Maine Revised Statutes

Title 38: WATERS AND NAVIGATION

Table of Contents

Chapter 1. OPERATION OF VESSELS 7

Subchapter 1. HARBOR MASTERS 7

Subchapter 2. PORT WARDENS 13

Subchapter 3. PILOTS 14

Subchapter 4. LIGHTERS AND HARBORS 24

Subchapter 5. SHIP OWNERS 25

Subchapter 6. WATERCRAFT REGISTRATION AND SAFETY 25

Article 1. GENERAL PROVISIONS 25

Article 2. CONDITIONS AND RESTRICTIONS 26

Subchapter 7. OPERATING RESTRICTIONS 28

Subchapter 8. PUBLIC FACILITIES FOR BOATS 29

Chapter 2. DEPARTMENT OF ENVIRONMENTAL PROTECTION 32

Subchapter 1. ORGANIZATION AND POWERS 32

Subchapter 1-A. ENVIRONMENTAL AUDIT PROGRAM 75

Subchapter 2. MAINE ENVIRONMENTAL PROTECTION FUND 80

Subchapter 3. LAKE ENVIRONMENTAL PROTECTION FUND 106

Subchapter 4. MAINE POLLUTION PREVENTION FUND 107

Chapter 3. PROTECTION AND IMPROVEMENT OF WATERS 109

Subchapter 1. ENVIRONMENTAL PROTECTION BOARD 109

Article 1. ORGANIZATION AND GENERAL PROVISIONS 109

Article 1-A. GREAT PONDS PROGRAM 116

Article 1-B. GROUND WATER PROTECTION PROGRAM 119

Article 1-C. FRESHWATER WETLANDS 121

Article 1-E. MARINE ENVIRONMENTAL MONITORING PROGRAM 123

Article 1-F. NONPOINT SOURCE POLLUTION PROGRAM 124

Article 1-G. LAKES ASSESSMENT AND PROTECTION PROGRAM 126

Article 2. POLLUTION CONTROL 128

Article 2-A. ALTERATION OF RIVERS STREAMS AND BROOKS 179

Article 2-B. MANDATORY SHORELAND ZONING 180

Article 3. ENFORCEMENT 203

Article 4. AIR POLLUTION AND ENVIRONMENTAL IMPROVEMENT 208

Article 4-A. WATER CLASSIFICATION PROGRAM 209

Article 4-B. WATER WITHDRAWAL REPORTING PROGRAM 257

Article 5. ALTERATION OF COASTAL WETLANDS 261

Article 5-A. NATURAL RESOURCES PROTECTION ACT 262

Article 6. SITE LOCATION OF DEVELOPMENT 320
Article 7. PERFORMANCE STANDARDS FOR EXCAVATIONS FOR BORROW, CLAY, TOPSOIL OR SILT 352
Article 8. PERFORMANCE STANDARDS FOR SMALL ROAD QUARRIES 367
Article 8-A. PERFORMANCE STANDARDS FOR QUARRIES 368
Article 9. MAINE METALLIC MINERAL MINING ACT 383
Subchapter 2. INTERSTATE WATER POLLUTION CONTROL 396
Article 1. COMPACT 396
Article 2. ADMINISTRATIVE PROVISIONS 401
Subchapter 2-A. OIL DISCHARGE PREVENTION AND POLLUTION CONTROL 403
Subchapter 2-B. OIL STORAGE FACILITIES AND GROUND WATER PROTECTION 427
Subchapter 3. CRIMINAL LIABILITY 478
Chapter 3-A. CLIMATE CHANGE 479
Chapter 3-B. REGIONAL GREENHOUSE GAS INITIATIVE 482
Chapter 4. PROTECTION AND IMPROVEMENT OF AIR 492
Chapter 5. GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS 534
Subchapter 1. MILLS AND DAMS 534
Article 1. ERECTION AND FLOWAGE RIGHTS 534
Subarticle 1. GENERAL PROVISIONS 534
Subarticle 1-A. LICENSING OF HYDROELECTRIC FACILITIES 534
Subarticle 1-B. PERMITS FOR HYDROPOWER PROJECTS 535
Subarticle 1-C. PUBLIC PARTICIPATION IN THE LICENSING AND RELICENSING OF HYDROELECTRIC DAMS 545
Subarticle 2. RIGHTS AND LIABILITIES 546
Subarticle 3. ACTION FOR DAMAGES 547
Article 2. PROTECTION OF WAYS FROM OVERFLOW 551
Article 3. INSPECTION OF DAMS AND RESERVOIRS 552
Article 3-A. DAM REGISTRATION AND ABANDONMENT 552
Subarticle 1. INSPECTION 554
Subarticle 2. REGISTRATION 556
Subarticle 3. ABANDONMENT 556
Subarticle 4. WATER LEVELS 556
Article 4. MILLS AND THEIR REPAIR 560
Article 5. GRIST MILLS 560
Article 6. RELEASE FROM DAM OWNERSHIP AND WATER LEVEL MAINTENANCE 561
Subchapter 2. WATER STORAGE RESERVOIRS 566
Chapter 6. SACO RIVER CORRIDOR 568
Chapter 7. FLOATING TIMBER 594

Chapter 8. ST. CROIX INTERNATIONAL WATERWAY COMMISSION 596
Chapter 9. WHARVES AND FISH WEIRS..... 604
Chapter 10. STANDARD SEWER DISTRICT ENABLING ACT..... 607
Subchapter 1. GENERAL PROVISIONS..... 607
Subchapter 2. GOVERNANCE..... 609
Subchapter 3. POWERS..... 613
Subchapter 4. RATES AND FEES..... 618
Subchapter 5. BONDS, INVESTMENT AND DEBT LIMIT..... 623
Chapter 11. SANITARY DISTRICTS..... 630
Subchapter 1. GENERAL PROVISIONS..... 630
Subchapter 2. ORGANIZATION..... 632
Subchapter 3. POWERS..... 639
Subchapter 4. BONDS, RATES AND ASSESSMENTS..... 646
Chapter 11-A. COMMUNITY SANITARY DISTRICTS 657
Chapter 12. SEWER DISTRICTS..... 660
Chapter 12-A. ASBESTOS 662
Chapter 12-B. LEAD ABATEMENT 672
Chapter 13. WASTE MANAGEMENT 681
Subchapter 1. GENERAL PROVISIONS 681
Subchapter 1-A. SOLID WASTE 712
Article 1. REMEDIATION AND CLOSURE 712
Article 2. RECYCLING AND SOURCE REDUCTION 724
Article 3. SOLID WASTE FACILITY SITING 724
Subchapter 2. SOLID WASTE MANAGEMENT SUBSIDY..... 745
Subchapter 2-A. TIRE STOCKPILE ABATEMENT 746
Subchapter 2-B. MANAGEMENT OF MOTOR VEHICLE TIRES 751
Subchapter 2-C. DANGEROUS OR UNSAFE MATERIAL CONTROL 752
Subchapter 3. HAZARDOUS MATTER CONTROL..... 753
Subchapter 4. MAINE HAZARDOUS WASTE FUND..... 758
Subchapter 5. HAZARDOUS WASTE AND WASTE OIL 766
Chapter 13-A. SEPTIC TANK AND CESSPOOL WASTE AND OTHER WASTE MATERIALS..... 783
Chapter 13-B. UNCONTROLLED HAZARDOUS SUBSTANCE SITES..... 784
Chapter 13-C. SLUDGE AND RESIDUALS UTILIZATION RESEARCH 796
Chapter 13-D. WELLHEAD PROTECTION..... 798
Chapter 14. LIABILITY OF PERSONS MITIGATING THE EFFECTS OF DISCHARGE OF HAZARDOUS MATERIALS..... 804
Chapter 14-A. NUCLEAR WASTE ACTIVITY..... 806

