

# MAINE STATE LEGISLATURE

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Safe, Healthy and Productive Lives*

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**Resolve, Chapter 32**

**124<sup>th</sup> Maine Legislature**

**A Review of State-Level Risk Management**

**for**

**Lakes used as Public Drinking Water Sources**

Prepared by

Maine Department of Health and Human Services  
Center for Disease Control and Prevention  
Drinking Water Program

for

The Joint Standing Committee on Natural Resources

January, 2010





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and Human Services

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January 12, 2010

Senator Seth A. Goodall, Senate Chair  
Representative Robert S. Duchesne, House Chair  
Joint Standing Committee on Natural Resources  
124<sup>th</sup> Maine Legislature  
Room 214, Cross Office Building  
100 State House Station  
Augusta, Maine 04333

**Subject: Report on Resolve Chapter 32**

Dear Senator Goodall and Representative Duchesne:

Enclosed is the Maine CDC's Drinking Water Program (DWP) report prepared in response to Resolve Chapter 32. The report includes an analysis, made in cooperation with the Departments of Conservation and Inland Fisheries and Wildlife, of state laws and regulations that affect the safety and security of great ponds used as public water sources.

The review found that, for most sources, there is an existing management and regulatory structure that provides safe and secure drinking water. For a relatively small but important number of sources, there are areas where surface uses increase risks to drinking water. The report recommends that the Drinking Water Program use existing authority to develop regulations for review of state-funded activities under Title 22, §2649-A.

The DWP would be pleased to meet with the Committee to discuss the report at your convenience.

Sincerely,

Brenda M. Harvey  
Commissioner

BMH/klv

Enclosure



The 124<sup>th</sup> Legislature directed the Maine CDC Drinking Water Program (DWP) to perform a review of the management of risks associated with surface uses of lakes used as community public water sources. The DWP has worked with the Departments of Conservation (DOC) and Inland Fisheries and Wildlife (DIFW) to assess both the legal framework and current practices of surface use of public water supply lakes.

Thirty-eight Great Ponds are utilized as community public water sources in Maine, serving about 30% of Maine's people. Surface use management on these ponds is governed by historical precedent, water system charters, private and special laws, DIFW laws and regulations, local ordinances, and land ownership patterns. Management ranges from systems where there is no public access to the water to ponds where recreational activities take place in close proximity to the intake. Table 1 illustrates the range of management and control across the state.

State agency statutes, regulations, and activities have the potential to either enhance or reduce the protection of drinking water lakes. There are a variety of uses of lakes, notably fishing, boating and swimming, that are generally protected and encouraged in Great Ponds, since these are waters of the state. These surface uses are sources of increased risk to drinking water, and the restricted zones in place on many drinking water lakes are intended to manage that risk at an acceptable level.

The Maine DOC and DIFW develop and manage nearly all the public boat access to lakes and ponds in Maine. They work with Land for Maine's Future, Maine DOT, local government, and other state agencies to locate, develop, and maintain access points, as well as to manage boating traffic and other surface uses. The DOC mission is guided by sections of Title 12, which authorize a boating facilities program in the Department of Conservation, Bureau of Parks & Lands to acquire, develop and renovate public recreational boating facilities (Chapter 220, Sub 9), including placement and maintenance of navigational aids and regulatory markers. The latter function, referred to as the Navigational Aids Program, is intended to improve boating safety by establishing rules for marking hazards on inland waters of the state and to physically mark such hazards on as many lakes and ponds as budgets allow.

The DIFW boating program is funded by a combination of state Boating Facility Funds and federal Sportfish Restoration Funds and their mission is largely dictated by requirements of the federal funding agencies. In Chapter 935, a system of registration and regulation of watercraft is set out and administered by DIFW. Both agencies have promulgated rules under these authorities, providing significant detail on allowable uses and restrictions on various water bodies. These laws and regulations, along with the location of boat launches and other information, are summarized in "Maine Boating Laws and Rules" available on the DIFW website. Laws pertaining to surface use management are included in Appendix A.

Body contact recreation (swimming and related activities) is not generally regulated at the state level, and is managed by Towns and other local entities. Some public water systems have been able to establish 'no body contact' zones on certain lakes through ordinances, agreements, charters, or private and special laws. Many of these zones are monitored by DIFW Wardens and water system staff.

Based on experience over the last ten years, there are a handful of public water supply lakes where the existing or proposed management of surface uses and access points has generated conflict between public water systems, localities, and state agencies. It has been difficult to resolve these issues within the existing legislative and regulatory framework. Public water source status has become a political issue at these lakes, and has not helped either the proponents of access or enhanced the protection of drinking water. Rather, it has led to stalemates, where existing conditions persist which are less than optimal both for both the drinking water supply and boating interests.

The perfect drinking water lake has no other human uses, with regards to both surrounding land uses and surface water uses, and provides only passive recreational (scenery and fish habitat) values along with clean and safe drinking water. A number of public water systems in Maine utilize sixteen remote, undeveloped lakes that approach this level of protection. In these cases, the system owns the shoreland and often the watershed either in fee or through an easement. An additional fourteen lakes have existing, managed boat access sites with varying levels of restriction. In some of these cases, there is concern by either the boating public or the water system about the management plan's fairness and effectiveness. Concerns regarding fairness often revolve around inequities of access between shorefront property owners and the general public. The remaining lakes have no reported restrictions on surface use.

The risks associated with surface use of a drinking water supply have been the subject of a number of studies, most recently by two EPA review studies of Fecal Contamination and Zoonotic pathogens in recreational waters (2009). Both studies identify risks associated with body contact recreation (bathing) to water quality and public health. Additional risks are associated with the use of motor fuels and lubricants associated with boating. These risks are increased with older two-cycle engines, which discharge unburned hydrocarbons in measurable quantities during normal operations (Asplund, 2000). There are also security risks associated with boating access to drinking water supplies, including vandalism, deliberate contamination, and accidental discharge of contaminants.

