

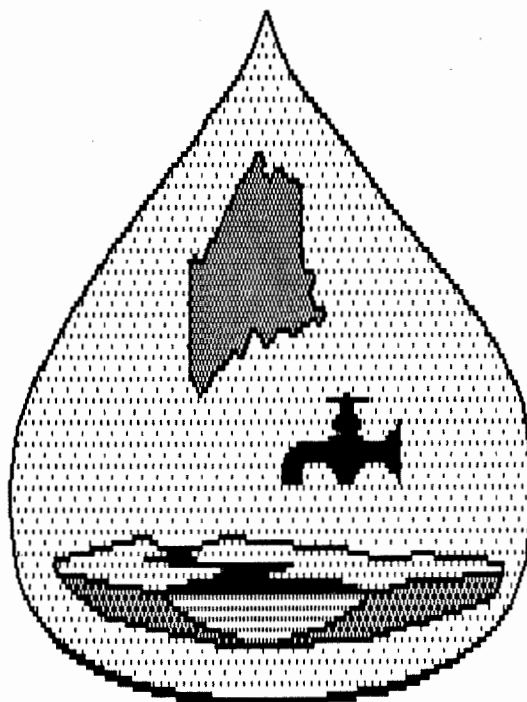
MAINE STATE LEGISLATURE

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**PUBLIC LAWS RELATING
TO GROUNDWATER**



APPENDIX A -1

**REPORT OF THE LEGAL
FRAMEWORK SUBCOMMITTEE**

**MAINE WATER RESOURCES
MANAGEMENT BOARD**

JANUARY, 1991

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TO
WATER LAW IN MAINE - 1990

PUBLIC LAWS RELATING TO GROUNDWATER

REPORT OF THE LEGAL FRAMEWORK SUBCOMMITTEE
MAINE WATER RESOURCES MANAGEMENT BOARD

November 20, 1990

MAY 13 1991

ACKNOWLEDGEMENTS

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MAINE LAWS RELATING TO GROUNDWATER

Assembled by: Paul Dutram

CHAPTER 11

AROOSTOOK COUNTY WATER AND SOIL MANAGEMENT PROGRAM

7 § 331. Legislative findings

The Legislature finds that:

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 § 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.

CHAPTER 103
SUBCHAPTER II-A
MAINE PESTICIDE CONTROL ACT OF 1975

* * *

7 § 606. Prohibited acts

* * *

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

* * *

B. For any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or to regulations of the commissioner, if those regulations further restrict the uses provided on the labeling

* * *

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

* * *

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.

* * *

CHAPTER 1
SOIL AND WATER CONSERVATION DISTRICTS

SUBCHAPTER I
GENERAL PROVISIONS

* * *

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;

* * *

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;

* * *

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.

* * *

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.

* * *

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.

**CHAPTER 201-A
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.

* * *

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

* * *

**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.

**CHAPTER 206-A
USE REGULATION**

**SUBCHAPTER I
GENERAL PROVISIONS**

12 § 681. Purpose and scope

The Legislature finds that it is desirable to extend principles of sound planning, zoning and subdivision control to the unorganized and deorganized townships of the State: To preserve public health, safety and general welfare; to prevent inappropriate residential, recreational, commercial and industrial uses detrimental to the proper use or value of these areas; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to provide for appropriate residential, recreational, commercial and industrial uses; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and inappropriate use of the water in these areas; and to preserve ecological and natural values.

In addition, the Legislature declares it to be in the public interest, for the public benefit and for the good order of the people of this State, to encourage the well planned and well managed multiple use of land and resources and to encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.

* * *

**CHAPTER 206-A
USE REGULATION**

**SUBCHAPTER II
MAINE LAND USE REGULATION COMMISSION**

12 § 683. Creation of Maine Land Use Regulation Commission

The Maine Land Use Regulation Commission, as established by Title 5, section 12004-D, subsection 1, to carry out the purposes stated in section 681, is created within the Department of Conservation, and in this chapter called the "commission." The commission is charged with implementing this chapter in all of the unorganized and deorganized areas of the State. The commission shall consist of 7 public members, none of whom shall be state employees, who shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resources and to confirmation by the Legislature, for staggered 4-year terms. Among the public members, there shall be 4 who shall be knowledgeable in at least one of each of the following areas: Commerce and industry; fisheries and wildlife; forestry; and conservation. Of the potential appointees to the commission, the Governor shall actively seek and give consideration to persons residing in or near the unorganized areas of the State and at least 2 members shall be residents within the commission's jurisdiction.

* * *

12 § 685-A. Land use districts and standards

* * *

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

* * *

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

* * *

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. (CONFLICT: Text as amended by PL 1989, c. 430, @1) No person may commence any construction or operation of any development without a permit issued by the commission.

* * *

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 1, article 5-A, for solid waste disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies

* * *

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

* * *

7. **Nonconforming uses and nonconforming structures.** To achieve the purposes set forth in this chapter after the adoption of permanent district standards and permanent districts, the commission may regulate and prohibit expansion and undue perpetuation of nonconforming uses. Specifically the commission may regulate and prohibit:

A. Changes in nonconforming uses to another nonconforming use

B. Extension or enlargement of nonconforming uses or nonconforming structures

C. Resumption of nonconforming uses, by prohibiting such resumption if such use is discontinued for 2 years or abandoned

D. Movement or enlargement of a nonconforming structure or of a structure containing a nonconforming use.

The commission may also provide for the termination of commercial or industrial nonconforming uses by specifying in land use standards the period or periods in which nonconforming uses shall be terminated and by adjusting such compulsory terminations so as to allow reasonable time for the conversion of such nonconforming uses and reasonable schedules for the amortization of investment.