Subchapter 1. GENERAL PROVISIONS 806
Subchapter 2. HIGH-LEVEL RADIOACTIVE WASTE 812
Subchapter 3. LOW-LEVEL RADIOACTIVE WASTE 815
Subchapter 3-A. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL 818
Subchapter 4. WASTE DISPOSAL 819
Chapter 14-B. MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY 822
Subchapter 1. GENERAL PROVISIONS 822
Subchapter 2. ORGANIZATION 822
Subchapter 2-A. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT 823
Subchapter 3. POWERS AND PROPERTY 824
Subchapter 4. DUTIES AND RESPONSIBILITIES 825
Subchapter 5. FINANCIAL MATTERS 826
Subchapter 6. RESPONSIBILITIES OF GENERATORS 827
Chapter 14-C. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL 828
Chapter 15. REGIONAL REFUSE DISPOSAL DISTRICT ENABLING ACT 829
Chapter 16. SALE OF CONSUMER PRODUCTS AFFECTING THE ENVIRONMENT 831
Chapter 16-A. NONDEGRADABLE FOOD AND BEVERAGE CONTAINERS 847
Chapter 16-B. MERCURY-ADDED PRODUCTS AND SERVICES 849
Chapter 16-C. ARSENIC-TREATED WOOD PRODUCTS 868
Chapter 16-D. TOXIC CHEMICALS IN CHILDREN'S PRODUCTS 869
Chapter 17. MAINE REFUSE DISPOSAL DISTRICT ENABLING ACT 880
Subchapter 1. GENERAL PROVISIONS 880
Subchapter 2. ORGANIZATION 884
Subchapter 3. POWERS 894
Subchapter 4. BONDS AND NOTES 899
Chapter 18. PRODUCT STEWARDSHIP 910
Chapter 19. COASTAL MANAGEMENT POLICIES 916
Chapter 20. PROTECTION OF MAINE LAKES 919
Chapter 20-A. PROGRAM TO PREVENT INFESTATION OF AND TO CONTROL INVASIVE AQUATIC PLANTS 920
Chapter 20-B. INVASIVE AQUATIC PLANTS AND NUISANCE SPECIES CONTROL 923
Chapter 21. COASTAL BARRIER RESOURCES SYSTEM 926
Chapter 23. COASTAL AND LAKE WATERSHED DISTRICTS 931
Chapter 23-A. COASTAL WATERSHED DISTRICTS 942

Chapter 24. SOLID WASTE MANAGEMENT AND RECYCLING 943
Subchapter 1. GENERAL PROVISIONS 943
Subchapter 2. SOLID WASTE PLANNING 946
Subchapter 3. WASTE REDUCTION AND RECYCLING 948
Subchapter 4. FACILITY SITING AND DEVELOPMENT 961
Subchapter 5. HOST COMMUNITY COMPENSATION AND FACILITY OVERSIGHT 970
Subchapter 6. LIABILITY AND LIMITATIONS 976
Subchapter 7. FINANCE, FEES AND CONTRACTS 977
Article 1. FEES AND CONTRACTS 977
Article 2. MAINE SOLID WASTE MANAGEMENT FUND 978
Article 3. REVENUE OBLIGATION SECURITIES AND MORTGAGE LOANS 983
Subchapter 8. INCINERATION PLANT FINANCIAL STATEMENTS 996
Chapter 26. TOXICS USE AND HAZARDOUS WASTE REDUCTION 999
Chapter 27. PRIORITY TOXIC CHEMICAL USE REDUCTION..... 1002
Chapter 28. MOTOR VEHICLE EMISSION INSPECTION PROGRAM 1009
Chapter 30. ACE SERVICE CENTER 1011
Chapter 31. UNIFORM ENVIRONMENTAL COVENANTS ACTS 1012

Title 38: WATERS AND NAVIGATION

Chapter 1: OPERATION OF VESSELS

Subchapter 1: HARBOR MASTERS

§1. APPOINTMENT; COMPENSATION

The municipal officers of a town that borders or contains territorial waters, on request by any person desiring mooring privileges or regulation of mooring privileges for boats or vessels, shall appoint a harbor master for a term of not less than one year, who is subject to all the duties and liabilities of that office as prescribed by state law, municipal ordinances and regulations adopted by the municipal officers, municipal harbor commissioners, municipal port authorities or other such bodies empowered to regulate municipal harbors. The municipal officers may establish the harbor master's compensation and, for cause by them declared in writing, after due notice to the officer and hearing, if requested, remove the harbor master and appoint another one. [2005, c. 492, §4 (AMD).]

The municipal officers may prohibit a harbor master from making arrests or carrying a weapon. A harbor master may not make arrests or carry a firearm unless the harbor master has successfully completed the training requirements prescribed in Title 25, section 2804-I. Any law enforcement officer vested with the authority to carry a weapon and make arrests has the authority to enforce this subchapter. [1999, c. 682, §6 (AMD).]

For purposes of this section, "territorial waters" has the same meaning as provided in Title 12, section 6001, subsection 48-B. [2005, c. 492, §4 (NEW).]

SECTION HISTORY
1977, c. 696, §330 (AMD). 1985, c. 531, §2 (AMD). 1985, c. 692, §§1,4 (RPR). 1987, c. 412, §§1,8 (RPR). 1987, c. 655, §1 (AMD). 1999, c. 682, §6 (AMD). 2005, c. 492, §4 (AMD).

§1-A. TRAINING

The following provisions govern the training of harbor masters and deputy harbor masters appointed pursuant to section 1 or 2. [2005, c. 525, §1 (NEW).]

1. **Basic training course.** A person appointed or reappointed a harbor master or a deputy harbor master after August 31, 2006 must complete a basic harbor master training course offered by a statewide harbor masters association within one year after being appointed or reappointed unless that person has previously completed such a course. The person appointed or reappointed a harbor master or deputy harbor master shall pay the cost of the training required under this subsection.

[2005, c. 525, §1 (NEW) .]

2. **Reimbursement.** Nothing in this section may be construed to prohibit a municipality, at its sole discretion, from reimbursing a harbor master or deputy harbor master for the cost of training under this section.

[2005, c. 525, §1 (NEW) .]

3. **Additional training.** Nothing in this section may be construed to prohibit a municipality from requiring a harbor master or deputy harbor master to obtain training beyond that required by this section.

[2005, c. 525, §1 (NEW) .]

SECTION HISTORY
2005, c. 525, §1 (NEW).

§2. RULES FOR CHANNEL LINES; ENFORCEMENT

The municipal officers of all maritime towns and plantations, other bodies empowered to regulate municipal harbors and the county commissioners in the case of maritime unorganized townships may make rules and regulations, with suitable provision for enforcement, to keep open convenient channels for the passage of vessels in the harbors and waterways of the towns or townships for which they act, and may establish the boundary lines of those channels and assign suitable portions of their harbors and other coastal and tidal waters within their jurisdiction for anchorages. [1987, c. 655, §2 (AMD).]

In the event fishing gear is within the boundary lines of a channel in violation of local rules, the harbor master may issue a warning of navigational interference and may commence court action to order removal of that gear. [1987, c. 655, §2 (NEW).]

Such rules and regulations as may be made by those municipal officers, other bodies empowered to regulate harbors or county commissioners shall be enforced and carried out by the harbor master of that town or unorganized township, or any other law enforcement officer of the State or any political subdivision of the State. [1987, c. 655, §2 (AMD).]

The harbor master may appoint deputies who, under his direction, shall enforce and carry out the rules and regulations of this section. [1987, c. 412, §§ 2, 8 (NEW).]

SECTION HISTORY
1965, c. 242, (AMD). 1987, c. 412, §§2,8 (AMD). 1987, c. 655, §2 (AMD).

§3. MOORING SITES

In all harbors wherein channel lines have been established by the municipal officers, as provided in section 2, and in all other coastal and tidal waters, harbors and great ponds where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, the harbor master shall assign and indicate only to the masters or owners of boats and vessels the location that they may occupy for mooring purposes and shall change the location of those moorings from time to time when the crowded condition of that harbor or great pond, the need to conform to section 7-A or other conditions render the change desirable. [1991, c. 838, §16 (AMD).]

Unless permitted by an ordinance adopted under section 3-A, mooring assignments may not be transferred. Assignments may not be rented unless the provision for rental was part of the agreement when the mooring was assigned. [1991, c. 685, §1 (AMD).]

Assignment of these mooring privileges does not confer any right, title or interest in submerged or intertidal lands owned by the State. To the extent that there is any inconsistency between this subchapter and any law that establishes or otherwise provides for a port authority, board of harbor commissioners or similar authority for any coastal waters of the State, that inconsistency must be resolved in favor of this subchapter. [2003, c. 660, Pt. A, §23 (AMD).]

Whenever practicable, the harbor master shall assign mooring privileges in those waters where individuals own the shore rights to a parcel of land, are masters or owners of a boat or vessel and are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently, as the case may be, fronting their land, if so requested, but not to encroach upon the natural channel or channels established by municipal officers; provided that not more than one mooring may be assigned to any shorefront parcel of land under this privilege. Notwithstanding section 11, persons who, prior

to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot have mooring privileges assigned according to this section. The limitation of one mooring assigned under this privilege does not prevent the owner of a shorefront parcel from receiving additional mooring assignments under the allocation system for all other residents. [2003, c. 660, Pt. A, §23 (AMD).]