Public Water Systems, under EPA regulations, use a multiple barrier approach to manage these risks to protect public health. Protection of water quality at the source is the first and most important barrier. Treatment and disinfection of the water provide additional barriers, as does a secure distribution system. Eleven Maine lakes and ponds are able to provide high quality water without filtration because they have a high level of watershed and source protection. As part of their protection plan, all have restrictions on surface use in all or part of their source. Maintaining these restricted areas is an ongoing cost to the systems, as well as to public agencies. This cost is a small fraction of the cost of upgrading treatment. Systems with filtration processes also need to manage surface use to maintain water quality and security.

It is technically feasible to produce safe drinking water from poor quality, unprotected sources. It is also significantly more costly. Should Maine choose, as a matter of policy, to increase the risk to water systems and require additional treatment to manage these risks in order to increase boating access, who should support the costs? We are able to provide both high quality drinking water and recreational access on many water supply lakes (Table 1) under current policies.

The 123<sup>rd</sup> Legislature enacted PL 353, which, among other things, added the following provision to the Drinking Water Statutes:

**Sec. 4. 22 MRSA §2649-A** is enacted to read:

**§ 2649-A. State's impact on public water supply protection**

When undertaking actions that have a negative impact on a public water supply, a state agency shall consider the impact and evaluate alternatives to avoid and minimize the impact.

Conceptually, this provision, along with the existing authorizations of DOC and IF&W to develop public boat access, provides an opportunity for a forum for state agencies to confer on issues including surface use and boat access to lakes used for drinking water. Since risk management is not a black and white science, and because each lake has different hydrologic and historical use patterns, the outcome of these discussions will not result in a uniform statewide solution. Public water systems and other stakeholders generally find this acceptable, as long as the process is open, fair, prompt and predictable. One significant complication in the process is that Towns, lakeshore property owners, the boating public, conservation groups, and local businesses also have strong opinions concerning access points and surface use. Finding a forum to resolve these issues effectively is not a simple task.

We can use the existing Environmental Review (National Environmental Policy Act) as a framework to provide structure to this general provision. This does impose a paperwork burden. It also provides a structured process for agencies to work together to receive and deal with public concerns. It does not, by itself, solve the puzzle of balancing other competing interests. We recommend that, for new state funded projects and facilities on or adjacent to PWS lakes, that the state agencies involved work together to develop standards and regulations, including evaluation of alternatives, under the existing authority of 22 MRSA §2649-A to make the process at the state level predictable, fair, and protective of public health.

#### References

Asplund, T.A, 2000, The Effects of Motorized Watercraft on Aquatic Ecosystems, Wisconsin DNR publication SS 948-00

USEPA, 2009, Review of Zoonotic Pathogens in Ambient Waters, EPA 822-R009-002

USEPA, 2009, Review of Published Studies to Characterize Relative Risks from Different Sources of Fecal Contamination in Recreational Waters, EPA 822-R-09-001



Table 1: Great Ponds used as Community Public Water Sources

Source Name	Water System Name <i>Italicized no filtration required</i>	Horsepower restrictions	Special Launch Procedures	Intake area marked (buoys, etc)	Restrictive Zone >200 feet	Restricted Zone Radius	Notes
Adams Pond	Boothbay Region Water District	Yes	Yes	No	No		Non-motorized fishing, no swimming
Burntland Pond	Stonington Water Company						No access
Big Wood Pond	Jackman Water District	No	No	No	No		no restrictions
Boulter Pond	Kittery Water District	Yes	Yes	No	Yes	All	no surface use
Branch Lake	Ellsworth Water Department	No	No	No	No		town-managed launch
Carlton Pond	Augusta Water District	No	Yes	No	Yes	All	currently off line: Carleton no surface use
Chases Pond	York Water District	Yes	Yes	No	Yes	All	no surface use
China Lake	Kennebec Water District	No	No	Yes	Yes	3.5 miles	winter vehicle access permitted
Cobbossee Lake	Augusta Water District	No	Yes	Yes	No		Backup Supply
Eagle Lake	<i>Bar Harbor Water Company</i>	Yes	Yes	Yes	Yes	1000 feet	access controlled by National Park Service
Floods Pond	<i>Bangor Water District</i>	Yes	Yes	No	Yes	All	no surface use
Folly Pond	Vinalhaven Water District	No	No	No	Yes	All	no surface use
Fresh Pond	North Haven Water Department	No	No	No	Yes	All	no surface use
Ferguson Pond	Aqua Maine, Millinocket Division	No	No	No	No		no conflicts known
Grassy Lake	<i>Aqua Maine, Camden &amp; Rockland Division</i>	Yes	No	Yes	Yes	All	no surface use
Halls Pond	Hebron Water Company	No	No	No	No		informal launch, ongoing discussion about motorized access
Hancock Pond	Madison/Anson Water Districts	No	No	No	No		there has been local interest in a boat ramp
Hatcase Pond	<i>Brewer Water District</i>	Yes	No	Yes	Yes	1000 feet	intake area restricted
Jordan Pond	<i>Seal Harbor Water Company</i>	No	Yes	No	Yes	All	10 hp limit, no swimming
Knickerbocker Pond	Boothbay Region Water District	No	No	Yes	No		10 hp limit
Lake Anasagunticook	Canton Water District	Yes	No	No	No		no restrictions
Lake Auburn	Lewiston Water Department/Auburn Water District	No	Yes	Yes	Yes	Half of Lake	No access on southern half of lake. No swimming or body contact, boats that promote body contact not allowed
Lake Wassookeag	Dexter Utilities District	No	No	No	No		no restrictions, proposed launch adjacent to intake
Little Pond	<i>Great Salt Bay Sanitary Dist.</i>	Yes	Yes	Yes	Yes	All	no surface use, motorboats prohibited
Long Pond (Southwest Harbor)	Southwest Harbor Water Company	No	No	No	No		no conflicts known