* * *

12 § 685-C. Miscellaneous provisions

1. **Comprehensive land use plan.** Not later than January 1, 1975 the commission shall adopt an official comprehensive land use plan for the unorganized and deorganized townships of the State.

Such plan shall guide the commission in developing specific land use standards and delineating district boundaries and guiding development and generally fulfilling the purposes of this chapter.

The plan may consist of maps, data and statements of present and prospective resource uses which generally delineate the proper use of resources, and recommendations for its implementation.

* * *

423-A
MINIMUM LOT SIZE

* * *

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.

* * *

**CHAPTER 91
NUISANCES**

17 § 2701-B. Action against improper manure handling

The Commissioner of Agriculture, Food and Rural Resources shall investigate complaints of improper manure handling including, but not limited to, complaints of improper storage or spreading of manure. If the commissioner is able to identify the source or sources of the manure and has reason to believe that the manure is a nuisance and the nuisance is caused by the use of other than generally accepted manure handling practices, the commissioner shall:

1. **Findings.** Determine the changes needed in manure handling to comply with generally accepted manure handling practices;

2. Conformance. Require the person responsible to abide by the necessary changes determined in subsection 1 and determine if the changes have been made; and

3. Report. Give the written findings of the initial investigation and any determination of compliance to the complainant and the person responsible.

If the person responsible does not adopt generally accepted manure handling practices, the commissioner shall send a copy of the written report to the Department of Environmental Protection and refer the matter in writing to the Attorney General. The Attorney General may institute an action to abate a nuisance and the court may order the abatement with costs as provided under this chapter. If the commissioner, upon investigation, finds that the person responsible for the manure is following generally accepted manure handling practices, the commissioner shall advise the complainant and the person responsible in writing.

The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, for the interpretation and implementation of this section, including a definition of "generally accepted manure handling practices."

The commissioner shall review proposed laws and rules that affect agricultural activity for their impact on soil tillage and animal grazing practices and their impact on the storage and use of animal manures and chemical fertilizers. The commissioner shall analyze the qualitative and quantitative impacts of proposed laws and rules that affect agricultural activity and present the analysis in public testimony to the Legislature on the proposed laws and rules.

If the commissioner finds that improper manure handling may have affected water quality and the person responsible does not adopt generally accepted manure handling practices, the commissioner shall advise the Commissioner of Environmental Protection that a potential water quality violation exists and the Commissioner of Environmental Protection may respond as appropriate.

* * *

17 § 2794. Dumping of oil.

Oil, and a petroleum base, or materials containing significant quantities of such oil shall not be intentionally placed or deposited directly into or on the banks of any river or stream, permanent or temporary, lake, pond or tidal waters or on the ice thereof where such material may fall or otherwise find its way into said watercourse or tidal waters, or shall such material be intentionally placed or deposited directly in pits, wells or on ground surfaces in such a manner that oil will percolate, seep or otherwise find access into ground waters or into wells used for the production of water.

* * *

17 § 2802. Miscellaneous nuisances.

...; causing or permitting abandoned wells or tin mining shafts to remain unfilled or uncovered to the injury or prejudice of others;...;corrupting or rendering unwholesome or impure the water of a river, stream, pond or aquifer; unlawfully diverting it from its natural course or state, to the injury or prejudice of others;...are nuisances within the limitations and exceptions mentioned.

* * *

CHAPTER 1
DEPARTMENT OF HEALTH AND WELFARE

SUBCHAPTER II
ADMINISTRATION

22 § 42. Rules and regulations
(CONFLICT)

* * *

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.

* * *

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.

* * *

**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-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.

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22 § 1471-M. Powers of board

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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.

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22 § 1471-P. Storage of illegal and obsolete pesticides

1. **Board to accept illegal and obsolete pesticides.** Within the limits of resources made available to it for the storage or disposal of illegal and obsolete pesticides purchased for use in Maine, the board shall accept, store and dispose of pesticides from persons who purchased them with the intent of applying them.

2. **Board may adopt rules and fees.** The board may adopt any rules necessary to implement this section, including rules limiting the quantity and nature of pesticides it accepts for storage or disposal. The board may adopt and charge fees for storage or disposal of pesticides presented to it where the amount of pesticides, or special treatments necessary for safe storage or disposal, will require a substantial cost to the board; provided, that the fees charged are close to the actual cost incurred by the board.

22 § 1471-Q. Return and disposal of limited and restricted use pesticide containers

1. **Purpose.** The purpose of this section is to insure the triple rinsing or equivalent of limited and restricted use pesticide containers in accord with the board's regulations, and provide an incentive through a deposit system for the return of triple rinsed pesticide containers. All limited and restricted use pesticide containers shall have a sticker supplied by the board. That sticker shall be used to identify those limited and restricted use pesticide containers for which a deposit is required.

22 § 1471-U. Municipal ordinances

1. **Centralized listing.** The Board of Pesticides Control shall maintain for informational purposes, for the entire State, a centralized listing of municipal ordinances that specifically apply to pesticide storage, distribution or use.

2. **Existing ordinances.** The clerk of any municipality which, on the effective date of this section, has an ordinance to be listed under subsection 1 shall file a copy of that ordinance with the board by December 31, 1988.

3. **New ordinances.** The clerk of the municipality shall provide the board with notice and a copy of any ordinance to be listed under subsection 1 at least 7 days prior to the meeting of the legislative body or the public hearing at which adoption of the ordinance will be considered. The clerk shall notify the board within 30 days after adoption of the ordinance.

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.

**CHAPTER 601
WATER FOR HUMAN CONSUMPTION**

**SUBCHAPTER I
GENERAL PROVISIONS**

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 § 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.

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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.

