representative chosen being a farmer; the Director of the Maine Agricultural Experiment Station; the Director of the University of Maine Cooperative Extension Service; the State Conservationist of the United States Department of Agriculture Soil Conservation Service; the Director of the Maine Geological Survey; the Director of the Northern Maine Regional Planning Commission; and the Commissioner of Agriculture, Food and Rural Resources.

2. **Terms.** The member appointed by the Maine Potato Board and the members appointed to represent the Aroostook County Soil and Water Conservation Districts shall each serve a 4-year term.

3. **Chairman.** The board shall annually select one of its members to serve as chairman.

4. **Compensation.** Board members shall be compensated in accordance with Title 5, chapter 379.

5. **Responsibilities.** The board shall coordinate all state and local efforts with respect to implementation of the United States Army Corps of Engineers Conservation Research/Demonstration Program. Coordination includes, but is not limited to:

A. Determining research priorities and informational needs relative to improved water and soil management practices;

B. Entering into agreements with the United States Army Corps of Engineers, the University of Maine System, the United States Department of Agriculture Soil Conservation Service, the United States Department of Agriculture Agricultural Research Service, local soil and water conservation districts, state agencies, private organizations and individuals to carry out research, demonstration and informational activities related to the program;

C. Assuring that new information developed by the program is effectively disseminated; and

D. Evaluating progress of the program and making recommendations regarding its future direction.

6. **Staff.** Staff to the board shall be provided by the Department of Agriculture, Food and Rural Resources.

7. **Report.** The board shall report at least annually to the joint standing committee of the Legislature having jurisdiction over agriculture. The report shall include an accounting of its meetings and actions, including agreements entered into, status of demonstration projects, research findings, informational activities and an evaluation of the program, with recommendations regarding changes or improvements in the program.

#### **7 § 333. Aroostook Water and Soil Management Fund**

There is established a nonlapsing Aroostook Water and Soil Management Fund. The Commissioner of Agriculture, Food and Rural Resources may accept money for this fund from the Federal Government or any public or private source and make expenditures from this fund in order to carry out activities related to the program.

(TITLE 7)  
(AGRICULTURE AND ANIMALS)  
  
(PART 2)  
(MARKETING, GRADING AND LABELING)  
  
(CHAPTER 103)  
(PRODUCTS CONTROLLED)  
  
(SUBCHAPTER II-A)  
(MAINE PESTICIDE CONTROL ACT OF 1975)

**7 § 601. Title**

This subchapter shall be known as the "Maine Pesticide Control Act of 1975."

**7 § 602. Enforcing official**

This subchapter shall be administered by the Commissioner of Agriculture, Food and Rural Resources, hereinafter referred to as the "commissioner."

**7 § 603. Declaration of purpose**

The purpose of this subchapter is to regulate in the public interest, the labeling, distribution, storage, transportation, use and disposal of pesticides as hereinafter defined. The Legislature hereby finds that pesticides are valuable to our State's agricultural production and to the protection of man and the environment from insects, rodents, weeds and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. New pesticides are continually being discovered or synthesized which are valuable to the control of pests and for use as defoliant, desiccants, plant regulators and related purposes. The dissemination of accurate scientific information as to the proper use of any pesticide is vital to the public health and welfare and the environment, both immediate and future. Therefore, it is deemed necessary to provide for regulation of such pesticides.

\* \* \*

**7 § 606. Prohibited acts**

1. **Unlawful distribution.** It is unlawful for any person to distribute in the State any of the following:

A. Any pesticide which has not been registered pursuant to the provisions of this subchapter.

B. Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product, if the registration is amended to reflect such change and if such change will not violate any provision of FIFRA or this subchapter

C. Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and the regulations adopted under this subchapter;

D. Any pesticide which has not been colored or discolored pursuant to the provision of section 610, subsection 1, paragraph D

E. Any pesticide which is adulterated or misbranded or any device which is misbranded

F. Any pesticide in containers which are unsafe due to damage.



**2. Unlawful alteration, misuse, divulging of formulae, transportation, disposal and noncompliance.** It shall be unlawful:

\* \* \*

D. For any person to handle, transport, store, display or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides

E. For any person to dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or pollute any water supply or waterway

F. For any person to refuse or otherwise fail to comply with the provisions of this subchapter, the regulations adopted hereunder, or of any lawful order of the commissioner

G. For any person to apply pesticides in a manner inconsistent with rules for pesticide application adopted by the board, which rules are designed to minimize pesticide drift to the maximum extent practicable under currently available technology. Without limitation, these rules may prescribe procedures to be used for the application of pesticides, including the time, place, manner and method of that application, may restrict or prohibit use of pesticides in designated areas or during specified periods of time and may prescribe tolerance levels for pesticide residues in off-target areas. The board shall propose the rules by June 15, 1985.

#### **7 § 607. Registration**

1. **Conditions requiring registration.** Every pesticide which is distributed in this State shall be registered with the commissioner subject to the provisions of this subchapter. Such registration shall be renewed annually prior to January 1, provided that registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this subchapter, or if the pesticide is distributed under the provisions of an experimental use permit issued under section 608 or an experimental use permit issued by EPA.

\* \* \*

9. **Adverse environmental effects.** If at any time after the registration of a pesticide, the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the commissioner.

#### **7 § 607-A. Review or reregistration**

1. **Review required.** The commissioner shall review all chemical pesticides used in this State, in accordance with the requirements of this section. This review shall be completed for presently registered pesticides on a schedule to be determined by the commissioner, with restricted use pesticides and the most widely used pesticides receiving priority, and within 3 years for pesticides registered after the effective date of this section.

2. **Review process.** In cooperation with technical personnel of the Department of Environmental Protection; the Department of Inland Fisheries and Wildlife; the Department of Human Services; and the Department of Conservation, specifically the Maine Forest Service, the commissioner shall conduct a review to include the following:

A. An environmental risk assessment to determine the effects of pesticides on the ecosystem. This assessment is to be based on available literature. The commissioner shall request data that he determines necessary to carry out the purpose of this chapter, but, when the literature is not available, is inadequate or incomplete, this assessment shall be based on an environmental monitoring protocol

B. A health risk assessment, based on a literature search of laboratory, clinical and epidemiological data available within and without the State. The commissioner shall request data he determines necessary to carry out the purpose of this chapter; and

C. A water residue survey to determine a representative sample of a number of wells or bodies of water, either at random, in areas of possible contamination or at other bases to be described by the commissioner, for the purpose of testing these waters and preparing a profile of the kinds and amounts of pesticides present.

**3. Effect of review on reregistration.** If the reviews in this section demonstrate that the impact of the pesticide on the ecosystem warrants additional health or environmental safeguards, the commissioner shall require implementation of those safeguards prior to reregistration.

**7 § 608. Experimental use permits**

**1. Commissioner's powers.** Provided the State is authorized by the Administrator of EPA to issue experimental use permits, the commissioner may:

A. Issue an experimental use permit to any person applying for an experimental use permit, if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 607. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed

B. Prescribe terms, conditions and period of time for the experimental use permit, which shall be under the supervision of the commissioner

C. Modify any experimental use permit in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment. These permits may be revoked by the Administrative Court if the terms or conditions are being violated or are inadequate to avoid unreasonable adverse effects on the environment.

**2. Development and promulgation of other requirements.** The commissioner may develop and promulgate such other requirements by regulation, adopted in a manner consistent with the Maine Administrative Procedure Act, as are necessary for the state plan to receive such authorization from EPA.

**3. Limitation or prohibition of experimental use pesticides.** The commissioner may, by regulation adopted in a manner consistent with the Maine Administrative Procedure Act, limit or prohibit the use of any pesticide for which an experimental use permit has been issued by EPA pursuant to Section 5(a) of FIFRA, and which the commissioner finds may cause unreasonable adverse effects on the environment.

**7 § 609. Refusal to register, cancellation, suspension, legal recourse**

**1. Procedure.** Provided the State is certified by the Administrator of EPA to register pesticides formulated to meet special local needs, the commissioner shall consider the following for refusal to register; for cancellation; for suspension; or for legal recourse for such pesticides. This registration, cancellation and suspension shall be considered rule-making as that term is defined in the Maine Administrative Procedure Act and notice shall be provided in a manner consistent with the Maine Administrative Procedure Act.

A. If it does not appear to the commissioner that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this subchapter or regulations adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this subchapter so as to afford the applicant an opportunity to make the necessary corrections and shall notify, in a manner consistent with the Maine Administrative Procedure Act, the applicant of the opportunity for hearing prior to refusal to register.

B. When the commissioner determines that a pesticide or its labeling does not comply with the provisions of this subchapter or the regulations adopted thereunder, he may cancel the registration of a pesticide or change its classification, after notice and opportunity for hearing has been provided in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act.

C. When the commissioner determines that there is an imminent hazard, he may, on his own motion, suspend the registration of a pesticide in a manner consistent with the Maine Administrative Procedure Act, Title 5, section 8054, as to emergency rule-making pending decisions reached after notice and opportunity for a hearing. Hearings shall be held with the utmost possible expedition

D. When the commissioner becomes cognizant of any possible hazard or violation involving either a registered or unregistered product, he shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings or charge to be preferred, to be delivered by registered mail, return receipt requested, to the person concerned, who shall be given an opportunity to be heard under such rules and regulations as prescribed by the commissioner.

E. Any person who will be adversely affected by such order in this section may obtain judicial review thereof by filing in the District Court, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the commissioner and thereupon the commissioner shall file in the court the record of the proceedings on which he based his order. The court shall have jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the commissioner with respect to questions of fact shall be sustained, if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the commissioner to take further testimony, if there are reasonable grounds for the failure to adduce such evidence in the prior hearing. The commissioner may modify his findings and his order by reason of the additional evidence so taken and shall file the additional record and any modification of the findings or order with the clerk of the court.

2. **Federally registered pesticides.** If the commissioner determines that any federally registered pesticide, with respect to the use of such pesticide within this State, does not warrant the claims for it, or might cause unreasonable adverse effects on the environment, he may refuse to register the pesticide as required in section 607, or if the pesticide is registered under section 607, the registration may be cancelled or suspended as provided in subsection 1. If the commissioner believes the pesticide does not comply with the provisions of FIFRA or the regulations adopted thereunder, he shall advise EPA of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of FIFRA, and suggest necessary corrections.

**7 § 610. Determinations; rules and regulations; restricted use pesticides; uniformity**

1. **Determinations.** The commissioner is authorized, after due notice and an opportunity for a hearing in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act:

A. To declare as a pest any form of plant or animal life, except virus, bacteria or other microorganisms on or in living man or other living animals, which is injurious to health or the environment

B. To determine whether pesticides registered under the authority of Section 24(c) of FIFRA are highly toxic to man. The definition of highly toxic, as defined in Title 40, Code of Federal Regulations 162.8 as issued or hereafter amended, shall govern the commissioner's determination

C. To determine pesticides and quantities of substances contained in pesticides, which are injurious to the environment, the commissioner shall be guided by EPA regulations in this determination

D. To prescribe regulations requiring any pesticide to be colored or discolored, if he determines that such requirement is feasible and is necessary for the protection of health and the environment.

2. **Rule-making powers.** The commissioner is authorized, after due notice and a public hearing, in a manner consistent with the Maine Administrative Procedure Act, to make appropriate regulations for carrying out the provisions of this subchapter, including but not limited to regulations providing for:

A. The collection, examination and reporting of samples of pesticides or devices

B. The safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers

C. Labeling requirements of all pesticides required to be registered under provisions of this subchapter, provided that such regulations shall not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA.

D. Specifying classes of devices which shall be subject to the provisions of section 605, subsection 1.

3. **Uniformity of requirements; restricted uses.** For the purpose of uniformity of requirements between the states and the Federal Government, the commissioner may, after a public hearing, adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements and criteria for classifying pesticides for restricted use as established by EPA or other federal or state agencies.

**7 § 612. "Stop sale, use or removal" order**

When the commissioner has reasonable cause to believe a pesticide or device is being distributed, stored, transported or used in violation of any of the provisions of this subchapter or of any of the prescribed regulations under this subchapter, he may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the commissioner may attach the order to the pesticide or device and

notify the owner or custodian and the registrant. The pesticide or device shall not be sold, used or removed until the provisions of this subchapter have been complied with and the pesticide or device has been released in writing under conditions specified by the commissioner or the violation has been otherwise disposed of as provided in this subchapter by a court of competent jurisdiction. The issuance of such an order shall not be considered licensing or an adjudicatory proceeding as defined by the Maine Administrative Procedure Act.

**7 § 613. Judicial action after "stop sale, use or removal" order**

1. **Adjudication; court powers.** After service of a "stop sale, use or removal" order is made upon any person, either that person, the registrant or the commissioner may file an action in a court of competent jurisdiction in the district in which a violation of this subchapter or regulations adopted thereunder is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions, mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this subchapter or regulations adopted thereunder.

2. **Disposition of condemned pesticide.** If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and if such pesticide or device is sold, the proceeds, less costs including legal costs, shall be paid to the Treasurer of State as provided in section 621, provided that the pesticide or device shall not be sold contrary to the provisions of this subchapter or regulations adopted thereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing or otherwise bringing the product into compliance.

3. **Award of court costs and fees.** When a decree of condemnation is entered against the pesticide or device, court costs, fees, storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.

\* \* \*

**7 § 625. Right-of-way spraying; no-spray agreements**

Any public utility or the Department of Transportation, which maintains a right-of-way through a municipality shall offer a no-spray agreement, with reasonable provisions, for the municipality to consider if it desires. Any agreement negotiated may include, but is not limited to, the responsibilities of the parties, the allocation of costs and the rights and remedies of the parties in the event of default and may apply to all or any part of the right-of-way within the municipality. Any agreement reached under this section must be negotiated in good faith, written and signed by all parties. As part of the no-spray agreement, the municipality may either perform the vegetation control work to standards as provided in the agreement, or else contract with the public utility or the Department of Transportation to conduct the work.

If a reasonable no-spray agreement is offered to a municipality and an agreement is not reached within 90 days after the date of the offer, the public utility or the Department of Transportation at its own option may apply pesticides in the right-of-way under its jurisdiction or use other methods to control the vegetation. If the municipality agrees to perform vegetation control work, but does not perform it by the agreed-upon date, the public utility or the Department of Transportation, after 90 days written notice to the municipality, at its own option may apply pesticides in the right-of-way under its jurisdiction, or use other methods to control the vegetation.

It is the intent of this section to make available to municipalities an alternative to right-of-way maintenance procedures which use pesticides. This section does not affect municipal authority to enact ordinances nor the authority of public utilities or the Department of Transportation to maintain its right-of-way clear of unwanted vegetation in the absence of an agreement.

(TITLE 12)  
(CONSERVATION)  
  
(PART 1)  
(SOIL AND WATER CONSERVATION)  
  
(CHAPTER 1)  
(SOIL AND WATER CONSERVATION DISTRICTS)  
  
(SUBCHAPTER I)  
(GENERAL PROVISIONS)

**12 § 1. Short title**

This chapter may be known and cited as the "Soil and Water Conservation Districts" law.

**12 § 2. Policy**

Conservation of soil and water resources may involve adjustments in land and water use and the development, improvement and protection of these resources under various combinations of use. It is declared to be the policy of the Legislature to provide for and encourage the optimal use of the State's agricultural resources, to insure the availability of appropriate soil and water resources for the production of food and other renewable resources, to provide for the conservation of the soil and soil and water resources of this State, and for the control and prevention of soil erosion, and thereby to preserve natural resources and maintain the economic base for the State's natural resource industries, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this State.

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**12 § 4. Limitation of authority**

The powers and duties conferred upon the Soil and Water Conservation Commission or the soil and water conservation districts under this chapter shall not infringe upon or impair in any way the rights of any owner of riparian lands located upon, or any rights heretofore or hereafter granted by the Legislature to any person, firm, corporation, association, public or quasi-public body to use or take the water in or from, any lake, pond, river, stream, brook or any other body of water located wholly or partly in the State of Maine.

**12 § 5. Cooperation of state agencies**

Agencies of this State which shall have jurisdiction over, or be charged with the administration of, any publicly owned lands, lying within the boundaries of any district organized under this chapter, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors. Public lands used for research purposes shall comply with this section only to the extent that it does not interfere with existing research work.

**12 § 6. Powers of districts and supervisors**

A soil and water conservation district organized under this chapter shall constitute an agency of the State and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this chapter

**1. Preventive and control measures; flood prevention.** To carry out preventive and control measures and works of improvement for flood prevention, or the conservation, development, utilization and disposal of water within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

**2. Agreements.** To cooperate, or enter into agreements with, and within the limits of appropriations or other funds duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;

3. **Options, purchase, sale, etc. of property.** To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest or devise, any property, real or personal, or rights or interests therein, after consultation with town, city and county officials; all such property shall be exempt from taxation by the State or any subdivisions or agencies thereof; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its real and personal property or interests therein in furtherance of the purposes and provisions of this chapter;

4. **Equipment and machinery made available.** To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, and such other equipment or material, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention or the conservation, development, utilization and disposal of water;

5. **Construct and maintain structures.** To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

6. **Plans.** To develop comprehensive plans for the conservation of soil resources, for the control and prevention of soil erosion, and for flood prevention or the conservation, development, utilization and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

7. **Agent for federal and state agencies; accept gifts; contracts.** To act as agent for the United States or any of its agencies, or for this State or any of its agencies, in connection with the acquisition, construction, operation or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention or for the conservation, development, utilization and disposal of water within its boundaries; to accept donations, gifts and contributions in money, services, materials or otherwise from the United States or any of its agencies; or from this State or any of its agencies, and to use or expend such moneys, services, materials or other contributions in carrying on its operations; and to enter into contracts or negotiations with any and all federal agencies having responsibility for the distribution of surplus war or other materials suitable for utilization in soil conservation or water conservation projects for the use thereof; to enter into contracts and negotiate with any agency of the United States Government in any plan related to soil conservation, flood prevention, or the conservation, development, utilization and disposal of water;

8. **Sue and be sued; seal; borrow money.** To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to borrow money and to execute promissory notes, bonds and other evidences of indebtedness in connection therewith; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers;

9. **Supervisors may require contributions.** As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require land occupiers to enter into such agreements as to the permanent use of such lands as will tend to prevent or control erosion thereon;

\* \* \*

(TITLE 12)  
(CONSERVATION)

(PART 1)  
(SOIL AND WATER CONSERVATION)

(CHAPTER 1)  
(SOIL AND WATER CONSERVATION DISTRICTS)

(SUBCHAPTER II)  
(SOIL AND WATER CONSERVATION COMMISSION)

\* \* \*

**12 § 54. Powers and duties**

In addition to the duties and powers conferred upon the State Soil and Water Conservation Commission, it shall have the following duties and powers

**1. Assistance.** To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts in the carrying out of any of their powers and programs, and to enter into such agreements as may be appropriate with such districts, with land occupiers and with other state and federal agencies

**2. Information to supervisors.** To keep the supervisors of each of the several districts organized under this chapter informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

**3. Coordination.** To coordinate the programs of the several districts so far as this may be done by advice and consultation;

**4. United States and state agencies.** To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts, and in carrying out the functions of the commission under this chapter; to accept grants, services and materials, and to borrow money from the United States or from any corporation or agency of the United States or from the State of Maine or any of its subdivisions or from any other source, but in no event shall the faith and credit of the State of Maine or any county or other political subdivision thereof be pledged by the commission for the repayment of any indebtedness

**5. Encourage districts.** To disseminate information throughout the State concerning the activities and programs of the districts, and to encourage the formation of such districts in areas where their organization is desirable

**6. Control measures.** To carry out preventive and control measures and works of improvement for the control and prevention of soil erosion, flood prevention, or the conservation, development, utilization and disposal of water

**7. Surveys.** To conduct surveys, investigations and research relating to the character of soil erosion and floodwater and sediment damages and to the conservation, development, utilization and disposal of water and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations and research, and to disseminate information concerning such preventive and control measures and works of improvement

**8. Options, purchases.** To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property or rights or interests therein; to maintain, administer and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its real or personal property or interests therein, in furtherance of the purpose and provisions of this chapter, including the conveyance, with or without consideration, of lands or interests therein to soil and water conservation districts for use in carrying out their authorized purposes

**9. Structures.** To construct, improve, operate and maintain such structures as may be necessary or convenient for the prevention of floodwater and sediment damages and for the conservation, development and utilization of the water impounded by such structures for irrigation, recreation, wildlife, municipal and industrial uses;

**10. Fund.** To have supervision and control of the Soil and Water Conservation Districts Fund which shall consist of all moneys appropriated thereto, and any moneys received as donations, repayments of loans or from other sources. The commission may use such fund for carrying out any of its authorized functions, for furnishing financial and other assistance to districts, for making allocations of funds to districts, and for making loans to districts under such terms and conditions as the commission may prescribe. Any balance in this fund, except moneys appropriated by the State, shall not lapse but shall be carried forward from year to year to be expended for the purposes set forth in this subchapter

**11. Sponsor.** To serve as a sponsoring or cosponsoring local organization, within the meaning of the term as used in Public Law 566, as amended, Watershed Protection and Flood Prevention Act, and to serve as a sponsoring or cosponsoring local organization where a watershed is situated wholly or in part within the geographical boundaries of any unorganized territory or territories.

**12. Entry on lands and structures.** The commission or its authorized agents shall have the right to enter upon any private or public lands for the purpose of inspecting dams and appurtenant structures. The commission shall seek the permission of the landowner, prior to exercising this right and shall not exercise this right until a reasonable effort has been made to obtain said permission.

**12 § 55. Exemptions**

Exempted from this subchapter are all dams and projects licensed by or subject to the jurisdiction of the Federal Power Commission under Part I of the Federal Power Act.



(TITLE 12)  
(CONSERVATION)

(PART 1)  
(SOIL AND WATER CONSERVATION)

(CHAPTER 1)  
(SOIL AND WATER CONSERVATION DISTRICTS)

(SUBCHAPTER VI)  
(FUND TO ENCOURAGE LOCAL SOIL AND WATER)  
(CONSERVATION PROJECTS)

**12 § 205. Findings and purposes**

The Legislature finds that the conservation of soil and water are essential to the continued productivity of our agricultural lands and the purity of our waters. Yet the economic realities of modern farming have led to more intensive cultivating methods which exhaust topsoil and erode croplands faster than ever before. Presently, Maine's average rate of soil loss is approximately twice the sustainable rate of erosion. Approximately 15% of the state's eroded soil finds its way into our lakes and streams, which become polluted by the fine sediments, fertilizers and pesticides they carry. Additionally, the overwhelming majority of Maine's livestock and poultry farms are unequipped to productively use or cleanly dispose of animal wastes. The improper handling of animal wastes contributes both to soil depletion and water pollution.

Conservation programs and practices initiated and encouraged by the Soil and Water Conservation Commission, Maine's 16 soil and water conservation districts and federal conservation agencies have been demonstrably effective in reducing soil loss and implementing animal waste management plans. Resource conservation demands a continuing commitment of both financial and human resources. Many conservation practices have limited lifetimes or require annual maintenance. Changing agricultural production methods and technologies also require new cropping arrangements and new erosion control systems.

Virtually all public financing for conservation practices in Maine, 98- of every government dollar spent, has been provided by the Federal Government, but the amount of federal spending has been steadily decreasing in constant dollars since 1972. Even under federally-funded programs, the farmer-landowner has been responsible for 25% to 100% of project costs. Because of low financial returns, many concerned farmers have been unable to set aside the money to finance their share of installation costs for conservation systems.

To continue the progress already made in soil and water conservation, State Government will need to assume a greater share of conservation spending than it has in the past. It is the intent of the Legislature that the largest portion of new funding be devoted to the development of innovative conservation projects by the soil and water conservation districts.

**12 § 206. Establishment of fund**

There is established a fund to encourage local soil and water conservation projects. The fund shall consist of all moneys appropriated to it and any moneys received as donations or from other sources. Moneys in this fund shall be disbursed periodically by the Soil and Water Conservation Commission on a competitive basis to one or more of the soil and water conservation districts for the funding of innovative soil and water conservation projects. Any balance in this fund, except moneys appropriated by the State, shall not lapse, but shall be carried forward from year to year to be expended for the purposes set forth in this subchapter. The commission shall establish by rule criteria for project submission, evaluation and selection. These criteria shall, among other factors, address priority of need, boldness of approach, program feasibility and reproducibility and verification of results. The commission may impose such conditions on the use of funds awarded as in its judgment are best suited to accomplish the purposes of this subchapter and insure that moneys awarded by the commission are properly spent by the districts. Any final decision of the commission to fund a project or to not fund a project shall constitute "final agency action" for purposes of Title 5, chapter 375, subchapter IV. The commission shall submit an annual report on the status of the Challenge Grant Program to the joint standing committees of the Legislature having jurisdiction over agriculture and audit and program review, as well as the Finance Authority of Maine for public hearing and critique.

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(TITLE 12)  
(CONSERVATION)

(PART 1)  
(SOIL AND WATER CONSERVATION)

(CHAPTER 3)  
(COOPERATIVE SOIL SURVEY)

**12 § 211. Legislative findings**

It is the intent of the Legislature to provide for the state contribution to the Cooperative Soil Survey of the State of Maine. The Cooperative Soil Survey, conducted nationally by the United States Department of Agriculture, Soil Conservation Service, is the systematic inventory of the soils of the State. This basic soils data is of great value in the guidance of sound land use planning.

**12 § 212. General provisions**

1. **Data.** The Soil and Water Conservation Commission shall gather and compile soils data and information of the State. It shall present this information in printed maps and reports for the general public.

2. **Professional soil scientists.** The commission may employ professional soil scientists, subject to the Civil Service Law, to perform soils mapping in Maine. The commission may contract with other state or federal agencies as appropriate to accomplish necessary soils mapping within this State.

3. **Interdepartmental cooperation.** The commission shall consult with other state resource agencies and the State Planning Office in setting priorities of soils mapping and the publication of interim soils reports.

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(TITLE 12)  
(CONSERVATION)

(PART 1)  
(SOIL AND WATER CONSERVATION)

(CHAPTER 200)  
(MAINE'S RIVERS)

12 § 401. Maine's rivers

The Legislature finds

1. **Rivers and streams a natural resource.** That the State's nearly 32,000 miles of rivers and streams comprise one of its most important natural resources, historically vital to the state's commerce and industry and to the quality of life enjoyed by Maine people

2. **Increase in value of rivers and streams.** That the value of its rivers and streams has increased in recent years due to the improvement in the quality of their waters, the restoration of their fisheries, the growth in demand for hydropower and the expanding interest in river recreation activities, leading at times to conflict among these uses

3. **Use of rivers and streams.** That its rivers and streams afford the state's people with major opportunities for the enjoyment of nature's beauty, unique recreational activities and solace from an industrialized society, as well as for economic expansion through the development of hydropower, the revitalization of waterfronts and ports and the attraction of both tourists and desirable new industries

4. **Policy.** That the best interests of the state's people are served by a policy which recognizes the importance that their rivers and streams have for meeting portions of several public needs, provides guidance for striking a balance among the various uses which affords the public maximum benefit and seeks harmony rather than conflict among these uses.

12 § 402. Declaration of policy

In its role as trustee of the public waters, the Legislature declares that the well-being of the citizens of this State depends on striking a carefully considered and well-reasoned balance among the competing uses of the state's rivers and streams. Further, the Legislature declares that such a balance shall

1. **Restoration of water.** Restore waters to a condition clean enough to allow fishing and swimming in all our rivers and streams

2. **Revitalization of waterfronts.** Revitalize waterfronts and ports

3. **Maintenance of scenic beauty.** Maintain, even in areas where development occurs, the scenic beauty and character of our rivers

4. **Interests of riparian owners.** Recognize and respect the rightful interests of riparian owners

5. **Increase hydroelectric power.** Increase the hydroelectric power available to replace foreign oil in the State

6. **Hydropower development.** Streamline procedures to facilitate hydropower development under reasoned environmental, technical and public safety constraints

7. **Fisheries.** Restore anadromous fisheries and improve the productivity of inland fisheries

8. **Recreation.** Expand the opportunities for outdoor recreation

9. **Outstanding river stretches.** Protect the special resource values of the flowing waters and shorelands of the State's most outstanding river stretches, as identified by the Department of Conservation's 1982 Maine Rivers Study and as specifically delineated in this chapter.

Further, the Legislature finds that with careful planning our foreseeable needs for all of these uses may be reasonably integrated harmoniously with one another on the state's 32,000 miles of rivers and streams.

## 12 § 403. Special protection for outstanding rivers

The Legislature declares that certain rivers, because of their unparalleled natural and recreational values, provide irreplaceable social and economic benefits to the people in their existing state. It is the Legislature's intent that no new dams be constructed on these river and stream segments without the specific authorization of the Legislature, that no new water diversion, which would constitute a hydropower project pursuant to Title 38, section 632, and which would bypass all or part of the natural course of these river and stream segments, be constructed without the specific authorization of the Legislature and that additional development or redevelopment of dams existing on these segments, as of September 23, 1983, shall be designed and executed in a manner that either enhances or does not diminish the significant resource values of these river segments identified by the 1982 Maine Rivers Study. No license or permit under Title 38, sections 630 to 636 may be issued for construction of new dams on the river and stream segments subject to this special protection without the specific authorization of the Legislature, for the construction of any water diversion project which would constitute a hydropower project pursuant to Title 38, section 632, and which would bypass all or part of the natural course of river and stream segments subject to this special protection without the specific authorization of the Legislature or for additional development or redevelopment of existing dams on the river and stream segments subject to this special protection where the additional development or redevelopment diminishes the significant resource values of these river and stream segments.

Further, the Legislature finds that projects inconsistent with this policy on new dams and diversion projects, which constitute hydropower projects pursuant to Title 38, section 632, and redevelopment of existing dams will alter the physical and chemical characteristics and designated uses of the waters of these river and stream segments. It finds that these impacts are unacceptable and constitute violations of the State's water quality standards. The Legislature directs that no project which fails to meet the requirements of this section may be certified under the United States Clean Water Act, Section 401.

For purposes of this section, outstanding river and stream segments meriting special protection shall include

1. **Allagash River.** The Allagash River from Gerald Brook in Allagash up to but not including the Churchill Dam in T.10, R.12, W.E.L.S., including its tributaries the Musquacook Stream from the Allagash River to the outlet of Third Musquacook Lake in T. 11, R. 11, W.E.L.S.; Allagash Stream from its inlet to Chamberlain Lake to the outlet of Allagash Pond in T.9, R.15, W.E.L.S.; and Chemquasabamticook Stream from its inlet into Long Lake to the outlet of Chemquasabamticook Lake, excluding Round Pond in T.13, R.12, W.E.L.S., Harvey Pond, Long Lake, Umsaskis Lake, Musquacook Lakes (1-2), Little Round Pond in T.8, R.13, W.E.L.S., Allagash Lake and Clayton Lake

2. **Aroostook River.** The Aroostook River from and including the Sheridan Dam in Ashland to Millinocket Stream, including its tributaries Millinocket Stream from the Aroostook River to the outlet of Millinocket Lake; Munsungan Stream from the Aroostook River to the outlet of Little Munsungan Lake; St. Croix Stream from the Aroostook River to Hall Brook in T.9, R.5, W.E.L.S.; and the Big Machias River from the Aroostook River to the outlet of Big Machias Lake, excluding Round Pond in T.7, R.9, W.E.L.S.

3. **Dead River.** The Dead River from the Kennebec River to the upstream limit of Big Eddy

4. **Dennys River.** The Dennys River from Hinckley Point in Dennysville to the outlet of Meddybemps Lake

5. **East Machias River.** The East Machias River, including the Maine River, from the Route 191 Mill Memorial Bridge in East Machias to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Second Lake, Round Lake, Crawford Lake, Lower Mud Lake and Upper Mud Lake

6. **Fish River.** The Fish River from its inlet into St. Froid Lake in T.14, R. 7, W.E.L.S. to the outlet of Mud Pond in T.13, R. 8, W.E.L.S., excluding Portage Lake, Round Pond and Fish River Lake.

7. **Kennebec River.** The Kennebec River from Bay Point in Georgetown to the Father Curran Bridge in Augusta and from the confluence of the Dead River with the Kennebec River up to, but not including, the Harris Dam in Indian Stream Township

8. **Machias River.** The Machias River, including Fourth and Fifth Lake Streams, from Fort O'Brien in Machias to the outlet of Fifth Machias Lake, including its tributaries the West Branch Machias River from the Machias River to the outlet of Lower Sabao Lake; Old Stream from the Machias River to the outlet of First Lake; and Mopang Stream from the Machias River to the outlet of Mopang Second Lake, excluding Machias Lakes (1-4), Lower Pond and Mopang First Lake

9. **Mattawamkeag River.** The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township townline.

10. **Moose River.** The Moose River from its inlet into Attean Pond to its confluence with Number One Brook in Beattie Township;

11. **Narraguagus River.** The Narraguagus River from the Route 1 bridge in Cherryfield to the outlet of Eagle Lake, excluding Beddington Lake and Deer Lake

12. **Penobscot River.** The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs up to, but not including, the Veazie Dam, including its tributaries the West Branch of the Penobscot from its inlet into Ambajeus Lake to the western boundary of T.3, R.10, and from its inlet into Chesuncook Lake up to, but not including, the dam at Seboomook Lake; the East Branch Penobscot River from the Penobscot River up to, but not including, the dam at the outlet of Grand Lake Matagamon; the Wassataquoik Stream from the East Branch of the Penobscot River to Annis Brook in T.4, R.9, W.E.L.S.; the Webster Brook from its inlet into Grand Lake Matagamon up to, but not including, Telos Dam in T.6, R.11, W.E.L.S.; the Seboeis River from the East Branch of the Penobscot River to the outlet of Snowshoe Lake; and the Sawtelle Brook from the Seboeis River up to, but not including, the dam at the outlet of Sawtelle Deadwater, excluding Passamagamet Lake, Webster Lake, White Horse Lake and Snowshoe Lake

13. **Pleasant River.** The Pleasant River from Seavey Point in Addison to the outlet of Pleasant River Lake

14. **Rapid River.** The Rapid River from the Magalloway Plantation and Upton townline to the outlet of Pond in the River

15. **Saco River.** The Saco River from the Little Ossipee River to the New Hampshire border

16. **St. John River.** The St. John River from one mile above the foot of Big Rapids in Allagash to the Baker Branch, including its tributaries the Big Black River from the St. John River to the Canadian border; the Northwest Branch from the St. John River to the outlet of Beaver Pond in T.12, R.17, W.E.L.S.; the Southwest Branch from the Baker Branch to 5 miles downstream of the Canadian border; and the Baker Branch from the St. John River to 1.5 miles below Baker Lake

17. **Sheepscot River.** The Sheepscot River from the Route 1 bridge in Wiscasset to Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributaries the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China

18. **West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the outlet of Fourth West Branch Pond in Shawtown Township, excluding Silver Lake and West Branch Ponds (1-3).

#### 12 § 403-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Existing dam.** "Existing dam" means any man-made barrier across a river segment identified in this chapter which impounds water and has not deteriorated or been breached or modified to the point where it no longer impounds water at 50% or more of its design level at normal flows.

#### 12 § 404. Finance Authority of Maine

The Finance Authority of Maine may not finance any energy generating system project under Title 10, chapter 110, if that project is located in whole or in part on any river listed in section 403.

#### 12 § 405-A. St. Croix River

1. **Special consideration.** In consideration of the special status of the St. Croix River as an international boundary governed in part by the International Joint Commission and the Province of New Brunswick, the Legislature establishes the following provisions.

2. **Commercial, industrial or residential development.** Except as provided in this subsection, no person may undertake any further commercial, industrial or residential development in the area within 250 feet of the St. Croix River from the Grand Falls flowage to the north end of Wingdam Island. The following activities shall be exempt from these provisions:

A. Development of hydroelectric or other dams, plants and related facilities or improvements subject to the conditions described in subsection 3

B. A bridge at Vanceboro

C. A haul road from Grand Falls

D. Activities and developments related to timber harvesting, mining or extraction of sand and gravel

E. Any recreational management activity conducted or approved by the State.

3. **New hydroelectric dams.** No person may develop new hydroelectric dams on the St. Croix River from Grand Falls to the north end of Wingdam Island without first:

A. Having performed a feasibility study, by a qualified consultant, approved by the Governor to examine the alternative potentials for hydropower development downstream from Grand Falls and having made the findings available to the State for review

B. Having consulted with the office of the Governor or other agency of the State, designated by the Governor, regarding the feasibility of this downstream development

C. Having determined that there exists no economically feasible site downstream from Grand Falls

D. Having consulted with the St. Croix International Waterway Commission.

If the State disagrees with any of the assumptions, findings or conclusions of the economic feasibility study, the comments of the State shall be considered and responded to by the consultant. These comments and the responses of the consultant shall be noted in the final report of the economic feasibility study.

4. **Review.** The State Planning Office shall review the status of hydropower development on the St. Croix River and shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources by January 1, 1993 and every 5 years thereafter. The report shall include any recommendations for changes in the provisions of this section together with the justification for the changes. If the St. Croix River is included in any legislative Act or regulation which directly or indirectly has as its effect the essential prohibition of construction of new dams or development or redevelopment of existing dams on the St. Croix River, this section shall be repealed on the effective date of that Act or regulation.

#### 12 § 406. Report

The State Planning Office shall provide a report no later than December 1, 1986, to the Legislature detailing the status of policy accomplishments pursuant to this chapter.

#### 12 § 407. Comprehensive river resource management plans

The State Planning Office, with assistance from the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Environmental Protection and other state agencies as needed, shall develop, subject to the Maine Administrative Procedures Act, Title 5, section 375, a comprehensive river resource management plan for each watershed with a hydropower project licensed under the Federal Power Act or to be licensed under the Federal Power Act. These plans shall provide a basis for state agency comments, recommendations and permitting decisions and shall at a minimum include, as applicable, minimum flows, impoundment level regimes, upstream and downstream fish passage, maintenance of aquatic habitat and habitat productivity, public access and recreational opportunities. These plans shall update, complement and, after public notice, comment, and hearings in the watershed, be adopted as components of the State's comprehensive rivers management plan.

(TITLE 12)  
(CONSERVATION)  
  
(PART 2)  
(FORESTS, PARKS, LAKES AND RIVERS)  
  
(CHAPTER 201-A)  
(MINING AND MINERALS)  
  
(SUBCHAPTER I)  
(MAINE GEOLOGICAL SURVEY)

**12 § 541. Maine Geological Survey established**

There is established within the Department of Conservation to accomplish the purposes of this chapter a Maine Geological Survey, hereinafter referred to as the "survey," to gather, analyze, interpret, publish and disseminate information relating to the geologic features of the State, and to administer mineral exploration and development activities on state-owned lands.

**12 § 542. Survey; powers and duties**

**1. Information program.** The survey shall develop and administer a program to gather, interpret, publish and disseminate information relating to the geologic features of the State including, but not limited to, hydrogeologic, marine-estuarine, bedrock, surficial and economic geology.

**1-A. Identification and mapping.** The survey, in cooperation with the United States Geological Survey is directed to delineate those areas of the State which are underlain with porous surficial geologic materials which are aquifers capable of and likely to yield significant amounts of ground water. The survey is directed to delineate areas that serve as important aquifer recharge areas. Aquifers and aquifer recharge areas shall be identified by standard geologic and hydrologic investigations, which may include drilling observation wells, performing pumping tests, water sampling and geologic mapping.

**2. Information furnished agencies and public; environmental development applications.** To the extent of its available resources, the survey shall provide, as requested, geologic information to public agencies and the general public. The survey may review the geologic aspects of environmental and site development applications under consideration by state and federal regulatory agencies.

**2-A. Solicitation of information.** Insofar as possible, all state agencies shall provide any information on geological resources, including ground water, that the survey may request. The survey shall actively solicit the cooperation of private water well drillers in obtaining information on surficial geology, bedrock and the hydrology of the State.

**3. Employees.** The survey may employ or retain such professional and other employees, subject to the Civil Service Law, as are necessary to carry out the purposes of this chapter, within the limits of the funds available.

**4. Mineral resources development.** The survey is responsible for the orderly development of mineral resources on state-owned lands, including submerged lands and waters, both inland and tidal, acting in conjunction with the Bureau of Public Lands.

**5. Research projects.** The survey may initiate, contract for and manage research projects relating to the purposes of this chapter.

**6. Royalties, fees and rents.** The survey shall receive all royalties, fees and rents accruing to the State under this chapter, which shall be paid into a separate account to be established by the Treasurer of State to be used for salaries and other expenses incurred in the administration of this chapter, subject to, and to the extent permitted by, section 553, subsection 3, paragraph E. The account shall not lapse, but shall continue from year to year.

**7. Rules and regulations.** The survey may from time to time adopt, amend, repeal, pursuant to Title 5, chapter 375, subchapter II, and enforce reasonable rules and regulations necessary to carry out the duties assigned to it.

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(TITLE 12)  
(CONSERVATION)

(PART 2)  
(FORESTS, PARKS, LAKES AND RIVERS)

(CHAPTER 201-B)  
(WATER WELLS)

**12 § 550-B. Water well information**

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

A. "Well" means any hole constructed by any method for the purpose of extracting water from below the ground.

B. "Well contractor" means any person, company, firm, partnership or corporation engaged in the business of constructing water wells.

**2. Exemptions.** Wells for which data reports are already required by any state agency are exempt from the reporting requirements of this chapter.

**3. Water well information documentation.** Completion reports shall be filed according to this subsection.

A. Within 180 days after completion of any well or dry hole, or the enlarging or deepening of an existing well, a well contractor shall submit a report to the Maine Geological Survey, on forms designed and provided by the Maine Geological Survey. The report shall contain information as may be required by the Maine Geological Survey, including, but not limited to, location, construction and well yield.

B. Any well contractor who has engaged in the construction of water wells, but who has not submitted well completion reports on a timely basis as required by this chapter, shall be in violation of this chapter.

**4. Compliance with other laws and rules.** Notwithstanding the provisions set forth in this chapter, all wells are to be constructed and maintained in accordance with all other laws and rules in effect.

**5. Penalties.** Any person, company, firm, partnership or corporation, who violates any standard or provision of this chapter, commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. In addition to other civil remedies, the court may issue an injunction.

**6. Information use.** Information collected by the Maine Geological Survey under this chapter is exempt from Title 1, chapter 13, subchapter I. The Maine Geological Survey shall make information collected under this chapter available to any federal, state or municipal entity or authorized agent of such entity.



(TITLE 12)  
(CONSERVATION)  
  
(PART 2)  
(FORESTS, PARKS, LAKES AND RIVERS)  
  
(CHAPTER 206-A)  
(USE REGULATION)  
  
(SUBCHAPTER II)  
(MAINE LAND USE REGULATION COMMISSION)

**12 § 685-A. Land use districts and standards**

1. **Classification and districting of lands.** The commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized portions of the State that fall into land use districts and designate each area in one of the following major district classifications: Protection, management and development. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter II, shall enact regulations for determining the boundaries of each major type of district in accordance with the following standards.

- A. Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State.
- B. Management districts: Areas which are appropriate for commercial forest product or agricultural uses and for which plans for additional development are not presently formulated nor additional development anticipated.
- C.
- D. Development districts: Areas discernible as having patterns of intensive residential, recreational, commercial or industrial use, or commercial removal of minerals or other natural resources, and areas appropriate for designation as development districts when measured against the purpose, intent and provisions of this chapter.

In addition to delineating the major district classifications listed, the commission may delineate such subclassifications as may be deemed necessary and desirable to carry out the intent of this chapter.

3. **Land use standards.** The commission, acting on principles of sound land use planning and development, shall prepare land use standards prescribing standards for the use of air, lands and waters. Except as provided in this chapter, these standards shall be adopted by the commission in accordance with the procedures set forth in Title 5, chapter 375, subchapter II.

In addition to the purposes set forth in section 681, the land use standards shall:

- A. Encourage the most desirable and appropriate use of air, land and water resources consistent with the comprehensive land use plan
- B. Protect public health by reduction of noise, air pollution, water pollution and other environmental intrusions
- C. Protect and preserve significant natural, scenic and historic features where appropriate, beneficial and consistent with the comprehensive land use plan
- D. Advise and assist the Department of Transportation and other concerned agencies in transportation planning and operation
- D-I. Provide for safe and appropriate loading, parking and circulation of land, air and water traffic
- E. Encourage minimal adverse impact of one use upon the use of surrounding areas by setting standards of performance describing desirable and acceptable levels of operation in connection with any use and its relation to surrounding areas, including provisions for the eventual amelioration of existing adverse impact

F. Reflect a consideration of the availability and capability of the natural resources base, including soils, topography or sufficient healthful water supplies

G. Regulate, as necessary, motor vehicles as defined in Title 29, section 1, subsection 7, on icebound inland lakes which are completely encompassed by unorganized territories during the hours from sunset to sunrise of the following day.

**4. Land use standards considered as minimum requirements.** Land use standards shall be interpreted and applied by the commission as minimum requirements, adopted to reasonably and effectively promote health, safety and general welfare and insure compliance with state plans and policies.

Whenever the requirements of the adopted land use standards are at variance with the requirements of any other lawfully adopted rules, regulations, standards, ordinances, deed restrictions or covenants, the more protective of existing natural, recreation and historic resources shall govern.

Any portion of a land use district which subsequently becomes an organized municipality or part of an organized municipality or any plantation which adopts planning, zoning and subdivision control as provided in Title 30-A, section 7059, shall continue to be regulated by the Maine Land Use Regulation Commission pursuant to this chapter until such time as the municipality or plantation of which the regulated district is then a part shall adopt land use plans and regulations not less protective of the existing natural, recreational or historic resources than those adopted by the commission.

A. Any municipality organized after September 23, 1971, or any plantation which adopts planning, zoning and subdivision control as provided in Title 30-A, section 7059, may submit to the commission and receive the approval of the commission of the following:

- (1) A comprehensive land use plan for that plantation or proposed city or town;
- (2) Standards for determining land use district boundaries and uses permitted within the districts in that plantation or proposed city or town;
- (3) A land use district boundary map for that plantation or proposed city or town; and
- (4) Such other proposed regulations or standards as the commission deems to be necessary to achieve the purpose, intent and provisions of this chapter.

Upon request of the municipality or plantation, the commission shall prepare such plans, maps, regulations and standards as it may deem necessary to meet minimum planning and zoning standards for its approval of those standards.

Upon obtaining approval, the plantation, city or town shall thereafter adopt, administer and enforce the approved plans, maps, regulations and standards.

B. From time to time, the commission may review the administration and enforcement of local land use plans and regulations by plantations and municipalities which have adopted land use plans, maps, regulations and standards approved by the commission. If, following the review, the commission finds that any of the following have occurred, the commission may reestablish its jurisdiction over that plantation or municipality:

- (1) A plantation or municipality has repealed the land use plan, maps, standards or regulations necessary to satisfy the requirements of this subsection or has substantially modified the land use plan, maps, standards or regulations so that the resources of the plantation or municipality are not reasonably protected;
- (2) A plantation or municipality has abolished or does not have functioning the administrative bodies and officers necessary to implement the land use program as approved by the commission, normally a planning board, board of appeals and code enforcement officer are included, but this may vary depending on the local program; or
- (3) A plantation or municipality has not administered or enforced its land use plan, maps, standards or regulations in a manner which reasonably protects the resources in the plantation or municipality involved.

The action by the commission shall conform with the provisions for rulemaking of the Maine Administrative Procedure Act, Title 5, chapter 375.

Action taken by the commission to reestablish its jurisdiction over a plantation or municipality shall be effective immediately, but shall be submitted to the current or next regular session of the Legislature for approval. If the Legislature fails to act, the action shall continue in effect.

**5. Considerations, application and exemptions.** No land use standard shall deprive any owner or lessee or subsequent owner or lessee of any interest in real estate of the use to which it is lawfully devoted at the time of adoption of said standard. Year-round and seasonal single residences and operating farms in existence and use as of September 23, 1971, while so used, and new accessory buildings or structures or renovations of such buildings or structures which are or may be necessary to the satisfactory and comfortable continuation of these residential and farm uses shall be exempt from the requirements of section 685-B, subsection 1.

Land use standards adopted pursuant to this chapter for management districts shall in no way limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes, including tree farms. Notwithstanding this subsection, a permit from the commission shall be required for roads covering a ground area of 3 acres or more constructed in management districts, unless those roads are constructed and maintained in accordance with the guidelines of the commission's Land Use Handbook, Section 6, "Erosion Control on Logging Jobs," or as revised. The commission may require a person constructing a road to notify the commission of the location of the road within 21 days.

In adopting district boundaries and land use standards, the commission shall give consideration to public and private planning reports and other data available to it, and shall give weight to existing uses of land and to any reasonable plan of its owner as to its future use.

**8. Amendments to district boundaries and standards.** The commission, of its own accord, may initiate and any state or federal agency, or any property owner or lessee, may petition for a change in the boundary of any land use district or for amendments to any land use standard.

The commission shall, within 45 days of receipt of such petition, either approve the proposed amendment, deny the proposed amendment or schedule a public hearing thereon in the manner provided in subsection 7. The notification procedures set forth in Title 5, section 8053, shall not be required prior to the commission's action upon a petition by a landowner for revision to the district boundaries within his ownership unless the commission determines to hold a hearing prior to acting upon the petition; provided that, in any case, notice shall be given to all abutting land owners.

No change in a district boundary shall be approved, unless there is substantial evidence that:

- A. The change would be consistent with the standards for district boundaries in effect at the time; the comprehensive land use plan; and the purpose, intent and provisions of this chapter
- B. The change in districting will satisfy demonstrated need in the community or area and will have no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

No amendment to land use standards shall be approved unless there is substantial evidence that:

- A. The change would better serve the purpose, intent and provisions of this chapter and would be consistent with the comprehensive land use plan.

Amendments to land use standards so adopted shall be effective immediately but shall be submitted to the next regular or special session of the Legislature for approval or modification. If the Legislature fails to act, such standards shall continue in full force and effect.

**9. Periodic review of district boundaries and land use standards.** At the end of each 5 years following initial adoption of permanent land use standards and districts, the commission shall make a comprehensive review of the classification and delineation of districts of the land use standards. The assistance of appropriate state agencies shall be secured in making this review and public hearings shall be held in accordance with the requirements set forth in subsection 7.

**10. Special exceptions and variances.** The commission may approve the issuance of a special exception permit in strict compliance with this chapter and the regulations and standards adopted pursuant thereto. The commission may grant a variance where the commission finds that strict compliance with the regulations and standards adopted by this commission would cause unusual hardship or extraordinary difficulties because of exceptional or unique conditions of topography, access, location, shape,

size or other physical features of the site, that the proposed development is in keeping with the general spirit and intent of this chapter and the public interest is otherwise protected.

**11. Public service corporation exemptions.** Real estate used or to be used by a public service corporation may be wholly or partially exempted from regulation to the extent that the commission may not prohibit such use but may impose terms and conditions for use consistent with the purpose of this chapter, when, upon timely petition to the Public Utilities Commission and after a hearing, the said commission determines that such exemption is necessary or desirable for the public welfare or convenience.

## **12 § 685-B. Development review and approval**

### **1. Review and approval required.**

A. No structure or part thereof shall be erected, changed, converted, or wholly or partly altered or enlarged in its use or structural form other than normal maintenance or repair, without a permit issued by the commission.

B. No person may commence development of or construction on any lot, parcel or dwelling unit within any subdivision or sell or offer for sale any interest in any lot, parcel or dwelling unit within any subdivision without a permit issued by the commission.

C. No person may commence any construction or operation of any development without a permit issued by the commission.

The commission may waive the requirement of a hearing for any person having received approval by the Board of Environmental Protection pursuant to the Site Location of Development Law, Title 38, sections 481 to 488.

Approval by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards and rules adopted by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the development meets the requirements of the Site Location of Development Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; or the natural resource protection laws, Title 38, chapter 3, subchapter I, article 5-A; and the rules adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply. Disapproval by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the proposed development does not meet the requirements of the Site Location of Development Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; or the natural resource protection laws, Title 38, chapter 3, subchapter I, article 5-A; and the rules adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply.

The commission may establish standards within which authority may be delegated to its staff to approve with reasonable conditions or deny applications submitted hereunder. Any person aggrieved by a decision of the staff shall have the right to a review of that decision by the commission members.

The commission shall establish coordination and assistance procedures for all land use permits issued by agencies of the State for proposed development within the unorganized townships and plantations. Those procedures shall, to the extent practicable, ensure: The availability to the public of necessary information concerning those land use permits; the provision of assistance to applicants in obtaining those permits from state agencies; the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by applicants and the issuing agencies. State permit issuing agencies shall cooperate with the commission in the development and effectuation of coordination and assistance procedures.

Approval by the Board of Environmental Protection of a proposed development under Title 38, chapter 13, article 3, shall be a sufficient basis to support, but shall not require, a finding by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards and rules adopted by the commission. Disapproval by the Board of Environmental Protection of a proposed development under Title 38, chapter 13, article 3, shall be a sufficient basis to support, but shall not require, a finding by the commission that the proposed development does not meet the requirements of subsection 4, and of the land use standards and rules adopted by the commission.

**2. Application for approval.** The application forms for approval, as provided by the commission, shall be completed and signed by the applicant and shall be accompanied by the following:

A. A plan of the proposed structure, subdivision or development showing the intended use of the real estate, the proposed change, the details of the project and such other information as may be required by the commission to determine conformance with applicable land use standards.

B. The fee prescribed by the commission rules, such fee to be a minimum of \$25 but no greater than 2/10 of 1% of the total construction costs. Zoning petitions submitted by other than a state or federal agency will range from \$50 to \$500 depending on size and complexity. The fees shall apply to all amendments except for minor changes to building permits

C.

D. Evidence of sufficient right, title or interest in all of the property which is proposed for development or use. For purposes of this subsection, the written permission of the record owner or owners of flowed land shall be deemed sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose. The commission may not refuse to accept, under this paragraph, a permit application for any prohibited activity if the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of the flowed land in question and has been unable to do so.

\* \* \*

**4. Criteria for approval.** In approving applications submitted to it pursuant to this section, the commission may impose such reasonable terms and conditions as the commission may deem appropriate.

The commission shall approve no application, unless:

A. Adequate technical and financial provision has been made for complying with the requirements of the state's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G, and the natural resource protection laws, Title 38, chapter 3, subchapter I, article 5-A, for solid waste disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies

B. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods

C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal

D. Uses of topography, soils and subsoils meet standards of the current soil suitability guide for land use planning in Maine, or which are adaptable to the proposed use pursuant to said guide and will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water

E. The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto.

F. In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the commission.

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected. The commission shall permit the applicant to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources.

\* \* \*

(TITLE 12)  
(CONSERVATION)

(PART 5)  
(WETLANDS)

(CHAPTER 421)  
(WETLANDS)

(SUBCHAPTER II)  
(ZONING)

**12 § 4751. Purpose**

The purpose of this subchapter is the promotion of the public safety, health and welfare, the protection of public and private property and the conservation of public or private water supplies, wildlife and freshwater, estuarine and marine fisheries.

**12 § 4752. Definition**

For the purposes of this subchapter, "coastal wetlands" are as defined in Title 38, section 472.

**12 § 4753. Administration**

This subchapter shall be administered by the Board of Environmental Protection.

**12 § 4754. Orders**

The board may, from time to time, for the purposes of this subchapter, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering any coastal wetland, or draining or depositing sanitary sewage into or on any coastal wetland, or otherwise polluting the same.

**12 § 4755. Hearing**

The board, before adopting, amending, modifying or repealing any such order, shall hold a public hearing thereon in the municipality in which the coastal wetlands to be affected are located, and shall give notice by mail to the municipal officers of such municipalities and to each assessed owner of such wetlands, to the Department of Transportation at least 21 days prior thereto, and to the public by publication in a newspaper published in the county where the wetlands are located, of the time and place of such hearing.

**12 § 4756. Recording**

Upon the adoption of any such order or any order amending, modifying or repealing the same, the board shall cause a copy thereof, together with a plan of the wetlands affected and a list of the assessed owners of such wetlands, to be recorded in the registry of deeds for the county in which such wetlands are located, and shall mail a copy of such order and plan to each assessed owner of such wetlands affected thereby, by registered or certified mail, return receipt requested.

**12 § 4757. Appeal procedure**

Any person having a recorded interest in wetlands affected by any such order of the board may, within the time provided in Title 5, chapter 375, subchapter VII, appeal to the Superior Court for the purpose of determining whether such order so restricts the use of the property as to deprive the owner of the reasonable use thereof or constitutes the equivalent of a taking without compensation. If the court so finds, it shall enter a decree that such order shall not apply to the wetland of the appellant, provided that such decree shall not affect any wetland other than that of the appellant. The appeal shall be the exclusive method of determining the validity of said order of the board. Any decree that such order constitutes the equivalent of a taking without compensation shall not entitle the appellant or any other person to petition for the assessment of damages by reason of the adoption of such order.

The board shall cause a copy of such decree to be recorded in the registry of deeds for the county in which the wetland is situated. After a decree has been entered providing that any such order of the board shall not apply to the wetland involved in the appeal, the board may, after causing an appraisal to be made, negotiate for the purchase of such wetland, if it deems that acquisition of the same is necessary for the purposes of section 4751 and Title 38, sections 471 to 478. If purchase, or a written agreement therefor, has not been effected within 60 days after negotiations have begun, and the board determines that an emergency situation exists which would cause an immediate threat to the public safety, health and welfare, to the protection of public or private property, or to public or private salt water supplies, or to the conservation of wildlife or freshwater estuarine or marine fisheries, the board shall declare that the public exigency requires the taking of such wetland, and, with the consent of the Governor, may acquire in behalf of the State the fee of such wetland or any lesser interest therein by eminent domain, the proceedings for such taking to be in accordance with Title 35-A, chapter 65.

Such wetlands or lesser interests therein, so taken, shall thereupon be under the jurisdiction and control of the board which shall hold the same for the purposes of this subchapter and issue rules and regulations governing the use thereof.

**12 § 4758. Violation; penalty**

The Superior Court shall have jurisdiction to restrain a continuing violation of any such order or of any provision of this subchapter at the suit of any person and, if necessary to preserve any of the values and purposes for which this subchapter was passed, shall order a restoration of the affected area to as near its original condition as possible, said restoration to be undertaken and costs borne by the property owner.

(TITLE 12)  
(CONSERVATION)

(PART 5)  
(WETLANDS)

(CHAPTER 423-A)  
(MINIMUM LOT SIZE)

**12 § 4807. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Multiple unit housing.** "Multiple unit housing" shall mean a structure or structures located on a single lot, which structures are designed or used to house 2 or more families.

2. **Other land use activity.** "Other land use activity" includes any commercial or industrial uses or combination of such uses.