Source Name	Water System Name	Horsepower restrictions	Special Launch Procedures	Intake area marked (buoys, etc)	Restrictive Zone >200 feet	Restricted Zone Radius	Notes
Long Pond (Sullivan)	Long Pond Water District	Yes	Yes	No	Yes	All	no surface use
Lower Hadlock Pond	<i>Northeast Harbor Water Co.</i>	No	No	No	Yes	All	10 hp limit, no swimming
Mirror Lake	<i>Aqua Maine, Camden &amp; Rockland Division</i>	Yes	No	Yes	Yes	All	no surface use
Moose Hill Pond	Livermore Falls Water District	No	No	No	Yes	All	no surface use
Nequasset Lake	Bath Water District	Yes	No	Yes	No		10 hp limit, no swimming
Nokomis Pond	Newport Water District	No	No	No	No		little recreational demand, hand carry access
North Pond	Buckfield Water Department	Yes	No	Yes	Yes	900 feet	no swimming, limited motor use
Salmon Pond	Dover-Foxcroft Water District	Yes	Yes	No	Yes	All	no public access
Sebago Lake	<i>Portland Water District</i>	No	Yes	Yes	Yes	2 miles	2-mile no bodily contact zone; 3000-foot no trespass zone
Silver Lake	Aqua Maine, Bucksport Divison	Yes	No	Yes	Yes	All	no surface use
Upper Narrows Pond	Winthrop Utilities District	No	Yes	Yes	No		existing access
Varnum Pond	Wilton Water Department	No	No	No	No		no formal access
Young Lake	Mars Hill & Blaine Water Co.	No	No	No	No		no access to lake

## Appendix A: Surface Use and Boating Laws

### Title 22

#### §2642. Municipal regulation authorized; penalty

1. Municipal regulations authorized. The municipal officers of each municipality, after notice and public hearing, may 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 that are located within that municipality in order to protect the quality of such sources of public water supply and the health, safety and welfare of persons dependent upon such supplies.

At least 15 days prior to public hearings held under this section, notice of the hearing must be published in a newspaper of general circulation in the county in which the municipality is located and mailed by certified mail to each owner of land bordering the source of public water supply within that municipality. Regulations adopted pursuant to this section 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.

[ 1995, c. 664, §1 (AMD) .]

2. Penalty. Whoever willfully violates any regulation established under the authority of this section must, upon conviction, be penalized in accordance with Title 30-A, section 4452.

[ 1991, c. 824, Pt. A, §41 (AMD) .]

#### SECTION HISTORY

1975, c. 751, §4 (NEW). 1979, c. 472, §5 (AMD). 1985, c. 479, §1 (AMD). 1987, c. 192, §2 (AMD).

1991, c. 824, §A41 (AMD). 1995, c. 664, §1 (AMD).

### Title 12: CONSERVATION

#### §13068-A. Operating watercraft; prohibitions

1. Launching contaminated watercraft. A person may not place a watercraft that is contaminated with an invasive aquatic plant upon the inland waters of the State.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$500 and not more than \$5,000 per violation may be adjudged. A fine imposed under this subsection may not be suspended by the court. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

2. Unlawfully permitting operation by another. A person may not permit operation of a watercraft in violation of this subsection.

A. A person violates this subsection if that person owns a watercraft and negligently permits another person to operate that watercraft in violation of this chapter.

(1) A person who violates this paragraph commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. A person violates this subsection if that person is the parent or guardian responsible for the care of a minor under 18 years of age and the minor operates a personal watercraft in violation of this chapter.

(1) A person who violates this paragraph commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

3. Operating motorboat other than personal watercraft while underage. A person under 12 years of age may not operate a motorboat propelled by machinery of more than 10 horsepower unless under the immediate supervision of a person located in the motorboat who is at least 16 years of age.

This subsection does not apply to operating a personal watercraft.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

4. Operating watercraft without proper safety equipment. Except as provided in paragraph B, a person may not operate a watercraft without proper safety equipment as described in paragraph A.

A. A person operates a watercraft without proper safety equipment if the person operates a watercraft and:

(1) Fails to comply with the same requirements pertaining to lights, life-saving devices, fire extinguishers and other safety equipment as required by federal laws and regulations on federal navigable waters, as promulgated under the Federal Boat Safety Act of 1971, Public Law 92-75, as amended;

(2) Fails to comply with requirements pertaining to additional equipment not in conflict with federal navigation laws, which the commissioner may prescribe if there is a demonstrated need;

(3) Fails to wear a Coast Guard approved Type I, Type II or Type III personal flotation device while canoeing or kayaking on the Saco River between Hiram Dam and the Atlantic Ocean between January 1st and June 1st; or

(4) Fails to wear a Coast Guard approved Type I, Type II, Type III or Type V personal flotation device while operating a watercraft on:

(a) The Penobscot River, between the gorge and the head of Big Eddy; or

(b) The Kennebec River, between Harris Station and Turtle Island, at the foot of Black Brook Rapids.

[2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. Notwithstanding paragraph A:

(1) Canoes, owned by a boys or girls summer camp located upon internal waters in the State and duly licensed by the Department of Health and Human Services and utilized by campers under the direction and supervision of a camp counselor at least 18 years of age or older during training and instruction periods on waters adjacent to the main camp within a distance of 500 feet from the shoreline of that camp, are exempt from this subsection; and

(2) Log rafts, carrying not more than 2 persons and used on ponds or lakes or internal waters of less than 50 acres in area, are exempt from carrying personal flotation devices. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

C. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

5. Operating watercraft to endanger. A person may not operate any of the following so as to endanger any person or property:

A. Watercraft; [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. Water ski; or [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

C. Surfboard or similar device. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

A person who violates this subsection commits a Class E crime.

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

6. Reckless operation of watercraft. A person may not operate any of the following in such a way as to recklessly create a substantial risk of serious bodily injury to another person:

A. Watercraft; [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. Water ski; or [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

C. Surfboard or similar device. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

A person who violates this subsection commits a Class D crime.

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

7. Operating watercraft at greater than reasonable and prudent speed. A person:

A. May not operate a watercraft except at a reasonable and prudent speed for existing conditions; and [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. Shall regulate the speed of a watercraft so as to avoid danger, injury or unnecessary inconvenience in any manner to other watercraft and their occupants, whether anchored or under way; waterfront piers; floats or other property or shorelines, either directly or by the effect of the wash or wave created by the watercraft through its speed, or otherwise. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

A person who violates this subsection commits a Class E crime.