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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.

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.

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CHAPTER 11
LAYING OUT, ALTERING, ETC. OF HIGHWAYS

23 § 652. Proceedings on damage claims

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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.

**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.

**CHAPTER 5
REGISTRATION OF HAZARDOUS MATERIALS**

**SUBCHAPTER II
FEES AND EXEMPTIONS**

29 § 246-D. Hazardous materials transport licenses

1. **Application.** Every person, firm or corporation transporting by motor vehicle materials required to be placarded in accordance with 49 Code of Federal Regulations, Section 177.823, shall apply to the Secretary of State for a hazardous materials transport license for each vehicle.

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**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.

* * *

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.

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**CHAPTER 185
REGULATION OF CONSTRUCTION AND IMPROVEMENTS**

**SUBCHAPTER III
REGULATION AND INSPECTION OF PLUMBING**

**Article 3
LOCAL PLUMBING INSPECTORS**

30A § 4221. Plumbing inspectors

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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;

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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.

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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; and
- 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; and

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:

* * *

30A § 4326. Local growth management program (CONFLICT)

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:

* * *

B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, where applicable, their vulnerability to degradation;

* * *

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; and
- 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:

* * *

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

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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.

* * *

30A § 4342 State planning review program.

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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 levels; and

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 § 4343. State review of local programs

Subject to the availability of state assistance under section 4344, municipalities shall submit their comprehensive plans and zoning ordinances to the office for review as provided in this section.

1. **Review schedule.** This subsection provides review deadlines for municipalities.

A. The following municipalities must submit their comprehensive plans to the office for review by the following dates:

(1) By January 1, 1991, those municipalities which have experienced population growth of 10% or more between 1980 and 1987 and which have total populations in excess of 500 persons, based on population estimates provided by the State Planning Office;

(2) By January 1, 1993, those municipalities which have experienced population growth of 5% or more between 1980 and 1987, based on population estimates provided by the State Planning Office; and

(3) All other municipalities by January 1, 1996.

**CHAPTER 187
PLANNING AND LAND USE REGULATION**

**SUBCHAPTER III
LAND USE REGULATION**

30A § 4358. Regulation of manufactured housing

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.

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.

* * *

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; and

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.

**CHAPTER 187
PLANNING AND LAND USE REGULATION**

**SUBCHAPTER IV
SUBDIVISIONS**

* * *

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; and
- 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;

* * *

12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

* * *

CHAPTER 26-A
REDUCTION OF TOXICS IN PACKAGING

32 § 1731. Purpose

The purpose of this chapter is to reduce toxicity of packaging waste without impeding or discouraging the expanded use of post-consumer materials in the production of packaging and its components. Under this chapter, reduction of the toxicity in packaging is accomplished by prohibiting the unnecessary addition of heavy metals, such as lead, mercury, cadmium and hexavalent chromium, in packaging and packaging components.

* * *

32 § 1733. Prohibition; schedule for removal of incidental amounts

1. Prohibition of sale of packaging. A manufacturer, supplier or distributor may not offer for sale or for promotional purposes a package or packaging component that includes inks, dyes, pigments, adhesives, stabilizers or any other additives to which any lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements.

2. Prohibition of sale of product in packaging. A manufacturer or distributor may not offer for sale or for promotional purposes any product in a package that includes, in the package itself or any packaging components, inks, dyes, pigments, adhesives, stabilizers or any other additives to which any lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements.

3. Concentration levels. The sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium present in any package or packaging component may not exceed:

- A. Effective April 1, 1992, 600 parts per million by weight, or 0.06%;
- B. Effective April 1, 1993, 250 parts per million by weight, or 0.025%; and
- C. Effective April 1, 1994, 100 parts per million by weight, or 0.01%.

4. Substitute materials. No material used to replace lead, cadmium, mercury or hexavalent chromium in a package or packaging component may be used in a quantity or manner that creates a hazard as great as or greater than the hazard created by the lead, cadmium, mercury or hexavalent chromium.

* * *

PUBLIC UTILITIES
CHAPTER 61
GENERAL PROVISIONS AND RATES

* * *

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.

* * *

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.

* * *

**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 § 343-A. Rules

1. **Rules.** The Board of Environmental Protection may adopt, amend and repeal reasonable rules and emergency rules necessary for the proper administration, enforcement, implementation and interpretation of any provision of law that the department is charged with the duty of administering. Rules duly promulgated shall have the full force and effect of law.

* * *

38 § 344. Processing of applications

* * *

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:

* * *

B. Applications under section 413 for a waste discharge license and for a cooling water waste discharge license

* * *

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

* * *

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

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-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.

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.

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.

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.

**CHAPTER 3
PROTECTION AND IMPROVEMENT OF WATERS**

**SUBCHAPTER I
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.

CHAPTER 3
PROTECTION AND IMPROVEMENT OF WATERS

SUBCHAPTER I
ENVIRONMENTAL PROTECTION BOARD

Article 2
POLLUTION CONTROL

* * *

38 § 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-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-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-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.

* * *

38 § 414. Applications for licenses

2. **Terms of licenses.** Licenses shall be issued by the board for a term of not more than 5 years, except that licenses for residential discharges may be issued for a term of not more than 10 years.

* * *

38 § 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-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 holding tanks as a "technologically proven alternative method 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.

* * *

38 § 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.

* * *

38 § 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.

38 § 419. Cleaning agents containing phosphate banned

1. Definitions.

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.

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.

38 § 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, at 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.

* * *

38 § 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.