3. **Person.** "Person" means any individual, corporation, firm, partnership, municipality, quasi-municipal corporation, state or federal agency or any other legal entity.

4. **Single family residential unit.** "Single family residential unit" means any structure of any kind, including mobile homes, used or designed to house a single family, and shall include those structures used permanently and seasonally.

5. **Subsurface waste disposal.** "Subsurface waste disposal" means any system for disposing of wastes or waste waters on or beneath the surface of the earth including, but not limited to, holding ponds, surface spraying, septic tanks, drainage fields and wells, but shall not include any discharge or the waste treatment system related thereto licensed under Title 38, section 413 or any discharge into a municipal or quasi-municipal sewer system.

6. **Waste.** "Waste" means any liquefied sewage, garbage, sewage sludge, chemical, biological or radiological materials, human body wastes, or any other refuse or effluent in a liquid form generated from domestic, commercial or industrial activities, except any wastes containing insufficient liquid to be free flowing and wastes generated from agricultural activities or animal husbandry.

**12 § 4807-A. Minimum lot size required**

In all areas of the State, notwithstanding any other provision of state or local law or regulation, no person shall

1. Dispose of waste from any single family residential unit by means of subsurface waste disposal unless such lot of land on which such single family residential unit is located contains at least 20,000 square feet; and if the lot abuts a lake, pond, stream, river or tidal area, it shall further have a minimum frontage of 100 feet on such body of water

2. Dispose of wastes by means of subsurface waste disposal from any multiple unit housing or any other land use activity which may generate wastes in excess of the waste disposal requirements of normal single family residential units, unless such multiple unit housing or other land use activity is located on a lot of a size and minimum frontage which is greater than the requirements stated in subsection 1 in the same proportion as the actual waste disposal requirements of the multiple unit housing or other land use activities is greater than that of a single family residential unit. For purposes of computing such proportions, the amount of sewage generated by and the waste disposal requirement of such activities or land uses shall be deemed to be:

- A. Single family residential unit, 300 gallons per day
- B. Multiple unit housing, 120 gallons per bedroom
- C. Other land use activity, actual measurement or computation of waste generated or likely to be generated.



**12 § 4807-B. Approval of smaller lots**

A lot of less than the size required in section 4807-A may be used for subsurface waste disposal if approved in writing by the Department of Human Services. Approval shall be granted if the applicant for approval demonstrates to the Department of Human Services that, based upon the amount and nature of wastes, construction of the subsurface disposal system, soil types and slopes, percolation rates, depth to bedrock and groundwater, density of any proposed development, and other relevant factors, the proposed subsurface waste disposal will not lower the water quality of or otherwise pose a threat to any lake, pond, stream, river or tidal waters, any underground water supply, or to the public health, safety and general welfare.

**12 § 4807-C. Approval of lesser frontage**

A lot of less than the frontage required in section 4807-A may be used for subsurface waste disposal if approved in writing by the Department of Human Services. Approval shall be granted if the applicant for approval demonstrates to the board that such frontage will not cause such lot to be of such configuration as to prevent compliance with the standards in section 4807-B, or not otherwise present any harm to public health, safety or general welfare.

**12 § 4807-D. Exemptions**

This chapter as to the use of a lot for single family residential purposes shall not apply to any lot which prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with law, prior to January 1, 1970; provided that contiguous lots in the same ownership on or after October 3, 1973 shall be considered as one lot for the purposes hereof.

This chapter shall not apply to any structure in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastes by means of subsurface waste disposal; except that no person shall reduce the size of the lot upon which such structure is located to a size or frontage less than that allowed by section 4807-A unless permitted pursuant to section 4807-B.

**12 § 4807-G. Violations**

Each day of violation of any provision of this chapter or the regulations enacted hereunder shall be considered a separate offense. Alternatively, and in addition thereto, any use of land in violation of this chapter shall be deemed to be a nuisance and the board may seek an injunction to prevent or abate a violation of this chapter or regulations promulgated thereunder.

(TITLE 12)  
(CONSERVATION)

(PART 8)  
(DEPARTMENT OF CONSERVATION)

(CHAPTER 428)  
(DEPARTMENT OF CONSERVATION)

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**12 § 5015. Maine Rivers Protection Fund**

There is established within the Department of Conservation a Maine Rivers Protection Fund, which shall be funded by donations, bequests, grants, gifts and proceeds from the sale of Maine rivers protection promotion items. The fund shall not lapse.

Pursuant to the authority established in section 5012, the commissioner may administer a state grant-in-aid program and may promulgate rules therefor under Title 5, chapter 375, subchapter II. The purpose of the program is to assist local governments, river conservation or management groups and landowners in activities that may include the acquisition, establishment and maintenance of access sites, parking areas, picnic areas, campsites and sanitary facilities; encouraging and securing shoreland gifts and conservation easements; financial support for river runners, litter control, signs and educational materials; the restoration and enhancement of anadromous fisheries; improving the natural productivity of inland fisheries; and supervision of recreational use and other similar or associated activities involving the protection of and public access to the State's rivers.

All funds of the Maine Rivers Protection Fund shall be subject to allocation by the Legislature.

Rules adopted under this section shall become effective immediately, but shall be submitted to the Legislature no later than the next regular session for approval or modification. If the Legislature fails to act, those rules shall continue in full force and effect.

(TITLE 12)  
(CONSERVATION)  
  
(PART 9)  
(MARINE RESOURCES)  
  
(SUBPART 1)  
(ADMINISTRATION)  
  
(CHAPTER 603)  
(DEPARTMENT ADMINISTRATION)

**12 § 6021. Purpose**

The Department of Marine Resources is established to conserve and develop marine and estuarine resources; to conduct and sponsor scientific research; to promote and develop the Maine coastal fishing industries; to advise and cooperate with local, state and federal officials concerning activities in coastal waters; and to implement, administer and enforce the laws and regulations necessary for these enumerated purposes, as well as the exercise of all authority conferred by this Part.

\* \* \*

**12 § 6022. Commissioner's appointment, duties and powers**

**1. Appointment and term.** The commissioner shall be appointed by the Governor and shall be subject to review by the Joint Standing Committee on Marine Resources and to confirmation by the Legislature. The commissioner shall serve at the pleasure of the Governor.

**2. General powers.** The commissioner shall be responsible for the administration and enforcement of all marine resources' laws and shall have all the powers of a marine patrol officer. He shall maintain records of all leases, certificates or licenses issued by the commissioner or required to be filed under section 6027.

**3. Organization and personnel.** The commissioner shall organize the department into the administrative units which the commissioner decides are necessary to carry out its duties. The commissioner shall hire all necessary employees of the department subject to the Civil Service Law, except that persons in the following positions shall be appointed by and serve at the pleasure of the commissioner: Deputy Commissioner; Chief, Bureau of Marine Patrol; and Assistant to the Commissioner for Public Information. The Chief of the Bureau of Marine Patrol shall be appointed from among the patrol personnel of the bureau with the rank of sergeant or higher. In the event that the Chief of the Bureau of Marine Patrol is not reappointed, that person shall have the right to be restored to the classified position from which that person shall have been promoted or to a position equivalent thereto in salary grade without impairment of that person's personnel status or the loss of seniority, retirement or other rights to which uninterrupted service in the classified position would have entitled that person. If that person's service in the position of Chief of the Bureau of Marine Patrol shall be terminated for cause, that person's right to be so restored shall be determined by the State Civil Service Appeals Board.

**4. Warden code.** The commissioner shall prepare a written code governing the operating procedures of the Bureau of Marine Patrol services for submission to the Director of Human Resources. The code shall become effective when approved by the Director of Human Resources.

**5. Property.** The commissioner may acquire and hold any right or interest in real or personal property on behalf of the State.

**6. Enforcement agreements.** The commissioner may enter into reciprocal enforcement agreements with political subdivisions of the State and with other states, regional authorities and the Federal Government. Pursuant to these agreements, the commissioner may designate and deputize federal law enforcement personnel and law enforcement personnel from other states to enforce marine resource laws and rules. In that event, the commissioner shall designate the specific laws and rules to be enforced. Agents so deputized may enforce those laws and rules so designated by the commissioner. Agents so deputized by the commissioner shall have the powers of a marine patrol officer, as defined in section 6025.

**7. Report.** The commissioner shall report to the Governor and Legislature every 2 years. This report shall include a detailed statement of the department's actions and functions and a survey of the present state of the state's fishing industries and their anticipated future, including statistics and data. The report may include those recommendations for amendments to the laws and licensing procedures of the marine resources' laws as may be necessary for the operation of the department. The report shall cover the period ending June 30th of each even-numbered year and shall be due within 6 months of the end of the period which it covers.

**8. Pamphlet laws.** The commissioner shall publish a pamphlet of the sections of this Part as soon as possible after the adjournment of the first regular session of each Legislature. In addition, the commissioner may publish any other laws or regulations.

**9. Federal expenditures.** The commissioner may accept federal funds for use in department programs and to do such acts as are consistent with the powers of the commissioner and as are necessary to carry out federal laws pursuant to which those funds are provided. The commissioner may accept any other funds as may be available to carry out the purposes of the department.

**10. Ecological impact.** The commissioner shall advise the United States Army Corps of Engineers, the Department of Transportation, the Department of Environmental Protection and appropriate state agencies on the ecological effects of dredging, filling and depositing of soil or otherwise altering coastal wetlands, whether these actions will affect adversely estuarine or marine fisheries and what mitigation or compensatory measures are available. The commissioner shall also recommend to these agencies whether dredging, filling or otherwise altering coastal wetlands is permitted under current state and federal wetland rules and regulations.

**11. Interagency cooperation.** The commissioner shall consult with, offer advice to and cooperate with the State Planning Office, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife and the Department of Conservation in carrying out his duties, and these agencies shall do the same in carrying out their duties. Cooperation shall include the exchange of information and the filing of copies of any application, petition, request, report or similar document which may bear upon the responsibilities of any of these departments. Details of those exchanges shall be worked out by the heads of the departments.

**12. Regulations.** The commissioner may make regulations as authorized by marine resources' laws.

\* \* \*

(TITLE 12)  
(CONSERVATION)

(PART 9)  
(MARINE RESOURCES)

(SUBPART 1)  
(ADMINISTRATION)

(CHAPTER 605)  
(GENERAL DEPARTMENT ACTIVITIES)

(SUBCHAPTER IV)  
(FISHWAYS)

**12 § 6121. Fishways in existing dams or artificial obstructions**

**1. Commissioner's authority.** In order to conserve, develop or restore anadromous fish resources, the commissioner may require a fishway to be erected, maintained, repaired or altered by the owners, lessors or other persons in control of any dam or other artificial obstruction within coastal waters frequented by alewives, shad, salmon, sturgeon or other anadromous fish species.

**2. Examination of dams.** The commissioner shall periodically examine all dams and other artificial obstructions to fish passage within the coastal waters in order to determine whether fishways are necessary, sufficient or suitable for the passage of anadromous fish.

**3. Initiation of fishway proceedings.** The commissioner shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams or other artificial obstructions whenever he determines that either of the following conditions may exist:

A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction with fish passage at other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of anadromous fish; or

B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species.

**4. Adjudicatory proceedings.**

A. A fishway proceeding shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, but a hearing may not be required unless requested in accordance with paragraph B. Notice of the proceeding shall be given in accordance with Title 5, section 9052, and the following requirements:

(1) Personal notice shall be given to the dam owner, lessee or other person in control of the dam or artificial obstruction, informing that person that a proceeding has been undertaken and of his right to request a hearing; and

(2) Notice to the public, in newspapers of general circulation in the areas affected, notifying the public of the initiation of the proceedings and of the public's opportunity to request a hearing.

B. If any interested person requests a public hearing, the commissioner shall, within 30 days, either notify the petitioners in writing of his denial stating the reasons, or schedule a public hearing. The commissioner shall hold a public hearing whenever:

(1) He is petitioned by 50 or more Maine residents; or

(2) The owner, lessee or other person in control of the dam or artificial obstruction requests a public hearing.

C. The commissioner shall accept testimony from the dam owner, lessee or other person in control of the dam or artificial obstruction on alternate fishway designs to those proposed by the commissioner for that dam or artificial obstruction.

5. **Decision.** In the event the commissioner decides that a fishway should be constructed, repaired, altered or maintained, his final orders shall be issued with specific plans and descriptions of the fishway construction, alteration, repair or maintenance requirements, the conditions of the use of the fishway and the time and manner required for fishway operation. The commissioner may issue a decision requiring the owners, lessees or other persons in control of the dam or obstruction to construct, repair, alter or maintain a fishway. Such a decision shall be supported by a finding based on evidence submitted to the commissioner that either of the following conditions exist:

A. One or more species of anadromous or migratory fish can be restored in substantial numbers to the watershed by construction, alteration, repair or maintenance of a fishway, and habitat anywhere in the watershed above the dam or obstruction is sufficient and suitable to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish; or

B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species.

In the event that the commissioner decides that no fishway should be constructed, he shall specify in that decision a period immediately subsequent to that decision during which no fishway may be required to be constructed. That period may not exceed 5 years.

**6. Compliance.**

A. The owner, lessee or other person in control of the dam or other artificial obstruction shall be jointly and severally liable for the costs of fishway design, construction, repair, alteration or maintenance and for full compliance with a decision issued pursuant to subsection 5. If the owner, lessee or other person in control of the dam or other artificial obstruction refuses to comply or does not fully comply with the commissioner's decision, the commissioner shall initiate a civil action to enjoin the owner, lessee or person in control of the dam to comply fully with the commissioner's order or to restrain the violation of an order. In the proceeding, the court shall not review the legality of the commissioner's order, except when the owner, lessee or person in control of the dam or artificial obstruction has brought a timely petition for judicial review pursuant to Title 5, chapter 375, subchapter VII.

B. The court may render judgment against and order the sale of the dam or other artificial obstruction, the land on which it stands and a right-of-way to the dam or artificial obstruction in order to secure the costs of fishway construction, repair, alteration or maintenance and costs of the court-ordered sale and the costs incurred by the department for fishway design. The purchaser of the dam or other obstruction shall be subject to the commissioner's decision.

7. **Privileged entry.** The commissioner, his agents or subcontractors shall be privileged to enter upon any private land in order to periodically examine fishways in dams or other artificial obstructions and the examination of dams provided in subsection 2. The commissioner shall notify the landowner, lessee or other person in control of the dam when the examination will take place and the time required to complete the examination. The commissioner shall make every effort to preserve private land and shall restore surrounding lands to the grade and condition existing prior to entry, if economically feasible.

**12 § 6122. Construction of new dams or other artificial obstructions**

1. **Notice required.** Prior to construction or prior to authorizing construction of a new dam or other obstruction in the coastal waters, the owner, lessee or other person in control of the dam or other artificial obstruction shall provide written notice to the commissioner, supplying information on construction plans, proposed location and date of construction of the dam or other artificial obstruction.

2. **Initiation of fishway proceedings.** Within 30 days of receipt of the construction notice, the commissioner shall review the plans in order to determine whether fishway construction or alteration of proposed fishway construction plans may be required pursuant to the criteria set forth in section 6121, subsection 3. If the commissioner determines that such construction or alteration may be necessary, he shall initiate fishway proceedings and follow the procedures prescribed in section 6121.

**12 § 6123. Obstructing fishways**

It shall be unlawful to tamper, damage, destroy, close to fish migration or introduce foreign objects into any fishway without the authority of the commissioner.

**12 § 6124. Violations; penalty**

It shall be considered a violation of this subchapter if a fish kill results from the improper operation of a fishway required pursuant to this subchapter. The department may assess a fine equivalent to the value of the fish killed but not more than \$10,000 for each day of that violation.

**12 § 6125. Rules**

The Department of Marine Resources and the Department of Inland Fisheries and Wildlife shall jointly make rules defining "fish kill."

(TITLE 12)  
(CONSERVATION)

(PART 10)  
(INLAND FISHERIES AND WILDLIFE)

(CHAPTER 713)  
(WILDLIFE AND FISHERIES MANAGEMENT)

(SUBCHAPTER I)  
(WILDLIFE SANCTUARIES AND WILDLIFE MANAGEMENT  
(AREAS)

**12 § 7652. Wildlife management areas and public  
access sites**

**1. Acquisition of land.**

A. The commissioner may acquire in the name of the State, by gift, bequest or otherwise, real and personal property for the location, construction and convenient operation of a wildlife management area or public access sites to inland or coastal waters.

B. The commissioner may purchase, lease or take and hold, for and in behalf of the State as for public uses, land and all materials in and upon it or any rights necessary for the purpose of establishing, erecting and operating wildlife management areas or public access sites to inland or coastal waters.

C. When the commissioner finds that a public need requires the taking of any land or rights for the purposes set out in this subsection, he shall cause them to be surveyed, located and described so that they can be located.

D. A plan of the land or rights shall be filed and recorded in the registry of deeds where the land or rights are located.

E. The filing of the plan and description shall vest the title to the land and right in the State or its grantees, to be held during the pleasure of the State.

**2. Compensation to landowners.**

A. The owners of property, either real or personal, taken by the commissioner under this section, shall be entitled to damages equal to the reasonable value of the property, as is provided when land is taken for highway purposes under Title 23, chapter 3.

B. In the event of a disagreement over the value, the reasonable value shall be determined by the county commissioners of the county in which the land is situated, upon the written application of any interested party.

C. If any party in interest is aggrieved by the decision of the county commissioners rendered in conformity with this section, an appeal may be made to the Superior Court of the county in the same manner as is provided when land is taken by the State for highway purposes.



(TITLE 12)  
(CONSERVATION)

(PART 10)  
(INLAND FISHERIES AND WILDLIFE)

(CHAPTER 713)  
(WILDLIFE AND FISHERIES MANAGEMENT)

(SUBCHAPTER III)  
(FISHWAYS AND DAMS)

**12 § 7701-A. Fishways in dams and other artificial obstructions**

**1. Commissioner's authority.** In order to conserve, develop or restore anadromous or migratory fish resources, the commissioner may require a fishway to be erected, maintained, repaired or altered by the owners, lessors or other persons in control of any dam or other artificial obstruction within inland waters frequented by alewives, shad, salmon, sturgeon or other anadromous or migratory fish species.

**2. Examination of dams.** The commissioner shall periodically examine all dams and other artificial obstructions to fish passage within the inland waters in order to determine whether fishways are necessary, sufficient or suitable for the passage of anadromous or migratory fish.

**3. Initiation of fishway proceedings.** The commissioner shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams or other artificial obstructions whenever he determines that one or more of the following conditions may exist:

A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction with fish passage at other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish

B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species.

**4. Adjudicatory proceedings.**

A. A fishway proceeding shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, but a hearing shall not be required unless requested in accordance with paragraph B. Notice of the proceeding shall be given in accordance with Title 5, section 9052 and the following requirements:

(1) Personal notice shall be given to the dam owner, lessee or other person in control of the dam or artificial obstruction, informing that person that a proceeding has been undertaken and their right to request a hearing; and

(2) Notice to the public, in newspapers of general circulation in the areas affected shall be given notifying the public of the initiation of the proceedings and of the public's opportunity to request a hearing.

B. If any interested person requests a public hearing, the commissioner shall, within 30 days, either notify the petitioners in writing of his denial stating the reasons therefor, or schedule a public hearing. The commissioner shall hold a public hearing whenever:

(1) He is petitioned by 50 or more Maine residents; or

(2) The owner, lessee or other person in control of the dam or artificial obstruction requests a hearing.

C. The commissioner shall accept testimony from the owner, lessee or other person in control of the dam or artificial obstruction on alternate fishway designs to those proposed by the commissioner for that dam or artificial obstruction.

**5. Decision.** In the event that the commissioner decides that a fishway should be constructed, repaired, altered or maintained, his final orders shall be issued with specific plans and descriptions of the fishway construction, alteration, repair or maintenance requirements, the conditions of the use of the fishway and the time and manner required for fishway operation. The

commissioner may issue a decision requiring the owners, lessees or other persons in control of the dam or obstruction to construct, repair, alter or maintain a fishway. Such a decision shall be supported by a finding based on evidence submitted to him that either of the following conditions exist:

- A. One or more species of anadromous or migratory fish can be restored in substantial numbers to the watershed by construction, alteration, repair or maintenance of a fishway and habitat anywhere in the watershed above the dam or obstruction is sufficient and suitable to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish
- B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species.

In the event that the commissioner decides that no fishway should be constructed, he shall specify in that decision a period subsequent to that decision during which no fishway may be required to be constructed. That period may not exceed 5 years.

**6. Compliance.**

A. The owner, lessee or other person in control of the dam or other artificial obstruction shall be jointly and severally liable for the costs of fishway design, construction, repair, alteration or maintenance, and for full compliance with a decision issued pursuant to subsection 5. If the owner, lessee or other person in control of the dam or other artificial obstruction refuses to comply or does not fully comply with the commissioner's decision, the commissioner shall initiate a civil action to enjoin the owner, lessee or person in control of the dam to comply fully with the commissioner's order or to restrain the violation of an order. In the proceeding, the court shall not review the legality of the commissioner's order, except when the owner, lessee or person in control of the dam or artificial obstruction has brought a timely petition for judicial review pursuant to Title 5, chapter 375, subchapter VII.

B. The court may render judgment against and order the sale of the dam or other artificial obstruction, the land on which it stands and a right-of-way to the dam or artificial obstruction, in order to secure the costs of fishway construction, repair, alteration or maintenance and costs of the court-ordered sale and the costs incurred by the department for fishway design. The purchaser of the dam or other obstruction shall be subject to the commissioner's decision.

**7. Privileged entry.** The commissioner, his agents or subcontractors shall be privileged to enter upon any private land in order to periodically examine fishways in dams or other artificial obstructions and the examination of dams provided in subsection 2. The commissioner shall notify the landowner, lessee or other person in control of the dam when the examination will take place and the time required to complete the examination. The commissioner shall make every effort to preserve private land and shall restore surrounding lands to the grade and condition existing prior to entry, if economically feasible.

**12 § 7701-B. Construction of new dams or other artificial obstructions**

**1. Notice required.** Prior to construction or prior to authorizing construction of a new dam or other obstruction in the inland waters, the owner, lessee or other person in control of the dam or other artificial obstruction, shall provide written notice to the commissioner, supplying information on construction plans, proposed location and date of construction of the dam or other artificial obstruction.

**2. Initiation of fishway proceedings.** Within 30 days of receipt of the construction notice, the commissioner shall review the plans in order to determine whether fishway construction or alteration of proposed fishway construction plans may be required pursuant to the criteria set forth in section 7701-A, subsection 3. If the commissioner determines that the construction or alteration may be necessary, the commissioner shall initiate fishway proceedings and follow the procedures prescribed in section 7701-A.

**12 § 7701-C. Violations; penalty**

It shall be considered a violation of this subchapter if a fish kill results from the improper operation of a fishway required pursuant to this subchapter. The department may assess a fine equivalent to the value of the fish killed but not more than \$10,000 for each day of that violation.

**12 § 7701-D. Rules**

The Department of Marine Resources and the Department of Inland Fisheries and Wildlife shall jointly make rules defining "fish kill."

(TITLE 12)  
(CONSERVATION)  
  
(PART 10)  
(INLAND FISHERIES AND WILDLIFE)  
  
(CHAPTER 715)  
(WATERCRAFT, SNOWMOBILES AND AIRMOBILES)  
  
(SUBCHAPTER I)  
(WATERCRAFT)

**12 § 7792. Commissioner's rule-making authority**

It shall be the intent of any rule required that it shall be in accord with such federal regulation as may be promulgated under the United States Federal Boat Safety Act of 1971 Public Law 92-75, as amended. The commissioner, acting jointly with the Commissioner of Marine Resources, may adopt and amend rules under the procedure provided in the Maine Administrative Procedure Act, Title 5, Part 18, which are not inconsistent with this subchapter, covering the following subject matter

**1. Administrative procedure.** Rules to further establish administrative procedure under this subchapter

\* \* \*

**2. Safe use and operation of watercraft.** Rules governing the use and operation of watercraft upon the waters of the State to insure safety of persons and property

**3. Safety equipment.** Rules further governing safety equipment for watercraft, including the type, quality and quantity of that equipment

**4. Horsepower.** Rules governing the horsepower of motors used to propel watercraft on all internal waters of this State. In promulgating these rules, the commissioner shall take into consideration the area of the internal waters, the use to which the internal waters are put, the depth of the water and the amount of water-borne traffic upon the waters and determine whether or not the rule is necessary to insure the safety of persons and property. The adoption of rules under this subsection is governed by the Maine Administrative Procedure Act, Title 5, Part 18, except that such rules may be only adopted as a result of a petition from the municipal officers of the municipality or municipalities in which the waters exist or from 25 citizens of the municipalities in which the waters exist, by county commissioners of the county in which the waters exist if they are located in unorganized territory or 25 citizens of the unorganized territory in which the waters exist, requesting the issuance of such a rule for a particular body of internal water and stating the proposed horsepower limitation.

**5. Restrictions for airmobiles.** Rules restricting the operation of airmobiles in fish or wildlife preserves, conservation areas or other areas where the operation may harm the natural environment.

**12 § 7792-A. Rules on operation of airmobiles**

**1. Rules.** Prior to November 1, 1979, the commissioner shall promulgate rules restricting the operation of airmobiles in areas where their use may be harmful. These rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, after public hearings in the areas affected.

**2. Minimum conditions.** These rules shall, as a minimum, condition the use of airmobiles in fish and wildlife preserves, conservation areas, coastal and inland wetlands and great ponds.

**3. Prohibitions.** The commissioner shall prohibit airmobile use wherever it adversely affects fish and wildlife habitat, interferes with the operation of other watercraft, threatens public safety or adversely affects the natural environment.

\* \* \*

(TITLE 22)  
(HEALTH AND WELFARE)

(SUBTITLE 1)  
(DEPARTMENTAL ORGANIZATION AND OPERATION)

(CHAPTER 1)  
(DEPARTMENT OF HEALTH AND WELFARE)

(SUBCHAPTER II)  
(ADMINISTRATION)

22 § 42. Rules and regulations

3. (CONFLICT: Text as amended by PL 1989, c. 104, Pt. C, @4) Plumbing and subsurface waste water disposal. The department shall adopt minimum rules relating to plumbing and subsurface sewage disposal systems and the installation and inspection thereof consistent with Title 30-A, chapter 185, subchapter III, and Title 32, chapter 49, but this does not preempt the authority of municipalities under Title 30-A, section 3001, to adopt more restrictive ordinances; and shall hold hearings on the first Tuesday of February of each year for the purpose of considering changes in the rules pertaining to plumbing and subsurface sewage disposal systems and the installation and inspection thereof. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30-A, sections 4201 and 4211 or uses a subsurface waste water disposal system not in compliance with rules applicable at the time of installation or modification shall be penalized in accordance with Title 30-A, section 4452. Enforcement of the rules shall be the responsibility of the municipalities rather than the department. The department or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust.

3. (CONFLICT: Text as amended by PL 1989, c. 483, Pt. A, @32) Plumbing and subsurface waste water disposal. The department, with the advice and consent of the Plumbers' Examining Board, shall adopt by reference a nationally recognized plumbing code. The department, with the advice and consent of the Plumbers' Examining Board, may adopt, as necessary, amendments to that code. The department shall adopt minimum rules relating to subsurface sewage disposal systems. All rules, including installation and inspection rules, must be consistent with Title 30-A, chapter 185, subchapter III, and Title 32, chapter 49, but this does not preempt the authority of municipalities under Title 30-A, section 3001, to adopt more restrictive ordinances; and shall hold hearings on the first Tuesday of February of each year for the purpose of considering changes in the rules pertaining to plumbing and subsurface sewage disposal systems and the installation and inspection thereof. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30-A, sections 4201 and 4211 or uses a subsurface waste water disposal system not in compliance with rules applicable at the time of installation or modification shall be penalized in accordance with Title 30-A, section 4506. Enforcement of the rules shall be the responsibility of the municipalities rather than the department. The department or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust.

3-A. Licensing of persons to evaluate subsurface waste water disposal systems. The department shall adopt rules providing for qualification, licensing and relicensing of persons to evaluate soils for subsurface waste water disposal. The hearings provided for in subsection 3 shall include consideration of the adoption or change of those rules.

The department shall investigate or cause to be investigated all cases or complaints of noncompliance with or violations of this section and the rules adopted pursuant to this section. The department has the authority to grant or amend, modify or refuse to issue or renew a license in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter V. The Administrative Court shall have the exclusive jurisdiction to suspend or revoke the license of any person who is found guilty of noncompliance with or violation of the rules adopted pursuant to this subsection or subsection 3.

The department may charge applicants no more than \$60 for examination to become a licensed site evaluator. The department shall charge a biennial site evaluator license fee of \$40. A licensed site evaluator who is employed by the department to administer this section and does not practice for the public is exempt from the licensee fee requirement. Appropriate rules shall be adopted by the department defining the appropriate financial procedure. The fees shall be paid to the Treasurer of State to be maintained as a permanent fund and used by the department for carrying out its plumbing and subsurface waste water disposal rules and site evaluation program.

**3-B. Inspection of plumbing and subsurface waste water disposal systems.** The department shall adopt rules providing for the inspection of plumbing and subsurface waste water disposal systems. In municipalities, the municipal officers shall provide for the appointment of one or more plumbing inspectors. In plantations, the assessors shall appoint plumbing inspectors in accordance with Title 30, section 3222. In the unorganized areas of the State, the department shall appoint plumbing inspectors or act in the capacity of a plumbing inspector until a person is appointed.

(TITLE 22)  
(HEALTH AND WELFARE)

(SUBTITLE 2)  
(HEALTH)

(PART 3)  
(PUBLIC HEALTH)

(CHAPTER 258-A)  
(BOARD OF PESTICIDES CONTROL)

**22 § 1471-A. Purpose and policy**

For the purpose of assuring to the public the benefits to be derived from the safe, scientific and proper use of chemical pesticides while safeguarding the public health, safety and welfare, and for the further purpose of protecting natural resources of the State, it is declared to be the policy of the State of Maine to regulate the sale and application of chemical insecticides, fungicides, herbicides and other chemical pesticides, and to regulate the return and disposal of limited and restricted use pesticide containers.

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**22 § 1471-D. Certification and licenses**

**1. Certification required; commercial applicators and spray contracting firms.** Certification is required for commercial applicators and spray contracting firms as follows.

A. No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board, provided that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator

B. No spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the board.

**2. Certification required, private applicators.** No private applicator shall use or supervise the use of any limited or restricted use pesticide without prior certification from the board, provided, that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator.

**2-A. Certification required; government pesticide supervisor.** No government pesticide supervisor may supervise the use of any pesticide without prior certification from the board, provided that the person who actually uses the pesticide must be certified.

**2-B. Certification required; spotters and monitors.** No person may:

A. Act as a spotter without prior certification from the board

B. Act as a monitor without prior certification from the board.

**3. License required, pesticide dealers.** No pesticide dealer shall:

A. Distribute any limited or restricted use pesticide without a distributor's license from the board

B. Distribute limited or restricted use pesticides to any person who is not licensed or certified by the board.

**4. Application.** Application for licenses or certification shall be accompanied by such a reasonable fee as the board may establish by regulation. The applicant shall provide such information regarding the applicant's qualifications and proposed operations and other relevant matters as required by the board. Commercial applicators and spray contracting firms shall be required by the board to provide proof of financial responsibility in custom application as to such amounts as the board may, by regulation, designate; private applicators may also be required to provide such proof. All applicants to the board for certification or licensing

shall be required to comply with such standards of competency as are established by the board concerning adequate knowledge of pesticide distribution or use and the related dangers and necessary precautions; provided that, in the case of applicants for commercial certification and pesticide dealers' licenses, such compliance shall be demonstrated by written examination in addition to such other criteria, including performance testing, as the board may establish.

**5. Issuance.** No license or certification may be issued by the board, unless the board determines that the standards for licensing and certification have been met as to those categories for which the applicant has applied and qualified. In the case of the spotter and monitor, the board shall set minimal proficiency requirements with the understanding that the board may choose to change these standards from time to time. The enforcement personnel of the Board of Pesticides Control shall be certified to meet at least the minimal proficiency requirements required of spotters and monitors. If a license or certification is not issued as applied for, the board shall provide written notice to the applicant of the reasons therefor. The license or certificate may be issued upon such terms and conditions as the board deems necessary for the protection of the public health, safety and welfare, and for enforcement and administration of this chapter and the rules promulgated pursuant to this chapter.

**6. Renewal.** Certification of commercial applicators, government pesticide supervisors, spotters, monitors, spray contracting firms and licenses of pesticide dealers shall be valid for one year from the date of issuance. Certification of private applicators shall be valid for such period as prescribed by the board by regulation. Application for renewal shall be accompanied by such reasonable fee as the board may by regulation require. The board may, by regulation, require that such renewal application include reexamination or other procedures designed to assure a continuing level of competence to distribute, use or supervise the use of pesticides safely and properly.

**22 § 1471-E. Aquatic application, permit required**

No person shall apply or cause to be applied a pesticide to the waters of the State without obtaining a waste discharge license from the Department of Environmental Protection pursuant to Title 38, chapter 3, subchapter 1, Article 2.

**22 § 1471-F. Critical areas**

No person shall apply pesticides to any area of the State which the board has determined to be a critical area, except to the extent such application is within the limits prescribed by the board in establishing the area.

**22 § 1471-G. Reports**

**1. Pesticide dealers to maintain certain records.** All pesticide dealers shall maintain records of pesticide distribution for a period of at least 2 years and shall provide such reports and information as the board may, by regulation, require.

**2. Applicators and firms to maintain certain records.** All commercial applicators and spray contracting firms shall maintain, for a period of at least 2 years, records indicating the type and amount of pesticide used, the area of use and such other information as the board may require. Said applicators and firms shall provide such information, notification and reports as the board, by regulation, may require.

**22 § 1471-H. Inspection**

For the purpose of carrying out the provisions of this chapter, the chairman or any member of the board or any authorized employee or consultant of the board may enter upon any public or private premises at reasonable times for the purpose of inspecting any equipment, device or apparatus used in applying pesticides; inspecting storage and disposal areas; inspecting or investigating complaints of injury to persons or land from pesticides; observing the use and application of pesticides; sampling pesticides in use or storage; sampling pesticide residues on crops, foliage, soil, water or elsewhere in the environment. Upon denial of access to the board or its agents, the board or its agents may seek an appropriate search warrant in a court of competent jurisdiction.

**22 § 1471-M. Powers of board**

**1. Establishment of categories and standards.** The board shall, by regulation promulgated in conformity with Title 5, chapter 375, subchapter II:

A. Establish categories, and where applicable subcategories, of commercial pesticide applicators and government pesticide supervisors depending upon the nature and extent of the pesticide use, the type of pesticide equipment, the degree of knowledge or skill required in their application and such other factors as the board deems relevant, provided that such categories shall be consistent with, but not limited to, the categories established by the United States Environmental Protection Agency

B. Establish competency standards for the established categories for the certification and renewal of certification of commercial applicators. Such standards shall require, as a minimum, that the applicant demonstrate, by written examination and, as appropriate, performance testing, knowledge of pests, formulation and labelling of pesticides, equipment and application techniques, safety precautions, potential harmful effects on the environment, and applicable federal and state laws and regulations.

C. Establish standards for the certification and renewal of certification of private applicators. Such standards shall require that the private applicator indicate satisfactory knowledge of pest problems and pest control practices, including as a minimum the ability to recognize common pests and the damage they cause, to understand the pesticide label, to apply pesticides in accordance with label instructions and warnings, to recognize local environmental situations that must be considered to avoid contamination, to recognize poisoning symptoms and corrective procedures, and to understand applicable federal and state laws and regulations.

D. Establish the standards for issuance and renewal of licenses of pesticide dealers. These standards shall include, but not be limited to, requirements concerning transportation of pesticides, the applicant's knowledge of applicable federal and state statutes and regulations, and the applicant's understanding of the dangers involved and the precautions necessary for the safe storage and distribution of pesticides

E. Establish guidelines and requirements for reporting of information by commercial applicators, pesticide dealers, spray contracting firms and monitors to the board

F. Establish standards for the certification and renewal of certification of government pesticide supervisors. These standards may require that the applicant demonstrate, by written examination and, as appropriate, performance testing, knowledge of pests, formulation and labeling of pesticides, equipment and application techniques, safety precautions, potential harmful effects on the environment and applicable federal and state laws and regulations.

G. Establish standards for the certification and renewal of certification of spotters and monitors

H. Establish standards for the certification and renewal of certification of spray contracting firms.

**2. Designation of critical areas; cooperation; promulgation of rules and regulations.** The board may:

B. Cooperate with any other agency of this State or its subdivisions, or with any agency of any other state or the Federal Government for the purpose of administering this chapter and of securing uniformity of regulations

C. On its own or in cooperation with other agencies or persons, publish such information as it deems appropriate, including information concerning injury which might result from improper application or handling of pesticides, and methods and precautions designed to prevent the injury

D. Promulgate such other rules and regulations and take such other actions as it deems appropriate to control the use and distribution of pesticides within the State and to otherwise provide that the purposes and policies of this chapter are insured.

**3. Chemical substance identification.** To the extent permitted under federal law, the board shall have primary enforcement responsibility for inspection of any workplace subject to the provisions of Title 26, chapter 22, solely because of the presence of a pesticide. The board shall have primary enforcement responsibility for training programs to be provided by employers under Title 26, chapter 22, in those instances where the employer is subject to the provisions of that law solely because of the presence or use of a pesticide.



The board shall assist the Director of the Bureau of Labor Standards in providing education and training in accordance with Title 26, section 1720, to aid agricultural employers in complying with the federal requirements for hazard communication and shall assist the responsible state agencies in providing education and training to aid agricultural employers in complying with the federal requirements for emergency and hazardous chemical inventory forms and community right-to-know reporting.

**4. Designation of critical areas.** The board may designate critical areas which shall include, but not be limited to, areas where pesticide use would jeopardize endangered species or critical wildlife habitat, present an unreasonable threat to quality of the water supply, be contrary to a master plan for the area where such area is held or managed by an agency of the State or Federal Government, or would otherwise result in unreasonable adverse effects on the public health, welfare or the environment of the area. The designation of a critical area may prohibit pesticide use or may include such limitations on such use as the board deems appropriate. The proceedings to designate a critical area under this section shall conform to Title 5, chapter 375, subchapter II.

The board, by rule, shall establish criteria for designation of critical areas by March 1, 1989.

In addition to the provisions of the Maine Administrative Procedure Act, Title 5, section 8001, any municipality and, for the purpose of representing unorganized territory, any county may petition the board for establishment of a critical area within their boundaries. If the board designates a critical area, the board shall develop a pesticide management plan for that area after receiving comments from the municipality or, for unorganized territory, the county; the volunteer medical advisory panel as established through the board; local applicators; owners of land within the critical area; and other interested parties and agencies.

\* \* \*

## **22 § 1471-R. Notification and monitoring**

**1. Purpose.** The purpose of this section is to protect the public health and safety by requiring a system of notification to the public and to the board for forest insect aerial spray projects and by improving the monitoring of these projects.

**2. Scope.** The requirements of this section apply to public and private forest insect aerial spray pesticide applications.

**3. Notification to the public.** Prior to the commencement of a forest insect aerial spray application, notice shall be given to the public as follows.

A. If the project is a major forest insect aerial spray application, as defined in section 1471-C, the notification shall be as follows.

(1) At least 14 days, but not more than 30 days, prior to spray application, notice shall be published in a newspaper of general circulation in the area affected. The notice shall describe the proposed spray activity, the area to be sprayed, the pesticide to be used, the date or dates on which the spraying is proposed to take place, any public precautions which appear on the pesticide label and the name, address and telephone number of persons responsible for the activity from whom more specific information regarding spray areas and times may be obtained.

(2) Any additions of spray blocks or changes in the choice of insecticides from the notification required pursuant to subparagraph (1) shall be published in a newspaper of general circulation in the area affected at least 24 hours before the change is effected.

(3) Notice shall be conspicuously posted at each point of major ingress and egress of the public into the area to be sprayed, including, without limitation, marked foot trails known to be used by the public and roads accessible to 4-wheeled vehicles and open to the public. The notice shall contain the information described in subparagraph (1). The board shall determine the time period the notice shall be posted prior to the commencement and following the completion of the spray project.

B. If the project is a minor forest insect aerial spray application, as defined in section 1471-C, the notification shall be as follows: Notice in a newspaper of general circulation in the areas affected at least 4 days, but not more than 10 days, before the commencement of spray application. The notice shall contain the information required in paragraph A, subparagraph (1).

C. Notice shall otherwise be provided, as required by rule or order of the board, when that board determines additional notification procedures to be necessary to reach the affected public.

4. **Notification to the board.** Written notice shall be given to the board:

- A. At least 15 days, but not more than 30 days, prior to the commencement of a major forest insect aerial spray application
- B. At least 5 days prior to the commencement of a minor forest insect aerial spray application.

The notice shall contain the information required under subsection 3, paragraph A, subparagraph (1), and shall also include any other information which is required by the board. The notice shall be on such form as the board may prescribe.

5. **Reports.** The following reports shall be prepared.

A. Following the completion of each spray period, a written spray period report prepared by the monitor, as defined in section 1471-C, shall be made available to the board within a reasonable time period established by the board.

The report shall describe the spray activity, shall certify the area actually sprayed and the pesticide used, weather conditions at the time, a map showing where spray booms were turned on and off and any nontarget areas that were sprayed, and the date and time on which spraying took place. The report shall be on such form and filed in accordance with such procedure as the board may prescribe.

B. In the event that a reportable spray incident occurs, a spray incident report shall be telephoned to the board immediately following the completion of each spray period. A reportable spray incident is a misapplication which may result in a potential threat to public health or the environment, including, without limitation: Failure to turn off spray booms over sensitive areas such as water bodies or human habitation; aircraft accidents involving chemical spills; and accidental discharge of insecticide, causing risk to human health. The report shall be on such form and filed in accordance with such procedure as the board may prescribe.

The spray contracting firm or applicator shall be responsible for complying with the requirements of this section.

C. A project report as described in the board's regulations shall be filed in accordance with such procedure as the board may prescribe.

6. **Responsibility.** The following parties shall be responsible for complying with the requirements of this section, unless otherwise noted:

- A. In the case of a forest insect aerial spray program administered pursuant to Title 12, chapter 803, the Bureau of Forestry
- B. In the case of any other forest insect aerial spray activities, the landowner or the landowner's representative, or, if the land is leased, the lessee.

#### **22 § 1471-S. Requirement for spotters and monitors**

Major public and private forest insect aerial spray projects shall employ spotters and monitors, as defined in section 1471-C. These personnel shall be certified pursuant to section 1471-D, subsection 2-B. At least one spotter and one monitor shall be with each spray aircraft or spray aircraft team during all spray application activities. A spotter or monitor shall not serve as the pilot of any aircraft involved in the spray project.

#### **22 § 1471-T. Exemption**

The board may exempt a person from compliance with one or more of the requirements of sections 1471-R and 1471-S, if the board finds that the exemption will not result in any unreasonable risk to the public's health, safety or general welfare and is otherwise in the public interest. Any request for exemption shall be made in writing to the board and shall state the reasons for the request. The board shall not grant any exemption, except following notice to the public and opportunity for hearing. Notice and opportunity for hearing shall be in a manner as the board may prescribe and may be at variance with the requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, to the extent that the board deems necessary under the circumstances.

\* \* \*

**22 § 1471-V. Local participation**

**1. Representation.** When the board, under section 1471-M, considers the designation of a critical area or the establishment of a pesticide management plan for a critical area, the municipal officers of any affected municipality, or county commissioners in the case of unorganized territories, shall be given the opportunity to select a local representative to serve as an additional board member. For a given action, there shall be only one local representative who shall represent the affected municipality or unorganized territory.

**2. Participation and voting procedure.** A local representative appointed under this section may participate officially and vote in deliberations on the designation of a critical area or on the establishment of a pesticide management plan only for a critical area which is in the municipality or unorganized territory represented. A local representative may participate on the board until final designation of the critical area or final establishment of the pesticide management plan, including any administrative or judicial appeals. When the board considers a proposed critical area or pesticide management plan that affects more than one municipality, the board shall take separate action on the portion in each municipality.

**3. Compensation.** Local representatives shall be reimbursed only for expenses as regular board members during the period of their service, to be paid by the board.

\* \* \*

(TITLE 22)  
(HEALTH AND WELFARE)

(SUBTITLE 2)  
(HEALTH)

(PART 5)  
(FOODS AND DRUGS)

(CHAPTER 601)  
(WATER FOR HUMAN CONSUMPTION)

(SUBCHAPTER I)  
(GENERAL PROVISIONS)

22 § 2601. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Contaminant.** "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.
2. **Feasible.** "Feasible" means capable of being done within the current limitation of economics and technology, as determined by the commissioner.
3. **Maximum contaminant level.** "Maximum contaminant level" means the maximum concentration of a contaminant allowed under the State Primary Drinking Water Regulations in water supplied for human consumption.
5. **Operator.** "Operator" means the individual who has direct management responsibility for the routine supervision and operation of a public water system or of a water treatment plant or collection, treatment, storage or distribution facility or structure that is a part of a system. Shift operators or other employees under the supervision of the operator in the performance of their duties are not operators.
6. **Person.** "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the State, department, agency or instrumentality of the United States or any other legal entity.
7. **Political subdivision.** "Political subdivision" means any municipality, county, district or any portion or combination of 2 or more thereof.
8. **Public water system.** "Public water system" means any publicly or privately-owned system of pipes, structures and facilities through which water is obtained for or sold, furnished or distributed to the public for human consumption, if such system has at least 15 service connections, regularly serves an average of at least 25 individuals daily at least 30 days out of the year or bottles water for sale. Any publicly or privately-owned system that only stores and distributes water, without treating or collecting it; obtains all its water from, but is not owned or operated by, a public water system; and does not sell water or bottled water to any person, is not a "public water system." The term "public water system" shall include any collection, treatment, storage or distribution pipes, structures or facilities under the control of the supplier of water and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. The system shall not include the portion of service pipe owned and maintained by a customer of the public water system.
9. **Supplier of water.** "Supplier of water" means any person who controls, owns or generally manages a public water system.
10. **Water treatment plant.** "Water treatment plant" means that portion of the public water system which is designed to alter the physical, chemical, biological or radiological quality of the water or to remove any contaminants.

## **22 § 2602. Fees for testing**

The department shall charge the average cost of the analysis for any examination, testing or analysis required under this chapter and performed in the departmental diagnostic laboratory. Such fees shall be recalculated and deposited according to section 562.

### **22 § 2602-A. Fees for testing private water supplies**

1. **Purpose.** The Legislature finds that there is a growing threat to the state's drinking water from a variety of contaminants and that testing of private residential water supplies may be necessary under certain circumstances to protect the public health. The Legislature recognizes that certain testing may be prohibitively expensive and accordingly provides for state-funded testing as set forth in this section.

2. **Fees.** The department shall charge the average cost of the analysis for an examination, testing or analysis of private residential water supplies requested under this chapter. These fees shall be recalculated and deposited according to section 562, provided that the fee charged for testing a private residential water supply shall not exceed \$150 when:

A. In the opinion of the department, initial testing or screening performed at the expense of the owner indicates the need for additional testing at a cost in excess of \$150 to determine whether that water supply contains contaminants potentially hazardous to human health and that additional testing is essential to the maintenance of public health; or

B. In the opinion of the department, there is reason to suspect that a private residential water supply may be affected by contamination potentially hazardous to human health and that additional testing is essential to the maintenance of public health. In making such a determination, the department shall consider the following:

- (1) The proximity of the private residential water supply to a known or suspected source of contamination;
- (2) The proximity of the private residential water supply to another private well or water supply which is known to be contaminated;
- (3) Information provided in writing to the department by a physician who has seen or treated a person and who has identified contaminated drinking water as a possible cause of the person's condition or symptoms; or
- (4) Information provided by the owner or a user of the private residential water supply voluntarily or in response to questions asked by personnel of the department.

The department may waive all fees incurred in connection with the testing of a private residential water supply upon a showing of indigency.

### **22 § 2603. Shipping costs**

Any person required under this chapter to submit samples of water to the department for analysis shall pay the shipping charges thereon.

### **22 § 2604. Schools, sampling and examination of water**

Any school, which takes water from a source other than a public water system and uses such water for drinking or culinary purposes, shall submit samples of such water to the department for analysis at least once during each school year. Such samples shall be analyzed by the department. If the water is found to violate the state primary drinking water regulations, the department shall issue an order prohibiting the use of the water for drinking or culinary purposes by the school, which order shall remain in force until the water conforms to the state primary drinking water regulations.

Violation of this section shall, on conviction, be punishable by a fine of not more than \$500.

### **22 § 2605. Administration**

To carry out this chapter, the commissioner is authorized and empowered to:

1. **Agreements.** Enter into agreements, contracts or cooperative arrangements under such terms and conditions as he deems appropriate with other state, federal or interstate agencies, municipalities, education institutions, local health departments or other organizations or individuals;

2. **Assistance.** Receive financial and technical assistance from the Federal Government and other public or private agencies;

3. **Program participation.** Participate in related programs of the Federal Government, other states, interstate agencies or other public agencies or organizations;

4. **Fiscal control and accounting.** Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds;

5. **Procedures.** Adopt and implement adequate procedures to insure compliance with this chapter and rules and regulations promulgated hereunder, including procedures for the monitoring and inspection of public water systems; and

6. **Advising other agencies.** Advise other regulatory agencies of the department's rules, regulations and orders promulgated under this chapter.

#### **22 § 2606. Emergency planning**

The department shall develop plans, with the advice and assistance of the Bureau of Emergency Preparedness and of the public water systems of the State, for emergency conditions and situations that may endanger the public health or welfare by contamination of drinking water. Such plans shall include potential sources of contaminants and situations or conditions that could place them in the sources of public drinking water, techniques and methods to be used by public water systems to reduce or eliminate the dangers to public health caused thereby, methods and times for analysis or testing during such emergency conditions or situations, alternate sources of water available to public water systems and methods of supplying drinking water to consumers if a public water system cannot supply such water.

#### **22 § 2607. Approved laboratories**

The department shall approve the facilities, techniques, testing methods and training of personnel of any laboratories that analyze water samples to determine compliance with State Primary Drinking Water Regulations. Such approval shall be based on the capability of the laboratory to accurately and reliably analyze samples to determine their contaminant levels under the State Primary Drinking Water Regulations, and may be limited to approval of only certain tests or contaminant level determinations. Any sample analysis performed by a laboratory not approved by the department shall not be considered in determining the compliance of a public water system with the State Primary Drinking Water Regulations.

#### **22 § 2608. Information on private water supply contamination; interagency cooperation**

1. **Information on private water supply contamination.** The department shall provide information and consultation to citizens who:

- A. Make reports of potential contamination of private water supplies;
- B. Request information on potential ground water contamination at or near the site of a private water supply.

2. **Interagency cooperation.** The department shall coordinate with the Department of Environmental Protection for the purposes of:

- A. Assessing the public health implications of reports or requests made by citizens in subsection 1;
- B. Determining the appropriate response to those reports or requests, including, but not limited to, on-site investigation, well water testing and ground water monitoring.

3. **Cooperation with local health officer.** The department and the Department of Environmental Protection, to the extent possible, shall notify and utilize the services of local health officers in collecting and evaluating information relating to actual or potential ground water contamination.

#### **22 § 2609. Recovery of testing costs**

Whenever the cost of testing a private residential water supply exceeds \$150 and that testing is conducted pursuant to section 2602-A, the department shall seek to recover the costs of the testing above \$150 from the person responsible for contaminating the water supply, or from the recipient of any compensation for the contamination of the well.

(TITLE 22)  
(HEALTH AND WELFARE)

(SUBTITLE 2)  
(HEALTH)

(PART 5)  
(FOODS AND DRUGS)

(CHAPTER 601)  
(WATER FOR HUMAN CONSUMPTION)

(SUBCHAPTER II)  
(SAFE DRINKING WATER ACT)

**22 § 2611. Drinking water regulations**

1. **State primary drinking water regulations.** The commissioner shall promulgate and enforce primary drinking water regulations which are necessary to protect the public health and which shall apply to all public water systems. Such regulations shall include:

A. Identification of contaminants which may have an adverse effect on the health of persons

B. Specifies for each contaminant either:

(1) A maximum contaminant level that is acceptable in water for human consumption, if it is feasible to ascertain the level of such contaminant in water in public water systems; or

(2) One or more treatment techniques or methods which lead to a reduction of the level of such contaminant sufficient to protect the public health, if it is not feasible to ascertain the level of such contaminant in water in the public water system

C. Criteria and procedures to assure compliance with the levels or methods determined under paragraph B, including quality control and testing procedures to insure compliance with such levels or methods and to insure proper operation and maintenance of the system, and requirements as to the minimum quality of water which may be taken into the system and the siting for new facilities.

Such regulations shall be no less stringent than the most recent National Primary Drinking Water Regulations in effect, as issued or promulgated by the United States Environmental Protection Agency. Regulations under this subsection may be amended from time to time, as necessary.

2. **State secondary drinking water regulations or guidelines.** The commissioner shall adopt secondary drinking water regulations or guidelines which are necessary to protect the public welfare. Such regulations or guidelines may apply to any contaminant in drinking water which may adversely affect the color, odor or appearance of the water and consequently may cause a substantial number of persons to discontinue using a public water system, or which may otherwise adversely affect the public welfare. Such regulations or guidelines may vary according to geographic, economic, technical or other relevant circumstances. Such regulations or guidelines shall reasonably assure the protection of the public welfare and the supply of aesthetically adequate drinking water; and shall be based upon the National Secondary Drinking Water Regulations promulgated by the United States Environmental Protection Agency. Regulations or guidelines under this subsection may be amended from time to time, as necessary.

**22 § 2612. Approval of construction or alteration,  
training, inspection, regulations and records**

1. **Construction or alteration of public water systems.** No new construction, addition or alteration involving the source, treatment or storage of water in any public water system shall be commenced until the plans and specifications have been submitted to and approved by the department; except, if such construction, addition or alteration is exempted by the commissioner because it will have no effect on public health or welfare, then such submission and approval is not required. The department shall consult with and advise persons planning or operating a public water system as to the most appropriate source of supply and the best methods of assuring its purity. In granting approval of plans and specifications, the department may require modifications, conditions or procedures to insure, as far as feasible, the protection of the public health. The department may adopt and enforce rules

and regulations governing the construction or alteration of public water systems to insure the protection of the public health, and may require the submission of water samples for analysis to determine the extent of treatment required. Records of construction, including, where feasible, plans and descriptions of existing public water systems, shall be maintained by such systems and shall be made available to the department upon request. The supplier of water shall promptly comply with such request.

**2. Operation and maintenance of public water systems.** The department shall monitor the operation and maintenance of any public water system in the State. Such monitoring shall include all aspects of operation and maintenance which may affect the quality of the water supply. The department may adopt rules and regulations relating to operation and maintenance of public water systems to insure the purity of water and the protection of public health. Such rules and regulations may apply to all aspects of operation and maintenance which may affect the quality of water supplied to the public, including feasible purification methods, equipment and systems. The department may require, by rule or regulation, any public water system to submit water samples for analysis on a regular basis, as often as necessary to insure the public health. Records of operation and maintenance of public water systems shall be kept on forms approved or specified by the department and this data shall be submitted to the department at the times and in the manner as the department directs. The supplier of water shall promptly comply with such department directions.

**3. Inspection.** Any officer or employee duly designated by the commissioner, upon presenting appropriate credentials and a written notice of his authority to inspect, signed by the commissioner, is authorized to enter any part of a public water system in order to determine whether such supplier is complying with this chapter and any departmental rules, regulations or orders issued hereunder. The inspection may include any portion of a public water system, including the sources of supply, treatment facilities and materials, pumping facilities, distribution and storage facilities, records, files and reports on operation. The inspection may also include the testing of any portion of a public water system affecting water quality, including raw and processed water, and the taking of any samples necessary to insure compliance with this chapter and the rules, regulations or orders issued hereunder. Each inspection shall take place at a reasonable time and be commenced and completed with reasonable promptness. The supplier shall be promptly notified of the results of the inspection.

**4. Engineering studies.** The commissioner may order a public water supplier to carry out an engineering study of the water works system or any portion thereof, if such study is required to identify potential threats to the public health and remedies that will remove such threats. The purpose of such study shall be to ascertain the best methods of complying with this chapter and departmental rules and regulations. The department may further order a public water system to implement the feasible recommendations of the study required to protect the public health. Prior to issuing any order under this subsection, this commissioner shall provide written notice to the public water system and public notice in a newspaper of general circulation in the area served by the public water system, and shall also provide the opportunity for a public hearing on the proposed order.

**5. Cross connections.** The department may adopt and enforce regulations governing the connection of any public water systems to any pipes, facilities or structures that carry, store or distribute water that has not been analyzed for compliance or cannot comply with the State Primary Drinking Water Standards, or any connection that may introduce contamination into the system, in order to protect the system from contamination.

**6. Training.** The department may provide training in operations and maintenance of public water systems, techniques and methods of testing and analysis of water, and the requirements of this chapter and departmental rules and regulations, for suppliers of water and operators and employees of public water systems.

## 22 § 2613. Variances and exemptions

**1. Variances.** The commissioner may grant one or more variances from an applicable state primary water drinking regulation to a public water system, if the variance will not result in an unreasonable risk to the public health, and if:

A. Because of the characteristics of the raw water sources reasonably available to the systems, the system cannot meet the maximum contaminant levels of such drinking water regulation despite application of the best feasible technology, treatment techniques or other means

B. Where a specified treatment technique for a contaminate is required by the state primary water drinking regulation, the system demonstrates to the commissioner's satisfaction that such treatment technique is not required to protect the public health because of the nature of the raw water source.

Prior to granting a variance, the commissioner shall provide an opportunity for public hearing pursuant to the Maine Administrative Procedure Act on the proposed variance. Variances may be conditioned on monitoring, testing, analyzing or other requirements to insure the protection of the public health; and variances granted under paragraph A, shall include a compliance schedule under which the public water system will meet each contaminant level for which a variance is granted as expeditiously as is feasible.



**2. Exemptions.** The commissioner may grant one or more exemptions from an applicable state primary water drinking regulation to a public water system, if:

- A. The exemption will not result in an unreasonable risk to the public health
- B. The public water system is unable to comply with the regulation due to compelling factors, which may include economic factors
- C. The public water system was in operation on the earliest effective date under present or prior law of the contaminant level or treatment technique requirement.