A harbor master may refuse to assign mooring privileges to any vessel or boat owner or master who has not paid any fee, charge for services, forfeiture or penalty levied pursuant to this subchapter. [1987, c. 655, §3 (NEW).]

Municipalities may not charge mooring fees for and do not have jurisdiction over the siting or specifications of structural moorings used to secure aquaculture equipment within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B. [2003, c. 660, Pt. A, §23 (NEW).]

Municipalities have jurisdiction over boat and vessel moorings within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B. A municipality may not charge a mooring fee for a boat or vessel within the boundaries of a lease that is inconsistent with that municipality's other mooring fees for commercial vessels. [2003, c. 660, Pt. A, §23 (NEW).]

SECTION HISTORY
1987, c. 412, §§3,8 (RPR). 1987, c. 655, §3 (RPR). 1991, c. 685, §1 (AMD). 1991, c. 838, §16 (AMD). 2003, c. 660, §A23 (AMD).

§3-A. MOORING TRANSFER PERMITTED BY ORDINANCE

A municipality may adopt an ordinance that allows the transfer of a mooring assignment used for commercial fishing purposes. The ordinance may permit a mooring assignment to be transferred only at the request or death of the assignee, only to a member of the assignee's family and only if the mooring assignment will continue to be used for commercial fishing purposes. For the purposes of this section, "member of the assignee's family" means an assignee's parent, child or sibling, by birth or by adoption, including a relation of the half blood, or an assignee's spouse. [1993, c. 66, §1 (AMD).]

SECTION HISTORY
RR 1991, c. 2, §140 (COR). 1991, c. 685, §2 (NEW). 1993, c. 66, §1 (AMD).

§4. NEGLECTING TO REMOVE OR REPLACE MOORINGS

In case of the neglect or refusal of the master or owner of any boat or vessel to remove his mooring or to replace it by one of different character, when so directed by the harbor master, that harbor master shall cause the entire mooring to be removed or the buoy removed and the chain dropped to the bottom or shall make such change in the character of the mooring as required, and collect from the master or owner of that boat or vessel the sum of $100 for either of those services rendered and the necessary expenses. [1987, c. 412, §§ 4, 8 (RPR).]

Before removing a mooring or a buoy, a harbor master shall notify the master or owner, if ownership can be determined, by mail at his last known address of the action desired of him, the fact that the mooring will be removed and the fine. If the matter is not settled to his satisfaction within 2 weeks, the harbor master may take the action provided for in this section. [1987, c. 412, §§ 4, 8 (NEW).]

SECTION HISTORY
1987, c. 412, §§4,8 (RPR).

§5. REMOVAL OF VESSELS OBSTRUCTING ANCHORAGE

A harbor master, upon receiving complaint from the master, owner or agent of any vessel, shall cause any other vessel or vessels obstructing the free movement or safe anchorage of that vessel to remove to a position to be designated by the harbor master and shall cause, without any complaint being made to the harbor master, any vessels anchoring within the channel lines as established by the municipal authorities, as provided in section 2, to remove to such anchorage as the harbor master may designate. [1987, c. 655, §4 (AMD).]

If that vessel has no crew on board or if the master or other person in charge neglects or refuses to move such vessel as directed by the harbor master, the harbor master may put a suitable crew on board and move that vessel to a suitable berth at a wharf or anchorage at the cost and risk of the owners of the vessel and shall charge $100, to be paid by the master or owner of that vessel, which charge, together with the cost of the crew for removing that vessel the harbor master may collect by civil action. [1987, c. 412, §§ 5, 8 (RPR).]

SECTION HISTORY
1977, c. 696, §331 (AMD). 1987, c. 412, §§5,8 (RPR). 1987, c. 655, §4 (AMD).

§6. POWER TO ARREST FOR ASSAULT

Harbor masters, whose authority is not restricted as described in section 1, may arrest and deliver to the police authorities on shore any person committing an assault upon them or another person acting under their authority. [1985, c. 531, §3 (AMD).]

SECTION HISTORY
1985, c. 531, §3 (AMD).

§7. RELATION TO OTHER LAWS

Nothing in this subchapter may be construed to be a limitation on the authority of municipalities to enact ordinances to regulate the assignment or placement of moorings and other activities in their harbors. These ordinances may include, but are not limited to: A process for assigning mooring privileges and determining the location of moorings; a waiting list for the assignment of mooring privileges; a fee schedule; construction standards for moorings; time limits on the mooring of vessels; a process for appeals from decisions of the harbor master; provisions that recognize that mooring privileges in lawful existence on the effective date of an ordinance may be preserved or continued after adoption of that ordinance, the location and use to be determined by the harbor master or other appropriate local authority; and provisions that establish a harbor commission or committee to administer the ordinance or ordinances and oversee the duties of the harbor master. Regulations adopted by the municipal officers under section 2 remain in effect unless the municipality's legislative body enacts an ordinance pertaining to the same matter pursuant to the Constitution of Maine, Article VIII, Part 2, and Title 30-A, section 3001. [1997, c. 89, §1 (AMD).]

SECTION HISTORY
1985, c. 692, §§2,4 (NEW). 1987, c. 412, §§6,8 (AMD). 1987, c. 655, §5 (RPR). 1997, c. 89, §1 (AMD).

§7-A. WAITING LISTS; NONRESIDENT MOORINGS

1. **Waiting lists.** If a municipality receives more applications for mooring privileges on state-owned lands that are controlled by its rules or ordinances than there are mooring spaces, the municipality shall assign spaces as they become available from a waiting list or lists according to its rules or ordinances, except as provided in this section. Waiting lists in effect at the time that this section becomes law may continue

in effect, but persons shall be selected from those lists in accordance with the allocation provisions of this section. If at the time a person applies for a mooring there is no waiting list, this person may be assigned a mooring without regard to the allocation provisions of this section.

[1987, c. 655, §6 (NEW) .]

2. **Allocations to nonresidents.** If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is noncommercial and less than 10% of the moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is commercial and less than 10% of the assigned moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If both nonresident noncommercial and nonresident commercial assignments are below 10% and there are both types of applicants on the waiting list, the available space shall be assigned to an applicant in the category that is the farthest below 10%. The burden of proof in determining residence and the principal use of a vessel shall be upon the applicant.

Each year, persons with mooring assignments shall report to the harbor master their anticipated residency status for the next year and whether they anticipate the principal use of their boats to be commercial or noncommercial. The harbor master shall update the percentage of mooring holders in each category from this data.

It is not a requirement of this section that a person lose a current mooring assignment to meet the objectives of this section.

Shorefront property owners shall be assigned mooring privileges as established in section 3.

If the mooring fee charged to nonresidents exceeds $20 a year, the fee charged shall be reasonable in relation to the costs involved in providing that mooring and shall not exceed 5 times the amount charged to residents.

This subsection shall be construed broadly in order to accomplish the distribution of moorings to nonresidents as specified in this section.

[1987, c. 655, §6 (NEW) .]

SECTION HISTORY
1987, c. 655, §6 (NEW).

§8. WAITING LIST

Whenever there are more applicants for a mooring assignment than there are mooring spaces available, the harbor master or other town official shall create a waiting list. The town officials shall work out a reasonable procedure for persons to add their names to this list. The procedure shall be posted in a public place. The list shall be considered a public document under the freedom of access law. [1987, c. 412, §§ 7, 8 (NEW).]

SECTION HISTORY
1987, c. 412, §§7,8 (NEW).

§9. ABANDONMENT OF WATERCRAFT

No person may bring into or maintain in the harbor any derelict watercraft, watercraft for salvage, or abandon any watercraft in the harbor without a permit from the harbor master or, if there is no harbor master, the appropriate municipal official. Whoever does so without permit is guilty of a Class E crime. Watercraft which are to be salvaged by firms licensed by the State to do salvage work shall be excluded

from this section. The municipal board or commission entrusted with harbor management shall be the sole determiner as to what constitutes a watercraft that is derelict and what constitutes a watercraft that is abandoned. [1987, c. 412, §§ 7, 8 (NEW).]

SECTION HISTORY
1987, c. 412, §§7,8 (NEW).

§10. HARBOR MASTER LIABILITY

In addition to the immunities from liability and the limitations and defenses provided under the Maine Tort Claims Act, Title 14, sections 8103, 8111 and 8112, a harbor master who, in the performance of statutory duties as set forth in sections 4 and 5, causes any damage to property or any injury to a person shall not be liable for damage or injury, unless the damage or injury is a direct result of the gross negligence, gross recklessness or bad faith intentional misconduct of the harbor master. [1987, c. 655, §7 (AMD).]