* * *

CHAPTER 3
PROTECTION AND IMPROVEMENT OF WATERS

SUBCHAPTER I
ENVIRONMENTAL PROTECTION BOARD

Article 3
ENFORCEMENT

38 § 451-A. Time schedule variances

* * *

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, 1997, 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 1990;
- (2) For Priority 3 project - January 1991;
- (3) For Priority 4 project - January 1992; and
- (4) For Priority 5 project - January 1993.

B. Arrangements for administration and financing must be completed within 12 months of the dates established in paragraph A for each priority category.

C. Detailed engineering and final plan formulation must 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 must 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 must be completed and in operation on or before January 1, 1997.

In no case may 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, 1997, whichever is earlier.

The board may 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.

* * *

**CHAPTER 3
PROTECTION AND IMPROVEMENT OF WATERS**

**SUBCHAPTER I
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.

* * *

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 § 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.

**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.

* * *

38 § 482. Definitions

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

* * *

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.

* * *

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

* * *

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.

* * *

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.

* * *

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.

* * *

CHAPTER 3
PROTECTION AND IMPROVEMENT OF WATERS

SUBCHAPTER II-A
OIL DISCHARGE PREVENTION AND POLLUTION CONTROL

* * *

38 § 543. Pollution and corruption of waters and lands of the State prohibited

The discharge of oil into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into or upon any lake, pond, river, stream, sewer, surface water drainage, ground water or other waters of the State or any public or private water supply or onto lands adjacent to, on, or over such waters of the State is prohibited. Notwithstanding the prohibition of this section, the Board of Environmental Protection may license the discharge of waste, refuse or effluent, including natural drainage contaminated by oil, petroleum products or their by-products, into or upon any coastal waters if, and only if, it finds that such discharge will be receiving the best available treatment and that such discharge will not degrade existing water quality nor perceptibly violate the classification of the receiving waters, nor create any visible sheen upon the receiving waters.

In acting upon an application for any such license, the board shall follow the provisions of subchapter I insofar as they are applicable.

* * *

38 § 548. Removal of prohibited discharges

Any person discharging or suffering the discharge of oil, petroleum products or their by-products in the manner prohibited by section 543 shall immediately undertake to remove that discharge to the department's satisfaction. Notwithstanding the above requirement, the department may undertake the removal or cleanup of that discharge and may retain agents and contracts for those purposes who shall operate under the direction of the department. The department may implement remedies to restore or replace water supplies contaminated by a discharge of oil, petroleum products or their by-products prohibited by section 543, including all discharges from interstate pipelines, using the most cost-effective alternative that is technologically feasible and reliable and which effectively mitigates or minimizes damages to, and provides adequate protection of, the public health, welfare and the environment.

* * *

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-A. Definitions

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

* * *

19. **Sensitive geologic areas.** "Sensitive geologic areas" means significant ground water aquifers and primary sand and gravel recharge areas, as defined in section 482, located within 1,000 feet of a public drinking water supply and within 300 feet of a private drinking water supply.

* * *

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 commissioner with the following information on a form in triplicate to be developed and provided by the commissioner; one copy to be submitted to the commissioner, 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. The location of the facility shown on a United States Geologic Survey topographic map for facilities located in rural areas or in relation to the nearest intersection for facilities located in urban areas 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 facilities, 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 the form of secondary containment, other forms of leak detection or equipment to be installed pursuant to section 564, subsection 1, paragraph A and, when applicable, the method of retrofitting leak detection pursuant to section 564, subsection 1 or 1-A;

H. For existing facilities and tanks, the best estimate of the age and type of tank or tanks at the facility; and

I. Expiration date of tank manufacturer's warranty.

The owner or operator shall comply with the requirements of paragraph C by January 1, 1991.

* * *

38 § 563-A. Prohibition of nonconforming underground oil storage facilities and tanks

1. **Compliance schedule.** Notwithstanding subsection 1-A, no person may operate, maintain or store oil in a registered underground oil storage facility or tank that 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.

1-A. Compliance schedule for municipalities and school administrative units. A municipality or school administrative unit may not operate, maintain or store oil in a registered underground oil storage facility or tank that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department after;

A. October 1, 1992, 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;

B. October 1, 1994, if that facility or tank is more than 20 years old or if that facility or tank is 15 years old and is located in a sensitive geological area; or

C. October 1, 1997.

1-A. Exception. Airport aviation fuel hydrant piping systems are exempt from the schedule in subsection 1 provided that corrosion-induced leaks have not occurred and the system is not located in a sensitive geologic area. Owners and operators of airport aviation fuel hydrant piping systems must meet all applicable requirements of section 564 and of this subchapter.

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.

* * *

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. **Investigation and removal.** Procedures, methods, means and equipment to be used in the investigation of discharges and 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 to store motor fuels or 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 to store motor fuel or used in the marketing and distribution of oil to others. These rules must ensure that requirements and standards governing facilities under this section assure that the State's program meets requirements under the United States Resource Conservation and Recovery Act, Subtitle I, as amended. 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, piping and below ground ancillary equipment must be constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the department. All new and replacement tanks must include secondary containment, monitoring of the interstitial spaces for all piping and below ground ancillary equipment except for suction piping systems installed in accordance with subsection 1-A. Both tanks and piping must be constructed of materials compatible with the product to be stored. Anchoring is required of tanks when located in a site where the ground water is expected to reach the bottom of the tank or in a 100-year flood plain.

B. All new and replacement facilities must be installed in accordance with the equipment manufacturer's specifications and nationally accepted standards and by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and must be registered with the commissioner 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. New and replacement impressed current cathodic protection systems must be designed by a corrosion expert.