Prior to implementation of a schedule for compliance with contaminant level or treatment technique requirements and for implementation of control measures, the commissioner shall provide notice and opportunity for public hearing pursuant to the requirements of the Maine Administrative Procedure Act. Each exemption shall also be conditioned on monitoring, testing, analyzing or other requirements to insure the protection of the public health, and shall include a compliance schedule under which the public water system will meet each contaminant level for which an exemption is granted as expeditiously as is feasible and in any event not later than 7 years after the adoption of the state primary drinking regulation.

**22 § 2614. Imminent hazards to public health**

**1. Determination of imminent hazard.** An imminent hazard shall be considered to exist when there is a violation of the state primary drinking water regulations, or when, in the judgment of the commissioner, a condition exists in a public water system or water supply which will cause a violation and will result in a serious risk to public health.

**2. Elimination of imminent hazard.** In order to eliminate an imminent hazard, the commissioner may, without a prior hearing, issue an emergency order requiring the supplier of water to immediately take such action as is required under the circumstances to protect the public health. Actions required under the emergency order may include:

- A. The prohibition of transportation, sale, distribution or supplying of water
- B. The repair, installation or operation of feasible purification equipment or methods
- C. The notification of all potential users of the system, including travelers, of the nature, extent and possible health effects of the imminent hazard and precautions to be taken by users
- D. The testing, sampling or other analytical operations required to determine the nature, extent, duration or termination of the imminent hazard.

A copy of the emergency order shall be served in the same manner as the service of notice of the commencement of a civil action in Superior Court. An emergency order issued by the commissioner shall be effective immediately and shall be binding for no more than 90 days unless sooner revoked, reviewed by the department at a public hearing or modified or rescinded by a Superior Court. At the written request of the supplier of water, a public hearing shall be held on the emergency order within 15 days of receipt of such request.

**22 § 2615. Notification of noncompliance to regulatory agencies and users**

**1. Notification.** Whenever a public water supply system:

- A. Is not in compliance with the state primary drinking water regulations
- B. Fails to perform monitoring, testing or analyzing, or fails to provide samples as required by rules and regulations of the department
- C. Is subject to a variance granted under section 2613
- D. Is subject to an exemption granted under section 2613
- E. Is not in compliance with the requirements prescribed by a variance or exemption

The supplier of water shall, as soon as practicable, notify the local health officer, the department, and through the department, the Administrator of the U.S. Environmental Protection Agency and the communications media serving the area served by the system of that fact, and of the nature, extent and possible health effects of that fact. As long as the noncompliance, failure, variance or exemption continues, notification shall be given of that fact at least once every 90 days by publication in a newspaper of general circulation within the area served by the system. In addition, the supplier of water shall directly notify the users by mail and renotify them regularly as required under the regulation of the department. The department shall adopt regulations for direct mail notification of users to insure that the users are aware of potential public health dangers, and to insure their continued awareness during the continuation of the noncompliance, failure, variance or exemption.

**2. Certain uses of notification prohibited.** Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any person or system providing such notice in any criminal case, except for prosecutions for perjury or the giving of a false statement.

**22 § 2616. Prohibited acts**

The following acts and the causing thereof are prohibited:

**1. Failure to comply with section 2615 or dissemination of certain misleading information.** Failure by a supplier of water to comply with the requirements of section 2615, or dissemination by such supplier of any false or misleading information with respect to remedial actions being undertaken to achieve compliance with state primary drinking water regulations

**2. Failure to comply with regulations and actions under sections 2611, 2612, 2613 and 2614.** Failure by a supplier of water to comply with the regulations for water quality, monitoring, maintenance, operations, reporting and corrective actions pursuant to sections 2611, 2612, 2613 and 2614

**3. Refusal to allow entry under section 2612.** The refusal of a supplier of water to allow entry and inspection of establishments, facilities or other property pursuant to section 2612.

**22 § 2617. Penalties and remedies**

**1. Violation of section 2616.** Any person willfully violating section 2616 shall, on conviction, be punished by a fine of not more than \$500. Each day of operation in violation of section 2616 shall constitute a separate offense. The District Court or the Superior Court shall have jurisdiction over violations of section 2616.

**2. Injunctive relief.** The commissioner may commence or cause to be instituted a civil action in the Superior Court of either Kennebec County or of the county in which the principal place of business of the supplier of water is located, to convict and punish a person under subsection 1, to seek injunctive relief to prevent the violation of any rule or regulation issued pursuant to this chapter, to prevent the violation of any order issued pursuant to sections 2612, 2613 or 2614, or to require a public water system or supplier of water to take other action necessary to protect the public health, with or without a prior order from the commissioner or department.

(TITLE 22)  
(HEALTH AND WELFARE)  
  
(SUBTITLE 2)  
(HEALTH)  
  
(PART 5)  
(FOODS AND DRUGS)  
  
(CHAPTER 601)  
(WATER FOR HUMAN CONSUMPTION)  
  
(SUBCHAPTER III)  
(LICENSURE OF OPERATORS)

**22 § 2621. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following words have the following meanings.

1. **Board.** "Board" means the Advisory Board for Licensure of Water Treatment Plant Operators referred to in this subchapter.
2. **License.** "License" means a license issued by the commissioners stating that the applicant has met the requirements for the specified operator classification.

**22 § 2622. Classification of public water systems and parts thereof**

The commissioner shall classify all public water systems and the water treatment plants or collection, treatment or storage facilities or structures that are part of a system with due regard to the size and type of facilities, the character of water to be treated and any other physical conditions affecting such system or part thereof and specify the qualifications the operator of the system or of a part of a system must have to supervise successfully the operation of the system or parts thereof so as to protect the public health or prevent nuisance conditions.

The commissioner, with the advice of the board, shall establish the criteria and conditions for the classification of public water systems and water treatment plants or collection, treatment or storage facilities or structures that are part of a system.

The commissioner, with the advice of the board, may establish classes of public water supply systems which do not require licensed individuals as operators.

**22 § 2623. Applicability**

It is unlawful for any person to perform the duties of an operator, as defined, without being duly licensed under this subchapter, except as provided in section 2630.

**22 § 2624. Advisory Board of Licensure**

The Governor shall appoint an Advisory Board for Licensure of Water Treatment Plant Operators, as authorized by Title 5, chapter 379, which shall be composed of 6 persons as follows: Two operators who shall be licensed under this chapter, with one of these holding a license of the highest classification issued by the board; one person who shall be from the Department of Human Services, as the commissioner may recommend; one person who shall be a water utility management representative; one person who shall be an educator whose field of interest is related to water supply; and one member of the general public.

Each member of the board, with the exception of the ex officio member from the Department of Human Services, shall be appointed for a 3-year term. Vacancies shall be filled by appointment of the Governor for unexpired terms.

Members of the board, shall elect from their number a chairman at the first meeting of each year. The Department of Human Services representative of the board shall serve as secretary of the board and be responsible for maintaining records and providing administrative support.

The board shall design and the commissioner shall hold at least one examination each year at a time and place designated for the purpose of examining candidates for licensure. Meetings of the board may be called by the chairman, or by him at the request of any other 2 members, as may be necessary to carry out this chapter.

Members of the board shall be compensated according to Title 5, chapter 379.

The commissioner, with the advice of the board, shall license persons to supervise the operation of a public water system or of a part of a system.

The commissioner, with the advice of the board, shall establish by regulation the qualifications, conditions and licensing standards and procedures for the licensure of individuals to act as operators.

#### **22 § 2625. Licenses**

The commissioner shall issue biennial licenses to individuals to act as operators. The license shall indicate the classification level of the systems or parts of systems for the operation of which the individual is qualified to act as an operator.

The commissioner may file a complaint with the Administrative Court to revoke a license of an operator when he determines that the operator has practiced fraud or deception; that he has been negligent in that reasonable care, judgment or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly.

The licenses of operators who terminate their employment at a public water system shall remain renewable for 3 years. After 3 years, the licenses shall be automatically invalidated. Operators whose licenses are invalidated under this section may be issued new licenses of a like classification provided appropriate proof of competency is presented to the commissioner.

This chapter shall not be construed to effect or prevent the practices of any other legally recognized profession.

When the unexpired term of license of an applicant is or will be more than one year at the time of licensure, the commissioner may require the applicant to pay an additional fee not to exceed 1/2 the biennial license fee.

Applications for a first examination shall be received by the board chairman at least 5 days prior to the examination. The passing grade on any portion of the examination shall be not less than 70%. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by regulation. Any candidate for registration having an average grade of less than 50% may not apply for reexamination for 6 months.

#### **22 § 2625-A. Renewals**

All licenses shall expire on December 31st of each biennial period and may be renewed thereafter for 2-year periods without further examination, upon the payment of the proper renewal fee as set forth in the rules. Any person who fails to renew his license within the 6-month grace period following the expiration date shall be required to take an examination.

The commissioner shall notify everyone registered under this subchapter of the date of expiration of his license and the fee required for its renewal for a 2-year period. The notice shall be mailed to the person's last-known address at least 30 days in advance of the expiration date of his license.

#### **22 § 2626. License from outside of Maine**

The commissioner, upon application therefor, may issue a license without examination, in a comparable classification, to any person who holds a license in any state, territory or possession of the United States or any country, providing the requirements for licensure of operators under which the person's license was issued does not conflict with this chapter and in the opinion of the commissioner, with the advice of the board, are of a standard not lower than that specified by regulations adopted under this chapter.

#### **22 § 2627. License from owner of particular system**

Licenses may be issued without examination to the person or persons certified by the governing body or owner to have been in direct responsible charge of a water treatment plant or a water distribution or public water system between October 1, 1966 and October 1, 1969. A license so issued shall be valid only for that particular classification level of treatment plant or system.

**22 § 2628. Rules**

The commissioner, with the advice of the board, in accordance with any other appropriate state laws, shall make such rules as are reasonably necessary to carry out the intent of this subchapter. The rules shall include, but are not limited to, provisions establishing requirements for licensure and procedures for examination of candidates and such other provisions as are necessary for the administration of this subchapter.

**22 § 2629. Fees**

The application fees, biennial renewal fees and reinstatement fees shall be established by the commissioner by rule and shall be based upon different classifications of water treatment systems and the levels of competence to operate various water systems. The application fee shall not exceed \$35, and the biennial renewal fee shall not exceed \$30. Revenues derived from applicants failing the examination shall be retained by the board.

**22 § 2630. Licensure; temporary conditional waiver**

If a supplier of water loses its licensed operator, it shall secure a new licensed operator or enter into a contractual agreement with a licensed operator of proper classification until a new operator has been employed for the supplier of water.

The commissioner may, in the event of extenuating circumstances, issue a waiver of the licensure requirements for a period not exceeding 13 months. In granting the waiver, the commissioner may impose such terms, conditions or requirements as, in his judgment, are necessary to protect the public health and interest.

Holders of a water treatment plant operator's certificate valid as of June 30, 1984, shall be deemed to hold a license expiring on the same day as the certificate.

**22 § 2631. Violations**

**1. Violation.** Any person violating any provision of this subchapter or the rules and regulations adopted under this subchapter, commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Each day of operation in violation of this subchapter or any rules and regulations adopted under this subchapter shall constitute a separate violation.

**2. Injunctive relief.** The commissioner may commence or cause to be instituted a civil action in the Superior Court under subsection 1, to seek injunctive relief to prevent the violation of this subchapter, to prevent the violation of any rule or regulation issued pursuant to this subchapter or to require a public water system or supplier of water to take other action necessary to comply with this subchapter, with or without a prior order from the commissioner or department.

In addition to the county in which the principal place of business of the supplier of water is located, the action may be instituted in the Superior Court of Kennebec County.

(TITLE 22)  
(HEALTH AND WELFARE)

(SUBTITLE 2)  
(HEALTH)

(PART 5)  
(FOODS AND DRUGS)

(CHAPTER 601)  
(WATER FOR HUMAN CONSUMPTION)

(SUBCHAPTER IV)  
(PUBLIC WATER SUPPLIES)

(Article 1)  
(Municipal Regulations)

**22 § 2641. Source of public water supply defined**

As used in this subchapter, unless the context otherwise indicates, "public water source" means any natural or man-made impoundment, pond or lake or ground water aquifer whose waters are transported or delivered by a public water system, as defined in section 2601, subsection 8. Where the intake of a public water supply is on the outlet of any impoundment, pond or lake, the source of such public water supply shall be considered to be the impoundment, pond or lake itself.

**22 § 2642. Municipal regulation authorized; penalty**

**1. Municipal regulations authorized.** The municipal officers of each municipality shall have the authority, after notice and public hearing, to adopt regulations governing the surface uses of sources of public water supply, portions thereof or land overlying ground water aquifers and their recharge areas used as sources of public water supply, located within that municipality in order to protect the quality of such sources of public water supply or the health, safety or welfare of persons dependent upon such supplies.

At least 15 days prior to public hearings held hereunder, notice of the hearing shall be published in a newspaper of general circulation in the county in which the municipality is located and shall be mailed by registered mail to each owner of land bordering the source of public water supply within that municipality. Regulations adopted pursuant to this section shall become void upon the expiration of one year from the date of the adoption unless sooner ratified by vote of the legislative body of the municipality.

**2. Penalty.** Whoever willfully violates any regulation established under the authority of this section shall, upon conviction, be penalized in accordance with Title 30, section 4966.

(TITLE 22)  
(HEALTH AND WELFARE)

(SUBTITLE 2)  
(HEALTH)

(PART 5)  
(FOODS AND DRUGS)

(CHAPTER 601)  
(WATER FOR HUMAN CONSUMPTION)

(SUBCHAPTER IV)  
(PUBLIC WATER SUPPLIES)

(Article 2)  
(Protection of Water Sources)

**22 § 2647. Protection of public water source**

Any water utility or municipality, or the department, is authorized to take reasonable steps to protect a public water source from pollution. It may enter upon land within 1,000 feet of a public water source and upon land used for commercial or industrial purposes having a facility, structure or system draining or suspected of flowing or seeping into a public water source and inspect the facility, structure or system, including any building or structure thereon. The power of entry and inspection shall be exercised only after the water utility, municipality or department has made a reasonable effort to obtain permission therefor from the landowner. Any local or state health inspector or officer may order the owner of any building or structure thereon having a facility, structure or system flowing or seeping into and contaminating the public water source, which may result in risk to the public health, to remedy the situation. The order shall be in writing and state a time in which the order must be complied with. These orders shall not be considered an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act, Title 5, chapter 375.

Either party may call upon the department for technical advice. Any person aggrieved by an order may appeal to the Superior Court within 30 days after receiving such order.

The water utility, municipality or department may petition the Superior Court upon failure of the person named in such order to comply with any order made by it. The court, after hearing, may make such order as may be appropriate.

Nothing in this section shall be construed to limit in any way any private and special law granting a water utility or municipality greater controls for protecting its public water source than those set forth in this section.

**22 § 2648. Protection of intake of public water supply**

Any water utility or municipality is authorized to designate by buoys in water or markers on the ice in an area on a lake or pond from which water is taken, with a radius commencing at its point of intake. Such radius shall not exceed 200 feet and within that area no person shall anchor or moor a boat or carry on ice fishing. Any such buoys placed in the water shall be plainly marked as required by the Director of the Bureau of Parks and Recreation under Title 38, section 323. Any person violating this section shall, on conviction, be penalized in accordance with Title 30, section 4966.

Nothing in this section shall be construed to limit in any way any private and special law granting a water utility or municipality greater controls for protecting the intake of its public water supply than those set forth in this section.

**22 § 2649. Protection of public water supplies over winter**

1. **Petition for rules.** Any water utility, water district or municipality which relies on surface water for its water supply may petition the Commissioner of Inland Fisheries and Wildlife to promulgate rules to regulate the size and range of motor vehicles which may be permitted on the ice of any reservoir or surface water which is used as a public water supply. The petitioner must supply the technical information in support of the decision. The commissioner shall promulgate only such rules as are reasonable

and necessary to protect the public water supply. These rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, after a public hearing in the affected area.

**2. Existing rules.** Any rules that are adopted must be at least as strict as those already in existence for that body of water. Nothing in this section may be construed to limit in any way the authority of the municipal officers to enact ordinances under Title 30, section 2151, subsection 7, or any private and special law granting a water utility or municipality greater control for protecting its public water supply than those set forth in this section.

**3. Violation.** Any violation of the rules promulgated under this section is a civil violation for which a forfeiture of not more than \$100 may be adjudged for each violation.



(TITLE 22)  
(HEALTH AND WELFARE)

(SUBTITLE 2)  
(HEALTH)

(PART 5)  
(FOODS AND DRUGS)

(CHAPTER 601)  
(WATER FOR HUMAN CONSUMPTION)

(SUBCHAPTER VI)  
(TRANSPORT OF WATER)

**22 § 2660. Legislative findings**

The Legislature finds that the transport of water for commercial purposes in large quantities away from its natural location constitutes a substantial threat to the health, safety and welfare of persons who live in the vicinity of the water and rely on it for daily needs. If the transportation occurs, persons who relied on the presence of water when establishing residences or commercial establishments may find themselves with inadequate water supplies. In addition, the Legislature finds that the only practicable way in which to prevent the depletion of the water resources is to prohibit the transport of water in large quantities away from the vicinity of its natural location. The purpose of this prohibition is, however, not to prevent the use of such supplies for drinking and other public purposes in the vicinity of the natural location of the water.

**22 § 2660-A. Restrictions on transport of water**

**1. Prohibition.** Except as otherwise provided in this section, no person may transport water for commercial purposes by pipeline or other conduit or by tank truck or in a container, greater in size than 10 gallons, beyond the boundaries of the municipality or township in which water is naturally located or any bordering municipality or township.

**2. Exceptions.** The prohibition in this section does not apply to:

A. Any water utility as defined in Title 35-A

B. Water transported for use in well drilling, construction activities, concrete mixing, swimming pool filling, servicing portable toilets, firefighting, hospital operations, aquaculture, agricultural applications or civil emergencies

C. Water distilled as a by-product of a manufacturing process

D. Water transported from a water source that, before July 1, 1987, was used to supply water for bottling and sale, and which is used exclusively for bottling and is sold in its pure form or as a carbonated or flavored beverage product.

**3. Appeal.** The Commissioner of Human Services, after consultation with the Public Utilities Commission, the State Geologist and the State Planning Office, may authorize transport of water for commercial purposes if the commissioner finds that: Transport of the water will not constitute a threat to public health, safety or welfare; that the water is not available naturally in the location to which it will be transported; and that failure to authorize transport of the water would create a substantial hardship to the potential recipient of the water. Any authorization under this subsection shall be for a period not to exceed 3 years, but may be renewed subject to the same criteria.

**3-A. Conditions of authorization.** Notwithstanding Title 1, section 302, the exceptions authorized in subsection 2 and any authorization granted under subsection 3 shall be subject to future legislative limitations of the right to transport water.

**4. Emergencies.** In case of an emergency, any person may transport water as necessary for the duration of the emergency, but the person transporting the water must inform the commissioner within 3 days and the commissioner may determine when the emergency is over.

**5. Penalty.** Any person who transports water in violation of this section is guilty of illegal transport of water. Illegal transport of water is a Class D crime. Each shipment or day of transport, if by pipeline, is a separate offense.

(TITLE 23)  
(HIGHWAYS)  
  
(PART 1)  
(STATE HIGHWAY LAW)  
  
(CHAPTER 11)  
(LAYING OUT, ALTERING, ETC.)

**23 § 652. Proceedings on damage claims**

1. Change of grade. Whenever the department changes the grade of any state or state aid highway, as provided in chapters 1 to 19, to the injury of an owner of adjoining land, that owner may apply, within 24 months after completion of the work according to the records of the department, to the department in writing for a determination and assessment of damages. If the department is unable to settle that damages at what it deems a reasonable amount, the department or interested parties may apply to the State Claims Commission in writing for a determination and assessment of the damages. The proceedings shall then be the same as in condemnation cases.

2. Private water supplies. In the event an owner of land adjacent to a state of state aid highway conceives that a private water supply on that land has been destroyed or rendered unfit for human consumption by the department constructing, reconstructing or maintaining of the highway, such owner may apply in writing to the department for a determination of the alleged cause and assessment of the damage and if such claim is founded on construction, the owner shall, present such application within 24 months after completion date of the work as that date appears in the records of the department.

The application shall set forth the name and address of the owner, the owner's source of title, the location of the property, a description of the damage, the cause to which the damage is attributed and the name and address of any lien holder.

A. If the department determines that it did not cause the alleged damage to such water supply, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court.

B. If the department determines that any damage to the privately owned water supply was caused by the department constructing, reconstructing or maintaining the highway, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court and shall set forth on offer of settlement which shall be either:

- (1) To replace the water supply; or
- (2) To repair the damage to the water supply; or
- (3) To pay a designated sum of money; or
- (4) To purchase the realty served by the water supply in the event the cost of repair or replacement of the water supply exceeds the appraisal value of the realty.

C. The department may issue rules and regulations in accordance with standards of the Department of Human Services and the Public Health Service regarding water potability for the determination of the degree of contamination, pollution or fitness for domestic use.

D. The department shall in its determination consider the necessity for installation or replacement of piping, tanks, pumps, heating systems or other related fixtures. The Department of Transportation shall not condition installation or replacement on the owner giving possession or title of any privately owned piping, tanks, pumps, heating systems or other related fixtures on his land to any agency of this State, unless agreed to by the property owner.

E. If the department is unable to settle what it deems a reasonable settlement, the department or owner may apply to the State Claims Commission in writing for a determination of the alleged cause and assessment of the damage. The proceedings shall then be the same as in condemnation cases.

F. This subsection shall not apply to private water supplies after June 26, 1969 where the location does not allow for or provide for adequate surface drainage.

G. This subsection shall not apply to private water supplies now located or hereafter located within the right-of-way limits.

H. This subsection shall not apply to any private water supply damaged by construction, reconstruction or maintenance which the department determines to have already been contaminated or polluted by another source to the degree said contamination or pollution would have rendered it unfit for human consumption.

3. Private water supplies within the right-of-way. In order to prevent undue hardship to properties served by water systems existing within the right-of-way of state and state aid highways prior to June 26, 1969, and which are the sole source of water supply to the property, and which are destroyed or altered, subsequent to the effective date of this Act, due to highway construction or reconstruction, the Department of Transportation is authorized to compensate the owners for such loss as may be determined equitable by the department.

(TITLE 23)  
(HIGHWAYS)

(PART 1)  
(STATE HIGHWAY LAW)

(CHAPTER 19)  
(FISCAL MATTERS)

(SUBCHAPTER VII)  
(SALT AND SAND STORAGE FACILITIES)

**23 § 1851. State cost-share program for salt and sand storage facilities**

The department may administer funds for the construction of municipal or county salt and sand storage facilities in order to reduce salt pollution of ground and surface waters. Any bonds issued under this section shall be paid for out of the Highway Fund. In administering these funds, the department shall provide reimbursement to municipal and county governmental entities for approved projects according to the order of priority established biennially by the Department of Environmental Protection. Allocation of funds shall be based upon 1.25 times the ratio of miles of state and state-aid roads maintained for winter maintenance, as described in sections 1001 and 1003, to all miles maintained for winter maintenance by the municipality, quasi-municipal agency or county. The department shall establish guidelines to reimburse eligible local government entities in a consistent and timely manner.

The department shall review and approve plans and specifications for salt and sand storage facilities prior to issuing any reimbursements. The review shall be in accordance with the guidelines for the design and construction established by the Department of Environmental Protection for these facilities and in accordance with the guidelines established by the department with respect to facility size.

The department may reimburse municipal and county government entities for expenses incurred for the construction of salt and sand storage facilities constructed in compliance with Private and Special Law 1985, chapter 121, provided that the plans for the facilities receive approval from the department. These reimbursements shall be made based on the priority established by the Department of Environmental Protection.

Reimbursable expenses under this section do not include land acquisition or debt service.

**23 § 1852. Salt and sand storage facilities**

In addition to the provisions of section 1851, and prior to calculating reimbursement under that section, the department shall reimburse each municipality and county for 25% of the expenses permitted under section 1851 and incurred for the construction of salt and sand storage facilities approved under section 1851.

(TITLE 30-A)  
(MUNICIPALITIES AND COUNTIES)

(PART 2)  
(MUNICIPALITIES)

(SUBPART 6)  
(REGULATION, LICENSES AND PERMITS)

(CHAPTER 185)  
(REGULATION OF CONSTRUCTION AND IMPROVEMENTS)

(SUBCHAPTER III)  
(REGULATION AND INSPECTION OF PLUMBING)

(Article 2)  
(REGULATIONS AND PERMITS)

**30A § 4211. Plumbing regulations**

**1. Municipal ordinances.** Municipalities may enact ordinances under their home rule authority which are more restrictive than rules governing plumbing or subsurface waste water disposal systems adopted by the department. The department may provide technical assistance to municipalities in the development of ordinances under this subchapter. The municipality shall enforce any such ordinance.

**2. State rules.** No municipal ordinance may be less restrictive than the rules of the department relating to plumbing or subsurface waste water disposal systems as adopted under Title 22, section 42. The department shall establish minimum permit fees by rule. The rules of the department relating to all plumbing or subsurface waste water disposal systems have full force and effect, provided that, to the extent that a municipality has enacted more restrictive ordinances, the provisions of those ordinances prevail.

**3. Subsurface waste water disposal system.** No person may erect a structure that requires a subsurface waste water disposal system until documentation has been provided to the municipal officers that the disposal system can be constructed in compliance with rules adopted under Title 22, section 42, and this section.

A. For the purposes of this section, "expansion" means the enlargement or change in use of a structure using an existing subsurface waste water disposal system that brings the total structure into a classification that requires larger subsurface waste water disposal system components under rules adopted pursuant to Title 22, section 42, and this section.

B. No person may expand a structure using a subsurface waste water disposal system until documentation is provided to the municipal officers and a notice of the documentation is recorded in the appropriate registry of deeds that, in the event of a future malfunction of the system, the disposal system can be replaced and enlarged to comply with the rules adopted under Title 22, section 42, and any municipal ordinances governing subsurface waste water disposal systems. No requirement of these rules and ordinances may be waived for an expanded structure.

(1) The department shall prescribe the form of the notice to be recorded in the registry of deeds. The notice shall include a site plan showing:

- (a) The exact location of the replacement system;
- (b) The approximate location of lot lines; and
- (c) The exact location of existing wells serving the lot on which the replacement system will be located and those located on abutting lots.

(2) The person seeking to expand a structure shall send copies of the notice by certified mail, return receipt requested, to all owners of abutting lots.

(3) After the notice required by this paragraph is recorded, no abutting landowner may install a well on that landowner's property in a location which would prevent the installation of the replacement septic system. The owner of the lot on which the replacement system will be installed may not erect any structure on the proposed site of the replacement system or conduct any other activity which would prevent the use of the designated site for the replacement system.

**4. Enforcement and penalty.** Any person who violates this section shall be penalized in accordance with section 4506. The municipality or the department may seek to enjoin violations of this section.

**30A § 4212. Department of Human Services; responsibilities**

**1. Administration of rules.** The department is responsible for ensuring the proper administration of the plumbing and subsurface waste water disposal rules by municipalities. The department shall assist municipalities in complying with this subchapter and with section 3428.

**2. Review.** The department shall review the administration of plumbing and subsurface waste water disposal rules and laws in each municipality for compliance with this subchapter and with section 3428. This review shall be made on a regular basis and may be made in response to a written complaint from any person as necessary. The department shall inspect the municipality's records and discuss the administration of the program with the local plumbing inspector. The local plumbing inspector shall be available during the department's review and shall cooperate in providing all necessary information. The department shall report the results of its review in writing to the municipality and, when applicable, to the complainant. The written notice shall set forth the department's findings of whether the municipality is in compliance with this subchapter and section 3428.

**3. Violation; penalty.** If after review the department finds any violation of this subchapter or section 3428, it shall notify the municipality that it has 30 days in which to take enforcement action and shall specify what action must be taken in order to achieve compliance. The municipality shall file a plan acceptable to the department setting forth how it will attain compliance. The department shall notify the municipality that it will review the municipality for compliance within 60 days of accepting the plan and shall conduct that review. Any municipality which fails to file an acceptable plan with the department or which remains in violation at the expiration of the 60-day period is subject to a civil penalty of at least \$500. The department shall enforce this section in any court of competent jurisdiction. Every 30-day period that a municipality remains in violation after review and notification constitutes a separate offense.

**30A § 4213. Right of entry on inspection**

The department and any duly designated representative or employee of the department, including the local plumbing inspector, may enter any property at reasonable hours, enter any building with the consent of the property owner, occupant or agent, inspect the property or structure for compliance with the applicable rules or investigate alleged conditions which do not comply with the rules. Upon the request of the occupant of the premises, the department's representative or the local plumbing inspector shall present proper credentials before entering the premises.

If entry is denied, entry shall not be attempted until after obtaining an order of the court.

**30A § 4214. Legislative intent**

It is the intent of the Legislature that local jurisdictions have primary responsibility for enforcing rules adopted by the department governing the installation and inspection of plumbing and subsurface waste water disposal systems. The adoption of rules by the department does not deny municipal authority under section 3001 to adopt more restrictive ordinances.

**30A § 4215. Permits**

**1. Permit required.** A permit is required for the following activities and is valid for work commenced within 24 months after the permit is issued:

- A. The installation of plumbing into a building
- B. The installation of a subsurface waste water disposal system or components

C. The conversion of a seasonal dwelling as provided in subsection 2. This paragraph may not be construed to require a permit for any dwelling which:

- (1) Will be occupied seasonally;
- (2) Is not the principal dwelling place of the occupant; or
- (3) Has the disposal system located outside the shoreland zoned area.

**2. Permit for seasonal conversion.** Before converting a seasonal dwelling which is located in the shoreland zoning area, as defined in Title 38, section 435, to a year-round or principal dwelling, a conversion permit must be obtained from the local plumbing inspector. A seasonal conversion permit shall not be approved if a holding tank is used as a means of waste water disposal or storage. The inspector shall issue a permit for conversion of a seasonal dwelling to a year-round or principal dwelling if one of the following conditions is met:

A. A subsurface waste water disposal application, completed after July 1, 1974, exists indicating that the dwelling's waste water disposal system substantially complies with departmental rules and applicable municipal ordinances, provided that the disposal system was installed with the required permit and certificate of approval

B. A replacement for an existing waste water disposal system has been constructed so that it substantially complies with departmental rules and applicable municipal ordinances

C. The dwelling unit's waste water is connected to an approved sanitary sewer system

D. A variance has been granted under this paragraph. The owner of a seasonal dwelling, upon application, shall be granted a variance from the requirements of this subsection if, based upon the site evaluation, the plumbing inspector finds that in the event of a malfunction of the existing system a replacement subsurface waste water system can be installed which will be in substantial compliance with departmental rules and applicable municipal ordinances and that the new system will not be likely to endanger the quality of the adjacent water bodies or of adjacent private water supplies.

(1) The applicant for a variance shall have a notice documenting the finding of the plumbing inspector recorded in the appropriate registry of deeds and shall send a copy of that notice by certified mail, return receipt requested, to each owner of an abutting lot. The department shall prescribe the form of the notice to be used. The notice shall include a site plan showing:

- (a) The exact location of the replacement system;
- (b) The approximate location of lot lines; and
- (c) The exact location of existing wells serving the lot on which the replacement system will be located and those located on abutting lots.

(2) After the notice required by subparagraph (1) is recorded, an abutting landowner may not install a well on the landowner's property in a location which would prevent the installation of the replacement septic system. The owner of the lot on which the replacement system would be installed may not erect any structure on the proposed site of the replacement system or conduct any other activity which would prevent the use of the designated site for the replacement system.

(3) In the event of a malfunction of a system for which a variance has been granted, the owner of the converted seasonal dwelling shall obtain a permit and repair or replace the existing subsurface disposal system to bring the system into substantial compliance with departmental rules and applicable municipal ordinances and ensure that the system will not endanger the quality of adjacent water bodies or adjacent private water supplies. No variance for a new, expanded or replacement subsurface disposal system may be approved within the shoreland zoning area which is less restrictive than the requirements of this paragraph or rules adopted to carry out this paragraph.

**3. Penalties.** Any person who installs or orders the installation of any plumbing or subsurface waste water disposal system without the permit required by this section or who otherwise violates this section shall be penalized in accordance with section 4506. The municipality or the department may seek to enjoin violations of this section.

4. **Fees.** The plumbing inspector shall issue any permit under this section upon receipt and approval of a completed application form as prescribed by the commissioner and payment by the applicant of the fee established by the municipality. The fee must be at least the minimum amount determined by rule of the department. One-quarter of the amount of the minimum fee shall be paid through the department to the Treasurer of State to be maintained as a permanent fund and used by the department to implement its plumbing and subsurface waste water disposal rules and to train and certify local plumbing inspectors. The remainder of the fee shall be paid to the treasurer of the municipality.

**30A § 4216. Transfers of shoreland property**

Any person transferring property on which a subsurface waste water disposal system is located within the shoreland area, as defined in Title 38, section 435, shall provide the transferee with a written statement by the transferor as to whether the system has malfunctioned during the 180 days preceding the date of transfer.



(TITLE 30-A)  
(MUNICIPALITIES AND COUNTIES)  
  
(PART 2)  
(MUNICIPALITIES)  
  
(SUBPART 6)  
(REGULATION, LICENSES AND PERMITS)  
  
(CHAPTER 185)  
(REGULATION OF CONSTRUCTION AND IMPROVEMENTS)  
  
(SUBCHAPTER III)  
(REGULATION AND INSPECTION OF PLUMBING)  
  
(Article 3)  
(LOCAL PLUMBING INSPECTORS)

**30A § 4221. Plumbing inspectors**

**1. Appointment; compensation; removal.** In every municipality, the municipal officers shall appoint one or more inspectors of plumbing, who need not be residents of the municipality for which they are appointed. Plumbing inspectors shall be appointed for a term of one year and shall be sworn and the appointment recorded as provided in section 2526, subsection 9. An individual properly appointed as plumbing inspector and satisfactorily performing the duties may continue in that capacity after the term has expired until replaced. The municipal officers shall notify the department of the appointment of a plumbing inspector in writing within 30 days of the appointment.

Compensation of plumbing inspectors shall be determined by the municipal officers and shall be paid by the respective municipalities.

The municipal officers may remove a plumbing inspector for cause, after notice and hearing.

**2. Certification requirements.** A person may not hold the office of plumbing inspector unless currently certified as qualified by the commissioner. The commissioner shall establish the certification standards for plumbing inspectors. Certification is effective for a period of 3 years unless sooner revoked or suspended by the Administrative Court upon complaint by the commissioner on grounds of fraud, negligence, misconduct or incompetence in the performance of duties. The commissioner may grant temporary certification for a period not to exceed 6 months.

A. The commissioner shall also establish certification standards and a program to certify familiarity with court procedures for:

- (1) Plumbing inspectors appointed under this section;
- (2) Code enforcement officers, as set forth in section 4506 and in Title 38, section 441; and
- (3) Department of Environmental Protection employees, as set forth in Title 38, section 342, subsection 7.

Certification under this paragraph is effective for a period of 3 years unless sooner revoked or suspended by the Administrative Court upon complaint by the commissioner on grounds of fraud, negligence, misconduct or incompetence in the performance of duties. After being certified by the commissioner under this paragraph, a plumbing inspector may serve civil process on persons who violate the plumbing and subsurface waste water disposal rules of the department. The municipal officers may also authorize the inspector to represent the municipality in District Court under section 4506.

**3. Duties.** Plumbing inspectors shall:

A. Inspect all plumbing for which permits are granted, within their respective municipalities, to ensure compliance with state rules and municipal ordinances and investigate all construction or work covered by those rules and ordinances

- B. Condemn and reject all work done or being done or material used or being used which does not comply with state rules and municipal ordinances, and order changes necessary to obtain compliance
- C. Issue a certificate of approval for any work that the inspector has approved
- D. Keep an accurate account of all fees collected and transfer those fees to the municipal treasurer
- E. Keep a complete record of all essential transactions of the office
- F. Perform other duties as provided by municipal ordinance
- G. Investigate complaints of alleged violations relating to plumbing or subsurface waste water disposal and take appropriate action as specified by the department by rule in the State of Maine Enforcement Manual, Procedures for Correcting Violations to the Subsurface Waste Water Disposal and Plumbing Rules.

**30A § 4222. Approving own work forbidden**

No inspector of plumbing may inspect or approve any plumbing work, site evaluation or installation of a subsurface disposal system, done by that inspector, or by any person by whom the inspector is employed, or who is employed by or with the inspector.

**30A § 4223. Annual reports**

Inspectors of plumbing shall annually, before February 1st, make a full report in detail to their respective municipalities and to the department of all their proceedings during the previous calendar year under this subchapter.

(TITLE 30-A)  
(MUNICIPALITIES AND COUNTIES)

(PART 2)  
(MUNICIPALITIES)

(SUBPART 6-A)  
(PLANNING AND LAND USE REGULATION)

(CHAPTER 187)  
(PLANNING AND LAND USE REGULATION)

(SUBCHAPTER II)  
(GROWTH MANAGEMENT PROGRAM)

(Article 1)  
(GENERAL PROVISIONS)

**30A § 4311. Short title**

This subchapter shall be known and may be cited as the "Comprehensive Planning and Land Use Regulation Act."

**30A § 4312. Statement of findings, purpose and goals**

**1. Legislative findings.** The Legislature finds that:

- A. The natural resources of the State, including its forests, agricultural lands, wetlands, waters, fisheries, wildlife, minerals and other related resources, are the underpinnings of the State's economy
- B. These same natural resources and traditional patterns of development have defined the quality of life which the citizens of the State treasure and seek to protect
- C. The pace of land speculation and development has accelerated and outstripped the capacity of the State and municipalities to manage this growth under existing state and local laws
- D. This unplanned growth threatens the integrity of the State's natural resource base, the ability of local government and State Government to provide necessary public services, the affordability of decent housing, the long-term economic viability of the State's economy and the quality of life presently enjoyed by Maine's citizens
- E. The most effective land use planning can only occur at the local level of government and comprehensive plans and land use ordinances developed and implemented at the local level are the key in planning for Maine's future
- F. Continued application of the current reactive, case-by-case system of land use regulation is detrimental to the public health, safety and welfare
- G. The State must take appropriate measures to protect and manage certain areas and natural resources which are of statewide significance and concern
- H. The State has a vital interest in ensuring that a comprehensive system of land use planning and growth management is established as quickly as possible which, while building on the strong foundation of local land use planning, also protects unique aspects of the State's heritage and environment, encourages appropriate uses of the State's natural resources, guides sound economic development and ensures prosperity for Maine citizens in all regions of the State.

**2. Legislative purpose.** The Legislature declares that it is the purpose of this Act to:

- A. Establish, in each municipality of the State, local comprehensive planning and land use management according to the schedule contained in this subchapter and consistent with the goals and policies of the State

B. Provide municipalities with the tools and resources to effectively plan for and manage future development within their jurisdictions with a maximum of local initiative and flexibility

C. Encourage, through state and regional technical and financial assistance and review, local land use ordinances, tools and policies that are based on local comprehensive plans that are prospective and inclusive of all matters determined by the Legislature to be in the best interests of the State

D. Incorporate regional considerations into local planning and decision making so as to ensure consideration of regional needs and the regional impact of development

E. Create a strong partnership between State Government and local government, while clarifying the respective roles of each, to improve land use planning and management

F. Provide for continued direct state regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital state interests

G. Encourage the widest possible involvement by the citizens of each municipality in all aspects of the planning and implementation process, in order to ensure that the plans developed by municipalities and reviewed by the State have had the benefit of citizen input

H. Ensure predictable, timely and cost-effective land use decision making that is coordinated and consistent between State Government and local governments and that minimizes unnecessary duplication.

**3. State goals.** The Legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The Legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the State, it is in the best interests of the State to achieve the following goals:

A. To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl

B. To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development

C. To promote an economic climate which increases job opportunities and overall economic well-being

D. To encourage and promote affordable, decent housing opportunities for all Maine citizens

E. To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas

F. To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas

G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public

H. To safeguard the State's agricultural and forest resources from development which threatens those resources

I. To preserve the State's historic and archeological resources

J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters.

**4. Limitation on state rule-making authority.** This section shall not be construed to grant any separate regulatory authority to any state agency beyond that necessary to implement this subchapter.

**30A § 4313. Transition; savings clause**

Except as otherwise provided in this section, any comprehensive plan or land use regulation or ordinance adopted or amended by a municipality before the applicable date established under section 4343 shall remain in effect until amended or repealed subject to this subchapter.

1. **Comprehensive plan.** Any comprehensive plan not consistent with the requirements, goals and guidelines of this subchapter is void 6 months after the applicable date established under section 4343, subsection 1.

2. **Zoning ordinances.** Any zoning ordinance not consistent with a comprehensive plan adopted according to this subchapter is void 18 months after the applicable date established under section 4343, subsection 1.

3. **Subdivision, site review and impact fee ordinances.** Notwithstanding any provision of a municipal timetable adopted under section 4326, subsection 3, any subdivision, site review or impact fee regulation or ordinance not consistent with a comprehensive plan adopted according to this subchapter is void 2 years after the applicable date established under section 4343, subsection 1.

4. **Other land use ordinances.** Any other land use regulation or ordinance not consistent with a comprehensive plan adopted according to this subchapter is void after January 1, 1998.

**30A § 4321. Local comprehensive planning**

There is established a program of local growth management to accomplish the goals of this subchapter.

**30A § 4322. Exception**

This article and section 4343, subsection 1, do not apply to municipalities within the jurisdiction of the Maine Land Use Regulation Commission.

**30A § 4323. Local authority for growth management**

Through the exercise of its home rule authority, subject to the express limitations and requirements of this subchapter, every municipality shall

1. **Planning.** Plan for its future development and growth

2. **Growth management program.** Adopt and amend local growth management programs, including comprehensive plans and implementation programs, consistent with this subchapter

3. **Other.** Do all other things necessary to carry out the purposes of this subchapter.

**30A § 4324. Local responsibility for growth management**

This section governs a municipality's responsibility for the preparation or amendment of its local growth management program. Where procedures for the adoption of comprehensive plans and ordinances are governed by other provisions of this Title or municipal charter or ordinance, the municipality may modify the procedural requirements of this section as long as a broad range of opportunity for public comment and review is preserved.

1. **Growth management program required.** Pursuant to the schedule established in section 4343, each municipality shall prepare a local growth management program in accordance with this section and which is consistent with the goals, guidelines and other provisions of this subchapter, or shall amend its existing comprehensive plan and existing land use ordinances to comply with this subchapter.

\* \* \*

5. **State Review.** Each municipality shall submit its proposed comprehensive plan and zoning ordinance or its amended, existing comprehensive plan and existing zoning ordinance, to the office according to the schedule established under section 4343 for review.

A. At least 75 days before any public hearing required in subsection 8, the local planning committee shall forward its proposed comprehensive plan to the office and to any applicable regional council for review and comment.

B. At least 75 days before the initial adoption of any zoning ordinance or any revision under section 4327, the local planning committee or municipal reviewing authority, as appropriate, shall forward its proposed ordinance to the office and to any applicable regional council for review and comment. Notice, hearing and other procedural requirements for adoption are governed by applicable provisions of this Title, municipal charter or ordinance.

\* \* \*

**30A § 4326. Local growth management program**

A local growth management program shall include at least a comprehensive plan, as described in subsections 1 to 4, and an implementation program as described in subsection 5.

**1. Inventory and analysis.** A comprehensive plan shall include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance the municipality considers important. The inventory shall be based on information provided by the State, regional councils and other relevant local sources. The analysis shall include 10-year projections of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.

The inventory and analysis section shall include, but is not limited to:

- A. Economic and demographic data describing the municipality and the region in which it is located
- B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, where applicable, their vulnerability to degradation
- C. Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under Title 5, section 3316, and unique natural areas
- D. Marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas
- E. Commercial forestry and agricultural land
- F. Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality
- G. Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities
- H. Residential housing stock, including affordable housing
- I. Historical and archeological resources
- J. Land use information describing current and projected development patterns
- K. An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services.

**2. Policy development.** A comprehensive plan shall include a policy development section which relates the findings contained in the inventory and analysis section to the state goals. The policies shall:

- A. Promote the state goals under this subchapter
- B. Address any conflicts between state goals under this subchapter
- C. Address any conflicts between regional and local issues

D. Address the State's coastal policies.

**3. Implementation strategy.** A comprehensive plan shall include an implementation strategy section which contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and shall actively promote policies developed during the planning process. The timetable shall identify significant ordinances to be included in the implementation program. The strategies and timetable shall guide the subsequent adoption of policies, programs and land use ordinances. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality shall employ the following guidelines consistent with the goals of this subchapter:

A. Identify and designate at least 2 basic types of geographic areas:

(1) Growth areas which are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality shall:

- (a) Establish standards for these developments;
- (b) Establish timely permitting procedures;
- (c) Ensure that needed public services are available within the growth area; and
- (d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion; and

(2) Rural areas which are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality shall adopt land use policies and ordinances to discourage incompatible development.

These policies and ordinances may include, without limitation: density limits; cluster or special zoning; acquisition of land or development rights; or performance standards

B. Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development

C. Protect, maintain and, when warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter 1, article 4-A

D. Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality may adopt ordinances more stringent than applicable state law

E. Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal municipality shall discourage new development that is incompatible with uses related to the marine resources industry

F. Ensure the protection of agricultural and forest resources. Each municipality shall discourage new development that is incompatible with uses related to the agricultural and forest industry

G. (CONFLICT: Text as amended by PL 1989, c. 271, @4) Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of section 4358 pertaining to individual mobile home and mobile home park siting and design requirements. The municipality shall seek to achieve a level of 10% of new residential development, based on a 5-year historical average of residential development in the municipality, meeting the definition of affordable housing. Municipalities are encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to, cluster zoning, reducing minimum lot and frontage sizes and increasing densities

G. (CONFLICT: Text as amended by PL 1989, c. 562, @6) Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community. The municipality shall seek to achieve a level of 10% of new residential development, based on a 5-year historical average of residential development in the municipality, meeting the definition of affordable housing. Municipalities are encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to, cluster zoning, reducing minimum lot and frontage sizes, increasing densities and use of municipally owned land

H. Ensure that the value of historical and archeological resources is recognized and that protection is afforded to those resources that merit it

I. Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking; and encourage the creation of greenbelts, public parks, trails and conservation easements. Each municipality shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting such protection.

**4. Regional coordination program.** A regional coordination program shall be developed with other municipalities to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others. This program shall provide for consistency with the comprehensive plans of other municipalities for these resources and facilities.

**5. Implementation program.** An implementation program shall be adopted that is consistent with the strategies in subsection 3. A zoning ordinance shall be adopted within 18 months of the applicable deadline date established in section 4343, subsection 1, with the remainder of the strategies adopted according to the timetable set in the plan and the provisions of section 4313.

#### **30A § 4327. Monitoring and revision**

A municipality shall periodically review and revise its local growth management program in a timely manner to account for changes caused by growth and development. A municipality shall update its program at least once every 5 years in accordance with this section. The municipality shall submit any comprehensive plan and zoning ordinance revised under this section to the office for review as provided in section 4343, subsection 4.



(TITLE 30-A)  
(MUNICIPALITIES AND COUNTIES)

(PART 2)  
(MUNICIPALITIES)

(SUBPART 6-A)  
(PLANNING AND LAND USE REGULATION)

(CHAPTER 187)  
(PLANNING AND LAND USE REGULATION)

(SUBCHAPTER II)  
(GROWTH MANAGEMENT PROGRAM)

(Article 3)  
(STATE ROLE IN GROWTH MANAGEMENT)

**30A § 4341. State duties**

There is established a program of local growth management assistance and review to promote the preparation and implementation of local growth management programs and to provide technical and financial assistance to accomplish this purpose. The program shall also encourage all local growth management programs and state agency activities to be consistent with the State's goals and guidelines established by this subchapter.

**1. Review agency designated.** The Office of Comprehensive Land Use Planning in the Department of Economic and Community Development shall carry out this article and ensure that the objectives of this subchapter are achieved.

\* \* \*

**4. Provision of natural resource and other planning information.** The office shall develop and supply to all municipalities available natural resource and other planning information for use in the preparation of local growth management programs. By July 1, 1990, the office shall complete an inventory of the State's natural resources sufficient to ensure adequate identification and protection of critical natural resources of statewide significance.

A. The office shall make maximum use of existing information available from other state agencies including, but not limited to:

- (1) The Department of Conservation;
- (2) The Department of Inland Fisheries and Wildlife;
- (3) The Department of Marine Resources;
- (4) The Department of Environmental Protection;
- (5) The State Planning Office; and
- (6) The Department of Economic and Community Development.

B. The office may contract with regional councils to develop the necessary planning information at a regional level and with other state agencies as necessary to provide support for local planning efforts.

**5. Rule-making authority.** The office may adopt rules, with the advice of the Planning Advisory Council, necessary to carry out the purposes of this subchapter, subject to Title 5, chapter 375, subchapter II.

**30A § 4342. State planning review program**

1. **Coordination.** Each state agency with regulatory or other authority affecting the goals established in this subchapter shall submit to the office before January 1, 1990, a written report which addresses how each agency has incorporated the goals of this subchapter into its planned activities. This report shall be revised as necessary but at least once every 2 years. After January 1, 1990, these agencies shall conduct their respective activities in a manner consistent with the goals established under this subchapter.

2. **State agencies.** Without limiting the application of this section to other state agencies, the following agencies shall comply with this section:

- A. Department of Conservation
- B. Department of Economic and Community Development
- C. Department of Environmental Protection
- D. Department of Agriculture, Food and Rural Resources
- E. Department of Inland Fisheries and Wildlife
- F. Department of Marine Resources
- G. Department of Transportation
- H. Finance Authority of Maine
- I. Maine State Housing Authority

3. **Development of a computerized geographic information system.** The Department of Administration, Office of Information Services, in consultation with the Department of Conservation and the Department of Economic and Community Development, shall develop an implementation strategy for a statewide geographic information system capable of providing natural resource, demographic and economic information for local and regional comprehensive land use planning and management. The strategy shall consist of:

- A. A description of computer system requirements
- B. An implementation plan and timetable
- C. The identification of state agency responsibilities
- D. A proposal for standards to ensure maximum compatibility of geographic data collected at local, regional and state
- E. An estimate of the implementation costs and resource requirements.

The Office of Information Services shall report its findings, together with any legislative recommendations, to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters by February 1, 1990.

\* \* \*

**30A § 4344. State Technical and Financial Assistance**

\* \* \*

**9. Other state grants and assistance.** Except for the programs specified in subsection 8, and after 2 years subsequent to the applicable deadline date established in section 4343, subsection 1, state agencies responsible for administering grant and direct or indirect financial assistance programs to municipalities designed to accommodate or encourage additional growth and development; to improve, expand or construct public facilities; to acquire land for conservation, recreation or resource protection; or to assist in planning or managing for specific economic and natural resource concerns shall allocate funds only to a municipality with an adopted comprehensive plan and implementation program which includes statements of policy or program guidelines directly related to the purposes for which the grant or financial assistance is provided. State agencies shall consider the content of the plan, policies and guidelines in awarding financial assistance to a municipality.

\* \* \*

(TITLE 30-A)  
(MUNICIPALITIES AND COUNTIES)

(PART 2)  
(MUNICIPALITIES)

(SUBPART 6-A)  
(PLANNING AND LAND USE REGULATION)

(CHAPTER 187)  
(PLANNING AND LAND USE REGULATION)

(SUBCHAPTER III)  
(LAND USE REGULATION)

**30A § 4351. Home rule limitations**

This subchapter provides express limitations on municipal home rule authority.

**30A § 4352. Zoning ordinances**

A municipal zoning ordinance may provide for any form of zoning consistent with this chapter, subject to the following provisions.

**1. Public participation required.** The public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance.

**2. Relation to comprehensive plan.** A zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body.

**3. Zoning map required.** A zoning map describing each zone established or modified must be adopted as part of the zoning ordinance or incorporated in the ordinance. Any conflict between the zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

**4. Exemption for public service corporations.** Real estate used or to be used by a public service corporation is wholly or partially exempt from an ordinance only when on petition, notice and public hearing the Public Utilities Commission determines that the exemption is reasonably necessary for public welfare and convenience.

**5. Effect on local governments.** County and municipal governments and districts are subject to any zoning ordinance.

**6. Effect on State.** Any zoning ordinance is advisory with respect to the State.

**7. Petition for rezoning; bond.** Any zoning ordinance may provide that if a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan the area may not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

**8. Conditional and contract rezoning.** A zoning ordinance may include provisions for conditional or contract zoning. All rezoning under this subsection must:

A. Be consistent with the local growth management program adopted under this chapter

B. Establish rezoned areas which are consistent with the existing and permitted uses within the original zones

C. Only include conditions and restrictions which relate to the physical development or operation of the property.

The municipal reviewing authority shall conduct a public hearing before any property is rezoned under this subsection. Notice of this hearing shall be posted in the municipal office at least 14 days before the public hearing. Notice shall also be published at least 2 times in a newspaper having general circulation in the municipality. The date of the first publication must be at least 7 days before the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at the owners' last known addresses. This notice shall contain a copy of the proposed conditions and restrictions with a map indicating the property to be rezoned.

\* \* \*

### 30A § 4354. Impact Fees

A municipality may enact an ordinance under its home rule authority requiring the construction of off-site capital improvements or the payment of impact fees instead of the construction. No later than 2 years after the applicable deadlines established under section 4343, subsection 1, any impact fee ordinance must have been adopted as part of a certified local growth management program.

1. **Construction or fees may be required.** The requirements may include construction of capital improvements or impact fees instead of capital improvements including the expansion or replacement of existing infrastructure facilities and the construction of new infrastructure facilities.

A. For the purposes of this subsection, infrastructure facilities include, but are not limited to:

- (1) Waste water collection and treatment facilities;
- (2) Municipal water facilities;
- (3) Solid waste facilities;
- (4) Fire protection facilities;
- (5) Roads and traffic control devices; and
- (6) Parks and other open space or recreational areas.

2. **Restrictions.** Any ordinance that imposes or provides for the imposition of impact fees must meet the following requirements.

- A. The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development.
- B. Funds received from impact fees must be segregated from the municipality's general revenues. The municipality shall expend the funds solely for the purposes for which they were collected.
- C. The ordinance must establish a reasonable schedule under which the municipality is required to use the funds in a manner consistent with the capital investment component of the comprehensive plan.
- D. The ordinance must establish a mechanism by which the municipality shall refund impact fees, or that portion of impact fees, actually paid that exceed the municipality's actual costs or that were not expended according to the schedule under this subsection.

### 30A § 4355. Application fees

Any application fee charged by a municipality for an application for any land use permit issued by the municipality may not exceed the reasonable cost of processing, review, regulation and supervision of the application by the municipality and its consultants and the administration of any requirement for a certificate of compliance with any permit conditions.

**30A § 4356. Moratoria**

Any moratorium adopted by a municipality on the processing or issuance of development permits or licenses must meet the following requirements.

**1. Necessity.** The moratorium must be needed:

A. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development

B. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area.

**2. Definite term.** The moratorium must be of a definite term of not more than 180 days. The moratorium may be extended for additional 180-day periods if the municipality adopting the moratorium finds that:

A. The problem giving rise to the need for the moratorium still exists

B. Reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium.

**3. Extension by selectmen.** In municipalities where the municipal legislative body is the town meeting, the selectmen may extend the moratorium in compliance with subsection 2 after notice and hearing.

**3. Regulation of mobile home parks.** This subsection governs a municipality's regulation of mobile home parks.

A. Except as required under Title 38, or an ordinance adopted pursuant to Title 38, a municipality shall not require:

(1) The size of any mobile home park lot served by a public sewer system to be larger than the smaller of:

(a) Six thousand five hundred square feet; or

(b) The area of the smallest residential lot permitted in the municipality;

(2) The size of any mobile home park lot with on-site subsurface waste water disposal to be larger than 20,000 square feet; or

(3) The size of any mobile home park lot served by a central on-site subsurface waste water disposal system approved by the Department of Human Services to be larger than 12,000 square feet, provided that a municipality may require that the overall density of the mobile home park be no more than one home for every 20,000 square feet.

B. A municipality shall not require the overall area of a mobile home park to be greater than the combined area of its mobile home park lots plus:

(1) The area required for road rights-of-way;

(2) The area required for buffer strips, if any; and

(3) For mobile home parks served by a public sewer, an additional area for open space, storage or recreation, as those terms are defined by local ordinances applicable to all residential developments. A municipality shall not require this additional area to be greater than 10% of the combined area of the individual lots within a mobile home park; and

(4) The area of any setbacks required under Title 38 or an ordinance adopted pursuant to Title 38.

C. Except as required under Title 38 or an ordinance adopted pursuant to Title 38, a municipality shall not require setbacks that have the effect of requiring lots larger than those permitted under paragraph A.

D. Notwithstanding paragraph C, a municipality may require that mobile homes on lots adjacent to a public road be set back from the public road according to requirements applicable to other residential developments.

E. A municipality shall not require road frontage on individual lots within a mobile home park that has the effect of requiring a manufactured home on the lot to be placed parallel to an adjacent private or public roadway.

F. Except as provided by paragraph G, municipal road standards shall not apply to private roads within a mobile home park unless the developer intends to offer the roads to the municipality for acceptance as town ways.

G. A municipality may require by ordinance or rule that privately owned roads within a mobile home park:

- (1) Be built according to acceptable engineering standards and with a professional engineer's seal as required by the Manufactured Housing Board;
- (2) Have a right-of-way up to 23 feet in width, 20 feet of which the municipality may require to be paved; and
- (3) Conform to reasonable safety standards applicable to intersections with public ways adjacent to the mobile home park.

H. The Manufactured Housing Board shall develop standards for construction of roads within a mobile home park no later than January 1, 1990. The board shall submit these standards to the joint standing committee of the Legislature having jurisdiction over legal affairs matters for that committee's review.

I. A municipality may require buffer strips, not to exceed 50 feet, including individual lot setbacks, along any mobile home park boundary which abuts land used for residential use if the per-acre density of homes within the mobile home park is at least 2 times greater than:

- (1) The density of residential development on immediately adjacent parcels of land; or
- (2) If the immediately adjacent parcels of land are undeveloped, the maximum net residential density permitted by applicable municipal ordinances or state law.

No structures, streets or utilities may be placed in the buffer strip, except that utilities may cross a buffer strip to provide services to a mobile home park. Municipalities may impose reasonable natural screening requirements within the first 25 feet of the buffer strip as measured from the exterior boundaries of the mobile home park if the requirements are no greater than those for other residential developments.

J. A municipality shall not require electrical utilities and telephone lines to be located underground within a mobile home park. A municipality shall allow a developer to install utilities anywhere within the mobile home park.