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

8. Imprudent operation of watercraft. A person may not, while operating a watercraft on the inland or coastal waters of the State, engage in prolonged circling, informal racing, wake jumping or other types of continued and repeated activities that harass another person.

A. This subsection may be enforced by any law enforcement officer or a person may bring a private nuisance action for a violation of this subsection pursuant to Title 17, section 2802. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

9. Operating watercraft to molest wild animals or wild birds. A person may not operate a watercraft so as to pursue, molest, harass, drive or herd any wild animal or wild bird, except as may be permitted during the open season on that animal.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

10. Operating motorboat that exceeds noise limits. The following provisions govern noise limits.

A. A person may not operate a motorboat in such a manner as to exceed:

(1) A noise level of 90 decibels when subjected to a stationary sound level test with and without cutouts engaged and as prescribed by the commissioner; or

(2) A noise level of 75 decibels when subjected to an operational test measured with and without cutouts engaged and as prescribed by the commissioner. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$300 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

C. This subsection does not apply to motorboats that are operating in a regatta or race approved by the commissioner under section 13061. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

11. Operating motorboat without muffler. A person may not operate a motorboat that is not equipped at all times with an effective and suitable muffling device on its engine or engines to effectively deaden or muffle the noise of the exhaust, except that motorboats that are operating in a regatta or race approved by the commissioner under section 13061 may use cutouts for these motorboats while on trial runs or competing in speed events, for a period not to exceed 48 hours immediately preceding or following such an authorized event.

A. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

12. Tampering with motorboat muffler system. A person may not modify a motorboat muffler system in any way that results in an increase in the decibels of sound emitted by that motorboat.

A. A person who violates this subsection commits a civil violation for which a fine not to exceed \$100 may be adjudged. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

13. Headway speed only. The following provisions govern speeds in certain zones.

A. A person may not operate a watercraft at a speed greater than headway speed while within the water safety zone or within a marina or an approved anchorage in coastal or inland waters except:

(1) While actively fishing; or

(2) While picking up or dropping off one or more persons on water skis in the water safety zone if a reasonably direct course is taken through the water safety zone between the point that the skiers are picked up or dropped off and the outer boundary of the water safety zone. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. For the purposes of this subsection, "headway speed" means the minimum speed necessary to maintain steerage and control of the watercraft while the watercraft is moving. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

C. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

14. Operating motorboat in bathing areas. The following provisions apply to operating a motorboat in a bathing area.

A. A person may not:

(1) Operate a motorboat within a bathing area marked or buoyed for bathing; or

(2) Operate an airmobile on a beach adjacent to a bathing area marked or buoyed for bathing. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

15. Violation of surface use restriction order. A person may not operate, launch or remove a watercraft at a restricted-access site or refuse inspection of a watercraft in violation of an order issued under Title 38, section 1864.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$500 and not more than \$5,000 per violation may be adjudged. A fine imposed under this subsection may not be suspended by the court. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2005, c. 397, Pt. E, §16 (AMD) .]

16. Operating motorboat in prohibited or restricted area. The following provisions apply to operating a motorboat in prohibited or restricted areas.

A. A person may not:

- (1) Operate a motorboat on that portion of Portage Lake in Township T. 13, R. 6, W.E.L.S., County of Aroostook, known as the Floating Island Area, north and westerly of a line beginning at the eastern edge of the marshy peninsula running out from Hutchinson Ridge, running 50 yards outside of the floating islands in a northerly direction to the mouth of Mosquito Brook;
- (2) Operate a motorboat on Quimby Pond in the Town of Rangeley, Franklin County;
- (3) Operate a motorboat upon the waters of Jerry Pond, so called, situated within the boundaries, or having a shore line abutting, the incorporated municipality of Millinocket and the unincorporated Townships being T.1, R. 7 and T.A., R. 7, all in Penobscot County;
- (4) Operate a motorboat on Upper and Lower Ox Brook Lakes in the Towns of T. 6 ND, T. 6 RI and Talmadge in Washington County;
- (5) Operate a motorboat on Little Nesowadnehunk (Sournahunk) Lake, in T. 5, R. 11, Piscataquis County;
- (6) Operate a motorboat having more than 10 horsepower on Eagle Lake and Jordan Pond, Mt. Desert Island, Hancock County and Long Pond, T.E. and T. D., Franklin County;
- (7) Operate a motorboat on a body of water commonly known as and referred to in the Dunham-Davee Work Plan as Snow's Pond, situated west of Route 7 in the Town of Dover-Foxcroft, Piscataquis County;
- (8) Operate a motorboat having more than 6 horsepower on Long Pond, Town of Denmark, Oxford County;
- (9) Operate a motorboat on Lily Pond, Edgecomb, Lincoln County;
- (10) Operate a motorboat powered by an internal combustion engine on Nokomis Pond, situated in the Towns of Newport and Palmyra, Penobscot County;
- (11) Operate a motorboat in Merrymeeting Bay at a speed in excess of 10 miles per hour, except within the confines of the buoyed channels;
- (12) Operate a motorboat equipped with an internal combustion engine on the following waters on Mount Desert Island in Hancock County: Witch Hole Pond; Aunt Betty's Pond; Bubble Pond; Round Pond; and Lake Wood;
- (13) Operate a motorboat equipped with a motor greater than 10 horsepower on Upper Hadlock Pond or Lower Hadlock Pond on Mount Desert Island in Hancock County;
- (14) Operate a personal watercraft in violation of section 685-C, subsection 10 or any rule adopted by the Maine Land Use Regulation Commission to implement that subsection;
- (15) Operate a watercraft at greater than headway speed on any area of Torsey Lake within 1/2 mile from the boat launch on Desert Pond Road in the Town of Mount Vernon;
- (16) Operate a watercraft at greater than headway speed on any area of Torsey Lake within 1/2 mile from the boat launch on Old Kents Hill Road in the Town of Readfield;
- (17) Operate a watercraft equipped with a motor greater than 10 horsepower on Cold Rain Pond in the Town of Naples or on Holt Pond in the Town of Naples and the Town of Bridgton;
- (18) Operate a watercraft equipped with a motor greater than 5 horsepower on Moose Pond in the Town of Otisfield;
- (19) Operate a watercraft at greater than headway speed on any area of Pickerel Pond in the Town of Wayne;
- (20) Operate a motorboat having more than 10 horsepower on Middle Branch Pond in the Town of Waterboro in York County;
- (21) Operate a motorboat having more than 10 horsepower on Adams Pond, Foster Pond or Otter Pond in the Town of Bridgton in Cumberland County;
- (22) Operate a motorboat having more than 10 horsepower on Pickerel Pond in the territory of T.32 MD in Hancock County. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