1-A. Leak detection standards and procedures for existing facilities. Facility owners shall implement one of the leak detection methods listed in this subsection or properly abandon a facility in accordance with section 566-A. The leak detection system must be capable of detecting a leak within 30 days with a probability of detection of 95%. Facility owners shall retrofit leak detection for facilities with pressurized piping by December 1, 1990, and facilities with suction piping by December 1, 1991. Leak detection methods are as follows:

A. Monthly reconciliation of daily product inventory data and an annual precision test of all tanks and piping. Pressurized piping must be retrofitted with an in-line leak detector; or

B. Installation of one of the following leak detection systems:

(1) Secondary containment of all underground oil storage facility components or secondary containment for the tank and single-walled containment for suction piping sloped evenly to the tank and equipped with a single check valve under the pump;

(2) Continuous monitoring for free product in monitoring wells installed in the excavated area around the tank or tanks, and to detect a leak or discharge of oil from the piping not installed in accordance with subparagraph (1), one of the following:

- (a) Continuous vapor monitoring;
- (b) Annual tightness testing;
- (c) Secondary containment with interstitial space monitoring; or
- (d) Other methods of leak detection approved by the department;

(3) Continuous vapor 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;

(4) Manual ground water sampling capable of detecting the presence of at least 1/8 inch of free product on top of the ground water table in a reasonable number of ground water monitoring wells installed in the excavated area, and to detect a leak or discharge of oil from the product piping not installed in accordance with subparagraph (1), one of the following:

- (a) Continuous vapor monitoring;
- (b) Annual tightness testing;
- (c) Secondary containment with interstitial space monitoring; or
- (d) Other methods of leak detection approved by the department;

(5) Automatic tank gauging that can detect a 0.2 gallon per hour loss, and to detect a leak or discharge of oil from product piping not installed in accordance with subparagraph (1), one of the following:

- (a) Continuous vapor monitoring;
- (b) Annual tightness testing;
- (c) Secondary containment with interstitial space monitoring; or
- (d) Other methods of leak detection approved by the department; or

(6) Other leak detection systems approved by the department that can detect a 0.2 gallon per hour leak rate or a leak of 150 gallons in 30 days with a 95% probability of detecting a leak and a 5% chance of false alarm.

New and replacement piping must be equipped with leak detection. Pressurized piping must be equipped with an automatic in-line leak detector and be monitored by a leak detection system listed in paragraph B. Suction piping must be installed to operate at less than atmospheric pressure, sloped to drain back into the tank with a loss of suction and installed with only one check valve located below and as close as practical to the suction pump. Product piping that does not meet these suction piping criteria must be monitored by a leak detection system listed in paragraph B.

1-B. Overfill and spill prevention equipment. Overfill and spill prevention equipment is required for all new, replacement and existing facilities. The board may adopt a phase-in schedule for existing facilities to meet this requirement.

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 must be reported to the commissioner. Annual statistical inventory analysis is not required for double-walled tanks equipped with interstitial space monitors;

C. Voltage readings for cathodically protected systems by a cathodic protection tester 6 months after installation and annually thereafter;

D. Monthly inspections by a cathodic protection tester of the rectifier meter on impressed current systems;

E. Precision testing of any tanks and piping showing evidence of a possible leak. Results of all tests conducted must be submitted to the commissioner by the facility owner and the person who conducted the test;

E-1. Proper calibration, operation and maintenance of leak detection devices;

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 commissioner 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 0.5% of the product delivered;

(2) Unexplained losses detected through statistical analysis of inventory records;

(3) Detection of product in a monitoring well or by other leak detection methods;

(4) Failure of a tank or piping precision test, hydrostatic test or other tank or piping tightness test approved by the department;

(5) Discovery of oil off site, on or under abutting properties, including nearby utility conduits, sewer lines, buildings, drinking water supplies and soil; and

(6) Notwithstanding this paragraph, any actual leaks or discharges of oil that occur on the premises, including, but not limited to, spills, overfills and leaks, whether or not cleaned up;

H. Compatibility of the materials from which the facility is constructed and the product to be stored;

I. Owners and operators, upon request by the commissioner, to sample their underground oil tanks, to maintain records of all monitoring and sampling results at the facility or the facility owner's place of business and to furnish records of all monitoring and sampling results to the commissioner or to permit the commissioner or the commissioner's representative to inspect and copy those records; and

J. Owners and operators to permit the commissioner or the commissioner's designated representatives, including contractors, access to all underground oil storage facilities for all purposes connected with administering this subchapter, including, but not limited to, for sampling the contents of underground oil tanks and monitoring wells. This right of access is to be in addition to any other granted by law.

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 that 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 commissioner. 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 commissioner instead. If the results of the statistical inventory analysis indicate evidence of a leak at the facility or that the inventory data is not available or is not sufficiently reliable to make a determination that the facility is or is not leaking, the commissioner may require that all remaining tanks and piping at the facility be precision tested, except that precision testing is not required when it can be demonstrated that the same tanks and piping passed a precision test conducted within the previous 6 months; and
- C. Install a minimum of 2 ground water monitoring wells, as deemed necessary by the commissioner 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 commissioner, and all tanks and piping found to be leaking must be removed pursuant to section 566-A, or repaired to the satisfaction of the commissioner.

4. Sampling of monitoring wells. When a monitoring well is installed at an underground oil storage facility storing motor fuel or used for the marketing and distribution of oil, the owner or operator is required to sample that well at least weekly; to maintain records of all sampling results at the facility or at the facility owner's place of business; and to report to the commissioner any sampling results showing evidence of a possible leak or discharge of oil.

5. Mandatory facility replacement. Upon the expiration date of a manufacturer's warranty for a tank installed in accordance with subsection 1, the tank and its associated piping must be removed from service and properly abandoned in accordance with section 566-A.