K. Except as required under Title 38, or an ordinance adopted pursuant to Title 38, a municipality may not enact or enforce land use regulations or ordinances, including, but not limited to, subdivision regulations or ordinances, which limit the number of lots in a mobile home park, which circumvent the intent of this section or which conflict with the provisions of this section.

L. Notwithstanding any provision in this subsection, a person developing or expanding a mobile home park has the burden of proving that development will not pollute a public water supply or aquifer or violate any state law relating to land development, subdivision or use.

M. A municipality shall permit mobile home parks to expand and to be developed in a number of environmentally suitable locations in the municipality with reasonable consideration being given to permit existing mobile home parks to expand in their existing locations. A municipality may not select a location for a mobile home park development which is not reasonably suitable because of:

- (1) Prior lot division;
- (2) Locational setting within the municipality;
- (3) Natural features; or

(4) Other similar factors.

This paragraph is effective January 1, 1990.

**30A § 4359. State policy relating to municipal commercial landfill facilities moratoria**

It is the policy of this State, with respect to commercial landfill facilities

**1. State and municipal control.** To affirm the importance of state and municipal control over the establishment of new commercial landfill facilities and over the substantial expansion of existing commercial landfill facilities

**2. Recognition of home rule authority.** To recognize that any municipality may, under its home rule authority, enact a moratorium on the issuance or processing of any municipal permit for a new commercial landfill facility or the substantial expansion of a commercial landfill facility, as defined by Title 38, section 1303, subsection 11-B.



(TITLE 30-A)  
(MUNICIPALITIES AND COUNTIES)

(PART 2)  
(MUNICIPALITIES)

(SUBPART 6-A)  
(PLANNING AND LAND USE REGULATION)

(CHAPTER 187)  
(PLANNING AND LAND USE REGULATION)

(SUBCHAPTER IV)  
(SUBDIVISIONS)

**30A § 4401. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Densely developed area.** "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

**2. Dwelling unit.** "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units.

**2-A. Freshwater wetland.** "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils

B. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

**3. Principal structure.** "Principal structure" means any building or structure in which the main use of the premises takes place.

**4. Subdivision.** "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence or for open space land as defined in Title 36, section 1102, for a period of at least 5 years before the 2nd dividing occurs; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter.

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

C. A lot of 40 or more acres shall not be counted as a lot, except:

(1) When the lot or parcel from which it was divided is located entirely or partially within any shoreland area as defined in Title 38, section 435, or a municipality's shoreland zoning ordinance; or

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435, or a municipality's shoreland zoning ordinance.

D. A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality, unless the intent of that gift is to avoid the objectives of this subchapter, or a division accomplished by the transfer of any interest in land to the owner of abutting land, does not create a lot or lots for the purposes of this definition.

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.

H. Nothing in this subchapter may be construed to prevent a municipality from enacting an ordinance under its home rule authority which expands the definition of subdivision to include the division of a structure for commercial or industrial use or which otherwise regulates land use activities.

5. **New structure or structures.** "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.

6. **Tract or parcel of land.** "Tract or parcel of land" means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.

7. **Outstanding river segments.** In accordance with Title 12, section 402, "outstanding river segments" means:

A. The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S.

B. The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line

C. The Crooked River from its inlet into Sebago Lake to the Waterford and Albany Township town line

D. The Damariscotta River from the Route 1 bridge in Damariscotta to the dam at Damariscotta Mills

E. The Dennys River from the Route 1 bridge to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation

F. The East Machias River, including the Maine River, from 1/4 of a mile above the Route 1 bridge to the East Machias and T.18, E.D., B.P.P. town line, from the T.19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake, and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond

G. The Fish River from the bridge at Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line, and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake

- H. The Kennebago River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line
- I. The Kennebec River from Thorns Head Narrows in North Bath to the Edwards Dam in Augusta, excluding Perkins Township, and from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake
- J. The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line
- K. The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line, and from the Reed Plantation and Bancroft town line to the East Branch in Haynesville
- L. The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town lines, excluding Beddington Lake
- M. The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line
- N. The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line
- O. The Pleasant River from the bridge in Addison to the Columbia and T.18, M.D., B.P.P. town line, and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake
- P. The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River
- Q. The Saco River from the Little Ossipee River to the New Hampshire border
- R. The St. Croix River from the Route 1 bridge in Calais to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line, and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage
- S. The St. George River from the Route 1 bridge in Thomaston to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond
- T. The St. John River from the Van Buren and Hamlin Plantation town line to the Fort Kent and St. John Plantation town line, and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line
- U. The Sandy River from the Kennebec River to the Madrid and Township E town line
- V. The Sheepscot River from the railroad bridge in Wiscasset to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China
- W. The West Branch of the Pleasant River from the East Branch in Brownville to the Brownville and Williamsburg Township town line
- X. The West Branch of the Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

**30A § 4402. Exceptions**

This subchapter does not apply to:

1. **Previously approved subdivisions.** Proposed subdivisions approved by the planning board or the municipal officials before September 23, 1971 in accordance with laws then in effect
2. **Previously existing subdivisions.** Subdivisions in actual existence on September 23, 1971 that did not require approval under prior law;

### 30A § 4403. Municipal review and regulation

This section governs municipal review of proposed subdivisions.

**1. Municipal reviewing authority.** The municipal reviewing authority shall review all requests for subdivision approval. On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.

### 30A § 4404. Review criteria

When adopting any subdivision regulations and when reviewing any subdivision for approval, the municipal reviewing authority shall consider the following criteria and, before granting approval, must determine that:

**1. Pollution.** The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

- A. The elevation of the land above sea level and its relation to the flood plains;
- B. The nature of soils and subsoils and their ability to adequately support waste disposal
- C. The slope of the land and its effect on effluents
- D. The availability of streams for disposal of effluents
- E. The applicable state and local health and water resource rules and regulations

**2. Sufficient water.** The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision

**3. Municipal water supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used

**4. Erosion.** The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results

**5. Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed

**6. Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized

**7. Municipal solid waste disposal.** The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized

**8. Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline

**9. Conformity with local ordinances and plans.** The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans

**10. Financial and technical capacity.** The subdivider has adequate financial and technical capacity to meet the standards of this section

**11. Surface waters; outstanding river segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter 1, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

A. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.

(1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.

(2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter 1, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983

12. **Ground water.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water

13. **(CONFLICT: Text as amended by PL 1989, c. 429, @1) Flood areas.** The subdivider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plat approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation

13. **(CONFLICT: Text as amended by PL 1989, c. 497, @8) Flood areas.** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation

14. **(CONFLICT: Text as enacted by PL 1989, c. 404, @2) Freshwater wetlands.** All potential freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

14. **(CONFLICT: Text as enacted by PL 1989, c. 429, @2) River, stream or brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

14. **(CONFLICT: Text as enacted by PL 1989, c. 479, @9) Storm water.** The proposed subdivision will provide for adequate storm water management.

\* \* \*

(TITLE 35-A)  
(PUBLIC UTILITIES)

(PART 6)  
(WATER)

(CHAPTER 61)  
(GENERAL PROVISIONS AND RATES)

**35A § 6101. Definitions**

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. b! 1987, c. 141, Pt. A, § 6 (new). ?b

1. **Governing body.** 1987, c. 490, Pt. B, § 10 (rp).

1-A. **Consumer-owned water utility.** "Consumer-owned water utility" means any water utility which is wholly owned by its consumers, including, but not limited to, any municipal or quasi-municipal water district or corporation, municipal water department or the water portion of any utility wholly owned by a municipality or district. b! 1987, c. 490, Pt. B, § 11 (new). ?b

1-B. **Governing body.** "Governing body" means the governing body of a consumer-owned water utility. b! 1987, c. 490, Pt. B, § 11 (new). ?b

2. **Service line.** "Service line" means the pipeline, including the meter and other appurtenances, extending from a water main to the building or other premises served. b! 1987, c. 141, Pt. A, § 6 (new). ?b

3. **Water district.** "Water district" means any district, including any multipurpose district, created by the private and special laws of the State to perform the functions of a water utility. b! 1987, c. 141, Pt. A, §6 (new). ?b

4. **Water main extension.** "Water main extension" means an extension of the pipeline, including associated appurtenances, from an existing water main to serve a previously unserved location or a location served by a seasonal main. b! 1987, c. 141, Pt. A, § 6 (new). ?b

**35A § 6102. Filing with commission plans for construction or improvements of water systems**

Any water utility, before commencing construction of a new water system or a major addition to or alteration of an existing water system, shall file with the commission, in accordance with the commission's rules, plans and specifications for the construction, additions or alteration in order to obtain the advice of the commission as to cost, method of financing and adherence to proper engineering standards. b! 1987, c. 141, Pt. A, §6 (new). ?b

**35A § 6107. System development charge**

1. **System development charge authorized.** In addition to section 6105, the governing body of a consumer-owned water utility may establish and file, pursuant to section 310 or 6104, a system development charge which is just and reasonable to provide funds to finance capital outlays for water system expansion caused by an increase in demand for service. b! 1987, c. 490, Pt. B, § 16 (amd). ?b

2. **Commission review.** If a consumer-owned water utility elects to institute a system development charge, it shall file the proposed charge and a description of the basis of the charge with the commission not less than 90 days before the effective date of the charge. The commission shall investigate the system development charge under section 1303 to determine whether it is just and reasonable. b! 1987, c. 490, Pt. B, § 16 (amd). ?b

**3. Use of funds.** The funds generated by the system development charge shall be deposited into a special account of the consumer-owned water utility dedicated to finance capital outlays for water system expansion caused by an increase in demand for service. The funds from the special account shall be used only for the purpose of financing the expansion of the system and shall not be used for the repair or replacement of existing facilities unless the replacement is required as a result of increased demand for service. The system development charge shall not be treated as income of the consumer-owned water utility nor shall it be considered part of the rates established and filed pursuant to section 6105. b! 1987, c. 490, Pt. B, § 16 (amd). ?b

**4. Assessment of charge.** The system development charge may be assessed upon all customers of the consumer-owned water utility that require new connections to the water system, excluding fire service, as of or after the effective date of that charge and upon all existing customers who substantially expand their demand for water service as of or after the effective date of that charge. b! 1987, c. 490, Pt. B, § 16 (amd). ?b

**5. Water conservation programs.** Before a system development charge may be instituted, the consumer-owned water utility must report to the commission its efforts in implementing water conservation programs. The utility shall state what combination of system development charges and new conservation programs will allow the utility to meet growing demand in the least costly manner. b! 1987, c. 490, Pt. B, § 16 (amd). ?b

**6. Review by elected local officials.** If the governing body is not an elected body, any system development charge proposed under this section must first be endorsed by the municipal officers of the municipality or municipalities involved, prior to filing with the commission. b! 1987, c. 141, Pt. A, § 6 (new). ?b

### **35A § 6108. State contributions**

The management and allocation by a consumer-owned water utility of a state contribution of funds made prior to January 1, 1989, under Title 38, section 568, and its income, shall not be subject to investigation or review by the commissioner included under section 310, 1302 or 1303 except upon request by the Department of Environmental Protection. b!1987, c. 889 (new).?b

**(TITLE 35-A)  
(PUBLIC UTILITIES)**

**(PART 6)  
(WATER)**

**(CHAPTER 63)  
(WATER DISTRICTS)**

**35A § 6301. Short title; purpose**

This chapter shall be known and may be cited as the "Maine Water District Act." The purpose of this chapter is to provide minimum guidelines to the water districts chartered under private and special laws of the Legislature. These guidelines will provide more public participation and more accountability for water districts, and encourage the maximum degree of local control consistent with protection of health and economic welfare of the citizens.

**35A § 6307. Legislative amendment of charter**

Prior to acting upon any proposed water district charter amendment, the joint standing committee of the Legislature having jurisdiction over public utilities shall obtain written comments from the municipalities that lie in whole or in part within the district.



(TITLE 35-A)  
(PUBLIC UTILITIES)

(PART 6)  
(WATER)

(CHAPTER 65)  
(PROPERTY TAKEN FOR PUBLIC USE AND)  
(ASSESSMENT OF DAMAGES)

**35A § 6501. Rights of parties as to procedure**

**1. Locations and damages.** All locations made and all damages assessed for the taking of property by the exercise of the right of eminent domain shall be made and assessed and the rights of the parties shall be as stated in this chapter, notwithstanding anything contained in the act granting the right.

**2. Water utilities may exercise right of eminent domain.** Water utilities may exercise the right of eminent domain for obtaining sources of supply and locations for storage and for the protection of them and locations for transmission and distribution of water to the public under this chapter and chapter 69.

**3. Exceptions.** This chapter does not apply to:

A. Property taken by the United States, the State of Maine, a county or municipality of the State, a quasi-municipal corporation or steam railroad corporation

B. Property which, when taken, is being or is necessary to be used by the owner in the performance of a public duty.

**35A § 6502. Proceedings before entry; location and map;  
description**

**1. Description.** All property taken by eminent domain shall, before it is entered upon for any purpose except to make surveys, be located by a description, signed by the party taking the property. The description shall:

A. Describe in detail the property taken

B. Give the names of the owners

C. Be accompanied by a map showing the property as described.

**2. Filing location and map.** The party taking the property shall file the location and map with the county commissioners of the county where the property is located, who shall:

A. Endorse the time of filing on the location and map

B. Order the location recorded.

**3. Recording location.** The taker shall record the location in the registry of deeds of the county or registry district where the property is located.

**4. Personal notice given to mortgage holder.** When there is a recorded mortgage covering any portion of the land taken, which has been recorded within 40 years of the taking and bears no record of discharge, satisfaction or release, the taker shall give personal notice to the owner of record of the mortgage by sending to the mortgage holder's residence, if known, otherwise to the residence or address set forth in the record, by registered mail, a written notice of the taking which shall contain a description of the property taken and the name of the owner.

**5. Description corrected.** When for any reason the taker fails to acquire the property authorized to be taken and which is described in the location, or the location recorded is defective or uncertain, the taker may, at any time, correct and perfect the location and file a new description.

**6. Liability of taker.** If a description is corrected under subsection 5, the taker is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the taker shall not be liable for any acts which would have been justified if the original taking had been valid.

**35A § 6503. Damages for property owners; security**

**1. Owners entitled to damages.** The owners are entitled to damages for all property taken by eminent domain as if the land were taken for highway purposes under Title 23, chapter 3.

\* \* \*

(TITLE 35-A)  
(PUBLIC UTILITIES)

(PART 6)  
(WATER)

(CHAPTER 67)  
(CONDEMNATION BY WATER UTILITIES)

**35A § 6701. Necessity of taking determined**

The owner of property which is subject to appropriation for public purposes by a water utility, upon hearing, may have the commission determine the necessity of the appropriation.

**35A § 6702. Petition by owner**

The owner of the property, within 30 days after the beginning of condemnation proceedings, may file with the commission a petition for a decision as to the necessity of the appropriation. A copy of the petition and order of notice, attested by the administrative director, shall be served on the defendant.

**35A § 6703. Proceedings before commissioners**

1. **Hearing.** The commissioners shall fix a time for a hearing, inside the county where the property is situated, and give written notice of the hearing to the owner and to the water utility seeking to acquire the property. At the hearing, all parties in interest shall be heard either in person or by attorney, and witnesses may be summoned by either party and attendance compelled as before other judicial tribunals.

2. **Burden of proof.** The burden of proof to show the necessity of the particular taking rests on the party seeking to acquire the property.

3. **Commission's decision.** The decision of a majority of the commissioners is final as to questions of fact.

**35A § 6704. Condemnation proceedings by water utility**

Upon the commencement of condemnation proceedings, the utility seeking to acquire property, unless otherwise provided by law, may file a petition asking that the necessity of the taking be determined. After the petition is filed, the proceedings shall be the same as in the case of a petition by the landowner.

**35A § 6705. Validation of proceedings**

All plans and descriptions of land and all descriptions of other property taken by a water utility for its purposes and uses, filed in the office of the county commissioners of the county where the land or other property is situated, prior to March 9, 1889, are valid and legal for all purposes of taking.

**35A § 6706. Water utility line crossing railroad right-of-way**

Wherever a line or main of a water utility is located and about to be constructed across the right-of-way of a railroad, unless the officers of the water utility agree with the corporation operating the railroad as to the time, place, manner and conditions of the crossing, the commission upon petition of either party, after notice and hearing, shall determine the time, place, manner and conditions of the crossing. All the work within the limits of the railroad shall be done under the supervision of the officers of the corporation operating the railroad and to the satisfaction of the commission. The water utility shall bear the expense of the work. The commission shall report its decision in the same manner as in the case of highways located across railroads and subject to the same right of appeal.

(TITLE 37-B)  
(DEPARTMENT OF DEFENSE AND VETERANS' SERVICES)  
(CHAPTER 22)  
(DAM INSPECTION)

**37B § 1061. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Agency.** "Agency" means the Maine Emergency Management Agency.

2. **Dam.** "Dam" means any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, which impounds or diverts a river, stream or great pond and which is 2 feet or more in height and has an impounding capacity at maximum water storage elevation of 15 acre-feet or more. Any such artificial barrier constructed solely for the purpose of impounding water to allow timber to be floated downstream in a logging operation shall not be considered a dam for the purposes of this chapter, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this chapter.

3. **Dam reconstruction.** "Dam reconstruction" means the rebuilding or replacement of all or part of an existing dam that no longer functions in the manner for which it was originally constructed.

4. **Director.** "Director" means the Director of the Maine Emergency Management Agency.

5. **Emergency operations plan.** "Emergency operations plan" means a set of written instructions or guidelines for use by public officials which recommends actions which, when implemented, will minimize the effects of a dam failure on people and property.

6. **High or significant hazard.** "High or significant hazard" means that condition which poses a risk of loss of human life and substantial property damage.

7. **Public safety.** "Public safety" or "safety of the public" means protection of life, health or property from any condition, event or action at a dam which might compromise the safety, stability or integrity of the dam or its ability to function safely.

8. **State dam inspector.** "State dam inspector" means an inspector appointed or hired under section 1064.

**37B § 1062. Jurisdiction**

The inspection of and design standards for all dams shall be under the sole jurisdiction of the agency, except that the agency does not have jurisdiction over any dam licensed or inspected by any agency of the Federal Government or by the International Joint Commission.

**37B § 1063. Design standards**

All new or reconstructed dams which are classified as high or significant hazard dams shall be constructed or reconstructed in accordance with design and construction standards that are consistent with accepted engineering standards. These standards shall be promulgated by rule of the agency prior to July 1, 1990. The agency shall establish by rule a process by which the design and construction of new or reconstructed dams shall be reviewed under this section.

**37B § 1064. Inspectors of dams**

The director shall appoint or hire one or more dam inspectors who are licensed as professional engineers under Title 32, chapter 19, and experienced in the inspection and design of dams.

**37B § 1065. Inspection of dams**

1. **Inspection.** By June 1, 1995, the director shall, at a minimum, inspect:
  - A. All dams which are listed in the 1981 United States Army Corps of Engineers' Inventory of Dams in the United States as "high" and "significant hazard" dams in the State
  - B. Any other new or existing dam that may, in the judgment of the director, constitute a potential threat to public safety
  - C. Any dams identified by the director under section 1070, subsection 2.

The purpose of the inspections shall be to reevaluate and ascertain the downstream hazard classification of each dam.

**2. Hazard classification.** Each dam inspected under this section shall be classified pursuant to the hazard potential of the dam. The principal criterion used to determine the hazard classification of the dam shall be the potential risk to public safety and property downstream of the dam which may be affected directly or indirectly by the failure of the dam. The standards of classification of dams shall be the same as those adopted by the United States Army Corps of Engineers, as set forth in 33 Code of Federal Regulations, Chapter II, and all subsequent amendments thereto.

**3. Report.** A state dam inspector shall write and issue a report making a recommendation regarding the classification of each dam to the director. A copy of the report shall be provided to the dam owner of record and forwarded by certified mail. The dam owner shall notify the agency within 30 days of receipt of the report if the owner disagrees with the conclusions of the State's classification recommendation. If the owner of the dam does not agree with the results and recommendations of the dam inspector, the owner may at the owner's expense have a registered professional engineer conduct an independent investigation to determine the hazard classification of the dam. The dam owner shall provide the results of this independent investigation to the director within 6 months of receipt of the original report. The owner may apply for and be granted an extension of this deadline by the director for good cause. A state dam inspector shall review and consider the information provided by the owner's report pertaining to the classification of the dam and may issue a new classification recommendation. After reviewing all available data, the director shall then determine the classification of the dam.

The director shall reevaluate the hazard classification of a dam at least once every 6 years and, if necessary, reclassify the dam to account for the possibility that conditions downstream of the dam may have changed.

**4. Ascertain conditions of dam.** A state dam inspector shall also conduct on-site inspections of the dams inspected under subsection 1 to determine if the integrity, structural stability and function of the dams constitute a threat to public safety downstream of the dams. A state dam inspector shall issue a report on the material condition of each dam which shall describe in detail any material condition which constitutes a threat to public safety. The engineering process, mathematical calculations and complete documentation justifying the assessment of the current material condition shall be provided to the director.

**5. Correction of unsafe conditions.** After receiving a report on a dam from a state dam inspector, if the director determines that a dam is an imminent threat to the safety of the public, the director may order the owners, lessees or persons in control of the dam to make alterations to the dam or its operations, including, but not limited to:

- A. Breach or removal of the dam
- B. Repair or maintenance of the dam
- C. Operation of the dam in a specified manner
- D. Preparation of and adherence to an emergency operations plan satisfactory to the agency
- E. Maintenance of appropriate records relating to water levels, dam operation and dam maintenance.

**37B § 1066. Enforcement**

The director may commence an action to enjoin the violation of any provision of section 1065. The director may enforce any order by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order.

The owners, lessees or persons in control of the dam shall be jointly and severally liable for any costs incurred by the agency in enforcing any order. If the owners, lessees or persons in control of the dam refuse to comply or do not fully comply

with the agency's order, the agency shall initiate a civil action against the owners, lessees or other persons in control of the dam for damages in the amount of the costs incurred by the agency in enforcing its order.

### **37B § 1067. Appeal**

Any person aggrieved by an order of the director may appeal to the Superior Court under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

### **37B § 1068. Access and notification**

**1. Agency access.** A state dam inspector and any agency staff member shall have full access to any dam site under the director's jurisdiction for the purpose of conducting an inspection or enforcing an order under this chapter subject to the Maine Rules of Civil Procedure, Rule 80E.

**2. Owners, lessees; necessary access.** The owners, lessees or persons in control of a dam shall have access over land abutting the dam site owned by others if the access, including the passage of vehicles, machinery and equipment, is reasonably necessary to comply with an order issued under section 1065. In passing over land owned by abutters, the owners, lessees or persons in control of a dam shall make every effort to minimize the intrusion, shall restore the land to its preexisting condition to the maximum extent practicable and shall be liable to the abutters for all property damage caused by their activities on the abutters' land. The abutters shall not be liable to any person for any personal injuries or property damage arising from the crossing of their land by the owners, lessees or persons in control of a dam.

### **37B § 1069. Emergency plans**

Within 6 months after the determination of the classification of a dam under section 1065, the owners of dams under the director's jurisdiction classified as high or significant hazard will prepare and update every 2 years an emergency operations plan. These emergency operations plans shall be reviewed for adequacy by the agency. Emergency plans shall follow a model plan supplied by the agency. All emergency operations plans shall be available and on file at the appropriate local and county government offices and at the agency.

### **37B § 1070. Inspection petition and order**

**1. Petition.** A petition requesting the inspection of any dam may be filed with the director by any of the following:

- A. Ten or more persons owning property adjacent to a stream or impoundment affected by a dam
- B. Fifty or more persons owning property within the floodplain downstream of a dam
- C. The municipal officers of a municipality in which a dam or the body of water it impounds is located
- D. The commissioners of any county in which the dam or body of water it impounds is located.

**2. Petition action.** The director shall, within 30 days after receipt of a petition requesting a dam inspection, notify the petitioners in writing of the director's action on the petition. The director may:

- A. Accept the petition and order an inspection under section 1065
- B. Deny the petition if the director determines that inspection of the dam is unnecessary.

**3. Director's order.** The director may order an inspection of any dam at any time without receipt of a petition requesting inspection of the dam.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 2)  
(DEPARTMENT OF ENVIRONMENTAL PROTECTION)

**38 § 341. Department**

The Department of Environmental Protection, as heretofore established and hereinafter called "the department", shall protect and improve the quality of our natural environment and the resources which constitute it and shall enhance the public's opportunity to enjoy the environment by directing growth and development which will preserve for all time an ecologically sound and aesthetically pleasing environment. The department shall consist of the Board of Environmental Protection, which is the successor of the Environmental Improvement Commission and of a Commissioner of Environmental Protection, hereafter in this Title called "commissioner," who shall be appointed by the Governor, subject to review by the Joint Standing Committee on Natural Resources and to confirmation by the Legislature and who shall serve at the pleasure of the Governor.

The Department of Environmental Protection shall establish coordination and assistance procedures for all environmental permits issued by agencies of the State for activities within the organized municipalities. Such procedures shall, to the extent practicable, ensure: The availability to the public of necessary information concerning such environmental permits; the provision of assistance to applicants in obtaining such permits from all such agencies; the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by the applicant and the issuing agencies. Such permit issuing agencies shall cooperate with the Department of Environmental Protection in the development and effectuation of such coordination and assistance procedures.

**38 § 342. Commissioner, duties**

**6. Technical services.** The commissioner may provide technical assistance, advice and consultation at the request of any municipality or quasi-municipal entity on matters relating to solid waste management. Technical services may include, but not be limited to, technical advice regarding the operation of waste management facilities or services and employment of consultants to assist in the location or design of any type of solid waste facility. The assignment of consultants shall be based upon demonstrated need, including, but not limited to, placement on the open-dump inventory list, noncompliance with orders of the board or noncompliance with state or federal rules.

**2. Delegation.** Authority is delegated to the Commissioner of Environmental Protection and the department staff to approve, approve with conditions or disapprove the following categories of applications:

- A. All applications under chapter 3, subchapter I, article 5-A, pertaining to great ponds permits
- B. Applications under section 413 for a waste discharge license and for a cooling water waste discharge license
- C. All applications under section 418, pertaining to log storage permits
- D. Applications under chapter 3, subchapter I, article 5-A pertaining to natural resource protection permits for pile supported piers
- E. Applications under section 483 for site location development permits for subdivisions and for structures at an existing industrial or commercial facility, approved pursuant to section 483 or 484, which do not increase the square footage of the total ground area of the facility by more than 50%
- F. All applications under section 543, pertaining to oil discharge licenses
- G. All applications under section 545, pertaining to oil terminal facility licenses
- H. Applications under section 590 pertaining to air emissions licenses for all petroleum storage facilities, for incinerators or boilers with capacities of less than 250,000,000 British Thermal Units per hour, or which do not result in a net increase in emissions at any industrial or commercial facility, and for all general process sources
- I. All applications under section 1319-O, subsection 1, paragraph C, pertaining to hazardous waste transporting licensing

J. All applications under section 1306, subsection 1 and section 1310-N pertaining to solid waste, sludge or septage waste facility permits except for new waste disposal facilities, expansions of waste disposal facilities and pulp and paper mill sludge utilization sites. Brush and demolition debris sites of less than 6 acres are delegated to the commissioner and the department staff

K. Applications for permit or license renewals where the permittee or licensee has operated in substantial compliance with the most recent permit or license and where the proposed pollution control equipment is substantially unchanged from that previously permitted or licensed and where applicable laws or rules on which the permit or license would be considered have not changed since the last permit or license was issued.

The board may delegate by regulation to the commissioner the authority to approve, approve with conditions or disapprove any other applications for approvals by the board made pursuant to any of the laws which the board is required to administer.

The board, after a majority of the members present and voting vote to do so, may delegate to the commissioner the authority to approve, approve with conditions or disapprove individual applications not otherwise delegated under this subsection.

Decisions made by the commissioner pursuant to any such delegation shall be made in accordance with the standards found in the applicable statute, with all procedural steps applicable to applications not delegated, and with regulations adopted by the board, which regulations shall include assurance that any interested person aggrieved by a decision of the commissioner made pursuant to this section shall have a right to appeal that decision to the board.

**6. Fees.** The board may establish reasonable fees for the reproduction of materials in its custody, including all or part of any application submitted to the department. All such fees may be retained by the department to reimburse expenses incurred in reproducing such materials.

**7. Permit by rule.** The Board of Environmental Protection may permit, by rule, any class of activities which would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no significant impact upon the environment. Any such rule shall describe with specificity the class of activities covered by the rule, and may establish standards of design, construction or use as may be deemed necessary to avoid adverse environmental impacts. Any such rule shall require notification to the commissioner prior to the undertaking of the regulated activity.

#### **38 § 345-A. Hearings**

**1. Hearings.** Except as provided in the Maine Administrative Procedure Act, Title 5, section 8052, subsection 2, whenever the board or the Department of Environmental Protection is required or empowered to conduct a hearing pursuant to any provision of law, the hearing may be conducted by any member of the board or any employee or representative of the Department of Environmental Protection so authorized by the board and may be held if at least 2 members of the board are present. Hearings conducted by the Department of Environmental Protection on applications delegated under section 344, subsection 2, for decision may be held without members of the board being present.

**2. Maine Administrative Procedure Act.** Except as provided in section 347, subsection 2, all hearings of the Board of Environmental Protection shall be conducted in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

**3. Fees.** The Commissioner of Environmental Protection may establish fees which recover the expenses entailed in providing notice to interested persons required by this section or reproducing all or any part of the record of any hearings for the applicant or interested persons.

**4. Subpoena power.** The board and commissioner may each issue subpoenas to compel the production of books, records and other data related to the matters in issue at any hearing. If any person served with a subpoena demonstrates to the satisfaction of the issuer of the subpoena that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, the information shall be disclosed only at a nonpublic portion of the hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the issuer of the subpoena may apply to any Justice of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.



**38 § 346. Judicial appeals**

**1. Appeal to the Superior Court.** Except as provided in section 347, subsection 2, any person aggrieved by any order or decision of the board may appeal there from to the Superior Court. These appeals to the Superior Court shall be taken in accordance with Title 5, chapter 375, subchapter VII.

**2-A. Appeal.** Appeal to Supreme Judicial Court. Any party to the appeal in the Superior Court under this section may obtain review by appeal to the Supreme Judicial Court sitting as the law court. The appeal shall be taken as in other civil cases.

**3. Limitation.** No riparian or littoral owner on any body of water shall have a cause of action either at law or in equity against any licensee licensed under section 414 to discharge into the same body of water nor be deemed an aggrieved person under this section based on the fact that such licensee is not a riparian or littoral owner on such body of water. No such owner shall have a cause of action either at law or in equity against such licensee nor be deemed an aggrieved person under this section based on the fact that such licensed discharge will prevent the owner from having the reasonable use and enjoyment of such body of water, provided that such licensed discharge will not either of itself or in combination with existing discharges to the body of water lower the statutory classification of such body of water, nor cause actual damages to such owner.

**38 § 361-A. Definitions**

Unless the context otherwise indicates, the following words when used in any statute administered by the Department of Environmental Protection shall have the following meanings

**1. Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

**1-A. Coastal streams.**

**1-B. Agricultural activities.** "Agricultural activities" means the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm woodlot products, including Christmas trees.

**1-B. Aquifer.**

**1-C. Aquifer recharge area.** "Aquifer recharge area" means land composed of permeable porous material or rock sufficiently fractured to allow infiltration and percolation of surface water and transmit it to aquifers.

**1-D. Aquifer.** "Aquifer" means a geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water, as identified by the Maine Geological Survey.

**1-E. Commissioner.** "Commissioner" means the Commissioner of Environmental Protection.

**1-F. Affordable housing.** "Affordable housing" means dwellings, apartments or other living accommodations for households making at or below 80% of the median household income as determined by the Department of Economic and Community Development.

**2. Fresh surface waters.** "Fresh surface waters" means all waters of the State other than estuarine and marine waters and ground water.

**2-A. Ground water.** "Ground water" means all the waters found beneath the surface of the earth which are contained within or under this State or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

**2-B. Handle.** "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

**3. Municipality.** "Municipality" means a city, town, plantation or unorganized township.

**4. Person.** "Person" means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

**4-A. Pollutant.** "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

**4-A-1. Snow dump.** "Snow dump" means a facility that is used for the storage of snow and incidental materials collected from public or private ways.

**4-A-2. Road salt and sand-salt storage area.** "Road salt and sand-salt storage area" means a facility that is used for the storage and handling of highway deicing materials.

**4-B. Surface waste water disposal system.** "Surface waste water disposal system" shall mean any system for disposal of waste waters on the surface of the earth, including, but not limited to, holding ponds, surface application and injection systems.

**5. Estuarine and marine waters.** "Estuarine and marine waters" means those portions of the Atlantic Ocean within the jurisdiction of the State, and all other waters of the State subject to the rise and fall of the tide except those waters listed and classified in sections 467 and 468.

**6. Transfer of ownership.** "Transfer of ownership" means a sale, a lease, a sale of over 50% of the stock of a corporation to one legal entity or a merger or consolidation where the surviving corporation is other than the original licensee.

**7. Coastal streams.**

**7. Waters of the State.** "Waters of the State" means any and all surface and subsurface waters which are contained within, flow through, or under or border upon this State or any portion thereof, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

**38 § 362. Authority to accept federal funds**

The department is designated the public agency of the State for the purpose of accepting federal funds in relation to water pollution control, water resources and air pollution studies and control. The commissioner may, subject to the approval of the Governor, accept federal funds available for water pollution control, water resources and air pollution studies and control and meet such requirements with respect to the administration of the funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving federal funds. The Treasurer of State shall be the appropriate fiscal officer of the State to receive federal grants on account of water pollution control, water resources and air pollution studies and control, and the State Controller shall authorize expenditures therefrom as approved by the commissioner.

**38 § 362-A. Experiments and scientific research in the field of pollution and pollution control**

Notwithstanding any other law administered or enforced by the department, the department is authorized to permit persons to discharge, emit or place any substances on the land or in the air or waters of the State, in limited quantities and under the strict control and supervision of the department or its designees, exclusively for the purpose of scientific research and experimentation in the field of pollution and pollution control. The research and experimentation conducted under this section shall be subject to such terms and conditions as the department deems necessary in order to protect the public's health, safety and general welfare, and may be terminated by the department at any time upon 24 hours' written notice.

Prior to applying for approval of any project involving discharge of petroleum products to tidal waters under this section, the applicant shall first obtain written approval from the municipal officers of the municipality in which the project is proposed to take place. The applicant shall provide the municipal officers with a complete description of the project at least 90 days prior to the proposed date of the project. The municipal officers may hold a public hearing, provided that it is held within 45 days of the filing of the application with the municipality. The municipal officers shall approve a project within 60 days of receipt if they find that the project will not constitute a hazard to the health, safety or welfare of the residents of the municipality.

**38 § 366. Cooperation with other departments and agencies**

The board is authorized to cooperate with other departments or agencies of this State and with any other state or states and with the Federal Government for the purpose of carrying out this subchapter relating to air, and rivers and waters which run through this State and any other state or states. Said board is authorized to cooperate with the Federal Government for the purpose of carrying out this subchapter relating to any and all rivers and waters which, in whole or in part, are located in or run through this State.

**38 § 372. Exceptions**

Nothing contained in this subchapter shall limit the powers of the State to initiate, prosecute and maintain actions to abate public nuisances to the extent consistent with the public interest, nor shall any license granted under this subchapter constitute a defense to any action at law for damages.

**38 § 391-A. Prohibitions**

**1. Activities prohibited.** Except as provided in subsection 3 and section 394, no person may perform or cause to be performed any of the following activities without first having obtained a permit from the Board of Environmental Protection:

- A. Dredging or removing materials from below the normal high water line in a great pond
- B. Constructing or repairing any permanent structure below the normal high water line in a great pond
- C. Depositing any dredged spoil or fill below the normal high water line in a great pond or on the land adjacent to a great pond in such a manner that the material may fall or be washed into the great pond
- D. Bulldozing or scraping on land adjacent to a great pond in such a manner that the material or soil may fall or be washed into a great pond.

Performing any action in violation of the terms or conditions of a permit issued by the board is also prohibited.

**2. Permission of record owners.** For purposes of this section, the written permission of the record owner or owners of flowed land shall be deemed sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose. The board may not refuse to accept a permit application for any prohibited activity due to the lack of evidence of sufficient right, title or interest if the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of flowed land and has been unable to do so.

**3. Application.** This section does not apply to areas of the State within the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)

(SUBCHAPTER 1)  
(ENVIRONMENTAL PROTECTION BOARD)

(Article 1-B)  
(GROUND WATER PROTECTION PROGRAM)

**38 § 401. Findings; purpose**

The Legislature finds and declares that the protection of ground water resources is critical to promote the health, safety and general welfare of the people of the State. Aquifers provide a significant amount of the water used by the people of the State. Aquifers and aquifer recharge areas are critical elements in the hydrologic cycle. Aquifer recharge areas collect, conduct and purify the water that replenishes aquifers.

The Legislature further finds and declares that an adequate supply of safe drinking water is a matter of the highest priority and that it is the policy of the State to protect, conserve and maintain ground water supplies in the State.

The Legislature further finds and declares that ground water resources are endangered by unwise uses and land use practices.

The Legislature further finds that these resources may be threatened by certain agricultural chemicals and practices, but that the nature and extent of this impact is largely unknown. Failure to evaluate this potential problem is likely to result in costly contamination of some ground water supplies leading to increased risks to the public health.

The Legislature further finds and declares it to be the purpose of this Article to require classification of the state's ground water resources.

The Legislature further finds and declares that there are numerous existing state agencies, commissions, boards or similar entities administering various statutes and programs relating to ground water. Because of the importance of ground water to the safety and well-being of the State, there is an urgent need for the coordination and development of the programs to assess the quality and quantity of and to protect ground water.

It is the intention of the Legislature that the Bureau of Geology provide coordination and develop programs for the collection and analysis of information relating to the nature, extent and quality of aquifers and aquifer recharge areas.

It is further the intention of the Legislature that existing programs related to ground water continue in their present form and that the Department of Environmental Protection provide coordination for the protection of ground water through existing statutes and regulations.

This article is not intended to limit a municipality's power to enact ordinances under Title 30, section 2151-A, to protect and conserve the quality and quantity of ground water.

**38 § 402. Research**

The Bureau of Geology in cooperation with the Department of Environmental Protection, is authorized to conduct research and studies to determine recharge and cleansing rates of ground water in different sand and gravel and bedrock formations.

The Maine Geological Survey in cooperation with other agencies as appropriate shall conduct a 3-year program to assess the impact of agricultural practices and chemicals on ground water quality in selected agricultural areas and selected aquifers. The program shall evaluate the extent and level of contamination associated with pesticide use, the mechanisms by which pesticides move through the soil and into ground water supplies, the synergistic effects of these substances and their persistence in ground water.

The survey shall report annually its progress to the joint standing committee of the Legislature having jurisdiction over natural resources.

**38 § 403. Ground water quality**

1. **Legislative intent.** The Legislature finds that sand and gravel aquifers are important public and private resources for drinking water supplies and other industrial, commercial and agricultural uses. The ground water in these formations is particularly susceptible to contamination by pollutants and, once polluted, may not recover for hundreds of years. It is the intent of the Legislature that information be developed which shall determine the degree that the state's sand and gravel aquifers have been contaminated and shall provide a base of knowledge from which decisions may be made to protect the aquifers.

2. **Determination of ground water quality.** The Department of Environmental Protection and the Department of Conservation shall delineate the primary recharge areas for all sand and gravel aquifers capable of yielding more than 10 gallons per minute. Utilizing existing water supply information and well drilling logs, the Department of Environmental Protection and the Department of Conservation shall determine depth to bedrock, depth to water table, surficial material stratigraphy and generalized ground water flow directions of the aquifers. The Department of Environmental Protection and the Department of Conservation shall also determine the extent and direction of contamination plumes originating from distinct sources within each area studied. The primary recharge areas, flow directions and contamination plumes are to be shown on maps of a scale of 1:50,000.

**38 § 404. Ground water rights**

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

A. "Beneficial domestic use" means any ground water used for household purposes essential to health and safety, whether provided by individual wells or through public supply systems.

B. "Ground water" means all the waters found beneath the surface of the earth.

C. "Preexisting use" means any use which was undertaken by a public water supplier, a landowner or lawful land occupant or a predecessor in interest of either of them, at any time during the period of 3 years prior to the commencement of the use which resulted in the interference.

2. **Cause of action created.** Subject to the limitations of subsection 3 and except as provided by Title 23, section 652, a person is liable for the withdrawal of ground water, including use of ground water in heat pump systems, when the withdrawal is in excess of beneficial domestic use for a single-family home and when the withdrawal causes interference with the preexisting beneficial domestic use of ground water by a landowner or lawful land occupant.

3. **Limitations.** The liability imposed under subsection 2 shall be in compensatory damages only, to be recovered in an action brought by the landowner or other lawful land occupant whose ground water use has been interfered with, against the person whose subsequent use has caused the interference.

A. The damages shall be limited to the following:

(1) All costs necessary to restore the landowner or lawful land occupant to a status which is reasonably equivalent in terms of quantity and quality of ground water, made available on a similarly accessible and economic basis;

(2) Compensatory damages for loss or damage to property, including, without limitation, the loss of habitability of residence, caused to the landowner or lawful land occupant by reason of the interference, prior to restoration of the status provided for in subparagraph (1); and

(3) Reasonable costs, including expert witness and attorney fees, incurred in initiating and prosecuting an action when necessary to secure a judgment granting the relief provided for under this chapter.

B. The rights afforded by this chapter shall be in addition to, and not in derogation of, any other rights, whether arising under statute or common law, which any person may have to seek redress against any other person for ground water interference or contamination.

(TITLE 38)  
(WATERS AND NAVIGATION)

ARTICLE 1-E.  
MARINE ENVIRONMENTAL MONITORING PROGRAM

**410-F. Marine Environmental Monitoring Program**

The Department of Environmental Protection in cooperation with the Department of Marine Resources shall establish the Marine Environmental Monitoring Program. The initial purpose of this program shall be to design a monitoring program to examine the extent and effect of industrial contaminants and pollutants on marine and estuarine ecosystems and to determine compliance with the attainment of water quality standards under article 4-A. This study shall include, but not be limited to:

1. **Sources.** The sources, fates and biological availability of these contaminants;
2. **Impact.** The impact of these contaminants on marine and estuarine biota; and
3. **Assessment.** An assessment of the condition of marine and estuarine habitats.

**410-G. Report required**

The Department of Environmental Protection in cooperation with the Department of Marine Resources shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources and the joint standing committee of the Legislature having jurisdiction over marine resources during the first regular session of each Legislature. The initial report shall include recommendations regarding the design of the monitoring program and on the level of funding necessary to fully implement the program. The report shall be due on or before March 15th. The report shall address the problems of marine and estuarine resources caused by industrial contaminants. The department also shall prescribe remedial steps to address problems identified in the report.

(TITLE 38)

(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)

(SUBCHAPTER 1)  
(ENVIRONMENTAL PROTECTION BOARD)

Article 2. Pollution Control

411. State contribution to pollution abatement

The department may pay an amount not to exceed 80% of the expense of a municipal or quasi-municipal pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners.

\* \* \*

The department shall develop a project priority list, for approval by the board, for pollution abatement construction and salt or sand-salt storage building projects. The factors to be considered in developing the priority lists shall include, but not be limited to, protection of ground and surface water supplies, shellfish, general public health hazards and water contact activities.

All proceeds of the sale of bonds for the construction and equipment of pollution abatement facilities to be expended under the direction and supervision of the Department of Environmental Protection shall be segregated, apportioned and expended as provided by the Legislature.

\* \* \*

412. Grants by State for Planning

Grants by State for Planning. The Department of Environmental Protection is authorized to pay an amount at least 15%, but not to exceed 25%, of the expense incurred by a municipality or quasi-municipal corporation in preliminary final planning of a pollution abatement program in the form of a grant. Such amount may not be paid until the governing body of the municipality or the quasi-municipal corporation duly votes to proceed with preliminary or final planning of a pollution abatement program as appropriate.

\* \* \*

412.A Technical and legal assistance

At the request of any recipient of state funds under section 411 or 412, the department is authorized to provide technical assistance and, through the Attorney General, legal assistance in the administration or enforcement of any contract entered into, by or for the benefit of the recipient in connection with wastewater treatment works or other facilities assisted by these funds.

\* \* \*

413. Waste discharge licenses

1. License required. No person shall directly or indirectly discharge or cause to be discharged, any pollutant without first obtaining a license therefore from the board.

1.A License required for surface waste water disposal systems.

No person shall install, operate or maintain a surface waste water disposal system without first obtaining a license therefore from the board.

**1.B License required for subsurface waste water disposal systems.**

No person shall install, operate or maintain a subsurface waste water disposal system without first obtaining a license therefor from the board, except that a license shall not be required for systems designed and installed in conformance with the State of Maine Plumbing Code, as promulgated under Title 22, section 42.

**2. Exemptions.** No person may be deemed in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to agricultural activities, subject to the following conditions.

A. The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates.

B. The board has certified that the plan meets the objectives of this chapter.

C. The department determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan.

**2.B Exemptions: Snow dumps.**

The Board of Environmental Protection may rule by exempt categories of snow dumps from the need to obtain a license under this section when it finds that the exempted activity would not have a significant adverse effect on the quality or classifications of the waters of the state.

**2.C Dredge spoils.**

Holders of a permit obtained pursuant to the United States Clean Water Act, Public Law 92-500, Section 404, are exempt from the need to obtain a license for disposal of dredged material into waters of the State when the dredged material is disposed of in an approved United States Army Corps of Engineers disposal site.

**2-D. Exemptions; road salt or sand-salt storage piles.**

The Board of Environmental Protection may exempt any road salt or sand-salt storage area from the need to obtain a license under this section when it finds that the exempt activity will not have a significant adverse effect on the quality or classifications of the waters of the State. In making its finding, the board's review shall include, but not be limited to, the location, structure and operation of the storage area.

Owners of salt storage areas shall register the location of storage areas with the department on or before January 1, 1986. As required by section 411, the department shall prioritize municipal or quasi-municipal sand-salt storage areas prior to November 1, 1986.

**2-E. Exemptions; pesticide permits.**

The following activities have been determined to have no significant adverse effect on the quality of the waters of the State and do not need to obtain an aquatic pesticide permit from the Department of Environmental Protection:

A. The application of aquatic pesticides by the Department of Inland Fisheries and Wildlife to waters of the State for the Purpose of restocking, including the elimination of undesirable species; or

B. The treatment of public water supplies by the application of copper sulfate or copper sulfate compounds where those water supplies are closed to swimming and fishing.

**2-F. Exemption; aquaculture.**

No person may be considered in violation of this section of:

A. The discharge activity is associated with off-shore marine aquaculture operations in the estuarine and marine waters; and



B. As a condition of obtaining a leasehold from the Department of Marine Resources, The Department of Environmental Protection certifies that the aquaculture activities mentioned in this subsection will not have a significant adverse effect on water quality or violate the standards ascribed to the receiving waters classifications.

**3. Transfer of ownership.**

In the event that any person possessing a license issued by the board shall transfer the ownership of the property, facility or structure which is the source of a licensed discharge, without transfer of the license being approved by the board, the license granted by the board shall continue to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer shall be jointly and severally liable for any violation thereof until such time as the board approves transfer or issuance of a waste discharge license to the new owner. The board may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

**6. Unlicensed discharge.**

If after investigation the board finds any unlicensed discharge, it may notify the Attorney General of the violation without recourse to the hearing procedures of section 347. The Attorney General shall proceed immediately under section 348.

**7. Tidal waters and subtidal lands.**

In connection with a license under sections 414 and 414-A, whenever issued, the board may grant to a licensee a permit to construct, maintain and operate any facilities necessary to comply with the terms of such license in, on, above or under tidal waters or subtidal lands of the State. Such permit may be issued upon such terms and conditions as the board deems necessary to insure that such facilities create minimal interference with existing uses, including a requirement that the licensee provide satisfactory evidence of financial capacity, or in lieu thereof, a bond in such form and amount as the board may find necessary, to insure removal of such facilities. In the event that such facilities are no longer necessary in order for such licensee or successor thereof to comply with the terms of its license, the board may, after opportunity for notice and hearing, require the licensee or successor to remove all or any portion of such facilities from the tidal waters or subtidal lands. Such removal may be ordered if the board determines that maintenance of such facilities will unreasonably interfere with navigation, the development or conservation of marine resources, the scenic character of any coastal area, other appropriate existing public uses of such area or public health and safety, and that cost of such removal will not create an undue economic burden on such licensee or successor.

**8. Treated waste water.**

Municipalities may apply to the board for authority to issue licenses for the discharge of not more than 2,500 gallons a day of treated domestic waste water to surface waters within their jurisdiction and for the inspection and enforcement of the licenses, in conformance with this chapter and applicable regulation of the board.

Authority shall only be given to a municipality after a finding by the board that the municipality has the capability and will fully execute all responsibilities under applicable state law, will routinely inspect and monitor licensed discharges within its jurisdiction and will take enforcement action against those persons who violate discharge permit requirements.

Upon issuance of a license, a municipality shall forward a copy of that license to the department within 5 working days. Within 30 days of the receipt of the license by the department, any person aggrieved by the decision of the municipality.

Municipalities delegated authority pursuant to this subsection may prescribe, by ordinance, standards for the issuance of waste discharge licenses and for minimum performance and maintenance of treatment systems as may be necessary to carry out the intent of this subsection. No ordinance or other municipal law may establish standards and procedures that are less stringent than those required under relevant state and federal law and departmental rule.

The Board of Environmental Protection may promulgate rules governing the minimum requirements that shall control the licensing and enforcement of discharges by the municipalities. Included in these rules shall be a model ordinance which, if adopted by municipalities, will satisfy the requirements of the rules.

Notwithstanding section 352, municipalities may establish reasonable fees, not to exceed \$200 per year, to defray the costs of discharge license issuance, inspection and testing. The department shall not collect fees associated with those licenses delegated under this subsection.

The department may provide municipalities with technical assistance in their licensing, inspections and enforcement programs.

If at any time the board determines that a municipality may be failing to exercise its license-granting authority in accordance with its approval procedures or the purposes of this chapter and rules promulgated by the board, it shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality to solicit public or official comment on those alleged deficiencies. Following the hearing, if it finds such deficiencies, it may revoke the municipality's license-granting authority at any time. Nothing in this subsection limits the board's or department's authority to inspect or initiate enforcement action against any discharge within a municipality.

#### **9. Emergency public water utility license.**

An emergency license may be issued pursuant to section 414-A to a certified public water supply operator for the purpose of discharging or causing to be discharged copper sulfate or related compounds into a public water supply.

\* \* \*

### **414-A. Conditions of licenses**

#### **1. Generally**

The board shall issue a license for the discharge of any pollutants only if it finds that:

- A. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;
- B. The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter.
- C. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless, following opportunity for public participation, the board finds that the discharge is necessary to achieve important economic or social benefits to the State and when the discharge is in conformance with section 464, subsection 4, paragraph F. The finding must be made following procedures established by rule of the board pursuant to section 464, subsection 4, paragraph F;
- D. The discharge will be subject to effluent limitations which require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents which are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources which the board determines are best calculated to protect and improve the quality of the receiving water and which are consistent with the requirements of the Federal Water Pollution Control Act, as amended. In determining best practicable treatment for each such category or class, the board shall consider the then existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives.
- E. A pesticide discharge is unlikely to exert a significant adverse impact on nontarget species. This standard shall only be applicable to applications to discharge pesticides.

**1-A. Emergency license for copper sulfate applications in public water supplies.**

The commissioner shall issue upon application, an emergency license within 48 hours of application to treat public water supplies with copper sulfate or related compounds. The board may not issue more than 2 consecutive licenses for the same body of water.

A. An emergency license may only be issued if the Department of Human Services, Division of Health Engineering has determined that:

1. An abundant growth of taste or odor producing algae exists to such a degree that the water supply is in danger of becoming unhealthful or unpalatable;
2. The abundance of algae is a sporadic event. For purposes of this section, "sporadic" means occurring not more than 2 years in a row; and
3. The algae cannot effectively be controlled by other methods.

B. Any emergency license issued under this section is for one application or series of applications not to exceed 6 months, as provided in the terms of the license.

C. The board shall impose all conditions necessary to meet the requirements of this section and all other relevant provisions of law.

D. The Department of Environmental Protection and the Department of Human Services shall jointly adopt rules to carry out the purposes of this section.

**2. Schedules of compliance.**

The board may establish schedules, within the terms and conditions of licenses, for compliance with best practicable treatment, as defined in subsection 1, paragraph D, which includes the application of conventional pollutant control technology or best available technology economically achievable. Schedules shall be consistent with the times permitted for compliance with the United States Water Pollution Control Act, as amended, and may include such interim and final dates for attainment of specific standards as are necessary to carry out the purposes of this subchapter. The schedules shall be as short as possible and shall be based upon a consideration of the technological and economic impact of the steps necessary to attain these standards.

**3. Federal law**

At such time as the Administrator of the United States Environmental Protection Agency determines to cease issuing permits for discharges of pollutants to waters of this State pursuant to his authority under Section 402(c)(1) of the Federal Water Pollution Control Act, as amended, the board shall refuse to issue a license for the discharge of pollutants which it finds would violate the provisions of any federal law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after such determination shall contain such provision, including effluent limitations, which the board deems necessary to carry out the purposes of this subchapter and any such federal laws or regulations.

Notwithstanding the foregoing, the board is authorized to issue licenses containing a variance from thermal effluent limitations, or from applicable compliance deadlines to accommodate an innovative technology. The variances shall be granted only in accordance with the Federal Water Pollution Control Act, sections 316 and 301(k), as amended, and applicable regulations.

**1-B. Relicensing of overboard discharges.**

The following provisions shall govern the licensing of overboard discharges.

A. The board shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of relicensing, when it finds that there are no technologically proven alternative methods of waste water disposal consistent with the Maine State Plumbing Code which will not result in overboard discharge.

B. For the purposes of this subsection, the department shall not require the installation or use of waste water disposal" except in the following cases:

1. Seasonal residential overboard discharges which are located on the mainland or on any island connected to the mainland by vehicle bridge or by scheduled car ferry service; and
2. All overboard discharges located within the boundaries of a sanitary or sewer district when the district has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district.

C. The board shall issue a conditional permit to any applicant denied a license for an overboard discharge under this subsection. The term of the permit shall extend until 6 months after the department offers a grant to the applicant for the costs of replacing the overboard discharge under the provisions of section 411-A.

D. The board shall limit to a maximum of 5 years the term of any overboard discharge license, including relicensing, issued after June 1, 1987. All licenses in existence on June 1, 1987, with expiration dates occurring in 1989 or 1990, shall expire on the date stated in the license. All other licenses in existence on June 1, 1987, shall expire on the same day and month stated in the existing license but in a new year, determined by the following schedule:

CURRENT EXPIRATION DATE	NEW DATE
1991, 1992	1990
1993, 1994	1991
1995, 1996	1992
1997, 1998	1993

E. At the time of each relicensing of an overboard discharge, the board shall impose all conditions necessary to meet the requirements of this section and all other relevant laws.

**414-B. Publicly owned treatment works**

**1. Definition**

"Publicly owned treatment works" means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

**2. Pretreatment Standards**

The board may establish pretreatment standards for the introduction into publicly owned treatment works of pollutants which interfere with, pass through or otherwise are incomparable with those treatment works. In addition, the board may establish pretreatment standards for designated toxic pollutants which may be introduced into a publicly owned treatment works.

The board may require that any license for a discharge from a publicly owned treatment works include conditions to require the identification of pollutants, in terms of character and volume, from any significant source introducing pollutants subject to pretreatment standards, and to assure compliance with these pretreatment standards by each of these sources.

**2-A. Prohibited discharge through publicly owned treatment works.**

The discharge to a publicly owned treatment works of any pollutant which interferes with, passes through or otherwise is incompatible with these works, or which is a designated toxic pollutant, is prohibited unless in compliance with pretreatment standards established for the applicable class or category of discharge.

**3. User charges**

The board may impose as a condition in any license for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by users of such treatment works with any system of user charges required by state or federal law or regulations promulgated thereunder.

#### **4. Acceptance of waste water.**

Municipal and quasi-municipal waste water treatment facilities constructed wholly or in part with funding allocated pursuant to section 411 shall accept for treatment holding tank waste water from any watercraft sewage pump-out facilities required pursuant to section 423-B. Municipal and quasi-municipal waste water treatment facilities may charge an annual or per visit fee for this service to be approved by the board.

#### **417. Certain deposits and discharges prohibited**

No person, firm, corporation or other legal entity shall place, deposit or discharge, directly or indirectly into the inland waters or tidal waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow or leach into such waters, any of the following, except as otherwise provided by law:

- A. Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse;
- B. Any potatoes or any part or parts thereof;
- C. Any scrap metal, junk, paper, garbage, septic tank sludge, rubbish, old automobiles or similar refuse.

This section shall not apply to solid waste disposal facilities in operation on July 1, 1977, owned by a municipality or quasi-municipal authority if the operation and maintenance of the facility has been or is approved by the Board of Environmental Protection pursuant to the requirements of Chapter 13 and the regulations adopted thereunder.

#### **418. Log driving and storage**

##### **1. Prohibitions.**

No person, firm, corporation or other legal entity may place logs of pulpwood into the inland waters of this State for the purpose of driving the logs or pulpwood to pulp mills, lumber mills or any other destination, except to transport logs or pulpwood from islands to the mainland.

No person, firm, corporation or other legal entity may place logs or pulpwood on the ice of any inland waters of this State, except to transport logs or pulpwood from islands to the mainland.

No person, firm, corporation or other legal entity may place logs or pulpwood into the inland waters of this State for the purpose of storage or curing the logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, without a permit from the board as described in subsection 2.

##### **2. Storage; permit.**

Whoever proposes to use the inland waters of this State for the storage or curing of logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, shall apply to the board for a permit for that use. Applications for these permits shall be in such form and require such information as the board may determine.

Within 45 days of receipt of an application, the board shall either grant the application or hold a public hearing thereon as provided.

If the board is able to find, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters nor adversely affect the public rights of fishing and navigation therein, and that inability to conduct that use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 10 years, with such terms and conditions as, in its judgement, may be necessary to protect the quality, standards and rights.

In the event the board deems it necessary to solicit further evidence regarding the proposed use, it shall schedule a public hearing on the application.

At that hearing the board shall solicit and receive testimony concerning the nature and extent of the proposed use and its impact on existing water quality, water classification standards and the public rights of fishing and navigation and the economic implications upon the applicant of the use. If, after hearing, the board determines that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct the use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 10 years, with such terms and conditions, as in its judgement, may be necessary to protect the quality, standards and rights.