B. The following penalties apply to violations of this subsection.

- (1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.
- (2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[ 2003, c. 655, Pt. B, §380 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

#### SECTION HISTORY

2003, c. 655, §B380 (NEW). 2003, c. 655, §B422 (AFF). 2003, c. 689, §B6 (REV). 2005, c. 397, §E16 (AMD).

## **Title 22: HEALTH AND WELFARE**

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

Any water utility or municipality is authorized, after consultation with the Commissioner of Inland Fisheries and Wildlife, the department and the Department of Conservation and after conducting a public hearing in the affected town, to designate by buoys in water or markers on the ice in an area on a lake or pond from which water is taken, with a radius commencing at its point of intake. The radius may not exceed 400 feet and within that area a person may not anchor or moor a boat or carry on ice fishing or carry on any other activity designated by the water utility or municipality when such restriction is necessary to comply with primary or secondary drinking water regulations applicable to public water systems. Any such buoys placed in the water must be plainly marked as required by the Director of the Bureau of Parks and Lands under Title 12, section 1894. Any person violating this section must, on conviction, be penalized in accordance with Title 30-A, section 4452. [1999, c. 127, Pt. A, §36 (AMD).] Nothing in this section shall be construed to limit in any way any private and special law granting a water utility or municipality greater controls for protecting the intake of its public water supply than those set forth in this section. [1975, c. 751, §4 (NEW).]

#### **SECTION HISTORY**

1975, c. 751, §4 (NEW). 1987, c. 192, §3 (AMD). 1991, c. 824, §A42 (AMD). 1995, c. 502, §E30 (AMD). 1997, c. 739, §11 (AMD). 1999, c. 127, §A36 (AMD).

## **Title 22: HEALTH AND WELFARE**

### **§2647-A. Protection of public water source**

Any water utility or municipality and the department are authorized to take reasonable steps to protect a public water source from pollution consistent with section 2642. [1999, c. 761, §3 (AMD).]

1. Right of entry for water utility. Employees or agents of a water utility may enter upon land within 1,000 feet of a public water source or upon land used for commercial or industrial purposes having a facility, structure or system draining into or suspected of flowing or seeping into a public water source and inspect the facility, structure or system, including any building or structure on that land. Entry onto property under this subsection is not a trespass. The power of entry and inspection may be exercised only after the water utility has made a reasonable effort to obtain permission from the landowner for the inspection.

[ 1991, c. 467, §2 (NEW) .]

2. Right of entry for department and consumer-owned water utility. Employees or agents of the department or of a consumer-owned water utility as defined in Title 35-A, section 6101 may enter any property at reasonable hours or enter any building with the consent of the owner, occupant or agent to inspect a wastewater disposal system draining into or suspected of flowing or seeping into a public water source. Entry onto property under this subsection is not a trespass. An employee or agent of the department or consumer-owned utility may seek an administrative inspection warrant pursuant to the Maine Rules of Civil Procedure, Rule 80E to carry out the purposes of this subsection.

[ 1991, c. 467, §2 (NEW) .]

3. Remedy. In addition to rights granted to municipal officers under Title 30-A, section 3428, any local or state health inspector or officer may order the owner of any facility, structure or system flowing or seeping into and contaminating a public water source, if the contamination may result in risk to the public health, to remedy the situation. The order must be served in writing and state a time in which the order must be complied with. An order made pursuant to this subsection is not considered an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act. Any person aggrieved by an order may appeal to the Superior Court within 30 days.

[ 1991, c. 467, §2 (NEW) .]

4. Court-ordered remedies. The water utility, municipality or department may petition the Superior Court upon failure of the person named in an order served under subsection 3 to comply with that order. The court, after hearing, may order that appropriate measures be taken.

[ 1991, c. 467, §2 (NEW) .]

5. Remedy ordered by water district or consumer-owned utility. If the municipal officers have failed to act on a malfunctioning wastewater disposal unit under Title 30-A, section 3428 and have notified a



consumer-owned water utility as defined in Title 35-A, section 6101 in writing of their failure to do so, the consumer-owned water utility may assume the rights of municipal officers under Title 30-A, section 3428, except that it may not assess a special tax under Title 30-A, section 3428, subsection 4, paragraph B.

[ 1991, c. 467, §2 (NEW) .]

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

[ 1991, c. 467, §2 (NEW) .]

#### SECTION HISTORY

1991, c. 467, §2 (NEW). 1999, c. 761, §3 (AMD).

### **Title 30-A: MUNICIPALITIES AND COUNTIES**

#### **§3428. Malfunctioning domestic waste water disposal units; abatement of nuisance**

Malfunctioning waste water disposal units, including septic tanks, cesspools, cisterns, dry wells, drainage beds, drains, sewer lines and pipes and the like, have become a menace to the health and general welfare of the citizens of this State and are declared to be a nuisance. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Abatement procedure. Upon complaint of any person resulting in documentation of a malfunctioning waste water disposal unit or on their own information, the municipal officers shall serve an order to remedy a malfunctioning waste water disposal unit upon the owner of any premises within that municipality that has such a malfunctioning unit.

[ 2007, c. 568, §1 (AMD) .]