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 to store motor fuels or in the marketing and distribution of oil to others. These rules apply to all underground heating oil storage facilities that are used for consumption on the premises or by the owner or operator of the facility 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. All new and replacement facilities must include secondary containment and continuous monitoring of the interstitial space for all tanks, piping and ancillary equipment. All below ground ancillary equipment must be constructed of fiberglass, cathodically protected steel or equally noncorrosive materials approved by the department.

B. All new and replacement facilities must be installed by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and must be registered with the commissioner 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.

B-1. New and replacement facilities with a capacity in excess of 1,100 gallons must prevent overfills and spills by the installation of overflow catchment basins, the use of automatic shut-off devices or the use of an automatic alarm when the tank is 90% full.

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 is required to report promptly upon discovery to the commissioner any evidence of a leak or discharge of oil.

* * *

C. When a monitoring well is installed at an existing facility governed by this section, the owner or operator of the facility is 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 commissioner any sampling results showing evidence of a possible leak or discharge of oil.

D. For leak detection devices other than monitoring wells installed at an existing facility governed by this section, the owner or operator of the facility is required to test for leaks at least once every 6 months; to maintain records of all testing results at the facility or at the facility owner's place of business; and to report to the commissioner any test 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 commissioner and the fire department in whose jurisdiction the underground oil facility or tank is located at least 30 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 requirements and procedures to conduct a site assessment for the presence of discharges of oil prior to completion of abandonment at facilities storing motor fuel or used in the marketing and distribution of oil and 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 determined 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 § 567-A. Certifications

1. Cathodic protection tester. The commissioner may certify a person as a cathodic protection tester on finding that the person understands the principles and measurements of all common types of cathodic protection systems as applied to buried metal piping and tank systems. At a minimum, these persons must have education and experience in soil resistivity, stray current, structure-to-soil potential and component electrical isolation measurements of buried metal piping and tank systems.

2. Corrosion expert. The commissioner may certify a person as a corrosion expert on finding that the person has a thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by professional education and related practical experience and is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. That person must be accredited as being qualified by the National Association of Corrosion Engineers or be a professional engineer registered in this State who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

38 § 568. Cleanup and removal of prohibited discharges

1. Removal. Any person discharging or suffering a discharge of oil to ground water in the manner prohibited by section 543 and any responsible party shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding this requirement, the commissioner may order the removal of that discharge pursuant to subsection 3, or may undertake the removal of that discharge and retain agents and contractors for that purpose who shall operate under the direction of the commissioner. Any unexplained discharge of oil to ground water within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting the discharge or the commissioner or the commissioner's agents or contractors, may be paid in the first instance from the Ground Water Oil Clean-up Fund, including any expenses incurred by the State under subsection 3, and any reimbursements due that fund must be collected in accordance with section 569.

2. Restoration of water supplies. The commissioner 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 with alternatives the commissioner finds are cost-effective, technologically feasible and reliable and that effectively mitigate or minimize damage to and provide 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 commissioner shall consult with the affected party prior to selecting the alternative to be implemented.

3. Issuance of clean-up orders. The commissioner 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, that relate or may relate to the discharge under investigation, from any person who the commissioner has reason to believe may be a responsible party. If the commissioner 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 issue a clean-up order requiring the responsible party to cease the discharge immediately or to take action to prevent further discharge and to mitigate or terminate the threat of human exposure to contamination or to explosive vapors. In addition to other actions, the commissioner may, as part of any clean-up order, require the responsible party to provide temporary drinking water and water treatment systems approved by the commissioner, to sample and analyze wells and to compensate 3rd-party damages resulting from the discharge. The commissioner may also 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 with water supplies the commissioner finds are cost effective, technologically feasible and reliable and that effectively mitigate or minimize damage to, and provide adequate protection of, the public health, welfare and the environment. Clean-up orders may be issued only in compliance with the following procedures.

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 board shall appoint an independent hearing examiner to hold a hearing as soon as possible after receipt of the application. The nature of the hearing must be an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order was directed. The burden of going forward then shifts 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 hearing examiner shall make findings of fact. The board shall vote to accept, reject or modify the findings of the hearing examiner at the next regularly scheduled board meeting and shall continue, revoke or modify the commissioner's 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 is not be subject to any fines or penalties for a violation of section 543 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 is not eligible for coverage under the fund pursuant to section 568-A, subsection 1, and 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 in addition to reasonable attorney's fees as a result of such failure to take prompt action.

C. Notwithstanding paragraphs A and B, a person who violates any laws or rules administered by the department under this subchapter is subject to the fines and penalties in section 349.

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 are credited all registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements, assessments and other fees and charges related to this subchapter. To this fund are 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.

* * *

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 on ground waters of the State. These allocations must be made in accordance with section 570-A.

38 § 570-F. Special provisions

The board shall adopt rules for underground oil storage facilities for storing waste oil. The board shall also promulgate rules governing field-constructed, airport hydrant and heavy oil underground oil storage facilities. These rules are not limited by the provisions of subchapter II-B.

**CHAPTER 3
WATER PROTECTION, LIABILITY**

**SUBCHAPTER III
CRIMINAL LIABILITY**

38 § 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.

**CHAPTER 13
WASTE MANAGEMENT
SUBCHAPTER I
GENERAL PROVISIONS**

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.

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.

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.

* * *

**CHAPTER 13
WASTE MANAGEMENT**

**SUBCHAPTER I-A
SOLID WASTE**

**Article 1
REMEDIATION AND CLOSURE**

38 § 1310-C. Program established

There is established within the Department of Environmental Protection a remediation and closure program for solid waste landfills.

1. **Objectives.** The program shall have the following objectives:

- A. To accomplish the prompt closure of solid waste landfills which, through inappropriate siting, inadequate design and construction or improper operation, pose an actual or potential hazard to the environment and public health; and
- B. To accomplish remedial activities to eliminate the existing hazards posed by those landfills.