#### **418-A. Protection of the lower Penobscot River**

**1. Findings.** The Legislature finds that the lower Penobscot River is a unique and valuable natural resource. The lower Penobscot River serves as an example to the Nation that good public policy carefully implemented can restore and preserve our natural resources. The river has supported, and is again beginning to support, the greatest run of Atlantic salmon in North America, providing a unique fishing opportunity for Maine residents. The Legislature declares that the preservation and restoration of the lower Penobscot River is of the highest priority.

**2. Prohibition.** To protect water quality and aquatic resources, fisheries and fishing opportunities, and as an exercise of the public trust of the State, no person, firm, corporation, municipality or other legal entity may erect, operate, maintain or use any dam on that portion of the Penobscot River downstream from the Bangor Hydroelectric Company Dam located at Veazie to the southernmost point of Verona Island for any purpose not previously authorized by act, resolve or operation of law, unless specifically authorized by the Legislature.

**3. Study Authorized.** Any person, firm, corporation, municipality or other legal entity may study the feasibility of erecting, operating, maintaining or using a dam for hydroelectric generation on the portion of the Penobscot River described in subsection 2.

#### **419. Cleaning agents containing phosphate banned**

##### **1. Definitions**

A. "Dairy Equipment", as used in this section, means equipment used by farmers or processors for the manufacture or processing of milk and dairy products.

B. "Food processing equipment", as used in this section, means equipment used for the processing and packaging of food for sale, except that equipment used at restaurants and similar places of business shall not be included within the meaning of "food processing equipment."

C. "High phosphorous detergent", as used in this section, means any detergent, presoak, soap, enzyme or other cleaning agent containing more than 8.7% phosphorous, by weight, but does not include detergent having a recommended use level which contains less than 7 grams of phosphorous by weight.

D. "Industrial equipment", as used in this section, means equipment used by industrial concerns which concerns are located on any brook, stream or river.

E. "Person", as used in this section, means any individual, firm, association, partnership, corporation, municipality, quasi-municipal organization, agency of the State or other legal entity.

**2. Prohibition.** No person may sell or use any high phosphorous detergent.

**3. Exception.** Subsection 2 shall not apply to any high phosphorous detergent sold and used for the purpose of cleaning dairy equipment, food processing equipment and industrial equipment.

#### **419-A. Prohibition on the use of tributyltin as an antifouling agent**

\* \* \*

**2. Prohibition on use.** Prohibition on use includes the following:

- A. Except as provided in subsection 3, a person may not distribute, possess, sell, offer for sale, apply or offer for application any antifouling paint or trap dip containing a tributyltin compound.
- B. No person may distribute, possess, sell, offer for sale, apply or offer for application any substance that contains a tributyltin compound in concentrated form that is labeled for mixing with paint or solvents to produce an antifouling paint for use on vessels, wooden lobster traps, fishing gear for marine waters, floats, moorings piers.
- C. The Board of Pesticides Control shall be the enforcement agency for this section. The board shall make available a list of paints with acceptable tributyltin release rates by January 1, 1988.
- D. This section shall take effect on January 1, 1988

**3. Exceptions.** Exceptions to the prohibition are as follows.

- A. A person may distribute or sell an antifouling paint containing a tributyltin compound with an acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a commercial boat yard may purchase, possess and apply an antifouling paint containing tributyltin compounds with an acceptable release rate, if the antifouling paint is applied only within a commercial boat yard and is applied only within a commercial boat yard and is applied to vessels exceeding 25 meters in length or that have aluminum hulls.
- B. This section does not prohibit the sale, application or possession of an antifouling paint containing a tributyltin compound, if the antifouling paint is in a spray can of 16 ounces or less, is commonly referred to as an outboard or lower drive unit paint and has an acceptable release rate.

**420. Certain deposits and discharges prohibited**

No person, firm, corporation or other legal entity shall place, deposit, discharge or spill, directly or indirectly, into the ground or surface waters or tidal waters of this State, or on the ice thereof, or on the banks thereof so that the same may flow or be washed into such waters, any of the following substances:

**1. Mercury.** Mercury, and any compound containing mercury, whether organic or inorganic, an any concentration which increases the natural concentration of mercury in the receiving waters.

\* \* \*

**2. Toxic or hazardous substances.** Any other toxic substance in any amount or concentration greater than that identified or regulated, including complete prohibition of such substance, by the board. In identifying and regulating such toxic substances, the board shall take into account the toxicity of the substance, its persistence and degradability, the usual or potential presence of any organism affected by such substance in any waters of the State, the importance of such organism and the nature and extent of the effect of such substance on such organisms, either alone or in combination with substances already in the receiving waters or the discharge. As used in this subsection, "toxic substance" shall mean those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

**3. Radiological, chemical or biological warfare agents.** Radiological, chemical or biological warfare agents or high level radioactive wastes.

**420-A. Dioxin monitoring program**

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

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**421. Solid waste disposal areas: location**

No boundary of any public or private solid waste disposal area shall lie closer than 300 feet to any classified body of surface water.

If the board shall determine that soil conditions, groundwater conditions, topography or other conditions indicate that any boundary of any such area should be further than 300 feet from any classified body of surface water, it may, after notice to the affected party, order the relocation of such boundaries and the removal of any solid waste, previously deposited within the original boundaries, to the confines of the new boundaries.

Any person, corporation, municipality or state agency establishing a solid waste disposal area after September 23, 1971 may apply to the board for a determination that the boundaries of the proposed area are suitably removed from any classified body of surface water.

Any solid waste disposal area whose boundary is closer than 300 feet to any classified body of surface water shall be discontinued in conformity with this section prior to December 1, 1973.

Notwithstanding this section, if the Board of Environmental Protection shall determine from an examination of soil conditions, groundwater characteristics, climatic conditions, topography, the nature and amount of the solid waste within an area less than 300 feet away from any classified body of surface water, will not result in an unlicensed direct or indirect discharge of pollutants to such body of surface water, it may, after notice, permit the deposit of solid waste within such area, upon such terms and conditions as it deems necessary. Permits issued pursuant to this section shall be for a term of not more than 2 years but may be renewed for successive 2-year terms after reexamination pursuant to this chapter.

**423. Discharge of waste from watercraft**

No person, firm, corporation or other legal entity may discharge, spill or permit to be discharged sewage, garbage or other pollutants from watercraft, as defined in Title 12, Section 7791, subsection 14, and including houseboats, into inland waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters.

Any watercraft, as defined in Title 12, section 7701, subsection 14, including houseboats, operated upon the inland waters of this State and having permanently installed sanitary waste disposal system shall have securely affixed to the interior discharge opening of such sanitary waste material so as to prevent its discharge or drainage into the inland waters of the State.

**423-A. Discharge of waste from motor vehicles**

No person, firm, corporation or other legal entity may discharge, spill or permit to be discharged sewage, garbage or other pollutants from motor vehicles or motor vehicle trailers into the inland or coastal waters, or on the ice of the inland or coastal waters, or onto the land in such a manner that the sewage, garbage or other pollutants may fall or be washed into these waters. A person who violates the provisions of this section commits a civil violation subject to the provisions of section 349, subsection 2.



**423-B. Watercraft sewage pump-out facilities at marinas**

By June 1, 1990, marinas serving coastal waters shall provide through contractual agreements facilities to remove sanitary waste from the holding tanks of watercraft. For purposes of this section, the term "marina" means any commercial facility that provides supplies and services and has the capacity to provide slip space or mooring for 18 or more vessels which exceed 24 feet in length.

The Commissioner of Environmental Protection may appoint voluntary water quality monitors to serve at the will and pleasure of the Commissioner.

**424. Voluntary water quality monitors**

The Commissioner of Environmental Protection may appoint voluntary water quality monitors to serve at the will and pleasure of the commissioner.

\* \* \*

(WATERS AND NAVIGATION)  
(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)  
(SUBCHAPTER I)  
(ENVIRONMENTAL PROTECTION BOARD)  
(Article 2-B)  
(MANDATORY ZONING AND)  
(SUBDIVISION CONTROL)

**38 § 435. Shoreland areas**

To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls. Shoreland areas include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal or freshwater wetland, or within 75 feet of the high-water line of a stream. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

It is further declared that, in accordance with Title 12, section 402, certain river and stream segments, as identified in the Department of Conservation's 1982 Maine Rivers Study and as specifically delineated in section 437, are significant river segments and deserve special shoreland zoning controls designed to protect their natural and recreational features.

Zoning ordinances adopted pursuant to this article need not depend upon the existence of a zoning ordinance for all of the land and water areas within a municipality, notwithstanding Title 30-A, section 4503, as it is the intention of the Legislature to recognize that it is reasonable for municipalities to treat shoreland areas specially and immediately to zone around water bodies rather than to wait until such time as zoning ordinances may be enacted for all of the land within municipal boundaries.

All existing municipal ordinances dealing with subjects of this section currently in effect and operational on April 18, 1986, are declared to be valid and shall continue in effect until rescinded, amended or changed according to municipal ordinance, charter or state law.

**38 § 437. Significant river segments identified**

For purposes of this chapter, significant river segments include the following

1. **Aroostook River.** The Aroostook River from St. Croix Stream in Masardis to the Masardis and T.10, R.6, W.E.L.S. townline, excluding segments in T.9, R.5, W.E.L.S.; including its tributary the Big Machias River from the Aroostook River in Ashland to the Ashland and Garfield Plantation townlines
2. **Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the dam at Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation
3. **East Machias River.** The East Machias River from 1/4 of a mile above the Route 1 bridge in East Machias to the East Machias and T.18, E.D., B.P.P. townline, and from the T.19, E.D., B.P.P. and Wesley townline to the outlet of Crawford Lake in Crawford, excluding Hadley Lake
4. **Fish River.** The Fish River from the bridge in Fort Kent Mills to the outlet of Eagle Lake in Wallagrass, and from the Portage Lake and T.14, R.6, townline to the Portage Lake and T.13, R.7, W.E.L.S. townline, excluding Portage Lake
5. **Machias River.** The Machias River from the Whitneyville and Machias townline to the Northfield T.19, M.D., B.P.P. townline

**6. Mattawamkeag River.** The Mattawamkeag River from the outlet of Mattakeunk Stream in Winn to the Mattawamkeag and Kingman Township townline, and from the Reed Plantation and Bancroft townline to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville T.3, R.3, W.E.L.S. townline and from its inlet into Upper Mattawamkeag Lake to the Route 2 bridge; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township townline and from the T.4, R 3, W.E.L.S. and Oakfield townline to Red Bridge in Oakfield; the Fish Stream from the Route 95 bridge in Island Falls to the Crystal-Patten townline; and the Baskehegan Stream from its inlet into Crooked Brook Flowage in Danforth to the Danforth and Brookton Township townline;

**7. Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township townline, excluding Beddington Lake

**8. East Branch of Penobscot.** The East Branch of the Penobscot from the Route 157 bridge in Medway to the East Millinocket and Grindstone Township townline

**9. Pleasant River.** The Pleasant River from the railroad bridge in Columbia Falls to the Columbia and T.18, M.D., B.P.P. townline, and from the T.24, M.D., B.P.P. and Beddington townline to the outlet of Pleasant River Lake

**10. Rapid River.** The Rapid River from the Magalloway Plantation and Upton townline to the outlet of Pond in the River

**11. West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township townline

**12. West Branch of Union River.** The West Branch of the Union River from the Route 9 bridge in Amherst to the outlet of Great Pond in the Town of Great Pond.

**38 § 438-A. Municipal authority; state oversight  
(CONFLICT)**

With respect to all shoreland areas described in section 435, municipalities shall adopt zoning and land use control ordinances pursuant to existing enabling legislation, under home rule authority and in accordance with the following requirements.

**1. Land use guidelines.** In accordance with Title 5, chapter 375, subchapter II, the Board of Environmental Protection shall adopt, and from time to time shall update and amend, minimum guidelines for municipal zoning and land use controls which are designed to carry out the legislative purposes described in section 435 and the provisions of this article. These minimum guidelines shall include provisions governing building and structure size, setback and location, establishment of resource protection, general development, limited residential, commercial fisheries and maritime activities' zones and other zones. Within each zone, the board shall prescribe uses which may be allowed with or without conditions and shall establish criteria for the issuance of permits and nonconforming uses, land use standards and administrative and enforcement procedures. The board shall comprehensively review and update its guidelines and shall reevaluate and update the guidelines at least once every 4 years.

**2. Municipal ordinances.** In accordance with a schedule adopted by the board and acting in accordance with a local comprehensive plan, municipalities shall prepare and submit to the board zoning and land use ordinances which are consistent with, or are no less stringent than, the minimum guidelines adopted by the board and, for coastal communities, which address the coastal management policies cited in section 1801. When a municipality determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the board for review and approval.

**3. Board approval.** Municipal ordinances, amendments and any repeals of ordinances shall not be effective unless approved by the board. In determining whether to approve municipal ordinances or amendments, the board shall consider the legislative purposes described in section 435, the minimum guidelines and any special local conditions which, in the judgment of the board, justify a departure from the requirements of the minimum guidelines in a manner which is not inconsistent with the legislative purposes described in section 435. Recognizing that the guidelines are intended as minimum standards, the board shall approve a municipal ordinance which imposes more restrictive standards than those in the guidelines. If an ordinance or an amendment adopted by a municipality contains standards which are inconsistent with or less stringent than the minimum guidelines, the board may approve the proposed ordinances or amendment with conditions imposing the minimum guidelines in place of the inconsistent or less stringent standard or standards. Those conditions shall be effective and binding within the municipality and shall be administered and enforced by the municipality. If the board fails to act on any proposed municipal

ordinance or amendment within 45 days of the board's receipt of the proposed ordinance or amendment, the ordinance or amendment is automatically approved. Any application for a shoreland zoning permit submitted to a municipality within the 45-day period shall be governed by the terms of the proposed ordinance or amendment if the ordinance or amendment is approved under this subsection.

4. **(CONFLICT: Text as amended by PL 1989, c. 143) Failure to adopt ordinances.** If a municipality fails to adopt ordinances as required under this article or if the board determines that an ordinance which a municipality has adopted does not satisfy the requirements and purposes under this article, the board, acting in accordance with Title 5, chapter 375, subchapter II, shall adopt suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality. Notwithstanding subsections 2 and 3, if the board determines that special water quality considerations on a great pond warrant more restrictive standards than those contained in the minimum guidelines, the board may adopt the additional standards for all municipalities outside the jurisdiction of the Maine Land Use Regulation Commission which abut those waters. Following adoption by the board, these ordinances or provisions shall be effective and binding within the municipality and shall be administered and enforced by that municipality.

4. **(CONFLICT: Text as amended by PL 1989, c. 403, @7) Failure to adopt ordinances.** If a municipality fails to adopt ordinances as required under this article or if the board determines that an ordinance which a municipality has adopted does not satisfy the requirements and purposes under this article, and that the board is unable to make the ordinance consistent with the minimum guidelines by the imposition of conditions, as set forth in subsection 3, the board, acting in accordance with Title 5, chapter 375, subchapter II, shall adopt suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality. Notwithstanding subsections 2 and 3, if the board determines that special water quality considerations on a great pond warrant more restrictive standards than those contained in the minimum guidelines, the board may adopt the additional standards for all municipalities outside the jurisdiction of the Maine Land Use Regulation Commission which abut those waters. Following adoption by the board, these ordinances or provisions shall be effective and binding within the municipality and shall be administered and enforced by that municipality.

5. **Exemptions.** Any areas within a municipality which are subject to nonmunicipal zoning and land use controls may be exempted from the operation of this section upon a finding by the board that the purposes of this chapter have been accomplished by nonmunicipal measures.

6. **Variances.** A copy of each request for a variance under an ordinance approved by the Board of Environmental Protection under this article shall be forwarded by the municipality to the commissioner at least 20 days prior to action by the municipality. The material submitted shall include the application plus all supporting information provided by the applicant. The commissioner may comment when the commissioner determines that the municipal issuance of the variance would be in noncompliance with the requirements of state law for a zoning variance or the variance would undermine the legislative purposes declared in section 435. Such comments, if submitted by the commissioner prior to the action by the municipality, shall be made part of the record, and shall be considered by the municipality prior to taking action on the variance request.

### 38 § 439-A. Additional municipal powers, limitations

1. **Additional controls.** In addition to the ordinances required by this chapter, municipalities may adopt zoning and land use controls applicable to other bodies of water as may be required to protect the public health, safety and general welfare and further the purposes of this article.

2. **Jurisdiction.** Notwithstanding the scope of shoreland areas as identified in section 435, the jurisdiction of municipal shoreland zoning and land use control ordinances adopted under this article may include any structure built on, over or abutting a dock, wharf, pier or other structure extending below the normal high-water line of a water body or within any wetland. Accordingly, municipalities may enact ordinances affecting structures which extend over the water or are placed on lands lying between high and low watermarks or within wetlands.

3. **Soil evaluation reports.** Any other law notwithstanding, when a zoning ordinance adopted in conformity with this article requires a written report of soil suitability for subsurface waste disposal or commercial or industrial development, that report shall be prepared and signed by a duly qualified person who has made an on-the-ground evaluation of the soil properties involved. Persons qualified to prepare these reports shall be certified by the Department of Human Services and shall include Maine State Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties and can provide proof of this training and experience in a manner specified by the Department of Human Services. That department may promulgate rules for the purpose of establishing training and experience standards required by this subsection.

4. **Setback requirements.** Notwithstanding any provision in a local ordinance to the contrary, all new principal and accessory structures and substantial expansions of such structures within the shoreland zone as established by section 435 shall meet the water setback requirements approved by the board, except structures which require direct access to the water as an

operational necessity, such as piers, docks and retaining walls. For purposes of this subsection, a substantial expansion of a building shall be an expansion which increases either the volume or floor area by 30% or more. This subsection is not intended to prohibit a municipal board of appeals from granting a variance, subject to the requirements of this article and Title 30-A, section 4353, nor is it intended to prohibit a less than substantial expansion of a legally existing nonconforming structure, provided that the expansion does not create further nonconformity with the water setback requirement.

**5. Timber harvesting.** Municipal ordinances shall regulate timber harvesting within the shoreland area. Notwithstanding any provision in a provision in a local ordinance to the contrary, timber harvesting activities shall be no less restrictive than the following:

- A. Selective cutting of no more than 40% of the trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, in any 10-year period, provided that a well-distributed stand of trees and other natural vegetation remains
- B. Within a shoreland area zoned for resource protection abutting a great pond there shall be no timber harvesting within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards.

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

**6. Clearing of vegetation.** Within the shoreland area, municipal ordinances shall provide for effective vegetative screening between buildings and shorelines. Notwithstanding any provision in a local ordinance to the contrary vegetative screening requirements shall be no less restrictive than the following:

- A. Within a strip extending 75 feet inland from the normal high-water mark, there shall be no cleared opening or openings, except for approved construction, and a well-distributed stand of vegetation shall be retained
- B. Within a shoreland area zoned for resource protection abutting a great pond there shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water mark except to remove safety hazards
- C. Selective cutting of no more than 40% of the trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period, provided that a well-distributed stand of trees and other natural vegetation remains.

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

### **38 § 440. Federal flood insurance**

In addition to controls required by this chapter, municipalities may extend or adopt zoning and subdivision controls beyond the limits established by this chapter in order to protect the public health, safety and welfare and to avoid problems associated with flood plain development.

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan.

Zoning ordinances adopted or extended pursuant to this section need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30-A, section 4503, to the contrary, provided such ordinances are required for entrance of the municipality into the Federal Flood Insurance Program. Ordinances or amendments adopted by authority of this section shall not extend beyond an area greater than that necessary to comply with the requirements of the Federal Flood Insurance Program.

Zoning ordinances adopted or amended pursuant to this section shall designate as a resource protection zone or its equivalent, as defined in the guidelines adopted pursuant to section 438-A, subsection 1, all areas within the floodway of the 100-year flood plain along rivers and in the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps. This provision does not apply to areas zoned for general development or its equivalent, as defined in the guidelines adopted pursuant to section 438-A, subsection 1, as of the effective date of this paragraph, or within areas designated by ordinances as densely developed. The determination of which areas are densely developed shall be based on a finding that, as of the effective date of this paragraph, existing development meets the definition in section 436, subsection 3.

All communities shall designate floodway areas, as set out in this section, as resource protection zones as of the effective date of a community's entry into the regular program of the National Flood Insurance Program or July 1, 1987, whichever comes later.

In those areas that are within the floodway, as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, all proposed activities which are permitted within the shoreland area must be shown not to increase the 100-year flood elevation. In addition, all structures built in the floodway shall have their lowest floor, including the basement, one foot above the 100-year flood elevation.

**38 § 440-A. Public access**

In addition to controls required in this chapter, municipalities may extend or adopt zoning and subdivision controls to protect any public rights for physical and visual access to the shoreline.

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan.

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**38 § 443-A. Cooperation; enforcement**

1. **Consultation with state agencies.** All agencies of State Government shall cooperate to accomplish the objectives of this article. To that end, the department shall consult with the governing bodies of municipalities and with other state agencies to achieve the purposes of this article, and shall extend to municipalities all possible technical and other assistance for that purpose.

2. **Legal actions.** In any legal action in which the pleadings challenge the validity or legality of any ordinance adopted pursuant to this article, the Attorney General shall be made a party until removed by the Attorney General's consent.

3. **Remedies.** Any municipality which fails to adopt, administer or enforce zoning and land use ordinances as required under this article shall be subject to the enforcement procedures, equitable remedies and civil penalties set forth in sections 347 to 349.

**38 § 444. Enforcement**

Any person who orders or conducts any activity in violation of a municipal ordinance adopted under this chapter shall be penalized in accordance with Title 30-A, section 4506.

The Attorney General, the district attorney or municipal officers or their designee may enforce ordinances adopted under this chapter.

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in a shoreland area, as defined by section 435, unless written authorization attesting to the validity and currency of all local permits required under this chapter has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials indicating that installation has been completed.

**38 § 445. Guidelines for shoreland zoning along significant river segments**

In addition to the guidelines adopted under section 438-A, the following guidelines for the protection of the shorelands shall apply along significant river segments identified in section 437. These guidelines are intended to maintain the special values of these particular river segments by protecting their scenic beauty and undeveloped character.

1. **New principal structures.** New principal structures, except for structures related to hydropower facilities, shall be set back a minimum of 125 feet from the normal high-water line of the river. These structures shall be screened from the river by existing vegetation.

2. **New roads.** Developers of new permanent roads, except for those providing access to a structure or facility allowed in the 250-foot zone, shall demonstrate that no reasonable alternative route outside of the zone exists. When roads must be located within the zone, they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

3. **New gravel pits.** Developers of new gravel pits shall demonstrate that no reasonable mining site outside of the zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than 75 feet and screened from the river by existing vegetation.

**38 § 446. Municipal ordinance review and certification**

Each municipality with shorelands along significant river segments, as identified in section 437, shall review the adequacy of the zoning on these shorelands to protect the special values cited for these river segments by the Department of Conservation's 1982 Maine Rivers Study and for consistency with the guidelines established under section 445. Prior to December 15, 1984, each such municipality shall certify to the Board of Environmental Protection either that its existing zoning for these areas is at least as restrictive as the guidelines established under section 445, or that it has amended its zoning for this purpose. This certification shall be accompanied by the ordinances and zoning maps covering these areas. Failure to accomplish the purposes of this subsection shall result in adoption of suitable ordinances for these municipalities, as provided for in section 438-A.

**38 § 447. Functionally water-dependent use zones**

Municipalities are encouraged to give preference, when appropriate, to functionally water-dependent uses and may extend zoning controls to accomplish this.

A municipality may, within coastal shoreland areas, adopt zoning ordinances for functionally water-dependent uses. Municipalities may establish districts within these zones to give preference to commercial fishing and other maritime activities.

In creating such a zone, a municipality shall consider the demand for and availability of shorefront property for functionally water-dependent uses.

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan.

(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)  
  
(SUBCHAPTER D)  
(ENVIRONMENTAL PROTECTION BOARD)  
  
(Article 3)  
(ENFORCEMENT)

**38 § 451-A. Time schedule variances**  
(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Power to grant variances.** The Board of Environmental Protection may grant a variance from any statutory water pollution abatement requirement, pursuant to section 414-A, subsection 1, paragraph D, to any municipality or quasi-municipal entity, hereinafter called the "municipality," upon application by it. The board may grant a variance only upon a finding that:

- A. Federal funds for the construction of municipal waste water treatment facilities are not available for the project
- B. The municipality has demonstrated that it has completed preliminary plans acceptable to the Department of Environmental Protection for the treatment of municipal wastes and for construction of that portion of the municipal sewage system intended to be served by the planned municipal treatment plant when that plant first begins operations
- C. Beginning on October 1, 1976, the municipality shall collect, from each discharger into its sewage system and each discharger not connected to the sewage system which has signed an approved agreement with the municipality pursuant to subsection 2, a fee sufficient to equal their proportionate share of the actual current cost of operating the sewage system for which preliminary plans have been completed and approved pursuant to paragraph B. Actual current costs shall include but not be limited to preliminary plans, final design plans, site acquisition, legal fees, interest fees, sewer system maintenance and rehabilitation and other administrative costs. A municipality may provide, when permitted under the federal construction grant program, that in lieu of such annual fees paid by dischargers, the municipality may apportion an appropriate amount from general revenues to cover that share of fees to be paid by dischargers.

The funds collected or apportioned pursuant to this paragraph and interest collected thereon shall be invested and expended pursuant to Title 30-A, subpart 9.

Any funds paid by a discharger or discharger not connected to the sewage system pursuant to this paragraph may be credited to the account of the discharger if the municipality is subsequently reimbursed by the federal construction grant program. The credit arrangement shall be determined by agreement between the municipality and the discharger.

Variances shall be issued for a term certain not to exceed 3 years, and may be renewed, except that no variance may run longer than the time specified for completion of the municipal waste treatment facility. Notwithstanding the provisions of this subsection, no variance issued under this section may extend beyond July 1, 1988. Upon notice of the availability of federal funds, the municipality shall present to the Department of Environmental Protection for approval an implementation schedule for designing, constructing and placing the waste collection and treatment facilities in operation. Variances may be conditioned upon reasonable and necessary terms relating to appropriate interim measures to be taken by the municipality to maintain or improve water quality.

1-A. **Time schedule for salt and sand-salt storage program.** An owner or operator of a salt or sand-salt storage area is not in violation of any ground water classification or reclassification adopted on or after January 1, 1980, at any time prior to October 1, 1996, with respect to discharges to the ground water from those facilities, if by that time the owner or operator has completed all steps then required to be completed by the schedules set forth in this subchapter. The department shall administer this schedule according to the project priority list adopted by the board pursuant to section 411 and the provisions of this subsection.



A. Preliminary plans and engineers' estimates shall be completed and submitted to the Department of Transportation by the following dates:

- (1) For Priority 1 and 2 projects - January 1989;
- (2) For Priority 3 project - January 1990;
- (3) For Priority 4 project - January 1991; and
- (4) For Priority 5 project - January 1992. b! 1987, c. 492 (new). ?b

B. Arrangements for administration and financing shall be completed within 12 months of the dates established in paragraph A for each priority category.

C. Detailed engineering and final plan formulation shall be completed within 24 months of the dates established in paragraph A for each priority category.

D. Review of final plans with the Department of Transportation shall be completed and construction commenced within 36 months of the dates established in paragraph A for each priority category. The Department of Transportation shall consult with the department in reviewing final plans.

E. Construction shall be completed and in operation on or before January 1, 1996.

In no case shall violations of the lowest ground water classification be allowed. In addition, no violations of any ground water classifications adopted after January 1, 1980, may be allowed for more than 3 years from the date of an offer of a state grant for the construction of those facilities or after January 1, 1996, whichever is earlier.

The board shall not issue time schedule variances under subsection 1 to owners or operators of salt or sand-salt storage areas.

An owner or operator of a salt or sand-salt storage area who is in compliance with this section is exempt from the requirements of licensing under section 413, subsection 2-D.

An owner or operator is not in violation of a schedule established pursuant to this subsection if the owner or operator is eligible for a state grant to implement the schedule and the state grant is not available.

**2. Exemptions.** Any person, other than a municipality, maintaining a discharge subject to the requirements of section 413, 414 and 414-A shall be exempt from the requirements of section 414-A, subsection 1, paragraph D, Effluent Limitations and Best Practicable Treatment, if, by July 1, 1976 or on the commencement of a licensed discharge, whichever occurs later, such discharger presents to the Department of Environmental Protection and receives approval of a contract agreeing to connect to the existing or planned municipal sewage system immediately upon completion of construction and commencement of operation of such treatment plant. Such contract must insure that, in the case of a new discharge, such new discharge will not cause serious water quality problems, including but not limited to downgrading the receiving waters so as to make them unsuitable for currently existing uses. For the purpose of this section, a "new discharge" is a discharge which commences or a discharge which changes characteristics or increases licensed volume by more than 10% on or after the effective date of this Act.

**3. Failure to comply with agreement.** Failure to comply with any of the terms of an agreement approved pursuant to subsection 2 shall immediately render such agreement null and void and discharges included in such an agreement shall immediately cease or shall only discharge in accordance with the standards of best practicable treatment specified in section 414-A, subsection 1, paragraph D, and all other requirements of sections 414 and 414-A.

**4. Pretreatment systems.** Where a discharger otherwise exempted from constructing treatment facilities pursuant to this section will be required to pretreat effluents before discharge into the municipal system pursuant to any requirement of state or federal law, the pretreatment system shall be installed upon commencement of the discharge.

**5. Fees.** Municipalities and quasi-municipal entities shall assess and collect the fees to be charged pursuant to this section in accordance with the provisions of chapter 11, and Title 30-A, chapters 161 and 213.

\* \* \*

(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)  
  
(SUBCHAPTER 1)  
(ENVIRONMENTAL PROTECTION BOARD)  
  
(Article 4-A)  
(WATER CLASSIFICATION PROGRAM)

**38 § 464. Classification of Maine waters**

The waters of the State shall be classified in accordance with this article.

**1. Findings; objectives; purpose.** The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare; in preventing disease; in promoting health; in providing habitat for fish, shellfish and wildlife; as a source of recreational opportunity; and as a resource for commerce and industry.

The Legislature declares that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine state waters. The Legislature further declares that in order to achieve this objective the State's goals are:

- A. That the discharge of pollutants into the waters of the State be eliminated where appropriate
- B. That no pollutants be discharged into any waters of the State without first being given the degree of treatment necessary to allow those waters to attain their classification
- C. That water quality be sufficient to provide for the protection and propagation of fish, shellfish and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this article to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics.

The Legislature further intends by passage of this article to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

**2. Procedures for reclassification.** Reclassification of state waters shall be governed by the following provisions.

- A. Upon petition by any person or on its own motion, the board, following public notice, may conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water reclassification.
- B. The board shall call public hearings in the affected area, or reasonably adjacent to the affected area, for the purposes of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.
- C. The board may recommend changes in classification it deems necessary to the Legislature.
- D. The Legislature shall have sole authority to make any changes in the classification of the waters of the State.

**3. Reports to the Legislature.** The board and the department shall periodically report to the Legislature as governed by the following provisions.

A. The board shall submit to the first regular session of each Legislature a report on the quality of the State's waters which describes existing water quality, identifies waters which are not attaining their classification and states what measures are necessary for the attainment of the standards of their classification.

B. The board shall, from time to time, but at least once every 3 years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

C. The department shall report annually to each regular session of the Legislature on the status of licensed discharges.

D. The department, in cooperation with the Land Use Regulation Commission, shall conduct a study of indirect discharges and the problems posed by those discharges to the waters of the State. The study shall incorporate the results of previous investigations conducted pursuant to the United States Water Pollution Control Act, Section 208. The study shall include recommendations for land use management and other related techniques designed to mitigate the effects of indirect discharges. The study shall commence on July 1, 1987. The study shall be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources by February 29, 1988.

**4. General provisions.** The classification system for surface waters established by this article shall be subject to the following provisions.

A. Notwithstanding section 414-A, the board shall not issue a water discharge license for any of the following discharges:

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that discharges into these waters which were licensed prior to January 1, 1986, shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;

(3) Any discharge into a tributary of GPA waters which, by itself or in combination with other activities, causes water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters;

(4) Discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class;

(5) Discharge of pollutants to any water of the State which violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range; or causes fish for human consumption to be injurious to human health as determined by the United States Food and Drug Administration under the procedures established by United States Code, Title 21, section 342 or as determined by the Department of Human Services. The Department of Human Services shall establish a protocol for determining risk in these situations. The protocol shall be promulgated as a rule in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375; and

(6) New discharges of domestic pollutants to the surface waters of the State which are not conveyed and treated in municipal or quasi-municipal sewage facilities. For the purposes of this subparagraph, "new discharge" means any overboard discharge which was not licensed as of June 1, 1987, except those discharges which were in continuous existence for the 12 months preceding June 1, 1987, as demonstrated by the applicant to the board with clear and convincing evidence. For purposes of licensing, the board shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge will take place as a new discharge of domestic pollutants.

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including, but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A and 465-B, those waters shall not be considered to be failing to attain their classification because of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years.

E. The waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified waters.

F. The antidegradation policy of the State shall be governed by the following provisions.

(1) Existing in-stream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. Existing in-stream water uses are those uses which have actually occurred on or after November 28, 1975, in or on a water body whether or not the uses are included in the standard for classification of the particular water body.

Determinations of what constitutes an existing in-stream water use on a particular water body shall be made on a case-by-case basis by the Board. In making its determination of uses to be protected and maintained, the Board shall consider designated uses for that water body and:

- (a) Aquatic, estuarine and marine life present in the water body;
- (b) Wildlife that utilize the water body;
- (c) Habitat, including significant wetlands, within a water body supporting existing populations of wildlife or aquatic, estuarine or marine life, or plant life that is maintained by the water body;
- (d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use for purposes of this antidegradation policy; and
- (e) Any other evidence which, for divisions (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for division (d), demonstrates its historical or social significance.

(1-A) The board may only issue a waste discharge license pursuant to section 414-A, or approve a water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, when the board finds that:

- (a) The existing in-stream use involves use of the water body by a population of plant life, wildlife, or aquatic, estuarine or marine life, or as aquatic, estuarine, marine, wildlife, or plant habitat, and the applicant has demonstrated that the proposed activity would not have a significant impact on the existing use. For purpose of this division, significant impact means:
  - (i) Impairing the viability of the existing population, including significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population; or
- (b) The existing in-stream use involves use of the water body for recreation in or on the water, fishing, water supply or commercial enterprises that depend directly on the preservation of an existing level of water quality and the applicant has demonstrated that the proposed activity would not result in significant degradation of the existing use.

The board shall determine what constitutes a population of a particular species based upon the degree of geographic and reproductive isolation from other individuals of the same species.

If the board fails to find that the conditions of this subparagraph are met, water quality certification, pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, is denied.

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality shall be maintained and protected. For purposes of this paragraph, the following waters shall be considered outstanding national resources: those water bodies in national and state parks and wildlife refuges; public reserved lands; and those water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section 465-B, subsection 1; and listed under sections 467, 468 and 469.

(3) The board may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, if the standards of classification of the water body and the requirements of this paragraph will be met.

(4) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that that water be reclassified in the next higher classification.

(5) The board may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that the action is necessary to achieve important economic or social benefits to the State and when the action is in conformance with subparagraph (3). That finding must be made following procedures established by rule of the board.

**5. Rulemaking.** In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this article. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and as necessary thereafter, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Rules adopted pursuant to this subsection shall become effective upon adoption. Rules adopted pursuant to this subsection shall be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review during the next regular session of the Legislature following adoption. This committee may submit legislation it deems necessary to clarify legislative intent regarding rules adopted pursuant to this subsection. If the committee takes no action, the rules shall continue in effect.

**6. Implementation of biological water quality criteria.** The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this article, the board may modify that license in accordance with section 347, subsection 3 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. When a discharge license is issued after the effective date of this article and before the effective date of the rules adopted pursuant to subsection 5, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

C. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 5 shall comply with the water quality criteria of this article.

**7. Interdepartmental coordination.** The board, the Commissioner of Marine Resources and the Commissioner of Human Services shall jointly:

A. Make available accurate and consistent information on the requirements of this section, section 411-A and section 414-A, subsection 1-B

B. Certify waste water treatment and disposal technologies which can be used to replace overboard discharges.

**8 Development of group systems.** Subject to the provisions of section 414-A, subsection 1-B, the board shall coordinate the development and implementation of waste water treatment and disposal systems serving more than one

residence or commercial establishment where individual replacement systems are not feasible.

**38 § 465. Standards for classification of fresh surface waters**

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

**1. Class AA waters.** Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water and navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

**2. Class A waters.** Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; and navigation; and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. Direct discharges to these waters licensed after January 1, 1986, shall be permitted only if, in addition to satisfying all the requirements of this article, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification which were licensed prior to January 1, 1986, shall be allowed to continue only until practical alternatives exist. There shall be no deposits of any material on the banks of these waters in any manner so that transfer of pollutants into the waters is likely.

**3. Class B waters.** Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; and navigation; and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters may not exceed a geometric mean of 64 per 100 milliliters or an instantaneous level of 427 per 100 milliliters.

C. Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

**4. Class C waters.** Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; and navigation; and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water shall be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes shall be maintained. Between May 15th and September 30th, the number of *Escherichia coli* bacteria of human origin in these waters may not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters. The department shall promulgate rules governing the procedure for designation of spawning areas. Those rules shall include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

C. Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

#### **38 § 465-A. Standards for classification of lakes and ponds**

The board shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers that are defined as great ponds pursuant to section 392 shall be classified as GPA or as specifically provided in sections 467 and 468.

1. **Class GPA waters.** Class GPA shall be the sole classification of great ponds and natural ponds and lakes less than 10 acres in size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, industrial process and cooling water supply, hydroelectric power generation and navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations and shall be free of culturally induced algal blooms which impair their use and enjoyment. The number of *Escherichia coli* bacteria of human origin in these waters may not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There shall be no new direct discharge of pollutants into Class GPA waters. Aquatic pesticide treatments or chemical treatments for the purpose of restoring water quality approved by the board shall be exempt from the no-discharge provision. Discharges into these waters which were licensed prior to January 1, 1986, shall be allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as permitted pursuant to section 391. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

#### **38 § 465-B. Standards for classification of estuarine and marine waters**

The board shall have 3 standards for the classification of estuarine and marine waters.

1. **Class SA waters.** Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish and navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

**2. Class SB waters.** Class SB waters shall be the 2nd highest classification.

A. Class SB waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation and navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas, United State Department of Food and Drug Administration.

C. Discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

**3. Class SC waters.** Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation and navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

#### **38 § 465-C. Standards of classification of ground water**

The board shall have 2 standards for the classification of ground water.

1. **Class GW-A.** Class GW-A shall be the highest classification and shall be of such quality that it can be used for public water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usage of these waters, other than that occurring from natural phenomena.

2. **Class GW-B.** Class GW-B, the 2nd highest classification, shall be suitable for all usages other than public water supplies.

#### **38 § 466. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. **Aquatic life.** "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

2. **As naturally occurs.** "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measurable effects of human activity.

3. **Community function.** "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. **Community structure.** "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proportion each taxonomic group represents of the total community.



5. **Direct discharge.** "Direct discharge" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

6. **Domestic pollutants.** "Domestic pollutants" means any material, including, without limitation, sanitary wastes, waste water from household activities or waste waters with similar chemical characteristics, which are generated at residential or commercial locations.

7. **Estuarine and marine life.** "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

8. **Indigenous.** "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by State and Federal agencies or published scientific literature.

9. **Natural.** "Natural" means living in, or as if in, a state of nature not measurably affected by human activity.

9-A. **Overboard discharge.** "Overboard discharge" means discharge to the surface waters of the State of domestic pollutants not conveyed to and treated in municipal or quasi-municipal sewerage treatment facilities.

9-B. **Quasi-municipal.** "Quasi-municipal" means any form of ownership and management by a governmental unit embracing a portion of a municipality, a single municipality or several municipalities which is created by law to deliver public waste water treatment services, but which is not a state governmental unit.

10. **Resident biological community.** "Resident biological community" means aquatic life expected to exist in a habitat which is free from the influence of the discharge of any pollutant. This shall be established by accepted biomonitoring techniques.

11. **Unimpaired.** "Unimpaired" means without a diminished capacity to support aquatic life.

12. **Without detrimental changes in the resident biological community.** "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.

### **38 § 467. Classification of major river basins**

All surface waters lying within the boundaries of the State which are in river basins having a drainage area greater than 100 square miles which are not classified as lakes or ponds and are not otherwise classified in this section are Class B waters.

#### **1. Androscoggin River Basin.**

##### **A. Androscoggin River, main stem, including all impoundments.**

(1) From the Maine-New Hampshire boundary to its confluence with the Ellis River - Class B.

(2) From its confluence with the Ellis River to a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction - Class C.

(3) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Gulf Island, Deer Rips and Lewiston Falls dams have not and may not continue to meet the Class C requirements for aquatic life and dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including, but not limited to, impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable, indigenous and renewable energy resource for hydroelectric energy which provides a significant contribution to the economic development and general welfare of the citizens of the State. This subparagraph is repealed on January 1, 1992.

Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existence of these impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their

classification if the department finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph may be construed to limit the board's authority to consider the requirements of section 414-A, subsection 1, paragraphs A to E. This subparagraph is repealed on January 1, 1992.

**B. Little Androscoggin River Drainage.**

- (1) Little Androscoggin River, main stem.
  - (a) From the outlet of Bryant Pond to the Maine Central Railroad bridge in South Paris - Class B.
  - (b) From the Maine Central Railroad bridge in South Paris to its confluence with the Androscoggin River - Class C.
- (2) Little Androscoggin River, tributaries - Class B unless otherwise specified.
  - (a) Outlet of Thompson Lake in Oxford - Class C.

**C. Androscoggin River, Upper Drainage; that portion within the State lying above the river's most upstream crossing of the Maine-New Hampshire boundary - Class A unless otherwise specified.**

- (1) Cusuptic River and its tributaries - Class AA.
- (2) Kennebago River and its tributaries except for the impoundment of the dam at Kennebago Falls - Class AA.
- (3) Rapid River, from a point located 1,000 feet downstream of Middle Dam to its confluence with Umbagog Lake - Class AA.

**D. Androscoggin River, minor tributaries - Class B unless otherwise specified.**

- (1) All tributaries of the Androscoggin River that enter between the Maine-New Hampshire boundary in Gilead and its confluence with the Ellis River and that are not otherwise classified - Class A.
- (2) Bear River - Class AA.
- (3) Sabattus River - Class B.
- (4) Webb River - Class A.

**2. Dennys River Basin.**

**A. Dennys River, main stem.**

- (1) From the outlet of Meddybemps Lake to the Route 1 Bridge - Class AA.
- (2) From the Route 1 bridge to tidewater - Class B.

**B. Dennys River, tributaries.**

- (1) All tributaries entering above the Route 1 bridge - Class A.

**3. East Machias River Basin.**

**A. East Machias River, main stem.**

- (1) From the outlet of Pocomoonshine Lake to a point located 0.25 miles above the Route 1 bridge - Class AA.
- (2) From a point located 0.25 miles above the Route 1 bridge to tidewater - Class C.

**B. East Machias River, tributaries.**

- (1) All tributaries entering above the Route 191 bridge in Jacksonville - Class A.

**4. Kennebec River Basin.**

**A. Kennebec River, main stem.**

- (1) From Moosehead Lake, including east and west outlets, to a point 1,000 feet below the lake - Class A.
- (2) From a point 1,000 feet below Moosehead Lake to its confluence with Indian Pond - Class AA.
- (3) From Harris Dam to a point located 1,000 feet downstream from Harris Dam - Class A.
- (4) From a point located 1,000 feet downstream from Harris Dam to its confluence with the Dead River - Class AA.
- (5) From its confluence with the Dead River to the Route 201A bridge in Anson-Madison except for Wyman Lake - Class A.
- (6) From the Route 201A bridge in Anson-Madison to the Fairfield-Skowhegan boundary, including all impoundments - Class B.
- (7) From the Fairfield-Skowhegan boundary to its confluence with Messalonskee Stream - Class C.
- (8) From its confluence with Messalonskee Stream to the Sidney-Augusta boundary - Class B.
- (9) From the Sidney-Augusta boundary to the Father John J. Curran Bridge in Augusta - Class C.
- (10) From the Father John J. Curran Bridge in Augusta to a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class C. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use shall be maintained.
- (11) From a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point, to a line across the southwesterly area of Merrymeeting Bay formed by an extension of the Brunswick-Bath boundary across the bay in a northwesterly direction to the westerly shore of Merrymeeting Bay and to a line drawn from Chop Point in Woolwich to West Chop Point in Bath - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use shall be maintained.

**B. Carrabassett River Drainage.**

**(1) Carrabassett River, main stem.**

- (a) Above a point located 1.0 mile above the railroad bridge in North Anson - Class A.
  - (b) From a point located 1.0 mile above the railroad bridge in North Anson to its confluence with the Kennebec River - Class B.
- (2) Carrabassett River, tributaries - Class A unless otherwise specified.
- (a) All tributaries entering the Carrabassett River below the Wire Bridge in New Portland - Class B.

**C. Cobbosseecontee Stream Drainage.**

- (1) Cobbosseecontee Stream, main stem - Class B.
- (2) Cobbosseecontee Stream, tributaries - Class B.

D. Dead River Drainage.

(1) Dead River, main stem.

(a) From the Long Falls Dam to a point 5,100 feet below the dam - Class A.

(b) From a point 5,100 feet below Long Falls Dam to its confluence with the Kennebec River - Class AA.

(2) Dead River, tributaries - Class A unless otherwise specified.

(a) Black Brook below Dead River Hatchery - Class B.

(b) Stratton Brook, Eustis, from the upper Route 16/27 bridge to its confluence with Flagstaff Lake - Class B.

(c) Spenser Stream - Class B.

E. Messalonskee Stream Drainage.

(1) Messalonskee Stream, main stem.

(a) From the outlet of Messalonskee Lake to its confluence with the Kennebec River - Class C.

(2) Messalonskee Stream, tributaries - Class B.

F. Moose River Drainage.

(1) Moose River, main stem.

(a) Above its confluence with Number One Brook in Beattie Township - Class A.

(b) From its confluence with Number One Brook in Beattie Township to its confluence with Attean Pond - Class AA.

(c) From the outlet of Attean Pond to the Route 201 bridge in Jackman - Class A.

(d) From the Route 201 bridge in Jackman to its confluence with Long Pond - Class B.

(e) From the outlet of Long Pond to its confluence with Moosehead Lake - Class A.

(2) Moose River, tributaries - Class A.

G. Sandy River Drainage.

(1) Sandy River, main stem.

(a) From the outlet of Sandy River Ponds to the Route 142 bridge in Phillips - Class AA.

(b) From the Route 142 bridge in Phillips to its confluence with the Kennebec River - Class B.

(2) Sandy River, tributaries - Class B unless otherwise specified.

(a) All tributaries entering above the Route 142 bridge in Phillips - Class A.

(b) Wilson Stream, main stem, below the outlet of Wilson Pond - Class C.

H. Sebasticook River Drainage.

(1) Sebasticook River, main stem, including all impoundments.

(a) From the confluence of the East Branch and the West Branch to its confluence with the Kennebec River - Class C.

(2) Sebasticook River, tributaries - Class B unless otherwise specified.

(a) Sebasticook River, East Branch main stem, from the outlet of Lake Wassookeag to its confluence with Corundel Lake - Class B.

(b) Sebasticook River, East Branch main stem, from the outlet of Corundel Lake to its confluence with the West Branch - Class C.

(c) Sebasticook River, West Branch main stem, from the outlet of Great Moose Lake to its confluence with the East Branch, including all impoundments - Class C.

I. Kennebec River, minor tributaries - Class B unless otherwise specified.

(1) All minor tributaries entering above Wyman Dam that are not otherwise classified - Class A.

(2) All tidal portions of tributaries entering between Edwards Dam and a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class C.

(3) Cold Stream, West Forks Plantation - Class AA.

(4) Moxie Stream, Moxie Gore, below a point located 1,000 feet downstream of the Moxie Pond dam - Class AA.

(5) Austin Stream and its tributaries above the highway bridge of Route 201 in the Town of Bingham - Class A.

#### **5. Machias River Basin.**

A. Machias River, main stem.

(1) From the outlet of Fifth Machias Lake to its confluence with the Whitneyville Mill Pond - Class AA.

(2) From the outlet of the Whitneyville Mill Pond to the site of the low dam opposite the ends of West Street and Hardwood Street in Machias - Class B.

(3) From the site of the low dam opposite the ends of West Street and Hardwood Street in Machias to tidewater - Class C.

B. Machias River, tributaries.

(1) All tributaries entering above the river's confluence with the Whitneyville Mill Pond which are not otherwise classified - Class A.

(2) Mopang Stream, from the outlet of Mopang Second Lake to its confluence with the Machias River - Class AA.

(3) Old Stream, from the outlet of First Lake to its confluence with the Machias River - Class AA.

(4) West Branch of the Machias River, from the outlet of Lower Sabao Lake to its confluence with the Machias River - Class AA.

#### **6. Mousam River Basin.**

A. Mousam River, main stem.

(1) From the outlet of Mousam Lake to a point located 0.5 mile above Mill Street in Springvale - Class B.

(2) From a point located 0.5 mile above Mill Street in Springvale to its confluence with Estes Lake - Class C.

(3) From the outlet of Estes Lake to tidewater - Class B.

**B. Mousam River, tributaries.**

(1) East Branch of Shaker Brook from the Route 4 bridge to the Alfred-Waterboro boundary - Class C.

(2) Hay Brook (Alfred and Sanford) - Class C.

(3) Unnamed Brook, entering the East Branch of Shaker Brook from the west just below Waterboro Village - Class C.

**7. Penobscot River Basin.**

**A. Penobscot River, main stem.**

(1) From the confluence of the East Branch and the West Branch to the Veazie Dam, including all impoundments - Class C.

(2) From the Veazie Dam to a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class C.

(3) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Mattaceunk Dam, also known as Weldon Dam, and Dolby Dam have not and may continue to not meet the Class C requirements for aquatic life and dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including, but not limited to, impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provide a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existence of these impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the department finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in the subparagraph may be construed to limit the board's authority to consider the requirements of section 414-A, subsection 1, paragraphs A to E.

**B. Penobscot River, East Branch Drainage.**

(1) East Branch of the Penobscot River, main stem.

(a) Above its confluence with Grand Lake Mattagamon - Class A.

(b) From the dam at the outlet of Grand Lake Mattagamon to a point located 1,000 feet downstream from the dam at the outlet of Grand Lake Mattagamon - Class B.

(c) From a point located 1,000 feet downstream from the dam at the outlet of Grand Lake Mattagamon to its confluence with the West Branch - Class B.

(2) East Branch of the Penobscot River, tributaries.

(a) All tributaries and segments of the East Branch of the Penobscot River entering above the outlet of Grand Lake Mattagamon which are not otherwise classified - Class A.

(b) All tributaries and segments of the East Branch of the Penobscot River entering below the outlet of Grand Lake Mattagamon which are not otherwise classified - Class B.

(c) All tributaries and segments of the East Branch of the Penobscot River which are within the boundaries of Baxter State Park - Class AA.

(d) Sawtelle Brook, from a point located 1,000 feet downstream from the dam at the outlet of Sawtelle Deadwater to its confluence with the Seboeis River - Class B.

(e) Seboeis River, from the outlet of Snowshoe Lake to its confluence with the East Branch - Class B.

(f) Wassataquoik Stream, from the boundary of Baxter State Park to its confluence with the East Branch - Class B.

(g) Webster Brook, from a point located 1,000 feet downstream from the dam at the outlet of Telos Lake to its confluence with Webster Lake - Class B.

C. Penobscot River, West Branch Drainage.

(1) West Branch of the Penobscot River, Main Stem.

(a) From the dam at the outlet of Seboomook Lake to a point located 1,000 feet downstream from the dam at the outlet of Seboomook Lake - Class B.

(b) From a point located 1,000 feet downstream from the dam at the outlet of Seboomook Lake to its confluence with Chesuncook Lake - Class B.

(c) From Ripogenus Dam to the T.3, R.11, W.E.L.S. - T.3, R.10, W.E.L.S. boundary - Class B.

(d) From the T.3, R.11, W.E.L.S. - T.3, R.10, W.E.L.S. boundary to its confluence with Ambajejus Lake - Class B.

(e) From the outlet of Elbow Lake to the outlet of Ferguson and Quakish Lakes - Class B.

(f) From the outlet of Ferguson and Quakish Lakes to its confluence with the East Branch of the Penobscot River, including all impoundments - Class C.

(2) West Branch of the Penobscot River, tributaries.

(a) All tributaries and segments of the West Branch of the Penobscot River which are within the boundaries of Baxter State Park - Class AA.

(b) All tributaries entering above the dam at the outlet of Seboomook Lake - Class A.

(c) Millinocket Stream, from the railroad bridge near the Millinocket-T.3 Indian Purchase boundary to its confluence with the West Branch of the Penobscot River - Class C.

D. Mattawamkeag River Drainage.

(1) Mattawamkeag River, main stem.

(a) From the confluence of the East Branch and the West Branch to the Kingman-Mattawamkeag boundary - Class B.

(b) From the Kingman-Mattawamkeag boundary to its confluence with the Penobscot River - Class B.

(2) Mattawamkeag River, tributaries.

(a) Baskahegan Stream, from the narrows in Crooked Brook Flowage approximately one mile above the village of Danforth to its confluence with the Mattawamkeag River - Class C.

(b) Fish Stream, from a point 0.25 mile upstream of the Route 11 bridge in Patten to its confluence with the West Branch of the Mattawamkeag River - Class C.

- (c) Mattakeunk Stream (Lee) from the outlet of Mattakeunk Pond to its confluence with Dwinal Pond - Class C.
- (d) Webb Brook (Patten) and its tributaries - Class C.
- (e) West Branch of the Mattawamkeag River (Island Falls) from a point 100 feet upstream of the railroad bridge at Island Falls to its confluence with Upper Mattawamkeag Lake - Class C.

E. Piscataquis River Drainage.

(1) Piscataquis River, main stem.

- (a) From the confluence of the East Branch and the West Branch to the Abbot-Guilford boundary - Class B.
- (b) From the Abbott-Guilford boundary to its confluence with the Pleasant River - Class C.
- (c) From its confluence with the Pleasant River to the dam at Howland - Class B.
- (d) From the dam at Howland to its confluence with the Penobscot River - Class C.

(2) Piscataquis River, tributaries.

- (a) Carleton Stream (Sangerville) from its mouth to the crossing of Route 23 - Class C.
- (b) Davee Brook below North Street, Dunham Brook below Forest Street and Fox Brook below Grove Street in Dover-Foxcroft - Class C.
- (c) East and West Branches of the Piscataquis River and their tributaries above their confluence near Blanchard - Class A.
- (d) Phillip Brook, Monson, from Lake Hebron to the junction with Monson Stream - Class C.
- (e) Pleasant River, East Branch and its tributaries - Class A.
- (f) Pleasant River, main stem, from the end of Maple Street in Brownville Junction to its confluence with the Piscataquis River - Class C.
- (g) Pleasant River, West Branch, from the outlet of Fourth West Branch Pond to its confluence with the East Branch - Class AA.
- (h) Pleasant River, West Branch tributaries - Class A.
- (i) Sebec River, from the dam at Main Street in Milo to its confluence with the Piscataquis River - Class C.
- (j) Sebec River and its tributaries above the outlet of Monson Stream - Class A.

F. Penobscot River, minor tributaries.

- (1) All minor tributaries entering from the west between Pushaw Stream and the outlet of Reed Brook in Hampden which are not otherwise classified - Class C.
- (2) All minor tributaries entering from the east between Blackman Stream and a line extended in an east-west direction from the outlet of Reed Brook in Hampden which are not otherwise classified - Class C.
- (3) Alamoosook Lake Tributaries - Class A.
- (4) Cambolasee Stream (Lincoln) below the Route 2 bridge - Class C.
- (5) Great Works Stream (Bradley) and its tributaries above the Route 178 bridge - Class A.



- (6) Kenduskeag Stream (Bangor) and tributaries below the Bullseye Bridge - Class C.
- (7) Mattanawcook Stream (Lincoln) below the outlet of Mattanawcook Pond - Class C.
- (8) Olamon Stream and its tributaries above the bridge on Horseback Road - Class A.
- (9) Passadumkeag River and its tributaries above Grand Falls - Class A.
- (10) Sourdabscook Stream and its tributaries above the dam of the Hampden Water District - Class A.
- (11) Sunkhaze Stream and its tributaries - Class A.

**8. Pleasant River Basin.**

A. Pleasant River, main stem.

- (1) From the outlet of Pleasant River Lake to a point located 1,000 feet above tidewater - Class B.
- (2) From a point located 1,000 feet above tidewater to tidewater - Class B.

**9. Presumpscot River Basin.**

A. Presumpscot River, main stem.

- (1) From the outlet of Sebago Lake to its confluence with Dundee Pond - Class A.
- (2) From the outlet of Dundee Pond to a point located below the Village of South Windham - Class B.
- (3) From a point located below the Village of South Windham to tidewater - Class C.

B. Presumpscot River, tributaries.

- (1) Little River (Windham) from canning plant on Route 114 to its confluence with the Presumpscot River - Class C.
- (2) Stevens Brook (Bridgton) - Class C.

**10. Narraguagus River Basin.**

A. Narraguagus River, main stem.

- (1) From the outlet of Eagle Lake to the confluence with the West Branch of the Narraguagus River in Cherryfield - Class AA.
- (2) From the confluence with the West Branch of the Narraguagus River in Cherryfield to tidewater - Class B.

B. Narraguagus River, tributaries.

- (1) All tributaries entering above the river's confluence with the West Branch - Class A.
- (2) West Branch of the Narraguagus River and its tributaries - Class A.

**11. Royal River Basin.**

A. Royal River, main stem.

- (1) From the outlet of Sabbathday Pond to tidewater - Class B.

B. Royal River, tributaries.

- (1) All tributaries of the Royal River which are not otherwise classified - Class C.
- (2) Chandler Brook (Pownal) - Class B.

- (3) Collyer Brook (Gray) - Class B.