SECTION HISTORY
1987, c. 412, §§7,8 (NEW). 1987, c. 655, §7 (AMD).

§11. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 548, Pt. D, §9 (AMD).]

1. **Municipal resident.** "Municipal resident" means any person who occupies a dwelling within the municipality for more than 180 days in a calendar year. A municipality may by ordinance include other persons in the definition of resident.

[1987, c. 412, §§ 7, 8 (NEW) .]

2. **Parcel of land.** "Parcel of land" means the larger of the minimal buildable lot size in the municipality or 20,000 square feet and, in either case, including 100 feet of shoreline frontage.

[1987, c. 412, §§ 7, 8 (NEW) .]

3. **Watercraft.** "Watercraft" means any type of vessel, boat, barge, float or craft used or capable of being used as a means of transportation on water other than a seaplane.

[1987, c. 412, §§ 7, 8 (NEW) .]

SECTION HISTORY
1987, c. 412, §§7,8 (NEW). 1991, c. 548, §D9 (AMD).

§12. VIOLATION OF SUBCHAPTER

Except as provided in section 13, a violation of this subchapter or any harbor ordinance may be prosecuted and relief, fees, fines and penalties granted and assessed pursuant to the provisions of Title 30-A, section 4452. [1991, c. 262, §1 (AMD).]

SECTION HISTORY
1987, c. 655, §8 (NEW). 1989, c. 287, §5 (RPR). 1991, c. 262, §1 (AMD).

§13. FAILURE TO OBEY ORDERS OF HARBORMASTERS

1. **Offense defined.** A person is guilty of failure to obey an order of a harbormaster if the person intentionally, knowingly or recklessly fails to obey any lawful order of a harbormaster authorized pursuant to this subchapter.

[1991, c. 262, §2 (NEW) .]

2. **Penalty.** Failure to obey an order of a harbormaster is a Class E crime.

[1991, c. 262, §2 (NEW) .]

SECTION HISTORY
1991, c. 262, §2 (NEW).

Subchapter 2: PORT WARDENS

§41. ELECTION; QUALIFICATIONS; TERM; REMOVAL; VACANCIES; RECORDS

Port wardens shall be elected in any city or town situated on navigable waters upon the petition of 10 or more citizens engaged in commercial pursuits therein.

If in such city or town there is a board of trade duly incorporated, said board shall annually elect the port warden. Otherwise the municipal officers thereof shall annually elect him.

Port wardens shall be men of commercial or nautical experience and shall hold office one year from each election and until others are qualified in their stead, except when removed for cause or when elected to serve out an unexpired term. They shall be sworn faithfully to perform their duties.

Said boards of trade, by their managers, or said municipal officers shall forthwith on complaint of any person aggrieved, after hearing, remove for cause any port warden by them elected, and all vacancies shall be filled by said authorities.

Port wardens shall make a record of their doings and keep the same in their office for inspection at any time, free of charge, by any person interested therein.

§42. DUTIES; VESSELS ARRIVING

When requested by any person interested, port wardens shall proceed on board of any vessel on her arrival in port and survey her hatches and notice if they are properly caulked and secured, and if they have been opened by some person not a port warden, that fact shall be noticed, and all the facts in relation to the hatches of said vessel shall be entered in the official record. They shall examine the condition and stowage of the cargo of any vessel, and if any portion of it is found to be damaged, they shall inquire into and ascertain the cause thereof, and make a memorandum of the same, noting particularly the marks and numbers of each damaged package, and shall enter the same in full in the records of their office. For the purpose of ascertaining the extent of said damage, they shall examine goods, wares or merchandise of any description in any warehouse or store, or on any wharf or at any place where the same are, provided said goods, wares or merchandise are part of the cargo and are claimed to be damaged. They shall note particularly the marks and numbers of every package examined by them and the extent of the damage received, and all the facts in relation thereto shall be entered in the records of their office.

§43. -- DISTRESSED VESSELS

When requested in writing by any person interested, port wardens shall survey the cargo of any vessel arriving in port in distress, and shall make and record in the books of their office, a full and particular report of the condition of said cargo, and of their recommendations in relation to the disposal of such portions of the same as in their judgment may not be in condition for reshipment, reference being had to the best interests of all concerned.

§44. -- WRECKED OR DAMAGED VESSELS

When requested in writing by any person interested, port wardens shall survey any vessel which may have suffered wreck or damage, or which may be deemed unseaworthy. Such port wardens shall call to their assistance one merchant and one shipwright, both of whom shall be competent and disinterested persons and shall be sworn faithfully to perform their duties in the examination and survey. Said surveyors and port wardens shall examine the hull, spars, sails, rigging and all the appurtenances of said vessel, and make and record in the books of the port wardens' office a full and particular report of all the surveys by them held on said vessel, specifying what damage she has sustained and what repairs in their opinion are necessary to render her again seaworthy. The aforesaid report shall be presumptive evidence of the necessity of such repairs and of the sufficiency of the same when made.

§45. FEES

Port wardens shall be allowed fees to be paid by the person requesting their services, as follows: For survey of hatches, $2; for each survey of cargo on shipboard, $1; for certificate of stowage of cargo, $2; for each subsequent certificate, $1; for each survey to ascertain extent of damage, $2; for each certificate thereof, $2; for each survey required by section 43, $4; for each certificate thereof, $2; on each survey as required by section 44 for each person, $2; for each certificate thereof, $2.

§46. JURISDICTION; IMPERSONATION; PENALTY

In the cities and towns for which they are elected, port wardens shall have exclusive jurisdiction in all matters pertaining to their duties, as specified in this subchapter and subchapters III, IV and V. Any other person who performs or attempts to perform any such duties in any city or town wherein there is a port warden forfeits for each offense $100, to be recovered in a civil action by any prosecutor.

Subchapter 3: PILOTS

§81. APPOINTMENT; BOND

(REPEALED)

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SECTION HISTORY
1975, c. 771, §413 (AMD).  1985, c. 389, §27 (RP).
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§82. DUTIES

(REPEALED)

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SECTION HISTORY
1985, c. 389, §29 (RP).
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§83. FEES; COMPLAINTS; SUSPENSION OR REMOVAL

(REPEALED)

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SECTION HISTORY
1975, c. 771, §414 (AMD).  1985, c. 389, §30 (RP).
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§84. LIABILITY FOR DAMAGE

(REPEALED)

SECTION HISTORY
1985, c. 389, §31 (RP).

§85. DECLARATION OF POLICY

It is declared to be the policy and intent of the Legislature and the purpose of this subchapter to provide for a system of state pilotage in order to provide maximum safety from the dangers of navigation for vessels entering or leaving the waters described in this subchapter, to maintain a state pilotage system devoted to the preservation and protection of lives, property, the environment and vessels entering or leaving these waters at the highest standard of efficiency and to insure the availability of pilots well qualified for the discharge of their duties in aid of commerce and navigation. [1999, c. 355, §2 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1985, c. 389, §32 (AMD). 1999, c. 355, §2 (AMD).

§85-A. DEFINITIONS

(REPEALED)

SECTION HISTORY
1983, c. 758, §13 (NEW). 1991, c. 509, §46 (AMD). 1997, c. 727, §C17 (AMD). 1999, c. 355, §3 (RP).

§85-B. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 355, §4 (NEW).]

1. **Actively piloting.** "Actively piloting" means a person licensed as a pilot by the commission who is engaged in providing pilot services on a regular and ongoing basis within the area for which that person is licensed.

[1999, c. 355, §4 (NEW) .]

2. **Coastal waters.** "Coastal waters" means the jurisdictional area of the commission, which waters are all coastal navigable waters that are contained within, flow through, or border upon the State or any portion thereof, including those portions of the Atlantic Ocean within the jurisdiction of the State, up to state or international boundaries, and including all waters between Isle au Haut and Seal Island westward of a straight line between Western Ear Ledge on Isle au Haut drawn to Eastern Ledge on Seal Island.

[1999, c. 355, §4 (NEW) .]

3. **Coastal zones.** "Coastal zones" means the 3 areas of Maine coastal waters relevant to the commission membership, Calais to Schoodic Point, Schoodic Point to Port Clyde, and Port Clyde to Kittery, excepting the port of Portland and Casco Bay.

[1999, c. 355, §4 (NEW) .]

4. **Commission.** "Commission" means the Maine Pilotage Commission.

[1999, c. 355, §4 (NEW) .]

5. **Commissioner.** "Commissioner" means the Commissioner of Transportation.

[1999, c. 355, §4 (NEW) .]

6. **Department.** "Department" means the Department of Transportation.

[1999, c. 355, §4 (NEW) .]