2. **Open and closed or abandoned landfills.** The department shall organize the program into 2 components to address the problems created by:

- A. Open-municipal solid waste landfills
- B. Abandoned or improperly or inadequately closed, municipal or privately-owned solid waste landfills.

3. **New facilities.** The department shall ensure that the siting, design, operating and closure requirements imposed on new solid waste disposal facilities pursuant to this chapter and chapter 3, article 6, site location of development, are consistent with the provisions of this article.

* * *

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-G. Time schedules for closure of existing facilities

The board shall establish, as part of the proposed closure and remediation plan, reasonable time schedules for the implementation of the plan.

1. Criteria. In establishing the time schedule, the board shall consider the following criteria:

A. The level of environmental and public health hazard posed by the landfill in its current state

B. The availability of reasonable, alternative disposal options available to the municipality following closure of the existing landfill

C. The period reasonably needed by the municipality to raise its share of plan costs.

* * *

CHAPTER 13
WASTE MANAGEMENT

SUBCHAPTER I-A
SOLID WASTE

Article 3

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 I, 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-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.

* * *

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, subchapter I, articles 5-A and 6 and the rules adopted thereunder. Municipal ordinances must 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

1. **New facilities.** Notwithstanding the provisions of Title 1, section 302, the board may not approve an application for a new commercial solid waste or biomedical waste disposal facility after September 30, 1989, including any applications pending before the board on or after September 30, 1989.

2. **Relicense or transfer of license.** The board may relicense or approve a transfer of license for commercial solid waste disposal facilities or biomedical waste disposal facilities after September 30, 1989, if those facilities had been previously licensed by the board prior to September 30, 1989, and all other provisions of law have been satisfied.

3. **Expansion of facilities.** The board may license expansions of commercial solid waste disposal facilities or biomedical waste disposal facilities after September 30, 1989, if:

A. The board has previously licensed the facility prior to the September 30, 1989;

B. The board determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on September 30, 1989; and

C. For commercial solid waste disposal facilities and 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 or, after the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

CHAPTER 13

WASTE MANAGEMENT

SUBCHAPTER III HAZARDOUS MATTER CONTROL

* * *

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.

* * *

**CHAPTER 13
WASTE MANAGEMENT**

**SUBCHAPTER IV
MAINE HAZARDOUS WASTE FUND**

38 § 1319-B. Findings and purpose

The Legislature finds that the proper handling of hazardous waste and protection of the natural environment are important to the public health, safety and welfare. The Legislature also finds that spills and unlicensed discharges of hazardous waste may cause damage to owners and users of property, public and private recreational activities, the natural environment and the general health and safety of citizens of the State.

The Legislature further finds that it is in the public interest of the State and its citizens to provide the capability for prompt and effective response to spills and unlicensed discharges of hazardous waste and that this state's interest outweighs the economic burdens and any burden of strict liability imposed by this subchapter upon those engaged in generating, transporting and handling hazardous waste.

The Legislature further finds that substantial quantities of waste oil are contaminated by hazardous waste and that waste oil, if not properly handled, is a threat to the public health, safety and welfare and to the environment and therefore must be controlled.

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38 § 1319-D. Maine Hazardous Waste Fund

The Maine Hazardous Waste Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the department's responsibilities under this subchapter. All fees, penalties, interest and other charges under this subchapter shall be credited to this fund. This fund shall be charged with the expenses of the department related to this subchapter, including costs of removal or abatement of discharges and costs of the inspection or supervision of hazardous waste activities and hazardous waste handlers.

* * *

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; and

F. A one-time allocation of \$100,000 to the department and the Maine Land Use Regulation Commission to develop mining rules pursuant to section 349-A. This allocation must be repaid by any preapplication fees assessed pursuant to section 352, subsection 4-A, or any federal funds received by the department to develop mining rules.

* * *

38 § 1319-J. Liability

Any person who permits, causes or is responsible for a discharge or threatened discharge of hazardous waste shall reimburse the State for all costs incurred, including personnel costs, in the removal of the discharge or threatened discharge. Funds recovered under this section shall be deposited to the account from which they were expended. Requests for reimbursement, if not made within 30 days of demand, shall be turned over to the Attorney General for collection.

In any suit to enforce claims of the State under this section, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge or threatened discharge. The State need only plead and prove the fact of the discharge or threatened discharge and that the discharge or threatened discharge occurred while the hazardous waste was in the custody or control of the person causing, permitting or responsible for the discharge or threatened discharge or that the discharge or threatened discharge occurred at or involved any real property, structure, equipment or conveyance under the custody or control of that person.

* * *

**CHAPTER 13
WASTE MANAGEMENT**

**SUBCHAPTER V
HAZARDOUS WASTE AND WASTE OIL**

38 § 1319-O. Rule-making authority; hazardous waste and waste oil

1. **Hazardous waste.** Rulemaking for hazardous waste shall be as follows.

A. 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 that 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 that has been identified as a hazardous waste by the board must be removed from identification only by further rulemaking by the board.

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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.** 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.

* * *

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.

2. **Report to the board.** The commissioner shall annually, prior to May 1st, prepare a report to the board covering the prior calendar year...

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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.

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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.

* * *

**CHAPTER 13-B
UNCONTROLLED HAZARDOUS SUBSTANCE SITES**

38 § 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.

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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.

* * *

38 § 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.

* * *

**CHAPTER 13-C
SLUDGE AND RESIDUALS UTILIZATION RESEARCH**

38 § 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.

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CHAPTER 14-A

NUCLEAR WASTE ACTIVITY

**SUBCHAPTER I
GENERAL PROVISIONS**

* * *

38 § 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.