## 12. Saco River Basin.

### A. Saco River, main stem.

- (1) From the Maine-New Hampshire boundary to its confluence with the impoundment of the Swan's Falls Dam - Class B.
- (2) From its confluence with the impoundment of the Swan's Falls Dam to a point located 1,000 feet below the Swan's Falls Dam - Class B.
- (3) From a point located 1,000 feet below the Swan's Falls Dam to its confluence with the impoundment of the Hiram Dam - Class B.
- (4) From its confluence with the impoundment of the Hiram Dam to a point located 1,000 feet below the Hiram Dam - Class B.
- (5) From a point located 1,000 feet below the Hiram Dam to its confluence with the Little Ossipee River - Class B.
- (6) From its confluence with the Little Ossipee River to its confluence with Thatcher Brook - Class B.
- (7) From its confluence with Thatcher Brook to tidewater - Class C.

### B. Saco River, tributaries.

- (1) Brown Brook (Limerick) main stem, from the outlet of Sokokis Lake to its junction with the Little Ossipee River - Class C.
- (2) Kimball Brook (Fryeburg) from a point 0.5 mile above the Route 113 crossing to Charles Pond - Class C.
- (3) Little River, from the crossing of Route 5 approximately 1.0 mile above Cornish Village to its confluence with the Ossipee River - Class C.
- (4) Ossipee River from a point located 0.5 mile upstream of the Route 25 bridge at Kezar Falls to its confluences with the Saco River - Class C.
- (5) Wards Brook (Fryeburg) - Class C.

## 13. St. Croix River Basin.

### A. St. Croix River, main stem.

- (1) From the outlet of Chiputneticook Lakes to the Grand Falls Dam, those waters lying within the State - Class B.
- (2) From the Grand Falls Dam to the Woodland Dam, those waters lying within the State, including all impoundments - Class C.
- (3) From the Woodland Dam to tidewater, those waters lying within the State, including all impoundments - Class C.

### B. St. Croix River, tributaries.

- (1) All tributaries which have portions of their drainage area in Maine and portions in New Brunswick, those waters lying within the State - Class B.
- (2) All tributaries entering upstream from the dam at Calais, the drainage areas of which are wholly within the State - Class A.

**14. St. George River Basin.**

A. St. George River, main stem.

- (1) From the outlet of Lake St. George to tidewater - Class C.

B. St. George River, tributaries.

- (1) All tributaries and segments of the St. George River which are not otherwise classified - Class C.
- (2) All tributaries entering above the outlet of Lake St. George - Class B.
- (3) Crawford Pond Outlet and Crawford Pond tributaries - Class B.
- (4) Fuller Brook and its tributaries - Class B.
- (5) North and South Pond tributaries and outlet to the St. George River - Class B.

**15. St. John River Basin.**

A. St. John River, main stem.

- (1) From the confluence of the Northwest Branch and the Southwest Branch to a point located one mile above the foot of Big Rapids in Allagash - Class B.
- (2) From a point located one mile above the foot of Big Rapids in Allagash to the Frenchville-Madawaska boundary, those waters lying within the State, including all impoundments - Class B.
- (3) From the Frenchville-Madawaska boundary to where the international boundary leaves the river in Hamlin, those waters lying within the State, including all impoundments - Class C.

B. Allagash River Drainage.

(1) Allagash River, main stem.

- (a) From Churchill Dam to a point located 1,000 feet downstream from Churchill Dam - Class A.
- (b) From a point located 1,000 feet downstream from Churchill Dam to its confluence with Gerald Brook in Allagash - Class AA.
- (c) From its confluence with Gerald Brook in Allagash to its confluence with the St. John River - Class A.

(2) Allagash River, tributaries.

- (a) All tributaries of the Allagash River which are not otherwise classified - Class A.
- (b) Allagash Stream, from the outlet of Allagash Pond in T.9, R.15, W.E.L.S. to its confluence with Chamberlain Lake - Class AA.
- (c) Chemquasabamticook Stream, from the outlet of Chemquasabamticook Lake to its confluence with Long Lake - Class AA.
- (d) Musquacook Stream, from the outlet of Third Musquacook Lake to its confluence with the Allagash River - Class AA.

C. Aroostook River Drainage.

(1) Aroostook River, main stem.

- (a) From the confluence of Millinocket Stream and Munsungan Stream to its confluence with the Machias River - Class AA.
- (b) From its confluence with the Machias River to the Sheridan Dam - Class B.
- (c) From the Sheridan Dam to its confluence with Presque Isle Stream, including all impoundments - Class B.
- (d) From its confluence with Presque Isle Stream to a point located 3.0 miles upstream of the intake of the Caribou water supply, including all impoundments - Class C.
- (e) From a point located 3.0 miles upstream of the intake of the Caribou water supply to a point located 100 yards downstream of the intake of the Caribou water supply, including all impoundments - Class B.
- (f) From a point located 100 yards downstream of the intake of the Caribou water supply to the international boundary, including all impoundments - Class C.

(2) Aroostook River, tributaries.

- (a) All tributaries of the Aroostook River entering above the confluence with St. Croix Stream which are not otherwise classified - Class A.
- (b) Limestone Stream from the Long Road Bridge to the international boundary - Class C.
- (c) Little Machias River and its tributaries - Class A.
- (d) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Route 161 bridge in Stockholm - Class A.
- (e) Machias River, from the outlet of Big Machias Lake to the Garfield Plantation-Ashland boundary - Class AA.
- (f) Machias River tributaries entering above the Garfield-Ashland boundary - Class A.
- (g) Millinocket Stream, from the outlet of Millinocket Lake to its confluence with Munsungan Stream - Class AA.
- (h) Munsungan Stream, from the outlet of Little Munsungan Lake to its confluence with Millinocket Stream - Class AA.
- (i) Pattee Brook (Fort Fairfield) and its tributaries above the dam just upstream of the Route 167 bridge - Class A.
- (j) Presque Isle Stream and its tributaries above its confluence with, but not including, the North Branch of Presque Isle Stream - Class A.
- (k) St. Croix Stream from the outlet of St. Croix Lake to its confluence with Hall Brook in T.9, R.5, W.E.L.S. - Class A.
- (l) St. Croix Stream from its confluence with Hall Brook in T.9, R.5, W.E.L.S. to its confluence with the Aroostook River - Class AA.
- (m) St. Croix Stream tributaries - Class A.
- (n) Salmon Brook, from the dam immediately above Washburn to its confluence with the Aroostook River - Class C.

- (o) Squapan Stream and its tributaries above the B&A Railroad bridge - Class A.
- (p) Unnamed Stream (Presque Isle) near Vining Station on Washburn Road - Class C.

D. Fish River Drainage.

- (1) Fish River, main stem.
  - (a) From the outlet of Mud Pond to its confluence with St. Froid Lake - Class AA.
  - (b) From the outlet of St. Froid Lake to the Route 11 Bridge - Class A.
  - (c) From the Route 11 Bridge to the bridge at Fort Kent Mills - Class B.
  - (d) From the bridge at Fort Kent Mills to its confluence with the St. John River - Class C.
- (2) Fish River, tributaries.
  - (a) All tributaries entering above the Route 11 Bridge - Class A.

E. Meduxnekeag River Drainage.

- (1) Meduxnekeag River, main stem.
  - (a) From the outlet of Meduxnekeag Lake to the international boundary - Class B.
- (2) Meduxnekeag River, tributaries.
  - (a) North Branch of the Meduxnekeag River and its tributaries above the Monticello - T.C, R.2 boundary - Class A.

F. St. John River, minor tributaries.

- (1) All tributaries of the St. Francis River, the drainage areas of which are wholly within the State - Class A.
- (2) All tributaries and branches of the St. John River above the outlet of Allagash River, the drainage areas of which are wholly within the State, including that portion of the river above the St. John Pond Dam- Class A.
- (3) Baker Branch, from a point located 1.5 miles below Baker Lake to its confluence with the Southwest Branch - Class AA.
- (4) Big Black River, from the international boundary to its confluence with the St. John River - Class B.
- (5) Northwest Branch, from the outlet of Beaver Pond in T. 12, R. 17, W.E.L.S. to its confluence with the St. John River - Class AA.
- (6) Southwest Branch, from a point located 5 miles downstream of the international boundary to its confluence with the Baker Branch - Class AA.
- (7) Martin Brook (Madawaska) downstream of the bridge on the Back Settlement Road - Class C.
- (8) Negro Brook (Allagash Plantation) and its tributaries - Class A.
- (9) Thibodeau Brook (Grand Isle) from Route 1 to the St. John River - Class C.
- (10) Violette Brook (Van Buren) below the railroad to its confluence with Violette Stream - Class C.
- (11) Violette Stream (Van Buren) below Champlain Street to its confluence with the St. John River - Class C.

**16. Salmon Falls River Basin.**

**A. Salmon Falls River, main stem.**

- (1) From the outlet of Great East Lake to tidewater, those waters lying within the State - Class B.

**17. Sheepscot River Basin.**

**A. Sheepscot River, main stem.**

- (1) From its origin in Montville to tidewater - Class B.

**B. Sheepscot River, tributaries.**

- (1) West Branch of the Sheepscot River, main stem, from the outlet of Branch Pond to its confluence with the Sheepscot River - Class B.

**18. Union River Basin.**

**A. Union River, main stem**

- (1) From the outlet of Graham Lake to the Route 1A bridge in Ellsworth Falls - Class B.  
(2) From the Route 1A bridge in Ellsworth Falls to tidewater - Class C.

**38 § 468. Classifications of minor drainages**

All surface waters lying within the boundaries of the State which are in basins having a drainage area less than 100 square miles which are not classified as lakes or ponds and which are not otherwise classified in this section are Class B waters.

**1. Cumberland County.** Those waters draining directly or indirectly into tidal waters of Cumberland County, with the exception of the Androscoggin River Basin, the Presumpscot River Basin, the Royal River Basin and tributaries of the Androscoggin River Estuary and Merrymeeting Bay, entering above the Chops.

**A. All minor drainages of Cumberland County which are not otherwise classified - Class C.**

**B. Brunswick.**

- (1) Unnamed Stream entering tidewater of New Meadows River at Middle Bay - Class A.

**C. Cape Elizabeth.**

- (1) Alewife Brook - Class A.

**D. Falmouth.**

- (1) Mill Creek and its tributaries - Class B.

**E. Freeport.**

- (1) Harvey Brook - Class B.  
(2) Frost Gully Brook - Class A.  
(3) Merrill Brook and its tributaries entering below the Maine Central Railroad crossing - Class B.  
(4) Collins Brook and its tributaries - Class B.  
(5) Mill Stream and its tributaries - Class B.  
(6) Little River and its tributaries - Class B.

F. Portland.

- (1) Stroudwater River from its origin to its confluence with Indian Camp Brook - Class B.

G. Scarboro.

- (1) Finnard Brook - Class B.
- (2) Stuart Brook - Class B.

H. South Portland.

- (1) Red Brook and its tributaries from the Rye Pond outlet dam to its origin - Class B.

I. Yarmouth.

- (1) Pratts Brook - Class B.

**2. Hancock County.** Those waters draining directly or indirectly into tidal waters of Hancock County, with the exception of the Union River Basin.

A. All brooks, streams and segments of those brooks and streams which are within the boundaries of Acadia National Park - Class AA.

B. All minor drainages entering tidewater between the Bucksport-Orrington boundary and a point located due east from Fort Point - Class C.

C. Blue Hill.

- (1) Carleton Stream, main stem, between First Pond and Second Pond - Class C.
- (2) Carleton Stream, main stem, from the outlet of First Pond to tidewater at Salt Pond - Class C.
- (3) Unnamed Stream at edge of Blue Hill Village entering tidewater near "Big Rock" - Class C.
- (4) Unnamed Stream flowing from near "Old Cemetery" to the Town Wharf - Class C.
- (5) Unnamed Stream about 100 yards east of Mill Brook Stream - Class C.

D. Brooksville.

- (1) Shepardson Brook (or Mill Brook), main stem, from Route 176 to its outlet at tidewater - Class C.

E. Bucksport.

- (1) All minor drainages which enter tidewater between the head of tide on Marsh Stream and the head of tide on the Orland River which are not otherwise classified - Class C.
- (2) Silver Lake Outlet, above the village limits of Bucksport - Class B.

F. Ellsworth.

- (1) Unnamed Stream south of Laurel Street in Ellsworth - Class C.

G. Franklin.

- (1) Unnamed Stream flowing near railroad station in Franklin Village to Hog Bay - Class C.

H. Gouldsboro.

- (1) All coastal streams, direct and indirect segments, discharging to tidewater on the easterly mainland of Gouldsboro - Class C.

I. Lamoine.

- (1) Spring Brook below washer at Grindle's gravel pit - Class C.

J. Penobscot.

- (1) Winslow Stream, main stem, from tidewater to dam at the sawmill of S.C. Condon - Class C.

K. Sedgewick.

- (1) Sargent Brook at Sargentville Village, main stem, from tidewater to a point 300 feet upstream of the highway - Class C.
- (2) Three Unnamed Streams entering tidewater immediately north of Sedgewick Village - Class C.

L. Trenton.

- (1) Stony Brook from Route 3 crossing to tidewater - Class C.

M. Winter Harbor.

- (1) Coastal streams, brooks and segments of those streams and brooks between the Winter Harbor-Gouldsboro boundary and the boundaries of Acadia National Park - Class C.

**3. Knox County.** Those waters draining directly or indirectly into tidal waters of Knox County, with the exception of the St. George River Basin.

A. Friendship.

- (1) Goose River, main stem, from tidewater to the dam at the Herbert Tibbetts' sawmill - Class C.

B. Owls Head.

- (1) All coastal streams, direct and indirect segments of those streams, draining to tidewater in the Town of Owls Head - Class C.

C. Rockland.

- (1) All coastal streams, direct and indirect segments of those streams, draining to tidewater in the City of Rockland - Class C.

D. Rockport.

- (1) All coastal streams, direct and indirect segments of those streams, draining to tidewater in the Town of Rockport, unless otherwise described or classified - Class C.
- (2) Goose River and its tributaries - Class B.
- (3) Lily Pond Outlet - Class B.

E. St. George.

- (1) All coastal streams, direct and indirect segments of those streams, draining to tidewater in the Town of St. George, unless otherwise described or classified - Class C.



F. South Thomaston.

- (1) All coastal streams, direct and indirect segments of those streams, draining to tidewater in the Town of South Thomaston - Class C.

G. Thomaston.

- (1) Mill River, main stem, from tidewater to a point 0.5 mile above tidewater - Class C.
- (2) Oyster River, main stem, from tidewater to a point 200 feet upstream of Packard's Mill - Class C.

H. Warren.

- (1) Unnamed Stream to St. George River tidewater near Warren-Cushing boundary between a point 500 feet above the South Warren-North Cushing Road to tidewater - Class C.

**4. Lincoln County.** Those waters draining directly or indirectly into tidal waters of Lincoln County, with the exception of the Sheepscot River Basin and tributaries of the Kennebec River Estuary and Merrymeeting Bay, entering above the Chops.

A. Bristol.

- (1) Pemaquid River, main stem, from dam upstream of Bristol Village to the entrance of Boyd Pond - Class C.

B. Waldoboro.

- (1) Goose River, main stem, from tidewater to the dam at Herbert Tibbetts' sawmill - Class C.

C. Westport.

- (1) All coastal streams and segments of those streams draining to tides in the Town of Westport - Class C.

**5. Penobscot County.** Those waters draining directly or indirectly into tidal waters of Penobscot County, with the exception of tributaries of the Penobscot River Estuary entering north of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands.

A. Minor drainages of Penobscot County which are not otherwise classified - Class C.

B. Reed Brook (Hampden) - Class C.

**6. Sagadahoc County.** Those waters draining directly or indirectly into tidal waters of Sagadahoc County, with the exception of tributaries of the Androscoggin River Estuary, the Kennebec River Estuary and Merrymeeting Bay, entering above the Chops.

A. All minor drainages of Sagadahoc County which are not otherwise classified - Class C.

**7. Waldo County.** Those waters draining directly or indirectly into tidal waters of Waldo County.

A. All minor drainages of Waldo County which are not otherwise classified and which enter tidewater between head of tide on the Goose River and head of tide on Marsh Stream in Frankfort - Class C.

B. Belfast.

- (1) Goose River, below the upstream crossing of Route 141 - Class C.

C. Searsport.

- (1) Mill Brook and its tributaries upstream of a bridge site on an abandoned road about 1.5 miles northerly of Searsport Village - Class B.

- (2) Unnamed Stream and its tributaries entering tidewater at the northwest corner of Long Cove - Class B.

**8. Washington County.** Those waters draining directly or indirectly into tidal waters of Washington County, with the exception of the Dennys River Basin, the East Machias River Basin, the Machias River Basin, the Narraguagus River Basin and the Pleasant River Basin.

A. Calais.

- (1) Unnamed Stream entering tidewater portion of St. Croix River between Beech and Union Streets - Class C.

B. Columbia.

- (1) Dyke Brook, East Branch, from tidewater to the crossing of the Maine Central Railroad - Class C.

C. Columbia Falls.

- (1) Unnamed Stream, from the Maine Central Railroad Bridge near the Pleasant River Canning Company plant to tidewater - Class C.

D. Harrington.

- (1) Unnamed Stream passing through the village, from a point immediately upstream of the school sewer to tidewater - Class C.

E. Jonesboro.

- (1) Chandler River and its tributaries above the Highway Bridge on Route 1 - Class A.

F. Robbinston.

- (1) Unnamed Stream entering northerly end of Brooks Cove - Class C.
- (2) Unnamed Stream immediately north of Schoolhouse Lane - Class C.

G. Stueben and T.7, S.D.

- (1) Whitten Parrin Stream - Class C.

H. Trescott.

- (1) Wiggins Brook at South Trescott, main stem, between Route 191 and tidewater - Class C.

I. Whiting.

- (1) Orange River and its tributaries above the highway bridge on Route 1 - Class A.

**9. York County.** Those waters draining directly or indirectly into tidal waters of York County, with the exception of the Saco River Basin, the Salmon Falls River Basin and the Mousam River Basin.

A. All coastal streams above tidewater between Roaring Rock Point (York) and the head of tide on Branch River (Wells), except as otherwise specified or classified - Class C.

B. All coastal streams and their tributaries not otherwise specified between Walker Point (Kennebunkport) and Fletchers Neck in Biddeford - Class C.

C. Biddeford.

- (1) Moors Brook and its tributaries - Class C.
- (2) West Brook and its tributaries - Class C.

D. Saco.

- (1) Goosefare Brook from its origin to head of tide - Class C.
- (2) Milliken Brook - Class C.

**38 § 469. Classifications of estuarine and marine waters**

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

**1. Cumberland County.**

A. Cape Elizabeth.

- (1) Tidal waters lying westerly of a line beginning at Portland Head Light and running northerly to the southernmost point of land on Cushing Island - Class SC.

B. Cumberland.

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

C. Falmouth.

- (1) Tidal waters located within a line beginning at a point located on the shore at latitude 43° - 42' - 03" N., longitude 70° - 15' - 22" W. and running southwesterly along the Falmouth-Portland boundary to the shore of Mackworth Island; thence running northerly along the western shore of Mackworth Island and the Mackworth Island Causeway to a point located at latitude 43° - 41' - 42" N., longitude 70° - 14' - 25" W.; thence running along the shore of the Presumpscot River Estuary to point of beginning - Class SC.

D. Harpswell.

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

E. Portland.

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

- (2) Tidal waters lying northwesterly of a line beginning at Portland Head Light and running northerly to the southernmost point of land on Cushing Island; thence running northerly along the western shore of Cushing Island to the northernmost point of land on Cushing Island; thence running northerly to the southernmost point of land on Peaks Island; thence running northerly along the western shore of Peaks Island to a point located at latitude 43° - 40' - 10" N., longitude 70° - 11' - 34" W.; thence running northwesterly to the southernmost point of land on Great Diamond Island; thence running northwesterly along the

westerly shore of Great Diamond Island to a point located at latitude 43° - 40'-36" W., longitude 70° - 11' - 34" W.; thence running northwesterly for 0.7 mile to a point where the Falmouth-Portland boundary forms a right angle; thence running northwesterly along the Falmouth-Portland boundary to a point located at latitude 43° - 42'-03" N., longitude 70° - 15'-22" W. - Class SC.

F. South Portland.

(1) All tidal waters - Class SC.

G. Yarmouth.

(1) Tidal waters of the Royal River and its tidal tributaries lying westerly of longitude 70° - 09'-00" W. - Class SC.

2. Hancock County.

A. Bar Harbor.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 16'-36" N., southerly of latitude 44° - 20'-27" N., and westerly of longitude 68° - 09'-28" W. - Class SA.

B. Bucksport.

(1) All tidal waters - Class SC.

C. Cranberry Isles.

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

D. Mount Desert.

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

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W. and lying southerly of a line beginning at a point located at latitude 44° - 19'-37" N., longitude 68° - 18'-52" W. and running northeasterly to a point located at latitude 44° - 19'-45" N., longitude 68° - 18'-23" W. - Class SA.

E. Orland.

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

F. Southwest Harbor.

(1) Tidal waters lying northerly of latitude 44° - 12'-44" N., southerly of latitude 44° - 14'-13" N. and westerly of longitude 68° - 18'-27" W. - Class SA.

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

G. Tremont.

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

H. Verona.

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

**3. Knox County.**

**A. Isle Au Haut.**

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

**B. Owls Head.**

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

**C. Rockland.**

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

**4. Penobscot County.**

**A. Hampden.**

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

**B. Orrington.**

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

**5. Sagadahoc County.**

**A. Georgetown.**

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

**6. Waldo County.**

**A. Frankfort.**

(1) All tidal waters - Class SC.

**B. Prospect.**

(1) All tidal waters - Class SC.

**C. Searsport.**

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

**D. Stockton Springs.**

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

E. Winterport.

- (1) All tidal waters - Class SC.

**7. Washington County.**

A. Calais.

- (1) Tidal waters of the St. Croix River and its tidal tributaries lying westerly of longitude 67° - 09'-48" W. - Class SC.

B. Eastport.

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

C. Lubec.

- (1) Tidal waters, except those lying within 500 feet of West Quoddy Head Light, located within a line beginning at a point located on the northern shore of West Quoddy Head at latitude 44° - 49'-08" N., longitude 66° - 57'-30" W. and running due north to the international boundary; thence running southeasterly and southwesterly along the international boundary to latitude 44° - 47'-00" N.; thence running due west to longitude 66° - 58'-45" W.; thence running due north to a point located in Carrying Place Cove at latitude 44° - 48'-36", longitude 66° - 58'-45" W.; thence running along the shore of West Quoddy Head to point of beginning - Class SA.

D. Trescott.

- (1) Tidal waters located within a line beginning on the shore at latitude 44° - 45'-02" N., longitude 67° - 04'-16" W., and running due east to longitude 67° - 03'-00" W.; thence running due south to latitude 44° - 43'-30" N.; thence running due west to longitude 67° - 05'-14" W.; thence running due north to a point located on the shore at latitude 44° - 44'-28" N., longitude 67° - 05'-14" W.; thence running along the shore of Eastern Head to point of beginning - Class SA.

**8. York County.**

A. Biddeford.

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

B. Kennebunk.

- (1) Tidal waters of the Kennebunk River and its tidal tributaries lying northerly of latitude 43° - 20'-50" N. - Class SC.

C. Kennebunkport.

- (1) Tidal waters of the Kennebunk River and its tidal tributaries lying northerly of latitude 43° - 20'-50" N. - Class SC.

D. Kittery.

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

E. Old Orchard Beach.

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

F. Saco.

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

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

**38 § 470. Classification of ground water**

All ground water shall be classified as not less than Class GW-A, except as otherwise provided in this section. The board may recommend to the Legislature the reclassification of any ground water, after careful consideration, public hearings and in consultation with other state agencies and the municipalities and industries involved, and where the board finds that it is in the best interests of the public that the waters be so classified.

(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)  
  
(SUBCHAPTER 1)  
(ENVIRONMENTAL PROTECTION BOARD)  
  
(Article 5-A)  
(PROTECTION OF NATURAL RESOURCES)

**38 § 480-A. Findings; purpose**

The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State.

The Legislature further finds and declares that there is a need to facilitate research, develop management programs and establish sound environmental standards that will prevent the degradation of and encourage the enhancement of these resources. It is the intention of the Legislature that existing programs related to Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and sand dunes systems continue and that the Department of Environmental Protection provide coordination and vigorous leadership to develop programs to achieve the purposes of this article. The well-being of the citizens of this State requires the development and maintenance of an efficient system of administering this article to minimize delays and difficulties in evaluating alterations of these resource areas.

The Legislature further finds and declares that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.

**38 § 480-B. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. **Coastal sand dune systems.** "Coastal sand dune systems" means sand deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand areas deposited by wave or wind action. Coastal sand dunes may extend into the coastal wetlands.

2. **Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands, including all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

3. **Fragile mountain areas.** "Fragile mountain areas" means areas above 2,700 feet in elevation from mean sea level.

4. **Freshwater wetlands.** "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas which are:

A. Of 10 or more contiguous acres, or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres

B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils

C. Not considered part of a great pond, coastal wetland, river, stream or brook.



These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

**5. Great ponds.** "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres.

**6. Normal high water line.** "Normal high water line" means that line along the shore of a great pond, river, stream, brook or other nontidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of great ponds, all land below the normal high water line shall be considered the bottom of the great pond for the purposes of this article.

**7. Permanent structure.** "Permanent structure" means any structure constructed or erected with a fixed location, or attached to a structure with a fixed location, on or in the ground within a fragile mountain area, or having a fixed location in, on or over the water for a period exceeding 7 months each year, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

**8. Protected natural resource.** "Protected natural resource" means coastal sand dune system, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds or rivers, streams or brooks, as these terms are defined in this article.

**9. River, stream or brook.** "River, stream or brook" means a channel between defined banks including the floodway and associated flood plain wetlands where the channel is created by the action of the surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of top soil containing water-borne deposits on exposed soil, parent material or bedrock.

**10. Significant wildlife habitat.** "Significant wildlife habitat" means the following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife: Habitat for species appearing on the official state or federal lists of endangered or threatened species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife.

#### **38 § 480-C. Prohibitions**

**1. Prohibition.** No person may perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the Board of Environmental Protection or in violation of the conditions of a permit, if these activities:

- A. Are in, on or over any protected natural resource; or
- B. Are on land adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operate in such a manner that material or soil may be washed into them.

**2. Activities requiring a permit.** The following activities require a permit:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials
- B. Draining or otherwise dewatering
- C. Filling, including adding sand or other material to a sand dune
- D. Any construction, repair or alteration of any permanent structure.

**3. Application.** This section applies to all protected natural resources statewide without regard to whether they have been mapped pursuant to section 480-I, except that significant wildlife habitat must be mapped before this section applies.

### 38 § 480-D. Standards

The Board of Environmental Protection shall grant a permit upon proper application and upon such terms as it deems necessary to fulfill the purposes of this article. The board shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the following standards.

**1. Existing uses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

**2. Soil erosion.** The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

**3. Harm to habitats; fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, aquatic habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the board may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

A. Avoiding an impact altogether by not taking a certain action or parts of an action

B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity

C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment

D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project

E. Compensating for an impact by replacing the affected significant wildlife habitat.

**4. Interfere with natural water flow.** The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

**5. Lower water quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.

**6. Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

**7. Sand supply.** If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

**8. Outstanding river segments.** If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

### 38 § 480-E. Permits; grants; denials; suspensions

The department shall process all permits under this article in accordance with chapter 2.

The board shall not issue a permit without notifying the municipality in which the proposed activity is to occur and considering any comments filed by the municipality within a reasonable period as established by the board.

If the resource subject to alteration or the underlying ground water is utilized by a water company, municipality or water district as a source of supply, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the water company, municipality or water district by certified mail and the board shall consider any comments filed within a reasonable period, as established by the board.

When winter conditions prevent the board or municipality from evaluating a permit application, the board or municipality, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. The applicant shall not during the period of deferral alter the resource area in question.

**38 § 480-F. Delegation of permit-granting authority to municipality; home rule**

**1. Delegation.** All permits shall be issued by the Board of Environmental Protection, subject to delegation to the commissioner as provided by law, except that a municipality may apply to the board for authority to issue such permits. The board shall grant such authority if it finds that the municipality has:

- A. Established a planning board
- B. Adopted a comprehensive plan and related land use ordinances consistent with the criteria set forth in Title 30, subchapter VI
- C. The financial, technical and legal resources to adequately review and analyze permit applications and oversee and enforce permit requirements
- D. Made provision by ordinance or rule for prompt notice to the board and the public upon receipt of application and written notification to the applicant and the board of the issuance or denial of a permit stating the reasons for issuance or denial
- E. Provided that the application form is the same as that provided by the Board of Environmental Protection.

**2. Procedure.** No permit issued by a municipality may become effective until 30 days subsequent to its receipt by the board, but, if approved by the board in less than 30 days, the effective date shall be the date of approval. A copy of the application for the permit and the permit issued by the municipality shall be sent to the board immediately upon its issuance by registered mail. The board shall review that permit and either approve, deny or modify it as the board deems necessary. If the board does not act within 30 days of its receipt of the permit by the municipality, this shall constitute its approval and the permit shall be effective as issued, except that within this 30-day period the board may extend the time for its review an additional 30 days.

**3. Home rule.** Nothing in this article may be understood or interpreted to limit the home rule authority of a municipality to protect the natural resources of the municipality through enactment of standards that are more stringent than those found in this article.

**4. Joint enforcement.** Any person who violates any permit issued under this section is subject to the provisions of section 349 in addition to any penalties which the municipality may impose. The provisions of this section may be enforced by the department and the municipality which issued the permit.

**38 § 480-G. Periodic review of delegated authority**

If the board finds that a municipality has failed to satisfy one or more of the criteria listed in section 480-F, the board shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If, at any time, the board determines that a municipality may be failing to exercise its permit-granting authority in accordance with its approval procedures or the purposes of this article, the board shall notify the municipality of the specific alleged deficiencies and shall order a public hearing of which adequate public notice shall be given to be held in the municipality to solicit public or official comment on the alleged deficiencies. Following the hearing, if the board finds such deficiencies, the board shall revoke the municipality's permit-granting authority. The municipality may reapply for authority at any time.

**38 § 480-H. Rules; performance and use standards**

In fulfilling its responsibilities to adopt rules pursuant to section 343-A, the board shall, to the extent practicable, adopt performance and use standards for activities regulated by this article.

**38 § 480-I. Identification of freshwater wetlands and fragile mountain areas**

1. **Identification by maps.** The department shall map areas meeting the definition of freshwater wetlands and fragile mountain areas set forth in this article and shall periodically review and revise the maps identifying these areas. Maps of significant wildlife habitats shall be adopted by rule pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to the extent that those habitats are identified by the Department of Inland Fisheries and Wildlife.

2. **Procedures.** The maps and subsequent amendments identifying freshwater wetlands, significant wildlife habitat and fragile mountain areas shall be subject to the following procedures.

A. Preliminary maps of the affected area or amendments of a map shall be sent to the municipal officers or their designees.

B. Upon receipt of the proposed maps, the municipal officers of each municipality shall take any action they deem appropriate to increase public participation in this identification and delineation, but shall return their comments to the department within a 90-day period.

**38 § 480-J. Maps**

Maps delineating the boundaries of freshwater wetlands, significant wildlife habitat and fragile mountain areas that meet the criteria of this article shall be available at the offices of the municipality and of the regional council in which the resources are located.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)

(SUBCHAPTER I)  
(ENVIRONMENTAL PROTECTION BOARD)

(Article 5-A)  
(PROTECTION OF NATURAL RESOURCES)

**38 § 480-K. Data bank**

The Department of Environmental Protection shall maintain, in cooperation with other state agencies, a data bank containing all the known information pertaining to all resources of state significance, as enumerated in this article, within the State. All governmental agencies, state or federal, shall make available to the department such information in their possession relating to these resources.

**38 § 480-L. Research**

The Department of Environmental Protection, in cooperation with other state agencies, is authorized to conduct research and studies to determine how the resource values of resources of state significance can be restored and enhanced.

**38 § 480-M. Funds**

The Department of Environmental Protection is the public agency of the State authorized to accept funds, public and private, for the purposes of this article.

**38 § 480-N. Lake Restoration and Protection Fund**

1. **Fund purposes and administration.** There is established a nonlapsing Lake Restoration and Protection Fund, from which the department may pay up to 50% of the eligible costs incurred in a lake restoration or protection project, except that projects addressing technical assistance, public education or research issues may be paid up to 100%. Eligible costs include all costs except those related to land acquisition, legal fees and debt service. All money credited to that fund shall be used by the department for projects to improve or maintain the quality of lake waters in the State and for no other purpose. The Commissioner of Environmental Protection may authorize the State Controller to draw a warrant for such funds as may be necessary to pay the lawful expenses of the lake restoration or protection project, up to the limits of the money duly authorized. Any balance remaining in the fund shall continue without lapse from year to year and remain available for the purpose for which the fund is established and for no other purpose.

2. **Money.** Money in the Lake Restoration and Protection Fund may not be used for projects in or on lakes for which public access is not provided.

3. **Intensive staffing program.** The department shall establish an intensive staffing program which shall provide adequate staffing at both the state and regional levels. The department shall provide technical information and guidance and the regional agencies shall assist with the adoption of revised comprehensive plans, standards and local ordinances by local governments.

4. **Public education program.** The department shall develop a coordinated public education program which shall target school children and involve extensive use of the media.

5. **Research.** The department shall encourage internal research focused on the following statewide topics:

- A. Lake vulnerability, particularly as it relates to noncultural features of the watershed
- B. The effectiveness and design of the best management practices to control phosphorous pollution
- C. New lake and watershed diagnostic tools.

**38 § 480-P. Special protection for outstanding river segments**

In accordance with Title 12, section 402, outstanding river segments shall include

1. **Aroostook River.** The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S., including its tributaries the Big Machias River from the Aroostook River to the Ashland and Garfield Plantation town line and the St. Croix Stream from the Aroostook River in Masardis to the Masardis and T.9, R.5, W.E.L.S. town line
2. **Carrabassett River.** The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line
3. **Crooked River.** The Crooked River, including the Songo River, from its inlet into Sebago Lake in Casco to the Waterford and Albany Township town lines
4. **Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation
5. **East Machias River.** The East Machias River, including the Maine River, from the old powerhouse in East Machias to the East Machias and T.18, E.D., B.P.P. town line, from the T. 19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond
6. **Fish River.** The Fish River from the bridge in Fort Kent Mills to the Fort Kent and Wallgrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake
7. **Kennebago River.** The Kennebago River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line
8. **Kennebec River.** The Kennebec River from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake
9. **Machias River.** The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line, including its tributaries the Old Stream from the Machias River to the northern most crossing of the Wesley and T.31, M.D., B.P.P. town line, excluding the segments in T.25, M.D., B.P.P. and T.31, M.D., B.P.P.
10. **Mattawamkeag River.** The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line and from the Reed Plantation and Bancroft town line to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville and T.3, R.3, W.E.L.S. town line and from its inlet into Upper Mattawamkeag Lake in Island Falls to the Hersey and Moro Plantation town line; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township town line and from the T.4, R.3, W.E.L.S. and Oakfield town line to the Smyrna and Dudley Township town line; the Fish Stream from the West Branch of the Mattawamkeag River to the Crystal and Patten town line; the Molunkus Stream from the Silver Ridge Township and Benedicta town line to the East Branch Molunkus Stream; the Macwahoc Stream from the Silver Ridge Township and Sherman town line to the outlet of Macwahoc Lake; and the Baskehegan Stream from the Mattawamkeag River to the Danforth and Brookton Township town line, and from the Brookton Township and Topsfield town line to the Topsfield and Kossuth Township town line, excluding Baskehegan Lake and Crooked Brook Flowage
11. **Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town line, excluding Beddington Lake
12. **Penobscot River.** The Penobscot River from the Bangor Dam in Bangor to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line

13. **Piscataquis River.** The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line, including its tributaries the East and West Branches of the Piscataquis River from the Blanchard Plantation and Shirley town line to the Shirley and Little Squaw Township town line; the Seboeis Stream from its confluence with the Piscataquis River in Howland to the Howland and Mattamiscontis Township town line and from the Mattamiscontis and Maxfield town line to the Maxfield and Seboeis Plantation town line, excluding Shirley Pond and West Shirley Bog

14. **Pleasant River.** The Pleasant River from the dam in Columbia Falls, formerly the Hathaway Dam, to the Columbia and T.18, M.D., B.P.P. town line and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake in Beddington

15. **Rapid River.** The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River

16. **Saco River.** The Saco River from the Little Ossipee River to the New Hampshire border

17. **St. Croix River.** The St. Croix River from the cotton mill dam in Milltown to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage

18. **St. George River.** The St. George River from the Route 90 bridge in Warren to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond

19. **St. John River.** The St. John River from the Hamlin Plantation and Van Buren town line to the Fort Kent and St. John Plantation town line and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line

20. **Sandy River.** The Sandy River from the Kennebec River to the Madrid and Township E town line

21. **Sheepscot River.** The Sheepscot River from the Head Tide Dam in Alna to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot River from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China

22. **West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township town line

23. **West Branch Union River.** The West Branch Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

**38 § 480-Q. Activities for which a permit is not required (CONFLICT)**

A permit is not required for the following activities if the activity takes place solely in the area specified below

1. **Water lines and utility cables.** In an area which affects a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, provided that the:

A. Excavated trench for access to the water is backfilled and riprapped to prevent erosion

B. Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion

C. Bureau of Public Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction

2. **Maintenance and repair.** Maintenance and minor repair of structures in fragile mountain areas, or to structures above the high water line causing no additional intrusion of an existing structure into the great pond, river, stream or brook, wetland or sand dune; and maintenance and repair of private crossings of a river, stream or brook, provided that:

A. Erosion control measures are taken to prevent sedimentation of the water

- B. The crossing does not block fish passage in the water course
  - C. There is no additional intrusion into the river, stream or brook.
3. **Peat mining.** Alteration of a freshwater wetland for the purpose of exploring for or mining peat, subject to article 6, where applicable
  4. **Interstate pipelines.** Alteration of freshwater wetlands associated with the construction, operation, maintenance or repair of an interstate pipeline, subject to article 6, where applicable
  5. **Gold panning.** Notwithstanding section 480-C, a permit shall not be required for panning gold, provided that stream banks are not disturbed and no unlicensed discharge is created
  6. **Agricultural activities.** Draining a freshwater wetland for the purpose of growing agricultural products is exempt from the provisions of this article. This exemption applies only as long as the land is being used for growing agricultural products
  7. **Forestry.** Alteration associated with normal forestry management and harvesting activities in or adjacent to a freshwater wetland is exempt from the provisions of this article. The determination of what constitutes normal forestry management and harvesting activities shall be made by the Maine Land Use Regulation Commission regardless of whether the freshwater wetland is located within the jurisdiction of the commission and according to standards adopted by the commission. For purposes of this subsection, "normal forestry management and harvesting activities" means those activities which meet the forestry standards of the Maine Land Use Regulation Commission
  8. **Hydropower projects.** Hydropower projects are exempt from the provisions of this article to the extent provided in section 634. Alteration of a freshwater wetland associated with the operation of a hydropower project, as defined in section 632, is exempt from the provisions of this article, but is subject to chapter 5, subchapter I, article 1, subarticle 1-B, where applicable
  9. **Public works.** A permit is not required for emergency repair or normal maintenance and repair of existing public works which affect any protected natural resource. An activity which is exempt under this subsection shall employ erosion control measures to prevent sedimentation of any surface water, shall not block fish passage in any water course and shall not result in any additional intrusion of the public works into the protected natural resource. This exemption does not apply to any activity on an outstanding river segment as listed in section 480-P
  10. (CONFLICT: Text as enacted by PL 1989, c. 306, @3) **Aquaculture.** Aquaculture activities regulated by the Department of Marine Resources under Title 12, section 6072. Ancillary activities, including, but not limited to, building or altering docks or filling of wetlands, are not exempt from the provisions of this article.
  10. (CONFLICT: Text as enacted by PL 1989, c. 430, @9) **Soil evaluation.** Borings taken to evaluate soil conditions in or adjacent to a great pond, river, stream or brook, coastal wetland, freshwater wetland or sand dune are exempt from the provisions of this article provided that no area of wetland vegetation is destroyed or permanently removed.

**38 § 480-R. Violations; enforcement**

1. **Violations.** A violation is any activity which takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity. Each day of a violation shall be considered a separate offense. A finding that any such violation has occurred shall be prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred.
2. **Enforcement.** In addition to the Department of Environmental Protection, inland fisheries and wildlife game wardens, Department of Marine Resources marine patrol officers and all other law enforcement officers enumerated in Title 12, section 7055, shall enforce the terms of this article.

**38 § 480-S. Fee for significant wildlife habitat review**

The department shall establish procedures to charge applicants for costs incurred in reviewing license and permit applications regarding significant wildlife habitats in the same manner as provided for other fees in section 352. The maximum fees are \$150 for processing and \$50 for a license. All fees shall be credited to the Maine Environmental Protection Fund established in section 351.



(TITLE 38)(WATERS AND NAVIGATION)  
(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)  
(SUBCHAPTER I)  
(ENVIRONMENTAL PROTECTION BOARD)  
(Article 6)  
(SITE LOCATION OF DEVELOPMENT)

**38 § 481. Findings and purpose**

The Legislature finds that the economic and social well-being of the citizens of the State of Maine depends upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment on the development sites and in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect the environment and quality of life in Maine.

The Legislature further finds that certain geological formations particularly sand and gravel deposits, contain large amounts of high quality ground water. The ground water in these formations is an important public and private resource, for drinking water supplies and other industrial, commercial and agricultural uses. The ground water in these formations is particularly susceptible to injury from pollutants, and once polluted, may not recover for hundreds of years. It is the intent of the Legislature, that activities that discharge or may discharge pollutants to ground water may not be located on these formations.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Board of Environmental Protection, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment within the development sites and of their surroundings and protect the health, safety and general welfare of the people.

The Legislature further finds that noise generated at development sites has primarily a geographically restricted and frequently transient impact which is best regulated at the municipal level pursuant to a municipality's economic development and land use plans. It is the intent of the Legislature that regulation of noise from developments is primarily the responsibility of local municipal governments. It is further the intent of the Legislature that any action by the board regulating the effects of noise taken after July 1, 1986, which is inconsistent with section 482-A, shall be reconsidered and amended only on the issue of noise upon the petition of an applicant or intervenor to the permitting action within 180 days of the effective date of rules adopted pursuant to section 482-A.

**38 § 482. Definitions**

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. **Board.** "Board" means the Board of Environmental Protection.
2. **Development which may substantially affect the environment.** "Development which may substantially affect the environment," in this article called "development," means any state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development which:
  - A. Occupies a land or water area in excess of 20 acres
  - B. Contemplates drilling for or excavating natural resources on land or under water where the area affected is in excess of 60,000 square feet
  - C. Is a mining activity as defined in this section

- D. Is a hazardous activity as defined in this section
- E. Is a structure as defined in this section
- F. Is a conversion of an existing structure that meets the definition of structure in this section section
- H. Is a multi-unit housing development as defined in this section located wholly or in part within the shoreland zone.

This term does not include state highways, state aid highways and borrow pits for sand, fill or gravel of less than 5 acres or when regulated by the Department of Transportation, and such borrow pits entirely within the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, and those activities regulated by the Department of Marine Resources under Title 12, section 6072.

**2-A. Exploration.** "Exploration" means an activity solely intended to determine the existence, quality and quantity of product provided less than 1,000 cubic yards of product is extracted or removed within 12 successive months.

**2-B. Mining activity.** "Mining activity" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of more than 1,000 cubic yards of product or overburden from the earth within 12 successive calendar months; any activity or process that for the extraction or removal of the product or overburden; and the preparation, washing, cleaning or other treatment of that product so as to make it suitable for commercial, industrial or construction use, but shall not include excavation or grading preliminary to a construction project.

**2-C. Hazardous activity.** "Hazardous activity" means any activity that consumes, generates or handles any of the following:

- A. Hazardous wastes, as defined in section 1303
- B. Hazardous matter, as defined in section 1317
- C. Oil, as defined in section 542.
- D. 1985, c. 479, § 5 (rp).

"Hazardous activity" also includes any low-level radioactive waste storage or disposal facility, as defined in section 1451.

This definition shall not include an expansion of an existing development unless that expansion by itself would be a hazardous activity.

The board shall identify by regulation activities that are exempt from this definition, including domestic and other uses of substances in quantities too small to present a significant risk of ground water contamination.

**2-D. Multi-unit housing.** "Multi-unit housing" means any building or buildings built for the purposes of providing 10 or more housing units located on a single parcel of land. b! 1987, c. 812, @@3, 18 (new). ?b

**2-E. Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time except during periods of maximum storm activity. Coastal wetlands may include portions of coastal sand dunes.

**2-F. Freshwater wetlands.** "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas which are:

- A. Of 10 or more contiguous acres
- B. Characterized predominately by wetland vegetation; and
- C. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small inclusions of land that do not conform to the criteria of this subsection.

**3. Natural environment of a locality.** "Natural environment of a locality" includes the character, quality and uses of land, air and waters in the development site or the area likely to be affected by such development, and the degree to which such land, air and waters are free from nonnaturally occurring contamination.

**3-A. Overburden.** "Overburden" means earth and other materials naturally lying over the product to be mined.

**3-B. Normal high-water line.** "Normal high-water line" means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

**4. Person.** "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, educational or charitable organization or institution or other legal entity.

**4-A. Product.** "Product" means clay, peat, stone minerals, ores, topsoils or other solid matter.

**4-B. Reclamation.** "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the board, including, but not limited to, the creation of lakes or ponds, where practicable, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits, shafts and underground workings with solid materials.

**4-C. Primary sand and gravel recharge areas.** "Primary sand and gravel recharge area" means the surface area directly overlying sand and gravel formations that provide direct replenishment of ground water in sand and gravel and fractured bedrock aquifers. The term does not include areas overlying formations that have been identified as unsaturated and are not contiguous with saturated formations.

**4-D. Significant ground water aquifer.** "Significant ground water aquifer" means a porous formation of ice-contact and glacial outwash sand and gravel or fractured bedrock that contains significant recoverable quantities of water which is likely to provide drinking water supplies.

**4-E. River.** "River" means a free-flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

**4-F. Shoreland zone.** "Shoreland zone" means all area within 250 feet of the normal high-water line of any great pond, river or salt water body, or within 250 feet of the upland edge of a freshwater or coastal wetland.

**5. Subdivision.** A "subdivision" is the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period if the lots to be offered, together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be so offered make up an aggregate land area of more than 20 acres except for the following:

A. All the lots are at least 10 acres in size and the aggregate land area of all the lots make up a total of 100 acres or less, unless the subdivision is located wholly or in part in the shoreland zone, in which case the exemption does not apply

B. (CONFLICT: Text as amended by PL 1987, c. 812, @@7,16) When:

(1) All lots are at least 5 acres in size;

(2) All lots less than 10 acres in size are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet which abuts at one point the principal access way or the lots have at least 75 feet of frontage of a cul-de-sac which provides access;

(3) The aggregate land area of all the lots makes up a total of 100 acres or less;

(4) The subdivision is not located wholly or in part in the shoreland zone;

(5) The municipality in which the subdivision is located has adopted a subdivision ordinance, or its municipal reviewing authority has adopted subdivision regulations, pursuant to Title 30, section 4956

B. (CONFLICT: Text as amended by PL 1987, c. 737, Pt. C, @@90, 106) All the lots are at least 5 acres, and the municipality has adopted additional regulations governing subdivisions pursuant to Title 30-A, section 4551, and the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access

C. Lots of 40 or more acres but not more than 500 acres shall not be counted as lots except where:

(1) The proposed subdivision is located wholly or partly within the shoreland area as defined in Title 38, section 435

C-1. Lots of more than 500 acres in size shall not be counted as lots

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a lot and actually uses the lot for that purpose during that period, that lot shall not be counted as a lot

E. Unless intended to circumvent this article, the following transactions shall not be considered lots offered for sale or lease to the general public:

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer; or

(2) Personal, nonprofit transactions, such as the transfer of lots by gift or devise

F. In those subdivisions which would otherwise not require site location approval, unless intended to circumvent this article, the following transactions shall not, except as provided, be considered lots offered for sale or lease to the general public:

(1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, provided that the Department of Environmental Protection is made a party.

The exception described in paragraph F does not apply, and the subdivision requires site location approval whenever the use of a lot described in paragraph F changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph F. For the purposes of this subsection only, a parcel of land is defined as all contiguous land in the same ownership provided that lands located on opposite sides of a public or private road shall be considered each a separate parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970.

6. **Structure.** A "structure" shall mean:

A. A building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or attached to something on or in the ground which occupies a ground area in excess of 60,000 square feet or contains a total floor area of 100,000 square feet or more

B. Parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated which causes a total project, including any buildings to occupy a ground area in excess of 3 acres.

#### 38 § 482-A. Noise effect

The effect of noise from a development may be regulated pursuant to section 484, subsection 3.

1. **Amended rules; adoption.** On or before December 31, 1987, the Department of Environmental Protection shall adopt amended rules for the control of noise generated by developments. These rules shall:

A. Reflect consideration of local zoning with regard to both the zone in which the development is located and the proximity of the development to residential areas

B. Employ a consistent methodology to assess background and intrusive noise effects of developments of a similar nature;

C. Provide that the board may limit the hours of operation of the development to minimize the impact on surrounding uses; and

D. Contain an appropriate list of activities which, although connected with a development, are wholly or partially exempt from review by the board.

**2. Consideration of local ordinance.** In determining whether a developer has made adequate provision for the control of noise generated by a development, the board shall consider its own regulations and the quantifiable noise standards of the municipality in which the development is located and of any municipality which may be affected by the noise.

**3. Prohibition.** Nothing in this section may be construed to prohibit any municipality from adopting noise regulations stricter than those adopted by the Department of Environmental Protection.

**38 § 483-A. Prohibition**

No person may construct or cause to be constructed or operate or cause to be operated or, in the case of a subdivision, sell or lease, offer for sale or lease or cause to be sold or leased, any development requiring approval under this article without first having obtained approval for such construction, operation, lease or sale from the Board of Environmental Protection.

**38 § 484. Standards for development**

The board shall approve a development proposal whenever it finds that

**1. Financial capacity.** The developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this article.

**2. Traffic movement.** The developer has made adequate provision for traffic movement of all types into, out of or within the development area. The board shall consider traffic movement both on-site and off-site. Before issuing a permit, the board shall determine that any traffic increase attributable to the proposed development will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed development

**3. No adverse effect on the natural environment.** The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

**4. Soil types and erosion.** The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.

**5. Ground water.** The proposed development will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur.

**6. Infrastructure.** The developer has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal, roadways and open space required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities, roadways and open space in the municipality or area served by those services or open space. In assessing the impact on open space, the board shall use as a standard that which is set forth in the municipality's comprehensive land use plan, when such a plan exists.

**7. Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

**8. Sand supply.** If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand within or to the sand dune system.

**38 § 485. Failure to notify board; hearing; injunctions; orders**

The board may at any time with respect to any person who has commenced construction or operation of any development without having first notified the board pursuant to section 483, schedule and conduct a public hearing with respect to such development.

**38 § 485-A. Notification required; board action;  
administrative appeals**

1. **Application.** Any person intending to construct or operate a development shall, before commencing construction or operation, notify the department in writing of the intent, nature and location of the development, together with such other information as the board may by rule require. The board or the commissioner shall either approve the proposed development, setting forth such terms and conditions as are appropriate and reasonable, or disapprove the proposed development, setting forth the reasons for the disapproval or scheduling a hearing in the manner described in subsection 2.

2. **Hearing request.** If the board has issued an order without a hearing regarding any person's development, that person may request, in writing, a hearing before the board within 30 days after notice of the board's decision. This request shall set forth, in detail, the findings and conclusions of the board to which that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the board shall schedule and hold a hearing limited to the matters set forth in the request. Hearings shall be scheduled in accordance with section 486-A.

3. **Failure to notify board.** The board may, at any time with respect to any person who has commenced construction or operation of any development without having first notified the board pursuant to this section, schedule and conduct a public hearing with respect to that development.

**38 § 486-A. Hearings; orders; construction suspended**

1. **Hearings.** If the board determines to hold a hearing on a notification submitted to it pursuant to section 485-A, it shall hold the hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

At that hearing, the board shall solicit and receive testimony to determine whether that development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare. The board shall permit the applicant to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources.

2. **Developer; burden of proof.** At the hearings held under this section, the burden is upon the person proposing the development to demonstrate affirmatively to the board that each of the criteria for approval listed in this article has been met, and that the public's health, safety and general welfare will be adequately protected.

3. **Findings of fact; order.** Within 30 days after the board adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing the development to construct or operate the development, as proposed, or granting that permission upon such terms and conditions as the board deems advisable to protect and preserve the environment and the public's health, safety and general welfare, except in the case of any low-level radioactive waste storage or disposal facility, in which case the board shall act in accordance with section 1478.

4. **No construction pending order.** Any person who has notified the board, pursuant to section 485-A, of intent to construct or operate a development shall immediately defer or suspend construction or operation of that development until the board has issued its order.

5. **Continuing compliance; air and water pollution.** Any person securing approval of the board, pursuant to this article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until that person has complied with those standards.

6. **Transcripts.** A complete verbatim transcript shall be made of all hearings held pursuant to this section.

**38 § 487-A. Hazardous activities; transmission lines**

1. **Preliminary notice required for hazardous activities.** Preliminary notice concerning the construction or operation of a development which is a hazardous activity shall be given as follows.

A. Any person intending to construct or operate a development which is a hazardous activity shall file a preliminary notice of intent with the department and the municipal officers of any municipality affected. The preliminary notice shall contain a brief description of:

- (1) The nature of the proposed development; and
- (2) The location of the proposed development.

Any person intending to construct or operate any other development may file this preliminary notice.

B. The department shall determine whether the proposed development is likely to discharge pollutants to a significant ground water aquifer and whether the proposed location of the development is on a primary sand and gravel recharge area. The department shall make this determination and notify the applicant within 15 days of the receipt of the preliminary notification. If both of these determinations are affirmative, or if requested by the municipal officers of any affected municipality, the applicant must then provide, as part of the notice under section 485-A, detailed information on:

- (1) The nature and extent of the significant ground water aquifer, including recharge areas and flow paths;
- (2) The quality and quantity of the significant ground water aquifer;
- (3) Existing and potential uses of the aquifer;
- (4) The nature and quantity of potentially hazardous materials to be handled; and
- (5) The nature and quantity of pollutants to be discharged.

C. An applicant who proposes a development which is a hazardous activity shall not be required to file the notice under section 485-A if both determinations in paragraph B are negative and the applicant is not otherwise required to proceed by this subchapter.

**2. Power generating facilities.** In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 100 kilovolts, or more, proposed to be erected within this State by an electric utility or utilities, the proposed development, in addition to meeting the requirements of section 484, subsections 1 to 9, shall also have been approved by the Public Utilities Commission under Title 35-A, section 3132.

In the event that an electric utility or utilities file a notification pursuant to section 485-A before they are issued a certificate of public convenience and necessity by the Public Utilities Commission, they shall file a bond or, in lieu of that bond, satisfactory evidence of financial capacity to make that reimbursement with the department, payable to the department, in a sum satisfactory to the Commissioner of Environmental Protection and in an amount not to exceed \$50,000. This bond or evidence of financial capacity shall be conditioned to require the applicant to reimburse the department for its cost incurred in processing any application in the event that the applicant does not receive a certificate of public convenience and necessity.

**3. Easement required; transmission line or gas pipeline.** In the case of a gas pipeline or a transmission line carrying 100 kilovolts or more, a permit under this chapter may be obtained prior to any acquisition of lands or easements to be acquired by purchase. The permit shall be obtained prior to any acquisition of land by eminent domain.

**4. Notice to landowners; transmission line or gas pipeline.** Any person making application for site location of development approval pursuant to sections 481 to 483, for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to this article, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or transmission line. Notice shall be sent by registered mail, postage prepaid, to the landowner's last known address contained in the applicable tax assessor's records. The applicant shall file a map with the town clerk of each municipality through which the pipeline or transmission line is proposed to be located, indicating the intended approximate location of the pipeline or transmission line within the municipality. The applicant is not required to provide notice of intent to construct a gas pipeline or transmission line other than as set forth in this subsection. The board shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of section 484, subsections 1 to 9 have been met, the board, in the case of the transmission line or pipeline, shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The board may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.

### 38 § 488. Applicability

This Article shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying 100 kilovolts or more, nor shall it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.

Developments which consist only of a municipal or private road or way are exempt from the requirements of this Article as follows, except that the administering agency may require a person constructing a road to notify the agency of the location of the road within 21 days.

1. **Unorganized areas.** Within those areas of the State which are subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, such roads and ways are exempt from this Article.

2. **Organized areas.** Within all areas of the State not subject to the jurisdiction of the Maine Land Use Regulation Commission, such roads and ways are exempt provided they are located, constructed and maintained in accordance with standards adopted by the board in accordance with this section. The board shall consider road construction standards adopted by the Maine Land Use Regulation Commission in promulgating these standards.

3. **Standards, guidelines, definitions and revisions.** Standards, guidelines, definitions and any revisions adopted pursuant to this section shall be in effect until 90 days after adjournment of the next regular session of the Legislature following enactment of this subsection, unless approved by legislative resolve.

4. **Exemption.** Development which consists only of a subdivision or subdivisions located entirely within the area of the State subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, is exempt from the requirements of this article. New construction which is not a development which may substantially affect the environment at an existing manufacturing facility is exempt from review under this article provided that the additional disturbed area not to be revegetated does not exceed 30,000 square feet in any calendar year. When review under this article is required for development at an existing manufacturing facility, the applicant shall provide plans for the new development, as well as for those activities which have been undertaken pursuant to this subsection.

Development which consists only of a subdivision or subdivisions located entirely within the area of the State subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, is exempt from the requirements of this article. New construction which is not a "development which may substantially affect the environment" at an existing manufacturing facility is exempt from review under this article provided that the additional disturbed area not to be revegetated does not exceed 30,000 square feet in any calendar year. When review under this article is required for development at an existing manufacturing facility, the applicant shall provide plans for the new development as well as for those activities which have been undertaken pursuant to this section.

### 38 § 489-A. Municipal review of development

The Department of Environmental Protection may register municipalities for authority to substitute permits issued pursuant to Title 30-A, chapter 187, subchapter IV, for permits required by section 483 under the following conditions.

1. **Kinds of projects.** The following kinds of projects may be reviewed by registered municipalities pursuant to this section:

A. Residential and nonresidential subdivisions of 20 or more acres but less than 100 acres

B. Structures as described in section 482, subsection 6, paragraph A, which occupy a ground area in excess of 60,000 square feet but less than 100,000 square feet

C. Structures as described in section 482, subsection 6, paragraph A, which occupy a total floor area of 100,000 square feet or more but less than 150,000 square feet of floor area

D. Structures as described in section 482, subsection 6, paragraph B, which occupy a ground area in excess of 3 acres but less than 7 acres of nonrevegetated land.