7. **Pilotage areas.** "Pilotage areas" means specific areas of the Maine coast where the commission has established licensing requirements.

[1999, c. 355, §4 (NEW) .]

SECTION HISTORY
1999, c. 355, §4 (NEW).

§86. VESSELS REQUIRED TO TAKE PILOT

Every foreign vessel and every American vessel under register, with a draft of 9 feet or more, entering or departing from any port or harbor within the waters described in section 86-A must take a pilot licensed under this chapter. Any master, owner, agent or consignee that fails to take a pilot licensed under this subchapter is subject to a civil penalty not to exceed $15,000 per day, payable to the State. This penalty is recoverable in a civil action. [1999, c. 355, §5 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1985, c. 389, §32 (AMD). 1991, c. 698, §2 (AMD). 1999, c. 355, §5 (AMD).

§86-A. JURISDICTION OVER COASTAL WATERS AND RIVERS

This subchapter applies to all Maine coastal waters and navigable waters with the exception of: [1987, c. 689, §1 (RPR).]

l. **Piscataqua River.** The Piscataqua River;

[1987, c. 689, §1 (RPR) .]

2. **Exempt waters.** Those waters specifically exempted by the Maine Pilotage Commission; or

[1999, c. 355, §6 (AMD) .]

3. **Portland harbor.** Those waters specifically governed by the Board of Harbor Commissioners for the Harbor of Portland.

[1987, c. 689, §1 (RPR) .]

4. **Frenchman's Bay.**

[1987, c. 689, §1 (RP) .]

5. **Eastport Harbor, Cobscook Bay, Penamquan River and Friar Roads.**

[1987, c. 689, §1 (RP) .]

SECTION HISTORY

1985, c. 389, §33 (NEW). 1987, c. 689, §1 (RPR). 1999, c. 355, §6 (AMD).

§87. VESSELS EXEMPT

(REPEALED)

SECTION HISTORY
1969, c. 410, §1 (NEW). 1985, c. 389, §34 (RP).

§87-A. EXCEPTIONS

1. **Vessels exempt.** This subchapter does not apply to:

A. Vessels under enrollment; [1985, c. 389, §35 (NEW).]

B. Fishing vessels; [1985, c. 389, §35 (NEW).]

C. Vessels powered predominantly by sail; [1999, c. 355, §7 (AMD).]

D. [2011, c. 498, §1 (RP).]

E. All military ships navigating the Kennebec River to and from the Bath Iron Works Corporation for the purpose of accomplishing overhaul, repair, post shakedown availability and sea trials; and [2011, c. 14, §2 (AMD).]

F. Noncommercial foreign vessels with overall length of under 200 feet. [2011, c. 14, §3 (NEW).]

[2011, c. 498, §1 (AMD) .]

2. **Limitation.** If any such vessel employs a pilot, the pilot is entitled to receive as compensation for that pilot's service pilotage fees in the amount established by the commission.

[1999, c. 355, §7 (AMD) .]

SECTION HISTORY
1985, c. 389, §35 (NEW). 1999, c. 355, §7 (AMD). 2011, c. 14, §§1-3 (AMD). 2011, c. 498, §1 (AMD).

§88. PILOTING WITHOUT LICENSE

It is unlawful for any person not licensed as a pilot under this subchapter to pilot or offer to pilot a vessel not exempt from this subchapter. Any person found to be in violation of this subchapter must be assessed a fine not to exceed $5,000 for each instance of piloting, or offering to pilot without a license. Violation of this provision is a Class E crime. [1999, c. 355, §8 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1977, c. 696, §332 (AMD). 1999, c. 355, §8 (AMD).

§89. MAINE PILOTAGE COMMISSION MEMBERS

The Maine Pilotage Commission, as established by Title 5, section 12004-A, subsection 40, consists of 7 members who are citizens of the United States and the State of Maine appointed by the Governor as follows: Three licensed pilots who are actively piloting, one member from each of the coastal zones; 2 members who are not licensed pilots but are from a maritime industry that utilizes the services of pilots; and 2 members representing the public who are not licensed pilots but have a maritime background. Appointments are for

3-year terms. Appointments of members must comply with Title 10, section 8009. The members of the commission are entitled to compensation according to Title 5, chapter 379. [2007, c. 695, Pt. B, §23 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1975, c. 771, §415 (AMD). 1983, c. 812, §288 (AMD). 1985, c. 389, §36 (RPR). 1989, c. 503, §B174 (AMD). 1993, c. 600, §A281 (AMD). 1999, c. 355, §9 (AMD). 2007, c. 695, Pt. B, §23 (AMD).

§90. DUTIES OF COMMISSION

1. **Duties.** The commission shall perform the duties set forth and such other duties as may be provided by law:

A. Make, establish and enforce such rules and regulations not inconsistent with law that are binding upon all pilots licensed by the commission, and upon all parties employing such pilots; [1999, c. 355, §10 (AMD).]

B. Make and establish rates of pilotage for those vessels that are subject to this subchapter; [1999, c. 355, §10 (AMD).]

C. Establish and determine the qualifications of any person applying for a pilot's license and conduct examinations; [1969, c. 410, §1 (NEW).]

D. Issue any pilot's license in accordance with this subchapter and initiate proceedings to suspend or revoke these licenses; [1999, c. 355, §11 (AMD).]

E. Cause the laws, rules and regulations concerning pilots and pilotage matters to be fully observed and executed; [1969, c. 410, §1 (NEW).]

F. Hear and decide complaints made in writing or initiated on its own motion against any pilot for any misbehavior, neglect of, or breach of rules or regulations that it determines material to be investigated; [1999, c. 355, §12 (AMD).]

G. Hear and decide complaints made in writing by any pilot against any charterer, owner, agent, master or seaman of a vessel for any misbehavior toward such pilot in the performance of his duty, or any breach of the rules and regulations; [1969, c. 410, §1 (NEW).]

H. [1991, c. 837, Pt. A, §79 (RP).]

I. To do all other things reasonable, necessary and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this subchapter. [1999, c. 355, §12 (AMD).]

[1999, c. 355, §§10-12 (AMD) .]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1977, c. 694, §747 (AMD). 1985, c. 389, §37 (AMD). 1991, c. 837, §A79 (AMD). 1999, c. 355, §§10-12 (AMD).

§90-A. REPORTS; LIAISON; LIMITATIONS

On or before August 1st of each year, the commission shall submit to the commissioner for the preceding fiscal year ending June 30th its annual report of its operations and financial position, together with those comments and recommendations that the commission considers essential. [1999, c. 355, §13 (AMD).]

SECTION HISTORY

1977, c. 604, §42 (NEW). 1981, c. 456, §A121 (AMD). 1983, c. 758, §14 (AMD). 1999, c. 355, §13 (AMD).

§90-B. BUDGET

The commission's budget must be prepared and submitted to the commissioner for approval. [1997, c. 727, Pt. C, §18 (AMD).]

SECTION HISTORY
1977, c. 604, §42 (NEW). 1981, c. 456, §A122 (AMD). 1983, c. 758, §15 (AMD). 1995, c. 397, §125 (RPR). 1997, c. 727, §C18 (AMD).

§90-C. EMPLOYEES

The commissioner may appoint employees as necessary. [1997, c. 727, Pt. C, §19 (AMD).]

SECTION HISTORY
1983, c. 758, §16 (NEW). 1995, c. 397, §126 (NEW). 1997, c. 727, §C19 (AMD).

§91. QUALIFICATIONS OF LICENSEES

Every person who applies for a license to act as a pilot in the waters covered in this subchapter must be a citizen of the United States and the State of Maine. If applicable, the applicant must possess a federal first class pilot's endorsement, issued by a duly constituted authority of the United States, covering areas for which the applicant is making application. The commission shall set standards for application, testing and granting of a state license. In those areas where no federal endorsement is available, the commission may set additional standards for a state license. An applicant for a license must satisfy the commission that the applicant has or will have proper means available for boarding and leaving vessels which the applicant may be called upon to pilot. [1999, c. 355, §14 (AMD).]

An applicant must complete a training trip in the area for which that person is making application under the direction of a licensed pilot actively piloting in that area. These training trips must be on vessels of at least 1600 gross tons. The commission shall establish standards for proof of such training and the minimum number of trips required. Once those standards are established, they may be amended only upon a 2/3 vote of the commission. [1999, c. 355, §14 (NEW).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1985, c. 389, §38 (AMD). 1999, c. 355, §14 (AMD).