2. Content of order. The order must be addressed to the owner of the premises and must contain:

A. The date; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The fact of the malfunctioning waste water disposal unit; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. A notice to remedy the nuisance within 10 days of service of the order; and [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. The signatures of the municipal officers. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

The municipal officers may allow the owner of the premises to request an extension of the 10-day period for no longer than an additional 20 days and may explain how to request an extension in the order. The municipal officers or their agents may approve an extension if it is reasonably necessary for and likely to result in remediation of the nuisance.

[ 2007, c. 568, §1 (AMD) .]

3. Service and return of service. One of the municipal officers or a law enforcement officer shall serve the order personally upon the owner, tenant or occupant in possession. The server shall make and file a return of service indicating the method used and the person served.

[ 1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Abatement. If the nuisance is not abated within the 10-day period or such period up to but not exceeding the additional 20 days as allowed by the municipal officers under subsection 2, the municipal officers or their agents may enter the premises and have the malfunction adequately remedied. To recover any actual and direct expenses, including reasonable attorney's fees if the municipality is the prevailing party, incurred by the municipality in the abatement of such nuisances, the municipality shall:

A. File a civil action against the owner. The costs, including reasonable attorney fees, to create and prosecute an action to collect expenses following such a civil complaint, shall also be recovered from the owners; or [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Assess a special tax against the land on which the waste water disposal unit is located for the amount of the expenses. This amount shall be included in the next annual warrant to the tax collector of the

municipality for collection in the same manner as other state, county and municipal taxes are collected. Interest as determined by the municipality pursuant to Title 36, section 505, in the year in which the special tax is assessed, shall accrue on all unpaid balances of any special tax beginning on the 60th day after the day of commitment of the special tax to the collector. The interest shall be added to and become part of the tax. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]  
[ 2007, c. 568, §1 (AMD) .]

#### SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 2007, c. 568, §1 (AMD).

### **Title 38: WATERS AND NAVIGATION**

#### **§413. Waste discharge licenses**

1. License required. No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department.

[ 1989, c. 890, Pt. B, §28 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

1-A. License required for surface wastewater disposal systems. No person may install, operate or maintain a surface wastewater disposal system without first obtaining a license therefor from the department, except that the department may exempt or license by rule categories of storm water discharges to groundwater when the discharges will not have a significant adverse effect on the quality or classification of waters of the State. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless the rules are incorporated as amendments to existing rules that are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 219, §1 (AMD) .]

1-B. License required for subsurface wastewater disposal systems. A license to install, operate or maintain a subsurface wastewater disposal system is governed as set forth in this subsection.

A. A person may not install, operate or maintain a subsurface wastewater disposal system without first obtaining a license for the system from the department, except that a license is not required for systems designed and installed in conformance with the plumbing code, as adopted by the Department of Human Services under Title 22, section 42. [2003, c. 551, §5 (NEW).]

B. The department may exempt or license by rule categories of subsurface discharges to groundwater in the same manner and using the same criteria as provided in subsection 1-A. [2005, c. 219, §2 (AMD).]

[ 2005, c. 219, §2 (AMD) .]

2. Exemptions. A person is not considered in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to agricultural activities, subject to the following conditions.

A. The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates. [1983, c. 566, §16 (RPR).]

B. The commissioner has certified that the plan meets the objectives of this chapter. [1989, c. 890, Pt. B, §28 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

C. The commissioner determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan. [1989, c. 890, Pt. B, §28 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

D. After the State receives authority to grant permits under the Federal Water Pollution Control Act, this exemption will not apply to any discharges considered point sources under federal law, including discharges from concentrated animal feeding operations and discharges from silvicultural point sources, as defined by federal law. [1997, c. 794, Pt. A, §12 (NEW).]

[ 1997, c. 794, Pt. A, §12 (AMD) .]

2-A. Exemptions; pesticide permits.

[ 1979, c. 281, §3 (RP) .]

2-A. Exemptions.

[ 1979, c. 296, §2 (AMD); 1979, c. 663, §229 (RP) .]

2-A. Exemptions; pesticide permits.

[ 1979, c. 663, §229 (RP); 1979, c. 541, Pt. B, §69 (RPR) .]

2-B. Exemptions; snow dumps. The department may by rule license categories of snow dumps when the activity would not have a significant adverse effect on the quality or classifications of the waters of the State, except there may be no snow dumps directly into the fresh surface waters of the State.

[ 1997, c. 794, Pt. A, §12 (AMD) .]

2-C. Dredge spoils. Holders of a permit obtained pursuant to the United States Clean Water Act, Public Law 92-500, Section 404, are exempt from the need to obtain a waste discharge license for disposal of dredged material into waters of the State when the dredged material is disposed of in an approved United States Army Corps of Engineers disposal site. Disposal of all dredged materials is governed by the natural resource protection laws, sections 480-A to 480-S.

[ 1989, c. 656, §1 (AMD) .]

2-D. Exemptions; road salt or sand-salt storage piles. The commissioner may exempt any road salt or sand-salt storage area from the need to obtain a license under this section for discharges to groundwaters of the State when the commissioner finds that the exempt activity will not have a significant adverse effect on the quality or classifications of the groundwaters of the State. In making this finding, the commissioner's review must include, but is not 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.

New or existing salt or sand-salt storage areas registered after October 1, 1999 may be exempt from licensing under this section as long as such areas comply with siting, operational and best management practices adopted by rule by the department. Storage areas other than those owned by municipalities or counties and registered prior to October 1, 1999 are exempt from licensing under this section as long as such areas comply with section 451-A, subsection 1-A and with operational and best management practices adopted by rule by the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Storage areas owned by the Department of Transportation and registered prior to October 1, 1999 are not in violation of best management practice rules adopted by the department pursuant to this subsection if the Department of Transportation complies with the reporting requirements in section 451-A.

[ 2003, c. 502, §1 (AMD) .]

2-E. Exemptions; pesticide permits.

[ 1997, c. 794, Pt. A, §13 (RP) .]

2-F. Exemption; aquaculture. Until the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, a person may not be considered in violation of this section if:

A. The discharge activity is associated with off-shore marine aquaculture operations in the estuarine and marine waters; and [1987, c. 769, Pt. A, §173 (NEW).]