**2. Registration.** The department shall register municipalities to grant permits for projects under subsection 1 if the municipality meets all of the following criteria:

- A. A municipal planning board or reviewing authority is established
- B. A comprehensive plan consistent with Title 30-A, chapter 187 has been adopted with standards and objectives determined by the department to be at least as stringent as this article
- C. Subdivision regulations have been adopted that are consistent with Title 30-A, chapter 187, and determined by the department to be at least as stringent as criteria set forth in section 484
- D. Site plan review regulations have been adopted with criteria which are determined by the department to be at least as stringent as section 484
- E. A professional planning staff to provide professional planning assistance and advice to the municipal reviewing authority has been retained or the municipality has otherwise arranged to provide professional planning assistance to advise the municipal reviewing authority on project review
- F. Procedures for public hearing and notification have been established including:
  - (1) Notice to the department upon receipt of an application, including a description of the project;
  - (2) Notice of issuance and denial to the applicant and department, including the reason for denial;
  - (3) Public notification of the application and any hearings; and
  - (4) Satisfactory hearing procedures
- G. Procedures for appeal by aggrieved parties of local decisions are defined
- H. A registration form, provided by the department, has been completed and submitted by the municipality, demonstrating compliance with the criteria under this subsection.

**3. Certification.** A municipality certified by the Department of Economic and Community Development under Title 30-A chapter 191, may be registered if the department finds the municipality has fulfilled the requirements of subsection 2 and applies to be registered.

**4. Suspension of registration.** If the commissioner finds that a municipality no longer meets the criteria set forth under subsection 2, the commissioner may suspend the registration and shall notify the municipality accordingly. If registration is suspended, the commissioner shall recommend actions for the municipality to come into compliance with this section.

**5. Transition.** Municipalities registered under former section 489 as it existed on October 1, 1975, shall be certified under this section for one year from the effective date of this section. Thereafter, the municipality must comply with the requirements under subsection 2.

**6. Central list of pending projects.** The department shall maintain and make available a list of projects pending municipal review under this section.

**7. Technical assistance.** The department and other state review agencies shall provide technical assistance to municipalities upon request for projects reviewed under this section.

**8. Review process.** Upon final action by the municipal reviewing authority of an application under this section:

- A. The municipality shall submit to the department within 14 days of final action by the municipal reviewing authority, one copy of the project application, one copy of the record of review and action and one copy of the notification form provided by the department
- B. The department shall review the application and, within 45 days of final action by the municipal reviewing authority, notify the municipality if the department intends to exercise jurisdiction
- C. If the department does not act within the 45-day period, this inaction constitutes approval by the department and the municipal permits shall be effective as issued as the municipal permit and board permit.

**9. State jurisdiction.** The department shall review projects for registered municipalities if:

- A. The commissioner finds that the project will have a potentially significant environmental impact, may set a precedent or could impact more than one municipality. In making this finding, the commissioner shall consider all public comments submitted to the department
- B. The local reviewing authority in which the project is located petitions the board in writing
- C. The local reviewing authority, in a municipality adjoining the municipality in which a project is located, petitions the board in writing
- D. The proposed project is located in more than one municipality.

State jurisdiction must be exerted within 45 days of final action by the municipal reviewing authority.

**10. Appeal of decision by commissioner to review.** An aggrieved party may appeal the decision by the commissioner to exert or not exert state jurisdiction over the proposed project to the board. Review and actions taken by the department or the board are subject to appeal procedures governing the department and board.

**11. Joint enforcement.** Any person who violates any permit issued under this section is subject to the provisions of section 349, in addition to any penalties which the municipality may impose. Any permits issued or conditions imposed by a local authority shall be enforced by the department and the municipality that issued the permit.

(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)  
  
(SUBCHAPTER II-A)  
(OIL DISCHARGE PREVENTION AND POLLUTION)  
(CONTROL)

**38 § 541. Findings; purpose**

The Legislature finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities.

The Legislature further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses.

The Legislature further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters and the transportation and other handling of oil in inland areas of the State are hazardous undertakings; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer, storage and other handling of such products pose threats of great danger and damage to the marine, estuarine, inland surface water and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine and inland surface water related activities; and to the beauty of the Maine coast and inland waters; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as set forth in this subchapter and that such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring and other handling of oil, petroleum products and their by-products and related activities.

The Legislature intends by the enactment of this legislation to exercise the police power of the State through the Board of Environmental Protection and the Department of Environmental Protection by conferring upon the board the power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from those occurrences may be promptly made whole; and to establish a fund to provide for the inspection and supervision of those activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

The Legislature further finds and declares that the preservation of the public uses referred to in this subchapter is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety, and that the state's interest in such preservation outweighs any burdens of absolute liability imposed by the Legislature upon those engaged in transferring or other handling of oil, petroleum products and their by-products and related activities.

\* \* \*

(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 3)  
(PROTECTION AND IMPROVEMENT OF WATERS)  
  
(SUBCHAPTER II-B)  
(UNDERGROUND OIL STORAGE FACILITIES AND)  
(GROUND WATER PROTECTION)

**38 § 561. Findings; purpose**

The Legislature finds that significant quantities of oil are being stored in underground storage facilities; that leaks and unlicensed discharges from these facilities pose a significant threat to the quality of the waters of the State, including the ground water resources; that protection of the quality of these waters is of the highest importance; and that their protection requires proper design and installation of new and replacement underground oil storage facilities, as well as monitoring, maintenance and operating procedures for existing, new and replacement facilities.

The Legislature intends by the enactment of this subchapter to exercise the police power of the State through the Board of Environmental Protection and the Department of Environmental Protection by conferring upon the board and the department the power to deal with the hazards and threats of danger and damage posed by the storage and handling of oil in underground facilities and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from these occurrences may be promptly made whole; to establish a fund to provide for the investigation, mitigation and removal of discharges or threats of discharge of oil from underground storage facilities, including the restoration of contaminated water supplies; and to guarantee the prompt payment of reasonable damage claims resulting therefrom.

The Legislature further finds that preservation of the ground water resources and of the public uses referred to in this subchapter is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety and that the State's interest in this preservation outweighs any burdens of absolute liability imposed by the Legislature in this subchapter upon those engaged in the storage of oil, petroleum products and their by-products in underground storage facilities.

**38 § 562. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Barrel.** "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.
2. **Board.** "Board" means the Board of Environmental Protection.
3. **Department.** "Department" means the Commissioner of Environmental Protection or his staff.
4. **Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emitting, escaping, emptying or dumping.
5. **Existing underground oil storage facility or tank.** "Existing underground oil storage facility" and "existing underground oil storage tank" means any such facility or tank, as defined in subsections 13 and 14, fully installed as of March 1, 1985, and the location of which has not changed.
6. **Fund.** "Fund" means the Ground Water Oil Clean-up Fund.
- 6-A. **Gasoline.** "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.
7. **Leak.** "Leak" means a loss or gain of .05 gallons or more per hour at a pressure of 4 pounds per square inch gauge, as determined by a precision test.
8. **Oil.** "Oil" means oil, petroleum products, oil additives and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

**9. Person.** "Person" means any natural person, firm, association, partnership, corporation, trust, the State and any agency of the State, governmental entity, quasi-governmental entity, the United States and any agency of the United States and any other legal entity.

**10. Responsible party.** "Responsible party" means any one or more of the following persons:

- A. The owner or operator of the underground oil storage facility where a prohibited discharge has occurred
- B. The person to whom the underground oil storage facility where a prohibited discharge has occurred is registered
- C. Any person other than those identified in paragraph A or B who caused the prohibited discharge of oil or who had custody or control of the oil at the time of the prohibited discharge
- D. Any person who owned or operated the underground oil storage facility from the time any oil, petroleum products or their by-products arrived there.

As set out in this subsection, "responsible party" does not include a person who can demonstrate by a preponderance of the evidence that that person neither knew nor had reason to know of the existence of an underground oil storage facility.

**11. Secondary containment.** "Secondary containment" means a system installed so that any material that is discharged or has leaked from the primary containment is prevented from reaching the soil or ground water outside the system for the anticipated period of time necessary to detect and recover the discharged material. Such a system may include, but is not limited to, impervious liners, double walled tanks, impervious soil treatments or any other method demonstrated to the satisfaction of the department to be technically feasible and effective.

**12. Sensitive geologic areas.** "Sensitive geologic areas" means significant ground water aquifers and primary sand and gravel recharge areas, as defined in section 482, locations within 1,000 feet of a public drinking water supply and locations within 300 feet of a private drinking water supply.

**12-A. Underground gasoline storage tank.** "Underground gasoline storage tank" means a single tank or container, 10% or more of which is underground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of gasoline. The term does not include multiple tanks or containers or tanks or containers that are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

**13. Underground oil storage facility.** "Underground oil storage facility," also referred to as "facility," means any underground oil storage tank or tanks, as defined in subsection 14, together with associated piping and dispensing facilities located under any land at a single location and used, or intended to be used, for the storage or supply of oil, as defined in this subchapter. Underground oil storage facility also includes piping located under any land at a single location associated with above ground storage tanks and containing 10% or more of the facility's overall volume capacity.

**14. Underground oil storage tank.** "Underground oil storage tank," also referred to as "tank," means any container, 10% or more of which is beneath the surface of the ground and which is used, or intended to be used, for the storage or supply of oil as defined in this subchapter, but does not include any tanks situated in an underground area if these tanks or containers are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

### **38 § 563. Registration of underground oil storage tanks**

**1. Prohibition on unregistered tanks.** The following prohibition on unregistered tanks applies.

- A. No person may install, or cause to be installed, a new or replacement underground oil storage facility without first having registered the facility with the department in accordance with the requirements of subsection 2, and having paid the registration fee in accordance with the requirements of subsection 4, at least 5 business days prior to installation. If compliance with this time requirement is impossible due to an emergency situation, the owner or operator of the facility at which the new or replacement facility is to be installed shall inform the department as soon as the emergency becomes known.

The owner or operator of the facility shall also promptly submit upon completion a copy of the registration form to the fire department in whose jurisdiction the underground tank will be located.

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

B. No person may operate, maintain or store oil in an underground oil storage facility after May 1, 1986, unless each underground oil storage tank at that facility is registered with the department.

**2. Information required for registration.** The owner or operator of an underground oil storage facility shall provide the department with the following information on a form in triplicate to be developed and provided by the department; one copy to be submitted to the department, one copy to be promptly submitted upon completion to the fire department in whose jurisdiction the underground tank is located and one copy to be retained by the owner or operator:

A. The name, address and telephone number of the owner of the underground oil storage tank to be registered

B. The name, address and telephone number of the person having responsibility for the operation of the tank to be registered

C. A description of the location of the facility and the location of the tank or tanks at that facility

D. Whether the location of any tank at the facility is within 1,000 feet of a public drinking water supply or within 300 feet of a private drinking water supply

E. The size of the tank to be registered

F. The type of tank or tanks and piping at the facility and the type of product stored or contained in the tank or tanks and piping

G. For new, replacement or retrofitted tanks, the name of the installer, the expected date of installation or retrofit, the nature of any emergency pursuant to subsection 1, paragraph A, if applicable, and a description or plan showing the layout of the facility or tank, including, for tanks in sensitive geologic areas, the form of secondary containment, monitoring wells or equipment to be installed pursuant to section 564, subsection 1, paragraph C and, where applicable, the method of retrofitting

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

For existing tanks, the information required for registration shall be submitted to the department in accordance with this subsection on or before February 1, 1986.

**3. Amended registration required.** The owner or operator of an underground oil storage facility shall file an amended registration form with the department immediately upon any change in the information required pursuant to subsection 2. No fee may be charged for filing an amended registration.

**4. Registration fees.** The owner or operator of an underground oil storage facility used in the marketing and distribution of oil shall pay an annual fee to the department of \$25 for each tank with a capacity less than or equal to 6,000 gallons and \$50 for each tank with a capacity in excess of 6,000 gallons located at the facility. The initial fee payment shall accompany the initial registration form. Annual payments thereafter shall be paid on or before January 1st of each calendar year.

**5. Payment for failure to register or to pay annual registration fee.** Any person liable for the fee imposed by subsection 4 shall pay 3 times the fee specified in subsection 4 if the initial fee payment and registration form has not been submitted to the department on or before May 1, 1986, or if the annual registration fee has not been submitted on or before January 1st of each calendar year. This does not preclude the department from seeking civil penalties from any person who fails to register a facility or tank. The owner or operator of an underground oil storage facility not used in the marketing and distribution of oil shall pay a fee of \$50 for each tank that is not registered by May 1, 1986, except that the board may establish, by rule, an annual late registration period not to exceed 10 business days in duration during which time no registration fee may be assessed.

**6. Providing notice.** Prior to the sale or transfer of any real estate where an underground oil storage facility is located, the owner of the real estate shall file a written notice with the purchaser or transferee. The notice shall disclose the existence of the underground oil storage facility, its registration number or numbers, the real estate where the facility is located, whether or not the facility has been abandoned in place pursuant to section 566-A and that the facility is subject to regulation, including registration requirements, by the department under this subchapter.

**38 § 563-A. Prohibition of nonconforming underground oil storage facilities and tanks**

1. **Compliance schedule.** No person may operate, maintain or store oil in a registered underground oil storage facility or tank which is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department after:

- A. October 1, 1989, if that facility or tank is more than 15 years old and is located in a sensitive geological area
- B. October 1, 1991, if that facility or tank is more than 25 years old or if that facility or tank is more than 15 years old and is located in a sensitive geological area
- C. October 1, 1994, if that facility or tank is more than 20 years old or if that facility or tank is more than 15 years old and is located in a sensitive geological area
- D. October 1, 1997.

2. **Consideration of sensitive geological areas.** For the purposes of this section, an underground oil storage facility is not subject to subsection 1, paragraph A, regarding sensitive geological areas if the board finds that:

A. The applicant has demonstrated that:

- (1) The facility is located in a municipality with a population of more than 10,000;
- (2) All persons within 500 feet of the facility are served by a public drinking water supply;
- (3) The facility is not located within 2,000 feet of any source of supply of a public drinking water supply system; and
- (4) The facility is not located within 300 feet of any source of supply of a private drinking water supply system.

3. **Violations.** After reasonable notice and hearing, if the board finds that an owner of an underground oil storage facility has failed to correct any violations of this subchapter, the board may impose on the owner a schedule that provides for the early application of any or all of the prohibitions contained in subsection 1.

4. **Presumption of age.** If the age of the underground oil storage facility or tank cannot be determined, it shall be presumed to be 20 years old as of October 1, 1989.

5. **Abandonment.** All underground oil storage facilities subject to the prohibitions in this section and section 563, subsection 1, shall be properly abandoned in accordance with section 566-A prior to the applicable prohibition dates.

6. **Rules.** The board may adopt rules necessary to administer this section.

7. **Report to Legislature.** The department shall report to the joint standing committee of the Legislature having jurisdiction over natural resources on or before January 1, 1989, on the progress made toward achieving the compliance schedule established by this section.

**38 § 563-B. Regulatory powers of department**

In addition to the rule-making authorities otherwise set forth in this subchapter, the board may adopt rules related to the following matters

- 1. **Removal.** Procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants
- 2. **Inventory analyses; precision testing; leak detection methods.** Procedures and methods to be used in conducting statistical inventory analyses, underground oil storage facility precision testing and other leak detection methods
- 3. **Hearings.** Hearings related to clean-up orders issued pursuant to section 568
- 4. **Third-party damage claims.** Procedures to be used in filing and processing of 3rd-party damage claims.

**38 § 564. Regulation of underground oil storage facilities used in the marketing and distribution of oil**

The board shall adopt rules necessary to minimize, to the extent practicable, the potential for discharges of oil from underground oil storage facilities and tanks used in the marketing and distribution of oil to others. These rules are limited to the following requirements.

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

A. All new and replacement tanks shall be constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the Department of Environmental Protection. All new and replacement piping shall be constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the Department of Environmental Protection.

B. All new and replacement facilities shall be installed by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and shall be registered with the department prior to installation pursuant to section 563. Underground gasoline storage tanks may be removed by an underground gasoline storage tank remover who has been properly certified pursuant to Title 32, chapter 104-A.

C. For new and replacement facilities in sensitive geologic areas or in the shoreland area, as defined in section 435, the owner shall install one of the following:

- (1) Secondary containment of all underground oil storage facility components;
- (2) Continuous electronic monitoring for free product in those monitoring wells installed in the excavated area around the tank or tanks, and additional wells with electronic monitoring to detect a leak or discharge of oil from the piping;
- (3) Continuous electronic monitoring in the unsaturated zone of all elements of the facility, using sufficient sampling points to detect a leak or discharge of oil from any point in the facility; or
- (4) A reasonable number of monitoring wells located around the tank or around the perimeter of the facility sufficiently sampled and tested to detect any discharge of oil or contamination of ground water from a facility.

D. The requirements set forth in paragraph B for new and replacement facilities in sensitive geologic areas may not be imposed solely due to the proximity of an underground oil storage tank to a private drinking water supply where the tank and private drinking water supply are located at the same site and are owned, operated or utilized by the same person or persons. In addition, the board shall adopt rules to provide for exemptions from the requirements of paragraph C in circumstances where the facility is to be installed over a polluted aquifer where no unreasonable additional harm to public health and safety or to the environment can occur.

**2. Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks.** The board's rules may require:

A. Collection of inventory data for each day that oil is being added to or withdrawn from the facility or tank, reconciliation of the data, with monthly summaries, and retention of records containing all such data for a period of at least 3 years either at the facility or at the facility owner's place of business

B. Annual statistical inventory analysis, the results of which shall be reported to the department

C. Annual voltage readings for cathodically protected systems

D. Monthly inspections of the rectifier meter on impressed current systems

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



F. Evidence of financial responsibility for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by sudden and nonsudden accidental discharges from an underground oil storage facility or tank

G. Reporting to the department any of the following indications of a possible leak or discharge of oil:

- (1) Unexplained differences in daily inventory reconciliation values which, over a 30-day period, exceed .5% of the product delivered;
- (2) Unexplained losses detected through statistical analysis of inventory records;
- (3) Detection of product in a monitoring well; and
- (4) Failure of a tank precision test or hydrostatic pipe test.

The requirements in paragraphs A and B do not apply to a double-walled tank containing interstitial space monitoring which has been installed and is operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter, and utilizing double-walled piping or a product delivery system using a suction pump or other system approved by the department which has been installed and is operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter.

**3. Replacement of tanks at facilities where leaks have been detected.** If replacement or removal is required as a result of a corrosion induced leak in an unprotected steel tank, the owner or operator of the facility may either replace all other tanks and piping at that facility not meeting the design and installation standards promulgated pursuant to subsection 1 or comply with the following:

- A. Remove all bare steel and asphalt-coated steel tanks and all piping which is not constructed of noncorrosive material or is not cathodically protected against corrosion at the facility that are more than 20 years old
- B. Perform a statistical inventory analysis of the entire facility and submit the results of that analysis to the department. If a statistical inventory analysis of the entire facility had been performed within 60 days prior to the required replacement, then the results of that analysis may be submitted to the department instead. If the results of the statistical inventory analysis indicate evidence of a leak at the facility or that the data is not sufficiently reliable to make a determination that the facility is or is not leaking, the department may require that all remaining tanks and piping at the facility be precision tested, except that precision testing shall not be required where it can be demonstrated that the same tanks and piping passed a precision test conducted within the previous 6 months
- C. Install a minimum of 2 ground water monitoring wells, as deemed necessary by the department to monitor the facility, unless all remaining tanks and piping at the facility were installed in accordance with the standards promulgated pursuant to subsection 1.

Results of all precision tests conducted pursuant to paragraph B shall be submitted to the department, and all tanks and piping found to be leaking shall be removed pursuant to section 566, or repaired to the satisfaction of the department.

**4. Sampling of monitoring wells.** Where a monitoring well is installed at an underground oil storage facility used for the marketing and distribution of oil, the owner or operator shall be required to sample that well at least every 6 months; to maintain records of all sampling results at the facility or at the facility owner's place of business; and to report to the department any sampling results showing evident of a possible leak or discharge of oil.

**38 § 565. Regulation of underground oil storage facilities used for consumption on the premises or by the owner or operator**

The board shall adopt rules necessary to minimize, to the extent practicable, the potential for discharges of oil from underground oil storage facilities not used in the marketing and distribution of oil to others. These rules shall apply to all underground oil storage facilities that are used for consumption on the premises or by the owner or operator of the facility, including tanks installed temporarily at a construction site; all residential home heating oil tanks regardless of size; all facilities owned or operated by the State, any of its agencies and instrumentalities or any political subdivision; and all other tanks and facilities that are not governed by the requirements of section 564. These rules are limited to the following requirements.

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

A. The installation of new or replacement tanks and piping constructed of bare steel or asphalt-coated steel is prohibited.

B. All new and replacement facilities shall be installed by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and shall be registered with the department prior to installation pursuant to section 563. Underground gasoline storage tanks may be removed by an underground gasoline storage tank remover who has been properly certified pursuant to Title 32, chapter 104-A.

C. The installation of monitoring wells shall be required for new and replacement facilities with a capacity in excess of 1,100 gallons where physically or technically practicable. Monitoring wells shall not be required where double wall tanks equipped with interstitial space monitors are utilized.

D. For new and replacement facilities in sensitive geologic areas or in the shoreland area, as defined in section 435, the owner shall install one of the following:

(1) Secondary containment of all underground oil storage facility components; or

(2) A reasonable number of monitoring wells located around the tank or around the perimeter of the facility sufficiently sampled and tested to detect any discharge of oil or contamination of ground water from a facility.

**2. Testing requirements and reporting of leaks for existing, new and replacement facilities and tanks.** Testing requirements and reporting of leaks for existing, new and replacement facilities and tanks are as follows.

A. The owner or operator shall be required to report promptly upon discovery to the department any evidence of a leak or discharge of oil.

B. Underground oil storage tanks that are used for storing motor fuels for consumptive use shall be precision tested for leaks every 5 years until abandonment when they are 15 years old, except that the owner or operator may elect to install monitoring wells as an alternative to precision testing. Results of the precision tests shall be submitted promptly to the department and all tanks and piping found to be leaking shall be removed pursuant to section 566-A or repaired to the department's satisfaction.

C. Where a monitoring well is installed at a facility governed by this section, the owner or operator of the facility shall be required to sample that well at least every 6 months; to maintain records of all sampling results at the facility or at the facility owner's place of business; and to report to the department any sampling results showing evidence of a possible leak or discharge of oil.

**38 § 566-A. Abandonment of underground oil storage facilities and tanks**

**1. Abandonment.** All underground oil storage facilities and tanks that have been, or are intended to be, taken out of service for a period of more than 12 months shall be properly abandoned by the owner or operator of the facility or tank or, if the owner or operator is unknown, by the current owner of the property where the facility or tank is located. All abandoned facilities and tanks shall be removed, except where removal is not physically possible or practicable because the tank or other component of the facility to be removed is:

A. Located beneath a building or other permanent structure;

B. Of a size and type of construction that it cannot be removed

C. Otherwise inaccessible to heavy equipment necessary for removal

D. Positioned in such a manner that removal will endanger the structural integrity of nearby tanks.

**2. Notice of intent.** The owner or operator of an underground oil storage facility or tank or, if the owner or operator is unknown, the current owner of the property where the facility or tank is located shall provide written notice of an intent to abandon an underground oil storage facility or tank to the department and the fire department in whose jurisdiction the underground oil facility or tank is located at least 10 days prior to abandonment.

**3. Rulemaking.** The board shall adopt rules allowing for the granting of a variance from the requirement of removal where abandonment by removal is not physically possible or practicable due to circumstances other than those listed in this subsection. The board shall adopt rules setting forth the proper procedures for abandonment of underground oil storage facilities and tanks, including acceptable methods of disposing of the removed tanks and procedures for abandonment in place where removal of a tank or other component of a facility is deemed not physically possible or practicable.

**4. Departmental role.** If the owner of an underground oil storage facility or tank fails to properly abandon the facility or tank within a reasonable time period, the department may undertake the abandonment. The department shall collect any reimbursement due the Ground Water Oil Clean-up Fund in accordance with section 569.

**5. Qualified personnel.** All abandoned facilities and tanks used for the storage of Class 1 liquids that require removal shall be removed under the direction of an underground oil storage tank installer certified pursuant to Title 32, chapter 104-A, or of professional firefighting personnel, except for underground gasoline storage tanks removed pursuant to subsection 6. The certified installer need not be present at the site at the time of the tank's or facility's removal.

**6. Underground gasoline storage tanks.** Underground gasoline storage tanks may be removed under the direction of an underground gasoline storage tank remover certified pursuant to Title 32, chapter 104-A, if the following conditions are met:

- A. All underground gasoline storage tanks at a site are removed at the same time
- B. No underground gasoline storage tanks are installed at the site for at least 6 months following that removal.

#### **38 § 567. Certification of underground tank installers**

No person may install an underground oil storage facility or tank after May 1, 1986, without first having been certified by the Board of Underground Oil Storage Tank Installers, pursuant to Title 32, chapter 104-A. Underground gasoline storage tanks may be removed by underground gasoline storage tank removers certified by the Board of Underground Oil Storage Tank Installers, pursuant to Title 32, chapter 104-A.

Notwithstanding section 570, tank installers and removers shall be liable to other than the State as follows: With the exception of prohibited discharges resulting from an installer's or remover's negligence, the liability of certified installers and removers shall be limited to damages resulting from prohibited discharges discovered within the 12-month period immediately following the installation or removal of the underground tank or facility. To insure its continued relevance, this provision shall be reviewed by June 30, 1991, by the joint standing committee of the Legislature having jurisdiction over energy and natural resources.

#### **38 § 568. Cleanup and removal of prohibited discharges**

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

**2. Restoration of water supplies.** The department may clean up any discharge of oil and take temporary and permanent remedial actions at locations threatened or affected by the discharge of oil, including restoring or replacing water supplies contaminated or threatened by oil, petroleum products or their by-products, using the most cost-effective alternative that is technologically feasible and reliable and which effectively mitigates or minimizes damage to and provides adequate protection of the public health, welfare and the environment. When the remedial action taken includes the installation of a public water supply, the fund may be used to pay costs of operation maintenance and depreciation of the water supply for a

period not exceeding 20 years. The department shall consult with the affected party prior to selecting the alternative to be implemented.

**3. Issuance of clean-up orders.** The department may investigate and sample sites where an oil discharge has or may have occurred to identify the source and extent of the discharge. During the course of the investigation, the commissioner may require submission of information or documents, which relate or may relate to the discharge under investigation, from any person who the department has reason to believe may be a responsible party. If the department finds, after investigation, that a discharge of oil has occurred and may create a threat to public health or the environment, including, but not limited to, contamination of a water supply, the commissioner may order the responsible party to cease the discharge immediately or to take action to prevent further discharge and to mitigate or terminate the threat. The commissioner may order that the responsible party take temporary and permanent remedial actions at locations threatened or affected by the discharge of oil, including a requirement that the responsible party restore or replace water supplies contaminated with oil, petroleum products or their by-products using the most cost-effective alternative that is technologically feasible and reliable and which effectively mitigates or minimizes damage to, and provides adequate protection of, the public health, welfare and the environment. Clean-up orders shall only be issued in compliance with the following requirements.

A. Any orders issued under this section shall contain findings of fact describing the manner and extent of oil contamination, the site of the discharge and the threat to the public health or environment.

B. A responsible party to whom such an order is directed may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by a responsible party. The hearing shall be held by the board within 15 working days after receipt of the application. The nature of the hearing before the board shall be an appeal. At the hearing, all witnesses shall be sworn and the department shall first establish the basis for the order and for naming the person to whom the order was directed. The burden of going forward shall then shift to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. Within 7 days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

**4. Enforcement; penalties; punitive damages.** Enforcement, penalties and punitive damages are as follows.

A. Any person who causes, or is responsible for, a discharge to ground water in violation of section 543 shall not be subject to any fines or penalties for the discharge if that person promptly reports and removes that discharge in accordance with the rules and orders of the department and the board.

B. Any responsible party who fails without sufficient cause to undertake removal or remedial action promptly in accordance with a clean-up order issued pursuant to subsection 3 may be liable to the State for punitive damages in an amount at least equal to and not more than 3 times the amount of any sums expended from the fund as a result of such failure to take prompt action.

**5. Acquisition of property; authority.** The department may acquire, by purchase, lease, condemnation, donation or otherwise, any real property or any interest in real property that the board in its discretion determines, by 2/3 majority vote, is necessary to conduct a remedial action under this subchapter. There shall be no cause of action to compel the board to acquire any interest in real property under this subchapter.

A. The board may use the authority in this subsection for a remedial action only if, before an interest in real estate is acquired under this subsection, the municipality in which the interest to be acquired is located assures the board through a contract or other legal agreement that the municipality will accept transfer of the interest following completion of the remedial action.

#### **38 § 569. Ground Water Oil Clean-up Fund**

The Ground Water Oil Clean-up Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. To this fund shall be credited all registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements and other fees and charges related to this subchapter. To this fund shall be charged any and all expenses of the department related to this subchapter, including administrative expenses, payment of 3rd party damages covered by this subchapter, costs of removal of discharges of oil and costs of cleanup of discharges, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1.

The Board of Environmental Protection may authorize the borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund to carry out the provisions of subchapters II-A and II-B. All funds borrowed pursuant to this section shall be repaid with interest to the fund of origin in as prompt a manner as revenues allow. The rate of interest shall be determined by the Treasurer of State, based on the average rate of interest earned on funds invested during the period of the loan.

Money in the fund, not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter and not on loan to the Maine Coastal and Inland Surface Oil Clean-up Fund, shall be deposited with the Treasurer of State to the credit of the fund and may be invested in such a manner as is provided for by law. Interest received on that investment shall be credited to the Ground Water Oil Clean-up Fund.

**1. Research and development.** The Legislature may allocate not more than \$100,000 per year of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on ground waters of the State. These allocations shall be made in accordance with section 570-A.

## **2. Third party damages.**

**2-A. Third-party damages.** Any person claiming to have suffered actual damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the claimant, may apply within 6 months after the occurrence or discovery of the discharge to the board stating the amount of damage alleged to be suffered as a result of that discharge. The board shall prescribe appropriate forms and details for the applications. The board, upon petition and for good cause shown, may waive the 6-month limitation for filing damage claims.

A. If the claimant and the board are able to agree as to the amount of the damage claim, the board shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the Ground Water Oil Clean-up Fund.

B. If the claimant and the board are not able to agree as to the amount of the damage claim, the board shall forthwith transmit the claim for action to the department as provided in this subchapter.

C. A claimant shall take all reasonable measures to minimize damages suffered by the claimant as a result of a discharge of oil.

D. Third-party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

E. Damage claims arising under this subchapter are recoverable only in the manner provided under this subchapter. It is the intent of the Legislature that the remedies provided for such damage claims in this subchapter are exclusive.

F. Awards from the fund on damage claims shall not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with or judgment of a court of competent jurisdiction against the person causing or otherwise responsible for the discharge.

## **3. Board of Arbitration.**

**3-A. Determination of disputed 3rd-party damage claims.** The commissioner shall establish a claims processing capability within the department to hear and determine claims filed under this subchapter which are not agreed upon by the claimant and the board.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims.

B. To the extent practical, all claims arising from or related to a common discharge shall be heard and determined by the same hearing examiner.

C. Hearings before the hearing examiner shall be informal and the rules of evidence prevailing on judicial proceedings shall not be binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination.

D. Determinations made by the hearing examiner shall be final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters relating to abuse of discretion by the hearing examiner. A claimant seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination.

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner, and shall certify the name of the claimant to the Treasurer of State, unless the commissioner has determined that the claimant is a responsible party, in which case certification shall be withheld until all claims that the department has against the responsible party with respect to the discharge have been satisfied.

**4. Funding.** A fee of 9¢ per barrel of gasoline and 8¢ per barrel of refined petroleum products and their by-products other than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, shall be assessed on the transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7. These fees shall be paid monthly by the oil terminal facility licensees on the basis of records certified to the department. All such transfer fees shall be credited to the Ground Water Oil Clean-up Fund upon receipt by the department, except that the amount of these fees in excess of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by-products, other than gasoline and liquid asphalt, shall be transferred by the department upon receipt as follows.

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

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

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

**5. Disbursements from fund.** Money in the Ground Water Oil Clean-up Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the department related to the enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Clean-up Fund made pursuant to this section

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products to ground water covered by this subchapter

C. Sums allocated to research and development in accordance with this section

D. Payment of the 3rd party damage claims awarded in accordance with this section

E. Payment of costs of arbitration and arbitrators

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund

G. Sums up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 570-A for payment of costs for studies of the environmental impacts of discharges to ground water prohibited by section 543 which may have adverse economic effects and which occur subsequent to the allocation, when the studies are deemed necessary by the commissioner

H. All costs associated with the Board of Underground Oil Storage Tank Installers.

**6. Reimbursements to the Ground Water Oil Clean-up Fund.** The department shall seek recovery for the use of the fund of all sums expended from the fund, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E and G, or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small or the likelihood of success too uncertain. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection.

**7. Waiver of reimbursement.** Upon petition of any responsible party, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

A. An act of war

B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 568

C. An act of God, which shall mean an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such a finding by the board, immediate credit therefor shall be entered for the party involved. The findings of the board shall be conclusive, as it is the legislative intent that the waiver provided in this subsection is a privilege conferred not a right granted.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 3)  
(WATER PROTECTION, LIABILITY)

(SUBCHAPTER III)  
(CRIMINAL LIABILITY)

**571. Corrupting waters forbidden**

Whoever intentionally or knowingly poisons, defiles or in any way corrupts the waters of any well, spring, brook, lake, pond, river or reservoir used for domestic purposes for man or beast, or knowingly corrupts the sources of any public water supply, or the tributaries of those sources of supply in a manner which affects the purity of the water supplied, or knowingly defiles that water in any manner, whether the water be frozen or not, or puts the carcass of any dead animal or other offensive material in those waters or upon the ice thereof, shall be guilty of a Class A crime.  
R.S.1954,c.137,1; 1977, c.696, 344, eff. March 31,1978.



(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 5)  
(GENERAL PROVISIONS RELATING TO RIVERS)  
(AND STREAMS)

(SUBCHAPTER 1)  
(MILLS AND DAMS)

(Article 1)  
(ERECTION AND FLOWAGE RIGHTS)

(Subarticle 1-B)  
(Permits for hydropower projects)

**38 § 630. Short title**

This subarticle may be cited and referred to in proceedings and agreements as the "Maine Waterway Development and Conservation Act."

**38 § 631. Purposes**

**1. Findings.** The Legislature finds and declares that the surface waters of the State constitute a valuable indigenous and renewable energy resource; and that hydropower development utilizing these waters is unique in its benefits and impacts to the natural environment, and makes a significant contribution to the general welfare of the citizens of the State for the following reasons.

A. Hydropower is the state's only economically feasible, large-scale energy resource which does not rely on combustion of a fuel, thereby avoiding air pollution, solid waste disposal problems and hazards to human health from emissions, wastes and by-products. Hydropower can be developed at many sites with minimal environmental impacts, especially at sites with existing dams or where current type turbines can be used.

B. Like all energy generating facilities, hydropower projects can have adverse effects; in contrast with other energy sources, they may also have positive environmental effects. For example, hydropower dams can control floods and augment downstream flow to improve fish and wildlife habitats, water quality and recreational opportunities.

C. Hydropower is presently the state's most significant indigenous resource that can be used to free our citizens from their extreme dependence on foreign oil for peaking power.

**2. Policy and purpose.** The Legislature declares that hydropower justifies singular treatment. The Legislature further declares that it is the policy of the State to support and encourage the development of hydropower projects by simplifying and clarifying requirements for permits, while assuring reasonable protection of natural resources and the public interest in use of waters of the State. It is the purpose of this subarticle to require a single application and permit for the construction of all hydropower projects and for the reconstruction or structural alteration of certain projects, including water storage projects. The permit application process shall be administered by the Department of Environmental Protection, except that, for hydropower projects within the jurisdiction of the Maine Land Use Regulation Commission, the commission shall administer the permit application process under this subarticle.

**38 § 632. Definitions**

As used in this subarticle, unless the context indicates otherwise, the following terms have the following meanings.

**1. Board.** "Board" means the Board of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Regulation Commission, "board" means the Maine Land Use Regulation Commission.

**2. Department.** "Department" means the Department of Environmental Protection.

**3. Hydropower project.** "Hydropower project" means any development which utilizes the flow of water as a source of electrical or mechanical power or which regulates the flow of water for the purpose of generating electrical or mechanical power. A hydropower project development includes all powerhouses, dams, water conduits, transmission lines, water impoundments, roads and other appurtenant works and structures that are part of the development.

#### **38 § 633. Prohibition**

**1. Permit required.** No person may initiate construction or reconstruction of a hydropower project, or structurally alter a hydropower project in ways which change water levels or flows above or below the dam, without first obtaining a permit from the board.

**2. Exceptions.** This subarticle shall not apply to activities for which, prior to the effective date of this Act, a permit or permits have been issued pursuant to any of the following laws: Land use regulation laws, Title 12, sections 681 to 689; stream alteration laws, sections 425 to 430; great ponds laws, sections 391 to 394; alteration of coastal wetlands laws, sections 471 to 478; site location of development laws, sections 481 to 490; and small hydroelectric generating facilities laws, this subarticle.

**3. Exemptions.** Normal maintenance and repair of an existing and operating hydropower project shall be exempt from this subarticle, provided that:

A. The activity does not involve any dredging or filling below the normal high-water line of any great pond, coastal wetland, river, stream or brook

B. The activity does not involve any dredging or filling on the land adjacent to any great pond, coastal wetland, river, stream or brook such that any dredged spoil, fill or structure may fall or be washed into those waters.

#### **38 § 634. Permit requirements**

**1. Coordinated permit review.** Permits required under the following laws shall not be required by any state agency for projects reviewed or exempted from review under this subarticle: natural resource protection laws, chapter 3, subchapter 1, article 5-A; site location of development laws, chapter 3, subchapter 1, article 6; and land use regulation laws, Title 12, chapter 206-A. Notwithstanding section 654, the board may attach reasonable conditions consistent with this subarticle concerning the operation of hydropower projects. The board shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam.

**2. Application.** An application for a permit required by section 633 shall be made on forms provided by the board and shall be filed with the board. Public notice of the filing shall be made as required by the board.

**3. Application review.** Within 10 working days of receiving a completed application, the Commissioner of Environmental Protection or the Director of the Maine Land Use Regulation Commission, as appropriate, shall notify the applicant of the official date on which the application was accepted.

The commissioner or the director, as appropriate, shall circulate the application among the Department of Environmental Protection, Department of Conservation, Department of Inland Fisheries and Wildlife, Department of Marine Resources, Department of Transportation, Maine Historic Preservation Commission, State Planning Office, Public Utilities Commission and the municipal officials of the municipality in which the project is located. The State Planning Office and the Public Utilities Commission shall submit written comments on section 636, subsection 7, paragraph F. For projects within the jurisdiction of the Maine Land Use Regulation Commission, the director may request and obtain technical assistance and recommendations from the staff of the department. The department shall respond to the requests in a timely manner. The department's recommendations shall be considered by the commission in acting upon a project application.

#### **38 § 635. Board decision**

Upon receipt of a properly completed application, the board shall either

**1. Approval.** Approve the proposed project upon such terms and conditions as are appropriate and reasonable to protect and preserve the environment and the public's health, safety and general welfare, including the public interest in replacing oil with hydroelectric energy. These terms and conditions may include, but are not limited to:

A. Establishment of a water level range for the body of water impounded by a hydropower project

- B. Establishment of instantaneous minimum flows for the body of water affected by a hydropower project
- C. Provision for the construction and maintenance of fish passage facilities

In those cases where the proposed project involves maintenance, reconstruction or structural alteration at an existing hydropower project and where the proposed project will not alter historic water levels or flows after its completion, the board may impose temporary terms and conditions of approval relating to paragraph A or paragraph B but shall not impose permanent terms and conditions that alter historic water levels or flows

**2. Disapproval.** Disapprove the proposed project setting forth in writing the reasons for the disapproval

**3. Hearing.** Schedule a hearing on the proposed project. Any hearing held under this subsection shall follow the notice requirements and procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV. After a hearing is held under this subsection, the board shall make findings of facts and issue an order approving or disapproving the proposed project, as provided in subsections 1 and 2.

**38 § 635-A. Time limits for processing applications**

Whenever the board receives a properly completed application, the board shall make a decision as expeditiously as possible. When the proposed project lies within the jurisdiction of the Department of Environmental Protection, the Board of Environmental Protection shall make a decision in accordance with section 344, except that, following one extension of up to 45 working days, the commissioner may waive the requirements of section 344, only at the request of the applicant.

When the proposed project lies within the jurisdiction of the Maine Land Use Regulation Commission, decisions shall be made within 105 working days except that decisions delegated to the director shall be made within 60 working days. Following one extension of up to 45 working days, the director may waive the time limit requirements of this section only at the request of the applicant.

**38 § 635-B. Procedures for water quality certification**

Issuance of a water quality certificate required under the United States Water Pollution Control Act, Section 401, shall be coordinated for the applicant under this subarticle by the Department of Environmental Protection. The issuance of a water quality certificate shall be mandatory in every case where the board approves an application under this subarticle. The board shall issue or deny certification at the same time it approves or disapproves the proposed project. If issued, the certification shall state that there is a reasonable assurance that the project will not violate applicable water quality standards. The coordination function of the department with respect to water quality certification shall not include any proceedings or substantive criteria in addition to those otherwise required by this subarticle.

**38 § 636. Approval criteria**

The board shall approve a project when it finds that the applicant has demonstrated that the following criteria have been met.

**1. Financial capability.** The applicant has the financial capability and technical ability to undertake the project. In the event that the applicant is unable to demonstrate financial capability, the board may grant the permit contingent upon the applicant's demonstration of financial capability prior to commencement of the activities permitted.

**2. Safety.** The applicant has made adequate provisions for protection of public safety.

**3. Public benefits.** The project will result in significant economic benefits to the public, including, but not limited to, creation of employment opportunities for workers of the State.

**4. Traffic movement.** The applicant has made adequate provisions for traffic movement of all types out of or into the development area.

**5. Maine Land Use Regulation Commission.** Within the jurisdiction of the Maine Land Use Regulation Commission, the project is consistent with zoning adopted by the commission.

**6. Environmental mitigation.** The applicant has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts.

**7. Environmental and energy considerations.** The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon the following considerations:

- A. Whether the project will result in significant benefit or harm to soil stability, coastal and inland wetlands or the natural environment of any surface waters and their shorelands
- B. Whether the project will result in significant benefit or harm to fish and wildlife resources. In making its determination, the board shall consider other existing uses of the watershed and fisheries management plans adopted by the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Atlantic Sea Run Salmon Commission
- C. Whether the project will result in significant benefit or harm to historic and archeological resources
- D. Whether the project will result in significant benefit or harm to the public rights of access to and use of the surface waters of the State for navigation, fishing, fowling, recreation and other lawful public uses
- E. Whether the project will result in significant flood control benefits or flood hazards
- F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of nonrenewable fuels it would replace.

The board shall make a written finding of fact with respect to the nature and magnitude of the impact of the project on each of the considerations under this subsection, and a written explanation of their use of these findings in reaching their decision.

**8. Water quality.** There is reasonable assurance that the project will not violate applicable state water quality standards, including the provisions of section 464, subsection 4, paragraph F, as required for water quality certification under the United States Water Pollution Control Act, Section 401. This finding is required for both the proposed impoundment and any affected classified water bodies downstream of the proposed impoundment.

A. Notwithstanding section 464, subsection 2, the board shall reclassify the waters of the proposed impoundment to Class GPA if the board finds:

- (1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;
- (2) The proposed impoundment will exceed 30 acres in surface area;
- (3) The proposed impoundment will not have any upstream direct discharges except cooling water; and
- (4) The proposed impoundment will not violate section 464, subsection 4, paragraph F.

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(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 5)  
(GENERAL PROVISIONS RELATING TO RIVERS)  
(AND STREAMS)  
  
(SUBCHAPTER I)  
(MILLS AND DAMS)  
  
(Article 1)  
(ERECTION AND FLOWAGE RIGHTS)  
  
(Subarticle 1-C)  
(Public Participation in the Licensing and)  
(Relicensing of Hydroelectric Dams)

**38 § 640. Public participation**

Unless otherwise provided in accordance with regulations promulgated by the Federal Energy Regulatory Commission, for all existing hydropower projects located in Maine currently licensed under the Federal Power Act, and for all proposed hydropower projects requiring a license to operate under the Federal Power Act, all state agencies that review, comment on and consult in the proposed studies, plans, terms and conditions in the course of licensing or relicensing these projects, including the State Planning Office, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife and the Department of Marine Resources, shall cooperatively take the following steps to ensure that interested members of the public are informed of, and allowed to participate in, the review and comment process.

**1. Publication.** At the commencement of the consultation, review and comment process, the state agencies involved shall publish notification of this fact, informing the public of the issues anticipated to be involved in the licensing or relicensing process, the timetable for processing of the license and the opportunities the public has to comment on and participate in the process. The notice shall be designed to reach readership both statewide and in the vicinity of the hydropower project, including all persons that have contacted the agencies with an interest in this matter and all potentially interested persons.

**2. Written notification of status.** During the entire consultation process and including the filing of the license application under the Federal Power Act, the state agencies shall inform in writing all members of the public that have indicated an interest in the particular licensing process of the status of that process, including all requirements that the agencies may be placing upon the license applicant. That information shall be provided no less than once every 4 months.

**3. Public comment.** State agencies shall provide meaningful opportunities for public comment on the plans, studies, terms and conditions to be recommended by the agencies for inclusion in the license.

**4. Release of public information.** All information submitted to the agencies by the applicants for a license under the Federal Power Act shall constitute a public record pursuant to Title 1, section 402, unless such information is otherwise exempted from public disclosure by state law. Release of this information to members of the public shall be governed by Title 1, section 408.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 5)  
(GENERAL PROVISIONS RELATING TO RIVERS)  
(AND STREAMS)

(SUBCHAPTER 1)  
(MILLS AND DAMS)

(Article 1)  
(ERECTION AND FLOWAGE RIGHTS)

(Subarticle 2)  
(Rights and Liabilities)

**38 § 651. Milldams and canals**

Any man may on his own land erect and maintain a watermill and dams to raise water for working it, upon and across any stream not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding one mile in length, and thereby divert from its natural channel the water of any stream not navigable, upon the terms and conditions and subject to the regulations hereinafter expressed.

**38 § 652. --diversion of water**

Any person, authorized to erect and maintain a watermill and dams on a stream not navigable and to divert the water of such stream from its natural channel by a canal not exceeding one mile in length for the purpose of propelling mills or machinery under section 651, may so divert such waters without said limitation to one mile, provided he is the owner of the land on which the canal is to be located or has the consent of the owners thereof, and provided he is the owner of all riparian rights on said stream between the point of diversion and the point at which the waters are returned to the stream, upon the terms and conditions, and subject to the regulations under this chapter. Under this section, "canal" shall include excavations in the ground and closed flumes, penstocks, pipelines and other appropriate means of conveying water from the point of diversion to the point of return to the stream.

**38 § 653. --injury to existing mill or canal**

No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream; nor to the injury of any mill site, on which a mill or milldam has been lawfully erected and used, unless the right to maintain a mill thereon has been lost or defeated.

**38 § 654. --restrictions as to height and duration**

The height to which the water may be raised, and the length of time during which it may be kept up in each year, and the quantity of water that may be diverted by such canal, may be restricted and regulated by the verdict of a jury, or report of commissioners, as is provided.

**38 § 655. --damages for flowing or diversion; limitations**

Any person whose lands are damaged by being flowed by a milldam, or by the diversion of the water by such canal, may obtain compensation for the injury, by complaint to the Superior Court in the county where any part of the lands are; but no compensation shall be awarded for damages sustained more than 3 years before the institution of the complaint.

**38 § 656. Cranberry culture**

When dams are erected and maintained on streams not navigable, for the purposes of cranberry culture, and lands are flowed thereby and injured by such flowage, the owners thereof shall proceed for the recovery of damages for such flowage in the same manner as in case of flowage by dams erected and maintained for mill purposes.

**38 § 657. Ice cutting and harvesting**

In order to create ponds for the cutting and harvesting of ice for the market, any persons or corporations may erect and maintain, on their own land, dams on streams not navigable or floatable, but emptying into tidewaters navigable in the winter, and may flow the lands above during November, December, January, February, March and April; but they shall draw off the water to its natural state by the 20th day of May yearly. If any lands are injured by such flowing, the owners thereof have the same remedies as in case of lands flowed by dams erected and maintained for mill purposes; but no right is granted by this section or section 656 to flow any milldam or any mill privilege improved or unimproved. This section shall not be construed as authorizing any persons or corporations to cut ice on any pond created as provided over any area the soil of which such persons or corporations do not own or lease or possess as tenants at will, or by reason of a valid agreement with the owner or lessee or tenant thereof when said owner or lessee is not the State and the pond is not a great pond.

**38 § 658. Timber removal on flowed lands**

When any person or corporation shall have decided to erect a dam across a nonnavigable stream under this chapter or under special authority granted by the Legislature, and shall have filed the specifications required by Title 35, section 11, and it appears that standing timber or other property of value upon the land intended to be flowed will constitute a menace to the safety of such person or corporation or to persons or property upon and along the banks of said stream below the intended location of said dam, the Superior Court shall have jurisdiction, upon complaint of such person or corporation, to authorize said plaintiff to remove and sell such timber or other property and to order the payment to the owner thereof of the gross proceeds of such sale and such further sum, if any, as said court shall deem just. Said court shall require the plaintiff to furnish security for such payment and for an additional penalty not less than double the amount to be received from such sale and shall include in its decree a condition that such additional sum shall be paid to said owner as damages if the dam is not completed and the land flowed within a time to be therein specified. Such time may be extended for good cause shown.

**38 § 659. —damages**

Damages caused by flowage of lands from which timber or other property shall have been removed under section 658 shall be assessed as though there had been no severance, and the amount paid for such timber or other property with interest to the date of the judgment shall be credited thereon, provided the owner of the land shall have the right to elect whether his damages shall be assessed for flowage as of the time of taking or of flowing.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 5)  
(GENERAL PROVISIONS RELATING TO RIVERS)  
(AND STREAMS)

(SUBCHAPTER I)  
(MILLS AND DAMS)

(Article 1)  
(ERECTION AND FLOWAGE RIGHTS)

(Subarticle 3)  
(Action for Damages)

**38 § 701. Complaint**

The complaint shall contain such a description of the land flowed or injured, and such a statement of the damage, that the record of the case shall show the matter heard and determined in the action.

**38 § 702. --service**

The complaint shall be filed and service made as in other actions.

**38 § 703. Defenses**

The owner or occupant of such mill or canal may answer that the plaintiff has no right, title or estate in the lands alleged to be injured; or that he has a right to maintain such dam, and flow the lands, or divert the water for an agreed price, or without any compensation; or any other matter, which may show that the plaintiff cannot maintain the action; but he shall not answer that the land described is not injured by such dam or canal.

**38 § 704. Trial; costs**

When any such answer is filed and an issue in fact or in law is joined, it shall be decided as similar issues are decided at common law. If judgment is for the defendant, he shall recover his costs.

**38 § 705. Appointment of commissioners; appraisal of damages**

If the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objection to the proceedings, the court shall appoint 3 or more disinterested commissioners of the same county, who shall go upon and examine the premises and make a true and faithful appraisal, under oath, of the yearly damages, if any, done to the plaintiff by the flowing of his lands or the diversion of the water described in the complaint, and determine how far the same is necessary, and ascertain and report for what portion of the year such lands ought not to be flowed, or water diverted, or what quantity of water shall be diverted. They shall ascertain, determine and report what sum in gross would be a reasonable compensation for all the damages, if any, occasioned by the use of such dam, and for the right of maintaining and using the same forever, estimated according to the height of the dam and flashboards as then existing. If within 10 days after said report is presented to the court, the owners of said dam or mills elect to pay the damages in gross, the court, where the judgment is entered, shall fix the time in which said damages shall be paid, and if not paid within that time, the owners of the dam or mills lose all benefit of their election, and the annual damages shall stand as the judgment of the court, and, except as otherwise provided, all proceedings shall be in conformity with the other provisions of this chapter.

**38 § 706. Assessment in gross**

In any case where annual damages have been determined by a judgment of the court, the owners of the dam or mills may apply to the court by a new complaint, to have the damages assessed in gross, and commissioners may be appointed as in other cases to ascertain, determine and report the damages in gross, and like proceedings shall then be had as are provided in sections 705 and 707.



**38 § 707. Payment in gross; bar**

If the damages in gross are paid within the time fixed, the judgment is a bar to any further complaint so long as the dam and flashboards remain at the same height, but if thereafter either is raised, a new complaint may be made by the owner of the lands flowed for any additional damages caused thereby, and the proceedings in said new complaint shall be as hereinbefore prescribed.

\* \* \*

**38 § 711. Yearly damages**

Such verdict or accepted report of the commissioners, and judgment thereon, shall be the measure of the yearly damages, until the owner or occupant of the lands or the owner or occupant of the mill or canal, on a new complaint to the court and by proceedings as in the former case, obtains an increase or decrease of such damages.

**38 § 712. --security for**

When any person whose lands are so flowed or from whose lands the water is so diverted files his complaint for ascertaining or increasing his damages, or brings a civil action as provided in section 713, and moves the court to direct the owner or occupant of such mill or canal to give security for the payment of the annual damages, and the court so orders, the owner or occupant refusing or neglecting to give such security shall have no benefit of this chapter; but is liable to be sued for the damages occasioned by such flowing in a civil action.

**38 § 713. Action for unpaid damages; lien**

The party entitled to such annual compensation may maintain a civil action therefor against any person who owns or occupies said mill, or canal and mills supplied thereby, when the action is brought; and shall therein recover the whole sum due and unpaid, with costs; and shall have a lien for such compensation, from the time of the institution of the original complaint, on the mill and milldam, or on the canal and the mill supplied thereby, with the appurtenances and the land under and adjoining them and used therewith, for any sum due not more than 3 years before the commencement of the complaint.

\* \* \*

(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 5)  
(GENERAL PROVISIONS RELATING TO RIVERS)  
(AND STREAMS)  
  
(SUBCHAPTER I)  
(MILLS AND DAMS)  
  
(Article 3-A)  
(DAM REGISTRATION AND ABANDONMENT)

**38 § 815. Short title**

This article shall be known and may be cited as the "Maine Dam Registration, Abandonment and Water Level Act."

**38 § 816. Legislative findings and purpose**

The Legislature finds that there are many existing dams in the State which impound or otherwise regulate the flow of the waters of the State.

The Legislature further finds that the owners of some of these dams are unknown or difficult to determine and that the neglect by these owners of their property is now or may in the future result in inattention to the operation and repair of these dams so that they threaten the public health, safety and welfare.

The Legislature further finds that some dam owners want to be relieved of the responsibility of maintaining their dams and that there are persons who are now or may in the future be willing to take ownership of these dams and to maintain, repair or remove them to the best interests of the public and the public resources. The Legislature further finds that some dams impound waters that are subject to much public use and increasing public and private development and that these dams are now, or may in the future, be operated in such a manner that they threaten the public health, safety and welfare and the public resources of wildlife, fisheries, waters and water uses.

It is the purpose of this article to provide for the registration of dams and their ownership; to provide procedures for awarding ownership of abandoned dams to persons who will maintain and operate the dams so as to protect the public and the public resources; and to provide procedures for establishing water levels in impoundments controlled by dams that will, to the maximum extent practical, allow competing uses while protecting the public and the public resources.

**38 § 817. Definitions**

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. **Board.** "Board" means the Board of Environmental Protection.

2. **Commissioner.** "Commissioner" means the Commissioner of Environmental Protection.

3. **Dam.** "Dam" means any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, which impounds or diverts a river, stream or great pond and which is 2 feet or more in height and has an impounding capacity at maximum water storage elevation of 15 acre-feet or more. Any such artificial barrier constructed solely for the purpose of impounding water to allow timber to be floated downstream in a logging operation shall not be considered a dam for the purposes of this article, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this article.

4. **Department.** "Department" means the Department of Environmental Protection.

5. **Height.** "Height" means, in reference to a dam, the vertical distance in feet from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum capable water storage elevation.

**6. Littoral proprietor.** "Littoral proprietor" means an owner or lessee of property on the shore of a lake impounded by a particular dam.

**7. Person.** "Person" means any individual, firm, association, partnership, corporation, trust, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

**8. Public safety.**

**9. Riparian proprietor.** "Riparian proprietor" means an owner or lessee of property on the bank of a river or stream or shore of a pond or other small body of water impounded by a particular dam.

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(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 5)  
(GENERAL PROVISIONS RELATING TO RIVERS)  
(AND STREAMS)

(SUBCHAPTER 1)  
(MILLS AND DAMS)

(Article 3-A)  
(DAM REGISTRATION AND ABANDONMENT)

(Subarticle 3)  
(Abandonment)

**38 § 835. Abandonment**

The procedures of section 837 shall apply to any dam for which

**1. Eminent domain.** The State has assumed ownership through eminent domain proceedings under section 823, subsection 6, due to noncompliance with an inspection order

**2. Nonregistration.** The State has assumed ownership under section 830, subsection 5, due to nonregistration

**3. Abandonment.** The State has assumed ownership under section 836 due to an authorized abandonment by the owner.

Once a dam has been voluntarily or involuntarily abandoned, no previous owner may be entitled to any compensation for property rights forfeited to the State or to any subsequent owner under this Article.

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(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 5)  
(GENERAL PROVISIONS RELATING TO RIVERS)  
(AND STREAMS)

(SUBCHAPTER I)  
(MILLS AND DAMS)

(Article 3-A)  
(DAM REGISTRATION AND ABANDONMENT)

(Subarticle 4)  
(Water Levels)

38 § 840. Establishment of water levels

1. (CONFLICT: Text as amended by PL 1989, c. 323, @1) Power. The board may on its own motion and shall at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is neither:

- A. Licensed by the Federal Energy Regulatory Commission;
- B. Authorized under the Federal Power Act, Section 23

C. Used to store water for a downstream facility licensed by the Federal Energy Regulatory Commission or authorized under the Federal Power Act, Section 23, provided that the owner of the downstream facility possessed a majority ownership of the upstream dam as of January 1, 1983

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams.