§92. DURATION AND RENEWAL OF LICENSES

Licenses issued by the pilotage commission must be renewed every 5 years to coincide, if possible, with the renewal of the individual's federal license. [1999, c. 355, §15 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1983, c. 758, §17 (AMD). 1991, c. 509, §47 (AMD). 1999, c. 355, §15 (AMD).

§93. LICENSE FEES

Every new application for a license to act as a pilot on coastal waters must be accompanied by an application fee of $500 for the first pilotage area and $50 for each successive pilotage area. Original and renewal license fees are $375 for 5 years, regardless of number of areas being renewed. Licenses may be

renewed up to 90 days after the date of expiration upon payment of a late fee of $100 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the licensing renewal date is subject to all requirements governing new applicants under this chapter. [1999, c. 355, §16 (AMD).]

A holder of a license on the effective date of this paragraph is not required to renew that license until the next expiration and renewal of the federal license. [1999, c. 355, §16 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1991, c. 509, §48 (AMD). 1999, c. 355, §16 (AMD).

§94. ACCOUNTS OF FEES; PAYMENTS TO COMMISSION

(REPEALED)

SECTION HISTORY
1969, c. 410, §1 (NEW). 1991, c. 509, §49 (AMD). 1999, c. 355, §17 (RP).

§95. PILOT'S BOND

(REPEALED)

SECTION HISTORY
1969, c. 410, §1 (NEW). 1991, c. 509, §50 (RP).

§96. LAWFUL COMPENSATION

No pilot shall demand or receive any greater, lesser or different compensation for piloting a vessel upon any of the pilotage grounds than is allowed by law. [1969, c. 410, §1 (NEW).]

SECTION HISTORY
1969, c. 410, §1 (NEW).

§97. AUTHORITY OF PILOTS

A pilot licensed under this subchapter may pilot any vessel required to take a state pilot anywhere upon the pilotage area for which the pilot is licensed. [1999, c. 355, §18 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1999, c. 355, §18 (AMD).

§98. COMMISSIONS PROHIBITED

A master, agent, owner, charterer or consignee may not charge a commission or receive any payment directly or indirectly, for the assignment of pilotage, nor may any pilot pay or offer to pay to any person any commission for the assignment of pilotage. Any person violating this section commits a civil violation for which a forfeiture not to exceed $5,000 may be adjudged for each violation. [1999, c. 355, §19 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1977, c. 696, §333 (AMD). 1999, c. 355, §19 (AMD).

§99. GROUNDS FOR DISCIPLINARY ACTION

The commission may suspend any pilot for any period that it may consider proper and may suspend, revoke or annul any pilot's license that is issued under this subchapter, upon satisfactory proof that a pilot has willfully disobeyed or violated any of the provisions of this subchapter or any rule established by the commission; or a pilot has negligently lost or damaged any vessel under that pilot's care; or a pilot is habitually intemperate in the use of alcohol or habitually uses narcotic or hypnotic or other substances so as to be unfit to be entrusted with the charge of a vessel; or the pilot is so mentally or physically incapable as to be unfit to carry on the duties of a pilot. [1999, c. 355, §20 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1977, c. 694, §748 (AMD). 1985, c. 389, §39 (AMD). 1999, c. 355, §20 (AMD).

§99-A. PILOT LIABILITY

1. **Acts or omissions of another pilot; no liability.** A pilot is not liable directly or as a member of an organization of pilots for a claim that arises from an act or omission of another pilot or organization of pilots or that relates directly or indirectly to pilot services.

[1999, c. 355, §21 (NEW) .]

2. **Limitation on liability.** A pilot providing pilot services is not liable for more than $5,000 in damages or loss caused by any negligent act or omission in the performance of pilot services. A pilot providing piloting services is liable for:

A. Damages or loss arising from the intentional, willful or reckless misconduct of the pilot; or [1999, c. 355, §21 (NEW).]

B. Liability for exemplary damages for intentional, willful or reckless conduct of the pilot for which no other person is jointly or severally liable. [1999, c. 355, §21 (NEW).]

[1999, c. 1, §52 (COR) .]

Nothing in this section may be construed to exempt an owner or operator of a vessel from liability for damage or loss caused by that vessel. [1999, c. 1, §52 (COR).]

SECTION HISTORY
RR 1999, c. 1, §52 (COR). 1999, c. 355, §21 (NEW).

§100. NOTICE OF HEARING ON COMPLAINT

Before any person shall be proceeded against on any complaint, such person or pilot shall be notified in writing to appear before the commission. Such notice shall specify the nature and substance of such complaint and shall be served personally or by certified mail addressed to such pilot at his last and usual place of abode at least 15 days before the time fixed in the notice for his appearance. [1977, c. 694, §749 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1977, c. 694, §749 (AMD).

§100-A. CONFIDENTIALITY OF COMPLAINTS AND INVESTIGATIVE RECORDS

1. **During investigation.** All complaints and investigative records of the commission are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:

A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued; [1999, c. 355, §22 (NEW).]

B. The complaint has been listed on a meeting agenda of the commission; [1999, c. 355, §22 (NEW).]

C. A consent agreement has been executed; or [1999, c. 355, §22 (NEW).]

D. A letter of dismissal has been issued or the investigation has otherwise been closed. [1999, c. 355, §22 (NEW).]

[1999, c. 355, §22 (NEW) .]

2. **Exceptions.** Notwithstanding subsection 1, during the pendency of an investigation, a complaint or investigative record may be disclosed:

A. To department employees designated by the commissioner; [1999, c. 355, §22 (NEW).]

B. To designated complaint officers of the commission; [1999, c. 355, §22 (NEW).]

C. By a department employee or complaint officer designated by the commissioner when and to the extent considered necessary to facilitate the investigation; [1999, c. 355, §22 (NEW).]

D. To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies; [1999, c. 355, §22 (NEW).]

E. When and to the extent considered necessary by the commissioner to avoid imminent and serious harm. The authority of the commissioner to make such a disclosure may not be delegated; [1999, c. 355, §22 (NEW).]

F. Pursuant to rules adopted by the department, when it is determined that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; and [1999, c. 355, §22 (NEW).]

G. To the person investigated on that person's request. The commissioner may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure would prejudice the investigation. The authority of the commissioner to make such a determination may not be delegated. [1999, c. 1, §53 (COR).]

[1999, c. 1, §53 (COR) .]

3. **Violation.** A person who knowingly or intentionally makes a disclosure in violation of this section commits a civil violation for which a forfeiture not to exceed $1,000 may be adjudged.

[1999, c. 355, §22 (NEW) .]

SECTION HISTORY
RR 1999, c. 1, §53 (COR). 1999, c. 355, §22 (NEW).

§101. SURRENDER OF REVOKED OR SUSPENDED LICENSE

1. **Surrender of revoked or suspended license.** A pilot whose license has been revoked or suspended shall surrender the license to the commission, which shall retain it until the period of the pilot's suspension expires. A pilot whose license has been revoked or suspended who refuses to surrender the license on demand commits a civil violation for which a fine of not more than $5,000 for each week after the demand that the pilot refuses to surrender the license may be adjudged.

[2003, c. 452, Pt. W, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Continuing to pilot after revocation or suspension.** A pilot whose license has been revoked or suspended who continues to pilot commits a civil violation for which a fine of not more than $5,000 for each vessel piloted without a license may be adjudged.

[2003, c. 452, Pt. W, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Publication.** The commission may cause to be published in a newspaper of general circulation published in the State a notice that that person has no authority to act as a pilot unless and until reinstated by law.

[2003, c. 452, Pt. W, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1977, c. 696, §334 (RPR). 1999, c. 355, §23 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §W1 (RPR).

§102. REINSTATEMENT FOLLOWING SUSPENSION

Any pilot whose license has been suspended shall, following the expiration of the period of his suspension, be entitled to the reinstatement of his license, provided he shall possess the qualifications required of pilots as of the time his suspension expires. [1969, c. 410, §1 (NEW).]

SECTION HISTORY
1969, c. 410, §1 (NEW).

§103. LAPSED

Any pilot heretofore licensed by the commission whose license lapses for any reason may be reinstated upon compliance with sections 91 and 93, as if applying for an initial license. [1999, c. 355, §24 (AMD).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1999, c. 355, §24 (AMD).

§104. APPEALS FROM COMMISSION

Any person aggrieved by any final order or decision of the commission with respect to any disciplinary action or any application for, or denial of, a pilot's license may appeal therefrom to the Superior Court in accordance with the Maine Administrative Procedure Act. [1977, c. 694, §750 (RPR).]

SECTION HISTORY
1969, c. 410, §1 (NEW). 1973, c. 303, §3 (AMD). 1977, c. 694, §750 (RPR).