B. As a condition of obtaining a leasehold from the Department of Marine Resources, the Department of Environmental Protection certifies that the aquaculture activities mentioned in this subsection will not have a significant adverse effect on water quality or violate the standards ascribed to the receiving waters' classifications. [1987, c. 769, Pt. A, §173 (NEW).]

[ 1997, c. 794, Pt. A, §14 (AMD) .]

2-G. Exemptions; oil and hazardous substances spill response. A license is not required under this section for the following discharges:

A. A discharge to groundwaters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if discharge complies with the instructions of the commissioner or the commissioner's designee; or [1995, c. 493, §2 (NEW); 1995, c. 493, §21 (AFF).]

B. A discharge to surface waters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if the discharge complies with the instructions of an on-scene coordinator pursuant to 40 Code of Federal Regulations, Part 300. [1997, c. 794, Pt. A, §15 (AMD).]

[ 1997, c. 794, Pt. A, §15 (AMD) .]

3. Transfer of ownership. Application for transfer of a license must be made no later than 2 weeks after the transfer of ownership or interest in the source of the discharge is completed. If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the

license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, except that the parties to the transfer are jointly and severally liable for any violation until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

Except when it has been demonstrated within 5 years prior to a transfer that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard discharge, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42 based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharge. If an alternative to the overboard discharge is identified, the alternative system must be installed within 90 days of property transfer, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A.

[ 2007, c. 292, §18 (AMD) .]

4. Conditions for licensing.

[ 1973, c. 450, §10 (RP) .]

5. Registration of discharges exempted from licensing.

[ 1973, c. 450, §10 (RP) .]

6. Unlicensed discharge. If after investigation the commissioner finds any unlicensed discharge, the commissioner may notify the Attorney General of the violation without recourse to the hearing procedures of section 347-A. The Attorney General shall proceed immediately under section 348.

[ 1989, c. 890, Pt. B, §28 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

7. Tidal waters and subtidal lands. In connection with a license under sections 414 and 414-A, whenever issued, the department may grant to a licensee a permit to construct, maintain and operate any facilities necessary to comply with the terms of that license in, on, above or under tidal waters or subtidal lands of the State. This permit may be issued upon such terms and conditions as the department determines necessary to insure that the facilities create minimal interference with existing uses, including a requirement that the licensee provide satisfactory evidence of financial capacity, or in lieu thereof, a bond in such form and amount as the department may find necessary, to insure removal of such facilities. In the event that the facilities are no longer necessary in order for the licensee or successor thereof to comply with the terms of its license, the department may, after opportunity for notice and hearing, require the licensee or successor to remove all or any portion of the facilities from the tidal waters or subtidal lands. This removal may be ordered if the department determines that maintenance of the facilities will unreasonably interfere with navigation, the development or conservation of marine resources, the scenic character of any coastal area, other appropriate existing public uses of such area or public health and safety, and that cost of this removal will not create an undue economic burden on the licensee or successor.

[ 1989, c. 890, Pt. B, §28 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

8. Treated wastewater.

[ 1997, c. 794, Pt. A, §16 (RP) .]

9. Emergency public water utility license.

[ 1997, c. 794, Pt. A, §17 (RP) .]

10. Marine aquaculture projects. After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1972, the department may issue to an owner of a marine aquaculture project a license for the discharge of pollutants to those waters only if the following conditions are satisfied:

A. An application for a leasehold has been accepted as complete by the Department of Marine Resources and a copy of an approved leasehold is provided to the department prior to any discharge of pollutants;

[1997, c. 794, Pt. A, §18 (NEW).]

B. The project will not have a significant adverse effect on water quality or violate the standards of the receiving water's classification; [1997, c. 794, Pt. A, §18 (NEW).]

C. The project will be managed and monitored in accordance with a program approved by the Department of Marine Resources; [1997, c. 794, Pt. A, §18 (NEW).]

D. The project is not located in waters classified as SA under section 465-B, subsection 1; and [1997, c. 794, Pt. A, §18 (NEW).]

E. Other applicable requirements of this chapter are met. [1997, c. 794, Pt. A, §18 (NEW).]

A license issued pursuant to this subsection is void if water quality is significantly affected by the project. For the purposes of this subsection, an aquaculture project is a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable plants or animals in estuarine or marine waters.

[ 1997, c. 794, Pt. A, §18 (NEW) .]

11. Mercury. A facility discharging mercury into the waters of the State shall make reasonable progress to develop, incorporate and continuously improve pollution prevention practices and implement future economically achievable improvements in wastewater technology in order to reduce that facility's dependence upon mercury products, reduce or remove discharges of mercury over time and help in the restoration of the waters of the State. The department shall establish and may periodically revise interim discharge limits, based on procedures specified by rule, for each facility licensed under this section and subject to this subsection in order to reduce the discharge of mercury over time and achieve the ambient water quality criteria established in section 420, subsection 1-B. Notwithstanding section 420, subsection 1-B or section 464, subsection 4, paragraph F, a facility discharging mercury shall at all times meet the interim limits established under this subsection.

A. A discharge limit for mercury may not be less stringent statistically than an interim limit established by the department pursuant to Chapter 519 of rules adopted by the department, effective February 5, 2000, and must be based on recent data appropriate for the facility. A facility with such an interim limit shall comply with that limit unless the department establishes a different interim limit. [2001, c. 418, §1 (NEW).]

B. A facility that discharges mercury shall implement a pollution prevention plan consistent with requirements of the department. The department may require that the prevention plan be periodically updated.

(1) The facility shall submit a copy of the pollution prevention plan to the department and the copy must be made available for viewing upon request by a member of the public. The facility shall provide information concerning the status of implementation of the pollution prevention plan to the department as required by the department.

(2) The facility shall monitor for mercury and provide the monitoring information to the department as required by the department. [2001, c. 418, §1 (NEW).]

C. The department may adjust an interim discharge limit for mercury upward or downward upon its own action or at the request of a licensee based upon factors such as additional monitoring data, reduction in flow due to implementation of a water conservation plan, seasonal variations, increased atmospheric deposition and changes in levels of production. [2001, c. 418, §1 (NEW).]