1. (CONFLICT: Text as amended by PL 1989, c. 569, @1) Power. The board may on its own motion and shall at the request of the owner, lessee or person in control of a dam, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime for the body of water impounded by any dam that is neither:

- A. Licensed by the Federal Energy Regulatory Commission
- B. Authorized under the Federal Power Act, Section 23

C. Used to store water for a downstream facility licensed by the Federal Energy Regulatory Commission or authorized under the Federal Power Act, Section 23, provided that the owner of the downstream facility possessed a majority ownership of the upstream dam as of January 1, 1983

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams.

**2. Notice.** The board shall provide public notice of its intent to hold a hearing by providing written notice to the owner, lessee or person in control, if known, of any dam on the body of water and to any petitioner who has petitioned for a hearing with respect to the body of water. The board shall give public notice of the hearing under Title 5, section 9052. The board shall also file notice of the hearing in the municipal office of any municipality and in the clerk's office of any county in which the body of water is located.

**3. Conduct of hearing.** The hearing shall follow the procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV and the procedures specified in this section.

**4. Evidence.** At the hearing, the board shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water. The testimony shall be limited to:

- A. The water levels necessary to maintain the public rights of access to and use of the water for navigation, fishing, fowling, recreation and other lawful public uses
- B. The water levels necessary to protect the safety of the littoral or riparian proprietors and the public
- C. The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality
- D. The water levels necessary to prevent the excessive erosion of shorelines
- E. The water levels necessary to accommodate precipitation and run off of waters
- F. The water levels necessary to maintain public and private water supplies
- G. The water levels and flows necessary for any ongoing use of the dam to generate or to enhance the downstream generation of hydroelectric or hydromechanical power
- H. The water levels necessary to provide flows from any dam on the body of water to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water.

**5. Order.** Based on the evidence solicited at the hearing, the board shall, within 80 days after the hearing, make written findings and issue an order to the owner, lessee or person in control of the dam establishing a water level regime for the body of water impounded by the dam and, if applicable, minimum flow requirements for the dam. The order shall, insofar as practical, require the maintenance of a stable water level, but shall include provision for variations in water level to permit sufficient draw down of the body to accommodate precipitation and run off of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The board shall cause a copy of the order to be delivered to the owner, lessee or person in control of the dam, the municipal officers of any municipality in which the dam or the body of water it impounds is located and each petitioner, if any, and shall cause a copy of the order to be filed in the registry of deeds in the county where the dam is located.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 5)  
(GENERAL PROVISIONS RELATING TO RIVERS)  
(AND STREAMS)

(SUBCHAPTER II)  
(WATER STORAGE RESERVOIRS)

**38 § 931. Creation; right to flow land; damages**

Any person, firm or corporation which may be entitled to the rights and benefits provided for in this chapter is authorized and empowered to build, maintain and operate dams and other necessary works and structures, including side dams, embankments, ditches and drains, on lands owned or leased by them for the purpose of creating and maintaining water storage reservoirs or basins; to raise the level of the waters in such storage reservoirs or basins by augmenting the supply of stored water from sources other than the natural drainage area by means of pumping or otherwise; to retain and discharge said stored water; to build, maintain and operate pipes, conduits, penstocks, tunnels and canals for the purpose of augmenting and discharging said stored water for use by such persons, firms or corporations for working their water mill or mills. Such persons, firms or corporations are authorized and empowered to flow such lands as may be necessary to carry out the purposes of this section, and damages caused by the flowing of such lands by means of said dams, other works and structures shall be ascertained and determined in the manner as prescribed in this chapter.

**38 § 932. Eminent domain; assessment of damages**

Any person, firm or corporation authorized and empowered to build, maintain and operate pipes, conduits, penstocks, tunnels and canals under section 931 is further authorized and empowered to exercise the right of eminent domain by taking and holding as for public uses in the manner and subject to the limitations prescribed in Title 35-A, section 6502, such lands and rights-of-way as such person, firm or corporation may require for such purposes when the water which will be stored, retained and discharged through the use of such pipes, conduits, penstocks, tunnels and canals will be devoted to public uses. All proceedings relating to damages caused by the building, maintaining and operating of said pipes, conduits, penstocks, tunnels and canals shall be ascertained and determined in the same manner as prescribed in Title 35-A, sections 6503 to 6512.

**38 § 933. Authorization required**

Any person, firm or corporation authorized and empowered to augment stored water by pumping or otherwise under section 931 and acquire by eminent domain for public uses, lands and rights-of-way for pipes, conduits, penstocks, tunnels and canals under section 932 is authorized and empowered to exercise the rights and benefits under this chapter but only when such person, firm or corporation shall have received the necessary authority by legislative Act.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 6)  
(SACO RIVER CORRIDOR)

**38 § 951. Purpose**

The Legislature finds that the Saco, Ossipee and Little Ossipee Rivers are largely unspoiled by intensive or poorly planned commercial, industrial or residential development; that existing water quality on the inland portions of these rivers is extremely high; that these rivers and their associated wetlands constitute an important present and future source of drinking water; that they support large and diverse aquatic populations; and that they are heavily used for fishing, swimming, canoeing, camping and other forms of outdoor recreation.

The Legislature finds that the wetlands associated with these rivers constitute important water storage areas; that they moderate the flow of these rivers in time of flood and drought; that they replenish the groundwater; and that they provide nutrients and essential habitat for numerous species of fish, migratory birds and other forms of wildlife.

The Legislature finds that the periodic flooding of these rivers contributes to the fertility of the adjacent lands; that the unrestricted flow of water within the floodway in the upper portions of these rivers is an essential factor in limiting the severity of flooding in the lower portions of these rivers; and that because the floodplains are largely undeveloped, the flooding which now occurs results in relatively little loss of life, personal injury and damage to property.

The Legislature finds that these rivers and their adjacent lands possess outstanding scenic and aesthetic qualities and that certain areas along these rivers are of outstanding scenic, historic, archaeological, scientific and educational importance.

The Legislature finds that the towns along these rivers are experiencing rapid population growth and that the rivers themselves are subject to increasing development pressures which threaten to destroy the quality of these rivers and the character of the adjacent lands.

In view of the dangers of intensive and poorly planned development, it is the purpose of this chapter to preserve existing water quality, prevent the diminution of water supplies, to control erosion, to protect fish and wildlife populations, to prevent undue extremes of flood and drought, to limit the loss of life and damage to property from periodic floods; to preserve the scenic, rural and unspoiled character of the lands adjacent to these rivers; to prevent obstructions to navigation; to prevent overcrowding; to avoid the mixture of incompatible uses; to protect those areas of exceptional scenic, historic, archaeological, scientific and educational importance; and to protect the public health, safety and general welfare by creating the Saco River Corridor, established in section 953, and by regulating the use of land and water within this area.

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(SOLID WASTE FACILITY SITTING)

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 13)  
(WASTE MANAGEMENT)

(SUBCHAPTER I)  
(GENERAL PROVISIONS)

**38 § 1302. Declaration of policy**

For the purposes of this chapter and chapter 2, Legislature finds and declares it to be the policy of the state consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution, to establish a coordinate statewide waste reduction, recycling and management program.

The Legislature defines and declares that it is the policy of the State to pursue and implement an integrated approach to hazardous and solid waste management, which shall be based on the following priorities: reduction of waste generated at the source, including both the amount and toxicity of waste; waste reuse; waste recycling; waste composting; waste processing which reduces the volume of waste needing disposal, including waste to energy technology; and land disposal.

The Legislature finds that it is in the best interests of the State to prefer waste management options with low health and environmental risk and to ensure that such options are neither foreclosed nor limited by the State's commitment to disposal methods. The Legislature declares that it is in the public interest to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The Legislature finds that environmentally suitable sites for waste disposal are in limited supply and represent a critical resource. At the same time, new technologies and industrial developments are making recycling and reuse of waste an increasingly viable and economically attractive option which carries minimal risk to the State and the environment and an option that allows the conservation of the State's limited disposal capacity.

The Legislature further finds that needed municipal waste recycling and disposal facilities have not been developed in a timely and environmentally sound manner because of diffused responsibility for municipal waste planning, processing and disposal among numerous and overlapping units of local government. The Legislature also finds that direct state action is needed to assist municipalities in separating, collecting, recycling, and disposing of solid waste, and that sound environmental policy and economics of scale dictate a preference for public solid waste management planning and implementation on a regional and state level.

The Legislature finally declares that the provisions of this chapter shall be construed liberally to address the findings and accomplish the policies in this section.

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**38 § 1304. Department; powers and duties**

1. **Rules.** Subject to the Maine Administrative Procedure Act, Title 5, chapter 375, the board may adopt, amend and enforce rules as it deems necessary to govern waste management, including the location, establishment, construction and alteration of waste facilities as the facility affects the public health and welfare or the natural resources of the State. The rules shall be designed to minimize pollution of the State's air, land and surface and ground water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety. In adopting these rules, the board shall also consider economic impact, technical feasibility and such differences as are created by population, hazardous or solid waste, sludge or septage volume and geographic location.

**1-A. Rules; transportation.** The board shall adopt rules relating to the transportation of solid waste, including, without limitation:

- A. Licensing categories of transporters of solid waste, conveyances used for the transportation of solid waste and the operators of these conveyances as the board finds necessary to effect sound waste management
- B. Establishment of transporter licensing and conveyance registration fees which, considering the criteria of subsection 14, paragraphs A to C, are sufficient to recover all costs of administering, monitoring compliance with and enforcing the provisions of this subsection and which fees shall be paid to the Maine Environmental Protection Fund;
- C. A manifest system for categories of solid waste which shall provide a means to account for solid waste handled, transported and disposed of in the State
- D. Evidence of financial capacity of transporters to protect public health, safety and welfare and the environment, including, without limitation:
  - (1) Liability insurance;
  - (2) Performance bonding; and
  - (3) Financial ability to comply with statutory and regulatory requirements or conditions.

**1-B. Handling of special waste.** The board may adopt rules relating to the handling of special waste, including, without limitation:

- A. Containerization and labeling of special waste
- B. Reporting on handling of special waste
- C. Waste which is not compatible
- D. A marking system, by categories of waste, to clearly identify vehicles transporting solid waste.

**2. Site location.** The board may provide by rules that no person may locate, establish, construct, alter or operate any waste facility unless approved by the board under sections 481 to 488.

**3. Municipal status reports.**

**4. Technical assistance.** The department is authorized to establish guidelines for effective waste management, to provide technical assistance to persons planning, constructing or operating waste facilities, and to conduct applied research activities in the field of waste management, disposal technology and environmental effects, including methods of recycling hazardous or solid waste, sludge or septage. The department shall cooperate with the agency in the design and delivery of this assistance.

\* \* \*

**12. Compliance orders.** The commissioner may issue compliance orders subject to the provisions of this subsection.

A. Whenever, after investigation, the commissioner determines that there is or has been an unauthorized discharge of hazardous waste, constituents of hazardous waste, or waste oil into the environment where there is a reasonable basis to believe that the discharge is endangering or causing damage to public health or the environment or that any person has violated or is in violation of any requirement of this subchapter, including rules adopted thereunder, relating to hazardous waste or waste oil activities, he may issue an order requiring compliance immediately or within a specified time period or requiring corrective action or other response measures as necessary to protect the public health and safety or the environment.

The commissioner may require assurance of financial ability for completing corrective action and may require, where necessary, that corrective action be taken beyond a facility or site to remove the danger to the public health or the environment unless the person to whom the order is directed demonstrates to the commissioner that, despite that person's best efforts, he was unable to obtain the necessary permission to undertake such actions.

B. Any order issued under this subsection may be directed to any person who causes or caused or contributes or contributed to the discharge or violation. Such order shall contain findings of fact describing, insofar as possible, and with reasonable specificity, the nature of the discharge or violation, the wastes involved, the nature of the cause or contribution of the person with respect to the discharge or violation, the site of the activity, the required action, the time period for compliance and the danger to public health or safety of the environment.

C. Service of the commissioner's findings and an order shall be made by hand delivery by an authorized representative of the department or by certified mailing, return receipt requested, in accordance with the Maine Rules of Civil Procedure.

D. The person to whom the order is directed shall comply immediately or within a specified time period. That person may apply to the board within 10 working days after receipt of the order for a hearing on the order. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and continue, revoke or modify the order. At the hearing, all witnesses shall be sworn. The decision of the board may be appealed to the Superior Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

**13. Innovative disposal and utilization.** Recognizing that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource, the commissioner may investigate and implement with the approval of the board innovative programs for managing, utilizing and disposing of solid waste. Innovative programs may include agricultural and forest land spreading of wood-derived ash, utilization of ash resulting from combustion of municipal solid waste, paper mill sludges and municipal waste water treatment plant sludges. The agency shall first determine that the proposed innovative disposal and waste management programs are consistent with the state plan. The board shall review proposed innovative programs for each waste category and shall apply all controls necessary to ensure the protection of the environment and public health consistent with this chapter. The board may adopt application review procedures designed to review individual applications and their individual waste sources with prior approval of classes of disposal or utilization sites. The board shall adopt provisions for municipal notification prior to use of individual utilization sites.

**13-A. Pulp and paper mill sludge; land spreading.** The provisions of this section apply only to land spreading and related storage of sludge generated at industrial facilities utilizing kraft wood pulping processes.

A. Subject to Title 5, section 9051-A, the board shall adopt provisions for public notification prior to use of individual utilization sites and storage sites. Notice to individuals shall be made by certified mail.

B. The board shall establish, by rule, requirements for the siting, preparation of the site and operation of facilities, including stockpiles, used for the storage of sludge for a period of more than 30 days. The board shall incorporate the following provisions:

(1) The maximum storage period at facilities without impervious liners and leachate collection and treatment is 6 months. The board may waive this requirement on a case-by-case basis for a maximum of 2 additional months when the applicant has demonstrated that the storage facility is inaccessible or that utilization of the stored material would be in violation of any prohibition of land spreading on frozen, snow-covered or saturated ground.

(2) Sludge storage sites shall not be located within 300 feet of a year-round river, stream, brook or pond nor within 75 feet of any intermittent stream or brook or any natural drainage way, including gullies, swales and ravines.

(3) Storage facilities without impervious liners and leachate collection systems may be used only once in any 10-year period.

**38 § 1310. Emergency**

If the commissioner finds, after investigation, that any waste, whether or not hazardous waste, is being handled, transported or otherwise dealt with in a manner which may create a danger to public health or safety, he may order any person handling, transporting or otherwise dealing with the waste to immediately cease or prevent that activity and to take such action as may be necessary to terminate or mitigate the danger or likelihood of danger. He may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution.

Any order issued under this section shall contain findings of fact describing, insofar as possible, the waste, the site of the activity and the danger to the public health or safety.

Service of the commissioner's findings and an order shall be made pursuant to the Maine Rules of Civil Procedure.

The person to whom the order is directed shall comply immediately. An order may not be appealed to the Superior Court, but a person to whom it is directed may apply to the board for a hearing on the order if the application is made within 48 hours after receipt of the order by the person to whom the order was directed. Within 5 working days after receipt of the application, the board shall hold a hearing, make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter VII.

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**38 § 1310-C. Program established**

There is established within the Department of Environmental Protection a remediation and closure program for solid waste landfills.

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**38 § 1310-D. Closure and remediation of open-municipal landfills**

To accomplish the objectives of this article with regard to open-municipal solid waste landfills, the department shall undertake the following activities.

**1. Initial ranking.** On or before January 1, 1988, the board shall adopt by rule an initial ranking of all open-municipal solid waste landfills on the basis of the hazard each poses to the environment and public health. The ranking process shall be subject to the following provisions.

A. In assessing the hazard to public health, the department shall consult with the Bureau of Health and may consider epidemiological data and risk assessment information the bureau has developed.

B. In assessing the hazard to the environment, the department shall employ all existing hydrogeological and other scientific information, including, without limitation, geological information developed by the Maine Geological Survey and studies previously conducted by municipalities.

C. The department shall revise the ranking as necessary to reflect new information developed during the course of the program.

D. The ranking shall be adopted by rule, according to the provisions of Title 5, chapter 375, subchapter II.

**2. Evaluation.** In the order of the priorities established in the initial ranking and the objectives of paragraphs A to D, the department shall conduct and complete by January 1, 1993, environmental evaluations of each open-municipal solid waste landfill. The department may employ private consultants to avoid additions to departmental staff and to accomplish the evaluations in a timely manner. The department may utilize existing analyses of facilities, subject to the provisions of this subsection. When the department has sufficient knowledge of existing hazards to the environment and public health posed by a specific site, it may take measures necessary to effect proper remediation and closure of the landfill, notwithstanding the site's listed priority. In those cases, the department shall ensure that the requirements of this subsection are substantially met. The department shall design each evaluation to achieve the following objectives:

A. To identify the actual hazards, if any, to the environment and public health posed by the landfill and to determine the closure and remediation requirements of the landfill

B. To establish a ground water monitoring system, including monitoring wells and test borings sufficient to assure identification and monitoring of potential hazards

C. When hazards are identified, to provide:

(1) A complete description of the movement of surface and ground waters on or near the landfill;

(2) An identification of pollutants in those waters;

(3) An evaluation of the scope, direction and rate of movement of the contamination plume, if any; and

(4) Any other information that the department deems necessary to prepare the closure or remediation recommendations pursuant to this subchapter

D. To provide a recommended closure plan for the landfill and, when necessary, a recommended plan for the remediation of any hazards identified by the evaluation. Closure and remediation recommendations shall ensure a level or standard of control of pollutants in surface waters at least as stringent as the water quality criteria established under chapter 3, subchapter I, article 4-A. Those recommendations shall also seek to achieve a level or standard of control of pollutants in ground water at least as stringent as the water quality criteria established under sections 465-C and 470, unless the board finds that meeting those standards is technically and economically infeasible and that other measures can be implemented to ensure protection of public health and safety

E. To consult with and involve the affected municipality or municipalities in the conduct of the evaluation and the analysis of its results.

**3. Plan adoption.** The board may adopt the recommendations of the landfill evaluations subject to the following provisions.

A. Within 90 days of the receipt of a landfill evaluation, together with the recommendations for closure and, if any, remediation actions, the commissioner shall issue a proposed plan for closure and remediation. Subject to the provisions of sections 1310-F and 1310-G, a timetable for implementation and all pertinent cost-sharing shall be included as part of the proposed plan. The board shall subsequently adopt the plan subject to the provisions of Title 5, chapter 375, subchapter IV.

B. Any person who is aggrieved by the board's action may appeal the adoption of the formal plan as provided in Title 5, chapter 375, subchapter IV.

**4. Implementation.** The municipality owning the landfill is the party responsible for the implementation of the plan adopted by the board.

### **38 § 1310-E. Closure and remediation of closed or abandoned solid waste landfills**

To accomplish the objectives of this article with regard to closed or abandoned solid waste landfills in both public and private ownership, the department shall undertake the following activities.

**1. Initial ranking.** On or before January 1, 1989, the board shall adopt, by rule, an initial ranking of closed or abandoned solid waste landfills on the basis of the hazard each poses to the environment and public health. The ranking process shall be subject to the following provisions.

A. In assessing the hazard to public health, the department shall consult with the Bureau of Health and may consider epidemiological data and risk assessment information the bureau has developed.

B. In assessing the hazard to the environment, the department shall employ all existing scientific information, including, without limitation, geological information developed by the Maine Geological Survey and studies previously conducted by municipalities.

C. The department shall revise the ranking as necessary to reflect new information developed during the course of the program.

D. Any person may request the department to include a closed or abandoned solid waste landfill site in its subsequent evaluations.

E. The department shall report on the ranking developed pursuant to this section, together with the department's recommendations for remediation and closure efforts and related costs necessary to protect the public health and the environment, to the joint standing committee of the Legislature having jurisdiction over natural resources. The department shall submit the report on or before January 1, 1989.

\* \* \*

### 38 § 1310-N. Site location license

No person may locate, establish, construct, expand disposal capacity or operate any solid waste facility unless approved by the board under the site location of development laws, chapter 3, subchapter 1, article 6 and the provisions of this chapter. Where the proposed facility is located within the jurisdiction of the Maine Land Use Regulation Commission, in addition to any other requirement, the board shall require compliance with existing standards of the commission.

1. **Licenses.** The board shall issue a license for a waste facility whenever it finds that:

A. The facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance

B. In the case of a disposal facility, the facility provides a substantial public benefit

C. In the case of a disposal facility, the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal.

2. **Finding of environmental suitability.**

2-A. **Aquifer protection.** The board shall not issue a license for a solid waste disposal facility when it finds that the proposed facility overlies a significant sand and gravel aquifer or when the board finds that the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer which it does not overlie, or to an underlying fractured bedrock aquifer.

A. "Significant sand and gravel aquifer" is defined as a porous formation of ice-contact and glacial outwash sand and gravel that contains significant recoverable quantities of water which are likely to provide drinking water supplies.

B. "Fractured bedrock aquifer" is defined as a consolidated rock formation which is fractured and which is saturated and recharged by precipitation percolating through overlying sediments to a degree which will permit wells drilled into the rock to produce a sufficient water supply for domestic use.

C. In determining whether or not the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer or to an underlying fractured bedrock aquifer, the board shall require the applicant to provide:

(1) A thorough hydrogeological assessment of the proposed site and the contiguous area including any classified surface waters, significant sand and gravel aquifers and fractured bedrock aquifers which could be affected by the proposed facility during normal operation or in the event of unforeseen circumstances including the failure of any engineered barriers to ground water flow. The assessment shall include a description of ground water flow rates, the direction of ground water flow in both the horizontal and vertical directions, and the degree of dilution or attenuation of any contaminants that may be released from the proposed site and flow toward any classified surface water, significant sand and gravel aquifer or fractured bedrock aquifer.

**2-B. Traffic movement.** In addition to any requirements under section 482, the board shall not issue a license for a solid waste facility when it finds that the developer has not made adequate provision for traffic movement of all types into, out of or within the proposed solid waste facility. The board shall consider traffic movement both on-site and off-site. In making its determination, the board shall consider the following factors:

- A. Vehicular weight limits
- B. Road construction and maintenance standards
- C. Vehicle types
- D. Public safety and congestion on any public or private road traveled by vehicles transporting waste to or from the proposed facility
- E. Other relevant factors.

The board shall establish vehicle weight limits for any vehicle transporting solid waste to or from the proposed facility. The board shall base the vehicle weight limits on the road construction and maintenance standards of the roads likely to be traveled by vehicles transporting solid waste to or from the proposed facility.

### **38 § 1310-U. Municipal ordinances**

Municipalities are prohibited from enacting stricter standards than those contained in this chapter and in the solid waste management rules adopted pursuant to this chapter governing the hydrogeological criteria for siting or designing solid waste disposal facilities or governing the engineering criteria related to waste handling and disposal areas of a solid waste disposal facility. Except as provided in section 2173, municipalities are further prohibited from enacting or applying ordinances that regulate solid waste disposal facilities owned by the agency or a regional association.

Under the municipal home rule authority granted by the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, municipalities, except as provided in this section, may enact ordinances with respect to solid waste facilities which contain such standards as the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise that can be heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protection; and compatibility of the solid waste facility with local zoning and land use controls, provided, however, that the standards are not more strict than those contained in this chapter and in chapter 3, articles 5-A and 6 and the rules adopted thereunder. Municipal ordinances shall use definitions consistent with those adopted by the department.

A municipality adopting an ordinance under this section shall forward a copy of the ordinance to the department within 30 days of its adoption.

### **38 § 1310-X. Future commercial landfills**

Notwithstanding the provisions of Title 1, section 302, the board shall not approve an application for a new commercial solid waste disposal facility after the effective date of this section, including any applications pending before the board on or after the effective date of this section. The board may relicense or approve a transfer of license for commercial solid waste disposal facilities after the effective date of this section, if those facilities had been previously licensed by the board prior to the effective date of this section, and all other provisions of law have been satisfied.

The board may license expansions of commercial solid waste disposal facilities after the effective date of this section

- A. The board has previously licensed the facility prior to the effective date of this section
- B. The board determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on the effective date of this section
- C. Prior to the adoption of the state plan and siting criteria under chapter 24, the board determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1
- D. After the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 13)  
(WASTE MANAGEMENT)  
  
(SUBCHAPTER III)  
(HAZARDOUS MATTER CONTROL)

**38 § 1317. Definitions**

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

1. **Discharge.** "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping onto the land or into the water or ambient air.

2. **Hazardous matter.** "Hazardous matter" means substances identified by the board under section 1319 that present a present or potential danger to the people of the State or to its natural environment when deposited on land or discharged on or into waters of the State or ambient air.

3. **Remove or removal.** "Remove" or "removal" means the mitigation of the danger created by hazardous matter by either:

A. Treatment or cleanup of a discharge of hazardous matter

B. Any action necessary to prevent or minimize danger from a discharge or threatened discharge.

4. **Responsible party.** "Responsible party" means the person having care, custody, possession or control of hazardous matter.

**38 § 1317-A. Discharge prohibited**

The discharge of hazardous matter into or upon any waters of the State, or into or upon any land within the state's territorial boundaries or into the ambient air is prohibited unless licensed or authorized under state or federal law.

**38 § 1318. Mitigation of penalties**

1. **Reporting.** The immediate reporting of a discharge or threatened discharge by the responsible party or by the person causing the discharge may be considered in mitigation of any criminal or civil penalties assessed under this subchapter.

2. **Removal.** If the responsible party or person causing the discharge immediately reports and removes the discharge in accordance with the rules and orders of the board, he shall not be subject to criminal or civil penalties under this subchapter.

**38 § 1318-A. Recovery by the State and municipalities  
for expenditures for removal of discharges**

1. **Responsible party.** The responsible party or the person causing the discharge is liable for all acts and omissions of its servants and agents which are committed within the course and scope of their employment.

2. **State and municipalities to recover for expenditures for removal.** Any person who permits, causes or is responsible for a prohibited discharge shall reimburse the State and municipalities for all costs incurred, including personnel costs, in removing the discharge, including costs for ensuring public safety. Funds recovered under this section shall be deposited to the account from which they were expended. Requests for reimbursement, if not paid within 30 days of demand, shall be turned over to the Attorney General or, for municipal cost, to the District Attorney for collection.



In any suit to enforce claims of the State or a municipality under this section, it is not necessary for the State or a municipality to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge. The State or municipality need only plead and prove the fact of the prohibited discharge and that the discharge occurred while the hazardous matter was in the custody or control of the person causing, permitting or responsible for the discharge.

**38 § 1318-B. Procedures for removal of discharges of hazardous matter**

1. **Reporting.** The responsible party or the person causing the discharge shall report a discharge immediately to the Department of Public Safety, which shall immediately notify the Department of Environmental Protection and the public safety agency of the municipality in which the discharge takes place.

2. **Preservation of public order.** The local public safety agency shall exercise authority for preservation of public order and safety, shall coordinate the response to the spill and shall be reimbursed under section 1318-A. The Department of Public Safety shall exercise this authority in those areas of the State without a local public safety agency, or in any situation in which a local public safety agency requests assistance from the Department of Public Safety.

3. **Department of Environmental Protection to direct removal.** The Department of Environmental Protection shall have authority and responsibility to plan, implement and, with the cooperation of the appropriate public safety agency, direct that part of the response to a discharge of hazardous matter which involves removal.

A. The responsible party or the person causing the discharge shall immediately undertake removal of the discharge.

B. The department may undertake the removal of the discharge and may retain agents and make contracts for this purpose.

C. Any unexplained discharge of hazardous matter occurring within state jurisdiction, or on land or in water or air beyond state jurisdiction that for any reason penetrates within state jurisdiction, shall be removed by or under the direction of the department.

\* \* \*

**38 § 1319-E. Disbursements from the Maine Hazardous Waste Fund**

1. **Money disbursed.** Money in the Maine Hazardous Waste Fund may be disbursed by the department for the following purposes, but for no other:

A. Costs incurred in the removal or abatement of an unlicensed discharge or threatened discharge of hazardous waste or waste oil. Whenever practical, the department shall offer the responsible party the opportunity to remove or abate the discharge or threatened discharge

C. Costs incurred for the purchase of necessary hazardous waste and waste oil testing, response, inspection and monitoring equipment and supplies, response and compliance personnel and training of personnel in accordance with an allocation approved by the Legislature

D. Amounts necessary to reimburse municipalities as required by section 1319-R, subsection 3

E. Costs incurred in the inspection or supervision of hazardous waste activities and hazardous waste handlers.

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 13)  
(WASTE MANAGEMENT)

(SUBCHAPTER V)  
(HAZARDOUS WASTE AND WASTE OIL)

**38 § 1319-O. Rule-making authority; hazardous waste and  
waste oil  
(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

1. **Hazardous waste.** Rulemaking for hazardous waste shall be as follows.

A. (TEXT EFFECTIVE UNTIL 2/1/90) The board may adopt and amend rules identifying hazardous waste. It is the intent of the Legislature that the board shall identify as hazardous waste those substances which are identified by the United States Environmental Protection Agency in proposed or final regulations. The Legislature also intends that the board may identify as hazardous waste, in accordance with paragraph B, other substances in addition to those identified by the United States Environmental Protection Agency. Further, the Legislature intends that a substance which has been identified as a hazardous waste by the board shall be removed from identification only by further rulemaking by the board.

\* \* \*

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\* \* \*

B. The board may adopt rules relating to the handling of hazardous waste, including, but not limited to:

- (1) Containerization and labeling of hazardous waste, consistent with applicable rules of other federal and state agencies;
- (2) Reporting of handling of hazardous waste; and
- (3) Waste which is not compatible.

C. The board may adopt rules relating to transportation of hazardous waste, including, but not limited to:

- (1) Licensing of transporters of hazardous waste, conveyances used for the transportation of hazardous waste and the operators of these conveyances; and licensing fees shall be paid to the Maine Hazardous Waste Fund; and
- (2) A manifest system for hazardous waste which takes into consideration the requirements of the United States Resources Conservation and Recovery Act of 1976, Public Law 94-580, as amended, and this subchapter.

D. The board may adopt rules relating to the interim and final licensing and operation of waste facilities for hazardous waste, including, but not limited to:

- (1) Standards for the safe operation and maintenance of the waste facilities, including, but not limited to, record keeping, monitoring before and during operation of the facility and after its termination of use or closure, inspections and contingency plans to minimize potential damage from hazardous waste;
- (2) The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities;
- (3) The termination, closing and potential future uses of the waste facilities; and
- (4) Rules equivalent to rules of the United States Environmental Protection Agency which provide for licensing or permitting by rule.

E. The board may adopt rules relating to evidence of financial capacity of hazardous waste facilities' owners or operators, and of those who transport hazardous waste, to protect public health, safety and welfare and the environment, including, but not limited to:

- (1) Liability insurance;
- (2) Bonding; and
- (3) Financial ability to comply with statutory and regulatory requirements or conditions.

**2. Waste oil.** Rulemaking for waste oil shall be as follows:

A. The board may adopt rules relating to the transportation, collection and storage of waste oil by waste oil dealers to protect public health, safety and welfare and the environment. The rules may include, without limitation, rules requiring licenses for waste oil dealers and the location of waste oil storage sites which are operated by waste oil dealers, evidence of financial capability and manifest systems for waste oil. A person licensed by the board to transport or handle hazardous waste shall not be required to obtain a waste oil dealer's license, but his hazardous waste license must include any terms or conditions deemed necessary by the board relating to his transportation or handling of waste oil.

**3. Handling and disposal of biomedical waste.** On or before January 1, 1990, the board shall adopt rules relating to the packaging, labeling, handling, storage, collection, transportation, treatment and disposal of biomedical waste, including infectious and pathogenic waste, to protect public health, safety and welfare and the environment.

A. The rules shall include, without limitation:

- (1) Registration of biomedical waste generators;
- (2) Handling of biomedical waste by generators;
- (3) Licensing of biomedical waste transporters and the conveyances used for the transportation of biomedical waste;
- (4) Implementation of a biomedical waste tracking or manifest system; and
- (5) Establishment of treatment and disposal standards.

B. The board shall adopt rules governing the siting, licensing, operational and record keeping requirements for biomedical waste treatment, storage and disposal facilities.

C. The board shall require evidence of financial capacity.

D. The board may assess licensing fees sufficient to pay for the department's administrative costs in regulating biomedical waste.

The board shall submit the rules to the joint standing committee of Legislature with jurisdiction over natural resources for review on or before January 1, 1990.

**38 § 1319-P. Municipal hazardous waste control**

Nothing in this chapter shall be construed as a preemption of the field of hazardous waste regulation and study on the part of the State. Municipalities may study hazardous waste and adopt and enforce hazardous waste control and abatement ordinances, to the extent that these ordinances are not less stringent than this chapter or than any standard under, or other action promulgated pursuant to, this chapter. Local ordinance provisions which touch on matters not dealt with by the chapter or which are more stringent than this chapter shall bind persons residing in the municipality.

**38 § 1319-Q. Data; facility needs plan**

**1. Data collection and monitoring.** The board shall have data on the generation, transportation and handling of hazardous waste collected and monitored in a coordinated manner. It shall use that data to review the need for adequate waste facilities for generators in this State, and it shall develop appropriate policies and recommendations to insure that suitable waste facilities are available.

\* \* \*

**3. Facility needs plan.** The board shall, prior to January 1st of each year, prepare a plan which shall consider the need for new hazardous waste facilities. Specifically, it shall include:

- A. An identification of hazardous wastes generated within the State for which new commercial treatment facilities would be desirable, and the preferred technologies to be utilized;
- B. An identification of hazardous wastes by type generated within the State which are capable of being reused and recycled, and a corresponding reference to available technology or facilities
- C. An identification of the hazardous wastes generated within the State for which treatment facilities are not currently available within or outside the State
- D. A survey of generators of hazardous waste identified in paragraph C and facilities used by them, which provides the best estimates of future waste quantities, costs and capacity for the disposal of those wastes
- E. Identification of those geological areas of the State which, based on siting criteria in rules adopted by the United States Environmental Protection Agency or in rules adopted by the board, are unsuitable for hazardous waste disposal facilities.

\* \* \*

**38 § 1319-R. Facility siting**

**1. Licenses for hazardous waste facilities.** The board shall issue a license for a hazardous waste facility whenever it finds it will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance. Licenses shall be issued under the terms and conditions as the board may prescribe and for a term not to exceed 5 years. The board may establish reasonable time schedules for compliance with this subchapter and regulations promulgated by the board.

\* \* \*

**2. Municipal Ordinances.** Municipalities may enact necessary police power ordinances dealing with commercial hazardous waste facilities, provided that they are not more stringent than or duplicative of the hazardous waste provisions of this chapter or rules and orders promulgated by the board. The board shall incorporate all applicable local requirements to the fullest extent practicable.

\* \* \*

**38 § 1319-S. Hazardous waste facility closure**

1. **Closure plan.** Closure of any new or existing waste facility for hazardous waste and, if required, post-closure care, shall be in accordance with a closure plan and, if required, a post-closure plan, approved by the board. An applicant for a license for a waste facility for hazardous waste shall submit a closure plan and, if required, post-closure plan, for approval with his application for a license. For a facility which is licensed at the time of closure under an interim license, the licensee shall submit a closure plan and, if required, post-closure plan, for approval at least 180 days before the date on which he begins closure. The closure plan and, if required, post-closure plan must include measures, such as leachate control, site stabilization and monitoring, to evaluate and maintain the integrity of the facility site in order to prevent harm to the public health, safety and welfare and to the environment.

\* \* \*

(TITLE 38)  
(WATERS AND NAVIGATION)  
  
(CHAPTER 13-B)  
(UNCONTROLLED HAZARDOUS SUBSTANCE SITES)

**1361. Findings and purpose**

The Legislature finds and declares that uncontrolled hazardous substance sites within the jurisdiction of the State present a hazard to all the people of the State and that hazard poses a threat or potential threat to the public health, safety or welfare, to the environment of the State and to owners and users of property near or adjacent to uncontrolled sites.

The Legislature further finds that adequate measures must be taken to ensure that the threats posed by uncontrolled hazardous substance sites are abated, cleaned up or mitigated promptly.

The Legislature further finds that it is in the public interest of the State and its citizens to provide the capacity for prompt and effective planning and implementation of plans to abate, clean up or mitigate threats posed or potentially posed by uncontrolled sites. This paramount state interest outweighs any burden, economic or otherwise, imposed by this chapter.

**1363. Powers and duties of the department**

1. **Technical services.** The commissioner shall establish a technical services capability within the department to assist in the identification, evaluation and mitigation of uncontrolled hazardous substance sites.

2. **Rules.** The board may adopt rules related to the handling of hazardous substances and the designation and mitigation of uncontrolled hazardous substance sites. The board may provide by rule that any person who knows or has reason to believe that any hazardous substance is present in ground water beneath a site which is owned or operated by that person provide notice of that condition to the department if the concentration of the hazardous substance in ground water exceeds state or federal recommended contaminant levels for drinking water.

3. **Investigation and evaluation.** The department may investigate and sample sites where hazardous substances are stored or handled to identify uncontrolled hazardous substance sites. During the course of the investigation, the commissioner may require submission of information or documents which relate or may relate to the site under investigation from any person who the department has reason to believe may be a responsible party. The information may include, among other things, the nature and amounts of hazardous substances or other wastes which arrived or may have arrived at the site, manner of transportation, treatment or disposal of the hazardous substances or other wastes and any other information relating to the site or to threats posed by the potential site.

4. **Designation.** In accordance with section 1365, the commissioner may declare a site to be an uncontrolled hazardous substance site. The designation may be appealed only upon the issuance of an order pursuant to section 1365, subsection 2, as provided in section 1365, subsection 4.

5. **Mitigation.** The department may take whatever action is deemed necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by an uncontrolled site or to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards, and implementing remedies to remove, store, treat, dispose of or otherwise handle hazardous substances located in, on or over an uncontrolled site, including soil and water contaminated by hazardous substances.

6. **Accept funds.** The department may accept any public or private funds which may be available for carrying out the purposes of this chapter. The Uncontrolled Sites Fund is established to be used by the department as a non-lapsing revolving fund for carrying out the purposes of this chapter, including the longterm oversight of uncontrolled hazardous substance sites. Money in the fund, not needed currently to meet the obligations of the department in the exercise of its responsibilities under this chapter, shall be deposited with the Treasurer of State to the credit of the fund and may be invested in such a manner as is provided for by law. Interest received on that investment shall be credited to the fund.

**1365. Designation of uncontrolled hazardous substance sites**

1. **Investigation.** If the commissioner finds, after investigation, that any location at which hazardous substances are or were handled or otherwise came to be located may create a danger to public health or safety of any person or to the environment, he may designate that location as an uncontrolled hazardous substance site. He may order any responsible party dealing with the hazardous substances to cease immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger to cease or prevent that contribution.

\* \* \*

**1366. Abatement, clean up and mitigation costs**

Whenever possible and practical, the department shall make use of resources available under the Superfund program or other federal programs to evaluate and investigate uncontrolled sites and to abate, clean up or mitigate threats or hazards posed by uncontrolled sites.

In the case of a site at which federal resources may be or are being used, proceeds from the sale of bonds for the evaluation and investigation of sites and for implementation of plans to abate, clean up or mitigate hazards or threats posed by an uncontrolled site may be used:

1. **Privately owned sites.** In the case of a site that was privately owned at the time of disposal of any hazardous substances, for the state's share of remedial action costs; and

2. **Sites owned by state or political subdivision.** In the case of a site which was owned at the time of disposal of any hazardous substances by the state or a political subdivision thereof, for the state's share of response costs.

In the case of a site at which federal resources are not used, the commissioner shall so notify the Governor in writing. The Governor may authorize the department to proceed under the provisions of this chapter without those resources. In the event the State proceeds at its own expense with work eligible for federal funding, the Commissioner of Environmental Protection shall present the United States Environmental Protection Agency with demand for reimbursement.

(TITLE 38)  
(WATERS AND NAVIGATION)

Chapter 13-C  
SLUDGE AND RESIDUALS UTILIZATION RESEARCH

**1380. Foundation Established; purpose**

The Maine Sludge and Residuals Utilization Research Foundation is established to promote, conduct, facilitate and fund research into sludge and residuals utilization. The foundation shall determine research needs and priorities and develop valid, objective scientific information to be used by the private sector, state agencies, communities and public interest groups to solve utilization problems and address environmental concerns. In addition, the foundation shall operate a clearinghouse for information on the beneficial uses of sludge and residuals and any health or environmental consequences. The clearinghouse shall be a repository of information, available to sludge generators, state agencies and the public, that is continually updated to reflect current knowledge in all aspects of sludge and residuals recycling.

The foundation shall exist as a not-for-profit corporation with a public purpose and the foundation's exercise of the powers which this chapter confers shall be deemed an essential governmental function.

\* \* \*



(TITLE 38)  
(WATERS AND NAVIGATION)

CHAPTER 14-A

NUCLEAR WASTE ACTIVITY

SUBCHAPTER I

GENERAL PROVISIONS

\* \* \*

**1452. Consent of Legislature for federal radioactive waste storage facilities.**

Notwithstanding any other provision of law, this State does not consent to the acquisition by the Federal Government, by purchase, condemnation, lease, easement or by any other means, of any land, building or other structure, above or below ground, or in or under the waters of the State for use in storing, depositing or treating high-level or low-level radioactive waste materials. The legislature may consent, by prior affirmative vote, to such activities, except that consent is expressly withheld for any such activity undertaken in connection with the deep geological disposal of high-level radioactive waste, as provided in section 1461-A.

\* \* \*

**1453. Advisory Commission on Radioactive Waste**

\* \* \*

**3. Duties.** The duties of the commission are to:

- A. Study the management, transportation, storage and disposal of radioactive waste, including low-level and high-level radioactive waste generated in or near this State;
- B. Evaluate methods and criteria for siting and constructing low-level radioactive waste disposal or storage facilities;
- C. Evaluate methods and criteria siting and constructing high-level radioactive waste repositories or storage facilities;
- D. Advise the Governor and the Legislature on the findings and recommendations of the Commission;
- E. Assist the Governor in regional efforts to manage radioactive waste; and
- F. Provide opportunities for public input, disseminate information to the general public and promote public understanding concerning radioactive waste issues.

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SUBCHAPTER II

HIGH-LEVEL RADIOACTIVE WASTE

\* \* \*

#### 1461-A. Disapproval of high-level radioactive waste repository

1. **Disapproval.** The State has received notice that the United States Department of Energy, in accordance with the United States Nuclear Waste Policy Act of 1982, Public Law 97-425, is considering 2 sites within the State of Maine as potentially acceptable sites for location of a high-level radioactive waste repository and has considered at least 3 other sites within Maine for this purpose. The Legislature finds;

A. That, based on all available technical information, the geology at these sites is not suitable for a high-level radioactive waste repository;

B. That exploration for, construction or operation of such a repository at these sites is contrary to the economic well-being of the people of this State; and

C. That the location of such a repository at these sites is contrary to the safety and health of the people of the State of Maine and would substantially interfere with the power and ability of the State to govern its citizens and provide for their health, safety and welfare.

For each of these reasons, the State of Maine expressly disapproves the further exploration for, construction or operation of a high-level radioactive waste repository at any of these sites.

2. **Review by State.** If the Federal Government, or any person acting under its direction, in spite of the State's disapproval as provided in subsection 1, proceeds with further efforts to investigate the siting, construction or operation of a high-level radioactive waste repository within the State of Maine, the provisions of sections 1463 to 1466 apply to the extent necessary to allow the State to monitor, review and regulate such activities in order to minimize the adverse effects on the health, safety and economic well-being of the people of this State arising from these activities.

#### 1463. Area Studies

1. **Plan.** Prior to initiation of area studies by the Federal Government or any person acting under its authority, the commissioner, in consultation with the State Geologist, shall submit a plan for conduct of those studies and a plan for state oversight, review and verification of area studies. The State plan shall include procedures for the establishment of a state review group to monitor and review the conduct of area studies and report their findings to the Governor and the Legislature. This review group shall include representatives of the scientific community, the Legislature and the general public. The review group may be established and may conduct its activities before other elements of the plan are approved.

2. **Exploration.** No person may explore geological formations within this State for the purpose of investigating whether the site may be suitable for a high-level radioactive waste repository without the permission of the Legislature. The State Geologist shall advise the Legislature whether the proposed activity is consistent with the plan required by subsection 1 and with rules promulgated by the United States Department of Energy, the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency relevant to siting a high-level radioactive waste repository and the United States Nuclear Waste Policy Act of 1982, Public Law 97-425.

\* \* \*

### SUBCHAPTER III

#### LOW-LEVEL RADIOACTIVE WASTE

##### 1471. Purpose

In accordance with the United States Low-level Radioactive Waste Policy Act of 1980, Public Law 96-573, as amended by the United States Low-level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240, the State accepts its responsibility for providing for the capacity for the disposal of low-level radioactive waste generated within this State that consists of or contains Class A, B or C radioactive waste, as defined by the Code or Federal Regulations, Title 10, Section 61.55, as in effect on January 26, 1983, except for waste owned or generated by the United States Department of Energy or waste

owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy or waste owned or generated as a result of any research, development, testing or production of any atomic weapon. It is the purpose of this subchapter to establish a program for the safe management of low-level radioactive waste, and to provide capacity for its disposal either within this State or in regional facilities.

\* \* \*

#### 1473. Geological Characterization

The State Geologist shall advise the Governor and the legislature on the suitability of areas of the State for low-level waste disposal. In determining suitability, the State Geologist shall consider final rules for facility siting under 10 Code of Federal Regulations, Part 61, and other rules, as appropriate.

\* \* \*

#### 1478. Departmental review of low-level radioactive waste facilities

1. **Notice.** Any person intending to construct or operate a low-level radioactive waste storage or disposal facility shall file a preliminary notice with the department and the municipality in accordance with section 483, subsection 2.

2. **Hearings.** The board shall hold hearings on the proposed facility in accordance with Section 484. Subject to the requirements of Title 5, Section 9057 any person who resides within the State is entitled to be heard. The hearings shall as a minimum address the following issues:

- A. The technical feasibility of the proposed waste disposal or storage facility;
- B. The environmental impact of the proposed waste disposal or storage facility on the surrounding area;
- C. The social impact of the proposed waste disposal or storage facility on the surrounding area; and
- D. The economic impact of the proposed waste disposal or storage facility on the surrounding area.

Whether the proposed facility will satisfy any requirements under: Section 413, waste discharge licenses; section 590, air emission licensing; section 1304, licenses for waste facilities; and any other laws administered by the department that may be applicable.

3. **Municipal participation.** The municipality in which the proposed facility would be located may participate in the departmental site review using procedures for municipal participation in siting of hazardous waste facilities under section 1319-R, subsection 3.

3-A. **Maine Land Use Regulation Commission.** For facilities proposed to be located within areas subject to the jurisdiction of the Maine Land Use Regulation Commission and reviewed by the board under this subchapter, the reviewing agency shall be the board and no permit or other approval may be required from the commission.

In reviewing facilities proposed within the commission's jurisdiction, the board shall ensure that:

- A. There will not be adverse effects on the resources or uses of areas zoned as protection subdistricts; and
- B. The public health and safety will be protected.

\* \* \*

#### 1479. Legislative approval of facilities required

No low-level radioactive waste disposal or storage facility may be established in the State, unless the Legislature has, by Private and Special Act, approved the establishment of that facility pursuant to the provisions of this subchapter. The Legislature shall act expeditiously on any recommendation of the board under section 1478, but shall not act until after the conclusion of any judicial review of the recommendation and any resulting administrative proceedings.

Approval under this subchapter constitutes approval under the site location of development laws, but does not replace any other license required by law.

Approval under this subchapter is in addition to the voter approval required by subchapter IV.

\* \* \*

### SUBCHAPTER III-A

#### LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

##### 1481. State low-level radioactive waste disposal facility

1. **Intent.** It is the present intent of the State to develop a site for the location of a low level radioactive waste disposal facility within the State.

2. **Federal Milestone.** It is the intent of this section to meet the July 1, 1986, milestone requirements for interim access to existing regional disposal facilities as required by the United States Low-level Radioactive Waste Policy Amendments Act of 1985, PL 99-240.

##### 1482. Requirements to be met by any low-level radioactive waste disposal facility

1. **State ownership and control.** Any low-level radioactive waste disposal facility developed in the State shall be owned and controlled by the State, but the State may contract for services as necessary.

2. **Protection of public health and safety.** Any low-level radioactive waste disposal facility developed in the State shall employ the safest available technology in order to cope with the humid climate, high water table, cold winters and other geological characteristics of the State, improved engineered disposal methods in addition to geological barriers shall be used rather than conventional shallow land burial.

3. **Financing.** Any low-level radioactive waste disposal facility developed in the State shall be financed by funds collected prior to their expenditure from the generators of that waste within the State. This includes funds for planning, licensing, siting, construction, operation, closure, long-term monitoring and any other necessary functions.

4. **Licensing.** any low-level radioactive waste disposal facility developed in the State shall be licensed by the United States Regulatory Commission or, in the event the State becomes an agreement state, by the State. The facility must be recommended by the Board of Environmental Protection and approved by the Legislature in accordance with this subchapter and approved by the voters in accordance with subchapter IV.

\* \* \*

### CHAPTER 14-B

#### MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY

##### 1501. Short title

This chapter shall be known and may be cited as the "Maine Low-level Radioactive Waste Authority Act."

##### 1502. Legislative findings and purpose

The United States Low-level Radioactive Waste Policy Act of 1980, Public Law 96-573, requires that states assume responsibility for providing the capacity for the disposal of low-level radioactive waste generated within their borders. The State has expressed its intent to develop, if necessary, a site for the location of a low-level radioactive waste disposal facility within the State. The State is continuing to try to negotiate a compact or agreement for low-level radioactive waste disposal out of State. The United States Low-level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240, establishes January 1, 1988, as the milestone date for states which are not members of a

compact to develop a siting plan for a low-level radioactive waste disposal facility. To accomplish that task, it is necessary for the State to provide for planning, siting, construction, operation and maintenance, site closure and long-term, post-closure control of a low-level radioactive waste disposal facility or facilities. In order to protect public health, safety and the environment, federal regulations require the effective isolation of low-level radioactive waste for 500 years following disposal site closure, observation and maintenance of the closed site and long-term institutional control of the site leading to termination of the operating license.

The purpose of this chapter is to establish the Maine Low-level Radioactive Waste Authority with the responsibility, if necessary, to coordinate and oversee the planning, siting, construction, operation, maintenance, closure, post-closure observation and maintenance and long-term institutional control of a facility or facilities with sufficient capacity to dispose of only the low-level radioactive waste generated within this State and for which this State is responsible and to provide for termination of the license for the facility or facilities.

\* \* \*

**1525. Low-level radioactive waste management plan**

The authority shall promulgate by rule, following public hearing, a plan for the management of the State's low-level radioactive waste. The plan shall guide the State's activities in disposing of the State's low-level radioactive waste. The plan shall be adopted by January 1, 1988, milestone date for the development of a siting plan required by the United States Code, Title 42, Section 5(e)(1)(B), of the United States Low-level Radioactive Policy Amendments Act of 1985, Public Law 99-240.

\* \* \*

**SUBCHAPTER VI**

**RESPONSIBILITIES OF GENERATORS**

**1541. Delivery of low-level radioactive waste required**

Unless otherwise authorized by the authority, when the low-level radioactive waste facility is in operation, in-state generators of low-level radioactive waste for which the State is responsible shall dispose of that waste at the disposal facility.

\* \* \*

(TITLE 38)  
(WATERS AND NAVIGATION)

CHAPTER 16  
SALE OF CONSUMER PRODUCTS AFFECTING THE ENVIRONMENT

\* \* \*

**1602. Chemical septic tank cleaners**

No person may sell, offer to sell or commercially promote the use of any chemical solvent containing halogenated hydrocarbon compounds as septic tank cleaners or degreasers.

\* \* \*

**1604. Lead-acid batteries**

For the purposes of this section, "lead-acid battery" means a device designed and used to store electrical energy through chemical reactions involving lead and acid.

1. **Disposal.** No person may dispose of a lead-acid battery by burial, incineration, deposit or dumping so that the battery or any of its constituents may enter the environment or be emitted into the air or discharged into any waters.

\* \* \*

(TITLE 38)  
(WATERS AND NAVIGATION)

(CHAPTER 23)  
(LAKE WATERSHED DISTRICTS)

**38 § 2001. Watershed districts authorized**

Watershed districts may be created pursuant to this section to protect, restore and maintain the water quality of great ponds and to manage and conserve the land and water resources of watersheds of great ponds within the jurisdictions of these districts. The terms "watershed district" and "lake management district" are used interchangeably in this chapter. The term "participating water district," as used in this chapter, means a water district, as defined by Title 35-A, section 6101, subsection 3, included in the application provided for by section 2002.

\* \* \*

**38 § 2007. Powers**

A watershed district has the following powers.

1. **General.** Any district organized under this chapter may sue and be sued; make contracts; accept gifts, purchase, lease, devise or otherwise acquire, hold or dispose of real or personal property; disburse money; contract debt; adopt rules; and do such other acts as necessary to carry out the purposes of the district.

2. **Security required.** The district may require that a contracting party give adequate security to assure performance of the contract and to pay all damages which may arise from inadequate performance.

3. **Responsibilities.** The district shall be responsible for:

A. Initiating and coordinating research and surveys for the purpose of gathering data on great ponds, related shorelands and watersheds within the territory of the district

B. Planning lake restoration projects

C. Contacting and attempting to secure the cooperation of municipal officials and state agencies for the purpose of enacting and enforcing ordinances and regulations necessary to further the purposes of the district

D. Adopting and implementing lake protection, management and restoration plans

E. Adopting and implementing plans and programs to facilitate coordination of water level management and surface water use on great ponds within the territory of the district.

4. **Limits on jurisdiction.** The limits on jurisdiction are as follows.

A. The district has no authority to set a water level regime for a body of water impounded by a dam which is exempt, under section 840, subsection 1, from the authority of the Board of Environmental Protection to set water level regimes.

B. The district's authority to set a water level regime for any water body within its boundaries and over any dams within its boundaries is subordinate to the authority of the Department of Environmental Protection under chapter 5, subchapter 1, article 1, subarticle 1-B and article 3-A.

**38 § 2009. Exemption**

The property, both real and personal, rights and franchises of any watershed district formed under this chapter and held within the boundaries of the district is forever exempt from taxation.

\* \* \*

**38 § 2011. Liability**

Any watershed district formed under this chapter is a governmental entity for the purposes of Title 14, chapter 741.

(TITLE 38)  
(WATERS AND NAVIGATION)

CHAPTER 24  
MAINE WASTE MANAGEMENT AGENCY

SUBCHAPTER IV  
OFFICE OF SITING AND DISPOSAL OPERATIONS

\* \* \*

38 § 2151. Office of Siting and Disposal Operations

The Office of Siting and Disposal Operations, referred to as "the office" in this subchapter, is established to carry out the purposes of this subchapter. The Director of the office shall administer the office in accordance with the policies of the agency and consistent with the state waste management and recycling plan.

\* \* \*

38 § 2153. Siting Criteria

1. Siting criteria. By May 1, 1990, the Facility Siting Board shall adopt by rule siting criteria for solid waste disposal facilities based on the following factors.

A. To the extent possible, a site shall be located proximity to the entities that generate the waste placed at the site.

B. To the extent possible, a site shall be located in proximity to the transportation systems that are used to convey waste to the site or to convey residuals and materials to be recycled from the site.

C. The capacity or size of a site must be consistent with the projected demand as determined in the state plan.

D. A site and its considered use must be consistent with, and actively support, other waste management objectives, including waste reduction and recycling.

E. The projected price for site development, construction and operation must be fair and reasonable.

F. A site must meet preliminary environmental standards developed jointly by the department and the Maine Land Use Regulation Commission, including ground water and geological standards.

G. Existing uses on adjacent properties shall not be in significant conflict with or significantly jeopardized by the use of a site.

\* \* \*

SUBCHAPTER V  
HOST COMMUNITY BENEFITS

\* \* \*

38 § 2177. Water supply monitoring and protection

Upon written request from persons owning land contiguous to a waste landfill approved under subchapter IV, the operator of the landfill shall have quarterly sampling and analyses conducted of private water supplies used by the requestors for drinking water. The sampling and analysis shall be conducted in a manner specified by and shall meet criteria developed by the department.



Any person owning or operating a waste landfill that adversely affects a public or private water supply by pollution, degradation, diminution or other means that result in a violation of the state drinking water standards as determined by the department shall restore the affected supply and, to the owner or replace the affected supply with an active source of water that is of like quantity and quality and original supply at no cost to the owner.

1. **Extent of analysis.** Water supplies shall be tested for all parameters or chemical constituents determined by the department to be indicative of typical contamination from solid waste landfills. The laboratory performing the sampling and analysis shall provide written copies of the results to the landfill owner, the landowner and to the department.

2. **Additional sampling required.** If the analysis poses possible contamination from a solid waste landfill, the department shall conduct, or require the landfill operators to have the laboratory conduct, additional sampling and is to determine more precisely the nature, extent and cause of contamination. The department shall, if necessary, use this sampling beyond the boundaries of the contiguous property.

3. **Written notice of rights.** On or before December, 1989, for permits issued under this chapter prior to , and at or before the time of permit issuance permits issued under this chapter after October 1, 1989, operator of each waste landfill shall provide owners of contiguous land with written notice of their rights under this section on a form prepared by the department.

## **SUBCHAPTER VI LIABILITY AND LIMITATIONS**

### **38 § 2181. Effect on tort claims**

Nothing in this chapter may be construed or underestimated as in any way increasing any liability that may otherwise be limited under Title 14, chapter 741

### **38 § 2182. Ability to indemnify**

Nothing in this subchapter may be construed to prevent any host municipality, regional association or the state from obtaining or giving such indemnities as may be appropriate in connection with the ownership, operation or control of a municipal solid waste facility.

### **38 § 2183. Effect on existing contracts and facilities**

Except as otherwise provided, nothing in this chapter may be construed to impair any contract in force upon the effective date of this chapter.

### **38 § 2184. Municipal contracts**

A municipality may contract with any person to carry out its duties for the recycling, transportation, collection and storage of municipal waste and source-separated materials to be recycled, if the recycling, transportation, collection or storage activity or facility is conducted or operated in a manner that is consistent with the provisions of this chapter, the state plan, and the rules promulgated pursuant to this chapter.

1. **Existing contracts.** Except as otherwise provided in this chapter, nothing in this chapter may be construed to interfere with, or in any way modify, the provisions of any contract for municipal waste disposal, processing or collection with any regional association or municipality in force upon the effective date of this chapter or prior to the adoption of the state plan.

2. **Renewals.** No renewal of any existing contract upon the expiration or termination of the original term of the contract, and no new contract for municipal waste disposal, processing or collection may be entered into after the effective date of this chapter, if the renewal or new contract fails to conform to the applicable provisions of this chapter or interferes with the implementation of the state plan.

\* \* \*

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