§105. PILOTS CURRENTLY SERVING

(REPEALED)

SECTION HISTORY
1969, c. 410, §1 (NEW). 1979, c. 127, §206 (AMD). 1999, c. 355, §25 (RP).

§106. DISPOSITION OF FEES

All money received by the commission must be paid to the Treasurer of State and credited to the account for the commission within the budget of the Department of Transportation. [1997, c. 727, Pt. C, §20 (AMD).]

Money received by the commission must be used for the expenses of administering its statutory responsibilities, including, but not limited to, the costs of conducting investigations, taking testimony and procuring the attendance of witnesses, the costs of all legal proceedings initiated for enforcement and administrative expenses. [1995, c. 397, §127 (NEW).]

Any balance of these fees may not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years. [1995, c. 397, §127 (NEW).]

SECTION HISTORY
1985, c. 389, §40 (NEW). 1995, c. 397, §127 (RPR). 1995, c. 502, §H48 (AMD). 1997, c. 727, §C20 (AMD).

Subchapter 4: LIGHTERS AND HARBORS

§121. MARKING; INSPECTION AND RENEWAL

Every boat or lighter employed in carrying stones, sand or gravel shall be marked at light-water mark, and at least 5 other places, with the figures 4, 12, 16, 24 and 30, legibly made on the stem and sternpost thereof, expressing the weight which such boat or lighter is capable of carrying, when the lower part of the respective numbers touches the water in which it floats. Such marks shall be inspected yearly, and when found illegible in whole or in part, they shall be renewed.

§122. USE WITHOUT MARKS OR FALSE MARKS; PENALTY

The master or owner who uses his craft without such marks prescribed in section 121 and any person who falsely marks any such boat or lighter forfeits $50 to be recovered by any prosecutor in a civil action.

§123. APPOINTMENT OF INSPECTORS; FEES; REMARKING OF BOATS

The municipal officers of every town where boats and lighters are employed for the purposes set forth in section 121 shall annually, in April or May, appoint some suitable person who shall be sworn to examine and ascertain the capacities of all such boats and lighters, and mark them as prescribed. Said officers shall establish and regulate the fees therefor.

When such inspector thinks that the burden or capacity of any such boat or lighter is altered by repairs or otherwise, he shall forthwith ascertain the same anew and mark it accordingly.

§124. UNLAWFUL DISPOSAL OR TAKING OF BALLAST

The master of any vessel who shall throw overboard ballast in any road, port or harbor commits a civil violation for which a forfeiture of $60 may be adjudged. Any person who shall take any stone or other ballast from any island, beach or other land, without consent of the owner shall be liable for a civil penalty not to exceed $7 for each violation, to be recovered in a civil action, 1/2 to the person bringing the action and 1/2 for the town where the violation is committed. [1977, c. 696, §335 (RPR).]

SECTION HISTORY
1977, c. 696, §335 (RPR).

Subchapter 5: SHIP OWNERS

§161. LIABILITY TO FREIGHTERS

No ship owner is answerable beyond the amount of his interest in the vessel and freight for the embezzlement, loss or destruction, by the master and mariners, of any property put on board of such vessel, nor for any act of theirs without his privity or knowledge. If several owners of property on the same voyage suffer such damage and the whole vessel and her freight for the voyage are not sufficient to compensate each of them, they shall be compensated by the owner of the vessel in proportion to their respective losses, and for that purpose, they or the owner of the vessel, or any of them, may file a complaint for discovery and payment of the sum, for which said owner is liable to the parties entitled thereto.

§162. CHARTERER DEEMED OWNER; RESPONSIBILITY TO REAL OWNER

For the purposes of section 161 the charterer of any vessel, navigating the same at his own expense, shall be deemed the owner. If loss happens to any person from the causes therein mentioned and it is compensated from the freight or vessel, the owner thereof may recover the amount from the charterer.

Subchapter 6: WATERCRAFT REGISTRATION AND SAFETY

Article 1: GENERAL PROVISIONS

§201. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 17, §§1-3,18 (AMD). 1973, c. 513, §22 (AMD). 1975, c. 623, §64 (RP).

§202. LOCAL REGULATION PROHIBITED

(REPEALED)

SECTION HISTORY
1973, c. 513, §22 (AMD). 1975, c. 623, §65 (RP).

§203. DISPOSITION OF FINES AND FEES; WATERCRAFT FUND

(REPEALED)

SECTION HISTORY
1973, c. 17, §§4,18 (AMD). 1975, c. 623, §66 (RP).

§204. CERTIFICATE OF BUREAU HEAD AND BUREAU DIRECTOR ADMISSIBLE IN EVIDENCE

(REPEALED)

SECTION HISTORY
1969, c. 123, §2 (AMD). 1975, c. 623, §67 (RP).

§205. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1965, c. 431, §22 (RPR). 1969, c. 123, §3 (AMD). 1973, c. 17, §§5,18 (AMD). 1975, c. 623, §68 (RP).

§206. PENALTIES

(REPEALED)

SECTION HISTORY
1975, c. 623, §69 (RP).

Article 2: CONDITIONS AND RESTRICTIONS

§231. BUREAU OF WATERCRAFT REGISTRATION AND SAFETY

(REPEALED)

SECTION HISTORY
1971, c. 403, §47 (AMD). 1973, c. 15, (AMD). 1973, c. 17, §§6-9,18 (AMD). 1973, c. 513, §22 (AMD). 1973, c. 625, §§266,267 (AMD). 1973, c. 734, §2 (RP).

§232. REGULATIONS; FORCE OF LAW; PENALTIES

(REPEALED)

SECTION HISTORY
1969, c. 123, §4 (AMD). 1971, c. 403, §48 (AMD). 1973, c. 734, §2 (RP).

§233. CERTIFICATE REQUIRED; DISPLAY OF NUMBERS AND VALIDATION STICKERS

(REPEALED)

SECTION HISTORY
1965, c. 14, (AMD). 1969, c. 123, §5 (AMD). 1973, c. 17, §§10,18 (RPR). 1973, c. 734, §2 (RP).

§234. APPLICATION AND ISSUANCE; FEES

(REPEALED)

SECTION HISTORY
1967, c. 4, (AMD). 1967, c. 480, §§3,4 (AMD). 1969, c. 558, §§2-A TO 5 (AMD). 1973, c. 17, §§11,18 (RPR). 1973, c. 734, §2 (RP).

§235. NOTICE OF DESTRUCTION, ABANDONMENT, REMOVAL, TRANSFER OF OWNERSHIP, CHANGE OF ADDRESS

(REPEALED)

SECTION HISTORY
1973, c. 17, §§12,18 (RPR). 1973, c. 734, §2 (RP).

§236. MOTORBOATS CARRYING PASSENGERS FOR HIRE

(REPEALED)

SECTION HISTORY
1973, c. 17, §§13,18 (RPR). 1973, c. 734, §2 (RP).

§237. OPERATION OF WATERCRAFT

(REPEALED)

SECTION HISTORY
1969, c. 61, (AMD). 1969, c. 123, §§6,7 (AMD). 1969, c. 504, §§50-A (AMD). 1969, c. 590, §§70,71 (AMD). 1973, c. 17, §§14,18 (AMD). 1973, c. 734, §2 (RP).

§238. SAFETY EQUIPMENT AND REGATTAS

(REPEALED)

SECTION HISTORY
1967, c. 16, (AMD). 1969, c. 243, §1 (AMD). 1971, c. 120, §§1,2 (AMD). 1973, c. 17, §§15,18 (RPR). 1973, c. 282, §1 (AMD). 1973, c. 734, §2 (RP).

§239. ACCIDENTS

(REPEALED)

SECTION HISTORY
1973, c. 17, §16 (AMD). 1973, c. 734, §2 (RP).

§240. RESTRICTIONS ON POWER BOATS; PORTAGE LAKE AND QUIMBY POND

(REPEALED)

SECTION HISTORY
1971, c. 403, §49 (AMD). 1973, c. 734, §2 (RP).

§241. -- JERRY POND

(REPEALED)

SECTION HISTORY
1973, c. 734, §2 (RP).

§242. -- OX BROOK LAKE

(REPEALED)

SECTION HISTORY
1967, c. 43, (NEW). 1967, c. 76, (NEW). 1967, c. 544, §98 (RP). 1973, c. 734, §2 (RP).

§243. -- NESOWADNEHUNK (SOURDNAHUNK) LAKE

(REPEALED)

SECTION HISTORY
1967, c. 165, (NEW). 1973, c. 734, §2 (RP).