* * *

38 § 1453. Advisory Commission on Radioactive Waste

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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.

* * *

CHAPTER 14-A
NUCLEAR WASTE ACTIVITY

SUBCHAPTER II
HIGH-LEVEL RADIOACTIVE WASTE

38 § 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.

38 § 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.

**CHAPTER 14-A
NUCLEAR WASTE ACTIVITY**

**SUBCHAPTER III
LOW-LEVEL RADIOACTIVE WASTE**

38 § 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.

38 § 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.

* * *

38 § 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.

* * *

**CHAPTER 14-A
NUCLEAR WASTE ACTIVITY**

**SUBCHAPTER III-A
LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**

38 § 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.

38 § 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.

38 § 1483. Regulation of disposal or storage of low-level radioactive waste classified by the Nuclear Regulatory Commission as below regulatory concern

To the extent permitted under federal law, no low-level radioactive waste generated through the production of nuclear power that the United States Nuclear Regulatory Commission classified as low-level radioactive waste as of January 1, 1989, but which may be classified as below regulatory concern after that date, may be stored or disposed of in this State at other than a low-level radioactive waste storage or disposal facility licensed by the Nuclear Regulatory Commission, except as permitted under federal law as of January 1, 1989. Unless required under federal law, the State does not assume responsibility or ownership over these wastes by retaining jurisdiction over their storage and disposal.

**CHAPTER 14-B
MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY**

**SUBCHAPTER I
GENERAL PROVISIONS**

* * *

38 § 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 300 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.

* * *

**CHAPTER 14-B
MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY**

**SUBCHAPTER IV
DUTIES AND RESPONSIBILITIES**

38 § 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.

* * *

**CHAPTER 14-B
MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY**

**SUBCHAPTER VI
RESPONSIBILITIES OF GENERATORS**

38 § 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.

* * *

**CHAPTER 16
SALE OF CONSUMER PRODUCTS AFFECTING THE ENVIRONMENT**

* * *

38 § 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.

* * *

38 § 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.

* * *

**CHAPTER 24
MAINE WASTE MANAGEMENT AGENCY**

**SUBCHAPTER 1
MAINE WASTE MANAGEMENT AGENCY
GOALS AND ESTABLISHMENT**

38 § 2101. Solid waste management hierarchy

1. **Priorities.** It is the policy of the State to plan for and implement an integrated approach to solid waste management, which shall be based on the following order of priority:

- A. Reduction of waste generated at the source, including both amount and toxicity of the waste;
- B. Reuse of waste;
- C. Recycling of waste;
- D. Composting of biodegradable waste;
- E. Waste processing which reduces the volume of waste needing land disposal, including incineration; and
- F. Land disposal of waste.

38 § 2102. Establishment of the Maine Waste Management Agency

1. **Establishment of agency.** The Maine Waste Management Agency, referred to in this chapter as the "agency" is created as an agency in the executive branch of the State. The agency is an instrumentality of the State and a body corporate and politic. The exercise by the agency of the powers conferred on it under this chapter and the implementation of its purpose and duties are essential governmental functions.

2. **Organization and function of the agency.** The Maine Waste Management Agency shall be comprised of 3 offices: the Office of Planning, the Office of Siting and Disposal Operations and the Office of Waste Reduction and Recycling.

* * *

38 § 2103. Powers and duties of the agency

* * *

2. **Duties.** The agency shall undertake the following duties:
- A. Develop and adopt the state waste management and recycling plan pursuant to the provisions of this chapter;
 - B. Assist in regional and municipal waste recycling and waste reduction programs and provide technical assistance to regional associations, municipalities, state agencies and private entities to assist their implementation of this chapter;
 - C. Promote and emphasize recycling and waste reduction in the State;
 - D. Develop generic siting criteria and select sites for use by the agency;
 - E. Review applications for new or expanded solid waste disposal facilities for consistency with state siting criteria and recommendations and the state plan;
 - F. Enter into contracts for services to plan, design, construct and operate waste facilities;
 - G. Initiate, conduct and support research, demonstration projects and investigations and coordinate all state agency research programs pertaining to waste management and recycling;
 - H. Institute, in a court of competent jurisdiction, proceedings against any person to compel compliance with the provisions of this chapter, any regulation promulgated pursuant thereto, or any order of the agency;
 - I. Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out its duties under this chapter;
 - J. Work with other state agencies, regional associations, municipalities, regional planning agencies and other community, private sector and environmental organizations to manage the State's solid waste; and
 - K. Solicit public comment from all regions of the State.

* * *

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.

* * *

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.

* * *

CHAPTER 24
MAINE WASTE MANAGEMENT AGENCY

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 at no cost to the owner or replace the affected supply with an active source of water that is of like quantity and quality to the 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 indicates possible contamination from a solid waste landfill, the department shall conduct, or require the landfill operators to have the laboratory conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination. The department shall, if necessary, require this sampling beyond the boundaries of the contiguous property.
3. Written notice of rights. On or before December 1, 1989, for permits issued under this chapter prior to October 1, 1989, and at or before the time of permit issuance for permits issued under this chapter after October 1, 1989, the 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.

CHAPTER 26
TOXICS USE AND HAZARDOUS WASTE WASTE REDUCTION

* * *

38 § 2302. Toxics use reduction and hazardous waste management policy

It is the policy of the State to reduce the volume of the toxic materials used in the State, to reduce worker and environmental exposure to the release of toxic materials and to reduce the hazardous waste generated within the State. The State encourages an integrated approach to toxics use reduction, toxics release reduction and hazardous waste reduction based on the hierarchies of management strategies included in this section.

* * *

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