D. The department may approve an application and establish an interim discharge limit for a new or expanded discharge of mercury after the effective date of this paragraph only if:

(1) An opportunity for public participation is provided;

(2) The discharge will not result in a significant lowering of existing water quality with respect to mercury; and

(3) The action is necessary to achieve important economic or social benefits to the State. [2001, c. 418, §1 (NEW).]

E. [2001, c. 418, §1 (NEW); MRSA T. 38, §413, sub-§11, ¶ E (RP).]

F. Notwithstanding this subsection, whenever the commissioner finds that a danger to public health exists due to mercury concentrations in any waters of the State, the commissioner may issue an emergency order to all facilities discharging to those waters prohibiting or curtailing the further discharge of mercury and compounds containing mercury into those waters. These findings and the order must be served in a manner similar to that described in section 347-A, subsection 3 and the parties affected by that order have the same rights and duties as are described in section 347-A, subsection 3. [2001, c. 418, §1 (NEW).]

G. A facility may not directly or indirectly discharge to a publicly owned treatment facility any concentration of mercury that contributes to the failure of the treatment facility to comply with interim effluent limits or applicable ambient water quality criteria for mercury. The owner of a publicly owned treatment facility may require any user of that facility, except for a residential source, to institute

measures necessary to abate discharges of mercury to that facility. Those measures may include, but are not limited to, testing to determine concentrations of mercury, institution of pollution prevention practices or the evaluation of raw materials, products or practices. The owner of a publicly owned treatment facility may establish reasonable time schedules for completion of those measures. A facility that does not comply with abatement measures required by an owner of a publicly owned treatment facility may be subject to enforcement actions taken by the department or the owner of the facility and sanctions imposed by applicable municipal ordinances or section 349. [2001, c. 418, §1 (NEW).]

[ 2001, c. 418, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 499, §9 (AMD). 1971, c. 461, §3 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 139, (AMD). 1973, c. 450, §§7-10 (AMD). 1973, c. 788, §§208,209 (AMD). 1975, c. 770, §209 (AMD). 1977, c. 271, §4 (AMD). 1977, c. 300, §16 (AMD). 1977, c. 373, §32 (AMD). 1979, c. 281, §3 (AMD). 1979, c. 296, §2 (AMD). 1979, c. 380, §2 (AMD). 1979, c. 444, §3 (AMD). 1979, c. 472, §13 (AMD). 1979, c. 541, §§B69,B70 (AMD). 1979, c. 663, §229 (AMD). 1983, c. 566, §§16,17 (AMD). 1985, c. 479, §4 (AMD). 1987, c. 235, (AMD). 1987, c. 318, §3 (AMD). 1987, c. 372, (AMD). 1987, c. 394, §1 (AMD). 1987, c. 769, §§A172-A175 (AMD). 1989, c. 656, §1 (AMD). 1989, c. 890, §§A40,B28 (AMD). 1993, c. 333, §1 (AMD). 1995, c. 493, §2 (AMD). 1995, c. 493, §21 (AFF). 1997, c. 794, §§A12-18 (AMD). 1999, c. 387, §4 (AMD). 2001, c. 418, §1 (AMD). 2003, c. 246, §6 (AMD). 2003, c. 502, §1 (AMD). 2003, c. 551, §5 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 219, §§1,2 (AMD). 2007, c. 292, §18 (AMD). MRSA T.38 ., §413/11/E (AMD).

### Title 38

#### §444-A. Civil suit

**1. Suit authorized.** Any water utility, as defined in Title 35-A, section 102, may commence a civil action for injunctive relief against an owner of property in the shoreland zone when the following conditions are met.

A. A violation of a municipal shoreland zoning ordinance is alleged to have occurred. [1989, c. 733, §2 (NEW) .]

B. The water utility bringing the civil action has a water supply that is directly affected by the alleged violation. [1989, c. 733, §2 (NEW) .]  
[ 1989, c. 733, §2 (NEW) .]

**2. Suit prohibited.** An action may not be brought under this section if the Federal Government, State Government or a municipality of the State has commenced and is pursuing an administrative, civil or criminal action to remedy the alleged violation.  
[ 1989, c. 733, §2 (NEW) .]

**3. Notice.** An action may not be commenced under this section unless the plaintiff has given at least 60 days' notice to the alleged violator, the department, the Attorney General, and the municipality or municipalities in which the violation is alleged to have occurred. If the violation occurs within the jurisdiction of the Maine Land Use Regulation Commission, the commission must be given notice in place of the department and the municipality.  
[ 1989, c. 733, §2 (NEW) .]

**4. Jurisdiction.** An action may be commenced in the District Court or Superior Court in the county in which the violation is alleged to have occurred.  
[ 1989, c. 733, §2 (NEW) .]

**5. Intervention.** The Attorney General may intervene in any case brought under this section.

[ 1989, c. 733, §2 (NEW) .]

#### SECTION HISTORY

1989, c. 733, §2 (NEW) .

## **Title 38: WATERS AND NAVIGATION**

### **§1864. Emergency authority to regulate surface use**

The commissioner and the Commissioner of Inland Fisheries and Wildlife may jointly issue an emergency order to restrict access to or restrict or prohibit the use of any watercraft on all or a portion of a water body that has a confirmed infestation of an invasive aquatic plant. The order must be for a specific period of time and may be issued only when the use of watercraft on that water body threatens to worsen or spread the infestation. The order may require that watercraft on waters affected by the order be taken out of the water only at locations identified in the order. The order may require inspections and cleaning of watercraft, watercraft trailers and equipment upon removal at sites that have been identified in the order. Inspections must be conducted by designated state boat inspectors. For purposes of this section, "designated state boat inspector" means a person employed by the State and identified by the department or the Department of Inland Fisheries and Wildlife as a person who is qualified to properly conduct inspection activities. [2003, c. 627, §8 (AMD).]

#### **SECTION HISTORY**

2001, c. 434, §A7 (NEW). 2003, c. 551, §20 (AMD). 2003, c. 627, §8 (AMD).