§244. -- EAGLE LAKE, JORDAN POND AND LONG POND; USE OF POWER BOATS

(REPEALED)

SECTION HISTORY
1967, c. 544, §99 (NEW). 1971, c. 34, (AMD). 1973, c. 734, §2 (RP).

§245. -- SNOW'S POND; USE OF POWER BOATS

(REPEALED)

SECTION HISTORY
1971, c. 33, (NEW). 1971, c. 67, (NEW). 1971, c. 544, §124 (RP). 1975, c. 623, §70 (RP).

§246. -- LONG POND, OXFORD COUNTY

(REPEALED)

SECTION HISTORY
1971, c. 544, §125 (NEW). 1975, c. 623, §71 (RP).

§247. -- LILY POND; USE OF POWER BOATS

(REPEALED)

SECTION HISTORY
1971, c. 75, (NEW). 1975, c. 623, §72 (RP).

Subchapter 7: OPERATING RESTRICTIONS

§281. SPEED RESTRICTIONS

Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State at a speed greater than is reasonable and proper, having due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing, shall be guilty of a Class E crime. [1977, c. 696, §336 (RPR).]

SECTION HISTORY
1977, c. 696, §336 (RPR).

§282. ENDANGERING PERSONS OR PROPERTY

Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State in a manner which endangers any person or property shall be guilty of a Class E crime. [1977, c. 696, §337 (RPR).]

SECTION HISTORY
1977, c. 696, §337 (RPR).

§283. OPERATING RECKLESSLY

Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State recklessly shall be guilty of a Class E crime. [1977, c. 696, §338 (RPR).]

SECTION HISTORY
1977, c. 696, §338 (RPR).

§284. OPERATION UNDER INFLUENCE OF DRUGS OR LIQUOR

Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana, shall be guilty of a Class E crime. [1977, c. 696, §339 (RPR).]

SECTION HISTORY
1977, c. 696, §339 (RPR).

§285. ENFORCEMENT OF OPERATING RESTRICTIONS

Every law enforcement officer in this State, including harbor masters and their deputies, shall have the authority to enforce this subchapter, and in the exercise thereof shall have the authority to stop and board any such watercraft, vessel or motorboat found in violation of said subchapter. It shall be unlawful for the operator of any such watercraft, vessel or motorboat to fail to stop upon hail from any such officer, and a violation of the same shall be punished as provided in section 282.

Subchapter 8: PUBLIC FACILITIES FOR BOATS HEADING: PL 1997, C. 678, §23 (RP)

§321. DIRECTOR OF THE BUREAU OF PARKS AND LANDS; DUTIES

(REPEALED)

SECTION HISTORY
1967, c. 103, §1 (AMD). 1971, c. 165, §1 (AMD). 1971, c. 593, §22 (AMD). 1971, c. 622, §134 (AMD). 1973, c. 460, §19 (AMD). 1983, c. 819, §A61 (AMD). 1987, c. 674, §1 (AMD). 1989, c. 240, §2 (AMD). 1995, c. 502, §E30 (AMD). 1997, c. 678, §23 (RP).

§321-A. POWERS

(REPEALED)

SECTION HISTORY

1967, c. 103, §2 (NEW). 1973, c. 460, §19 (AMD). 1975, c. 771, §§416,417 (AMD). 1979, c. 541, §A262 (AMD). 1989, c. 160, §6 (AMD). 1995, c. 502, §E30 (AMD). 1997, c. 678, §23 (RP).

§322. BOATING FACILITIES FUND

(REPEALED)

SECTION HISTORY
1965, c. 395, §5 (AMD). 1973, c. 460, §19 (AMD). 1995, c. 502, §E30 (AMD). 1997, c. 678, §23 (RP).

§323. FEES

(REPEALED)

SECTION HISTORY
1965, c. 173, (AMD). 1969, c. 520, (AMD). 1971, c. 165, §2 (AMD). 1973, c. 460, §19 (AMD). 1987, c. 308, §11 (AMD). 1995, c. 502, §E30 (AMD). 1997, c. 678, §23 (RP).

§324. LEASES

(REPEALED)

SECTION HISTORY
1967, c. 103, §3 (AMD). 1973, c. 460, §19 (AMD). 1995, c. 502, §E30 (AMD). 1997, c. 678, §23 (RP).

§325. GRANTS-IN-AID

(REPEALED)

SECTION HISTORY
1967, c. 103, §4 (NEW). 1973, c. 460, §19 (AMD). 1975, c. 28, (AMD). 1977, c. 360, §§31,32 (AMD). 1995, c. 502, §E30 (AMD). 1997, c. 678, §23 (RP).

§326. VIOLATION OF RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1967, c. 103, §4 (NEW). 1971, c. 165, §3 (AMD). 1973, c. 460, §19 (AMD). 1977, c. 696, §340 (RPR). 1995, c. 502, §E30 (AMD). 1997, c. 678, §23 (RP).

§327. DISTRICT AND SUPERIOR COURTS HAVE CONCURRENT JURISDICTION

(REPEALED)

SECTION HISTORY
1967, c. 103, §4 (NEW). 1997, c. 678, §23 (RP).

§328. REAL ESTATE ACQUIRED SUBJECT TO MILL ACT

(REPEALED)

SECTION HISTORY
1967, c. 103, §4 (NEW). 1997, c. 678, §23 (RP).

§329. PENALTIES

(REPEALED)

SECTION HISTORY
1971, c. 165, §4 (NEW). 1971, c. 622, §133 (AMD). 1973, c. 460, §19 (AMD). 1977, c. 696, §341 (RPR). 1987, c. 674, §2 (AMD). 1997, c. 678, §23 (RP).

Chapter 2: DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subchapter 1: ORGANIZATION AND POWERS

§341. DEPARTMENT

(REPEALED)

SECTION HISTORY
1971, c. 618, §8 (NEW). 1975, c. 771, §418 (RPR). 1977, c. 78, §202 (AMD). 1977, c. 213, §4 (AMD). 1983, c. 812, §289 (AMD). 1989, c. 890, §§A12,40 (RP).

§341-A. DEPARTMENT OF ENVIRONMENTAL PROTECTION

There is established a Department of Environmental Protection, in this Title called the "department." [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

1. **Purpose.** The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

2. **Composition.** The department shall consist of the Board of Environmental Protection, in the laws administered by the department called "board," and of a Commissioner of Environmental Protection, in the laws administered by the department called "commissioner."

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

3. **Commissioner.** The commissioner is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.

A. The commissioner serves at the pleasure of the Governor. [1995, c. 3, §5 (AMD).]

B. The commissioner may not participate in the review of or act on an application for a National Pollutant Discharge Elimination System permit or the modification, renewal or appeal of a permit under Section 402 of the Federal Water Pollution Control Act, 33 United States Code, Section 1342 if the commissioner receives, or during the previous 2 years has received, a significant portion of income directly or indirectly from National Pollutant Discharge Elimination System permit holders or applicants . If the commissioner's authority is restricted under this paragraph, the commissioner shall delegate duties related to the restricted matter to employees of the department who do not hold major policy-influencing positions pursuant to Title 5, section 938 and who do not receive or have not received during the previous 2 years a significant portion of income directly or indirectly from National Pollutant Discharge Elimination System permit holders or applicants. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement. Duties that must be delegated include National Pollutant Discharge Elimination System permitting, enforcement, establishment of waste load allocations and total maximum daily loads and establishment and implementation of water quality standards but not other Federal Water Pollution Control Act matters such as water quality certification. The restriction imposed by this paragraph may not be interpreted to be more restrictive than federal law or the regulations of the United States Environmental Protection Agency. If a person with a conflict under this paragraph is

nominated for the position of commissioner, the Governor shall submit to the President of the Senate and Speaker of the House of Representatives a plan for delegating the duties required to be delegated under this paragraph. The plan must be submitted with the information packet required to be provided by the Governor to the President of the Senate and Speaker of the House of Representatives under Title 3, section 154. [2011, c. 357, §1 (AMD).]

C. The commissioner may delegate duties assigned to the commissioner under this Title to staff of the department. [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

D. The commissioner is subject to the conflict-of-interest provisions of Title 5, section 18. [2011, c. 357, §2 (NEW).]

[2011, c. 357, §§1,2 (AMD) .]

4. **Licenses and permits.** For purposes of this Title, licenses or permits issued by the department may be issued by either the commissioner or the board subject to the provisions of section 341-D, subsection 2.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

SECTION HISTORY
1989, c. 890, §§A13,40 (NEW). 1995, c. 3, §5 (AMD). 1997, c. 794, §A2 (AMD). 2011, c. 357, §§1, 2 (AMD).

§341-B. PURPOSE OF THE BOARD

The purpose of the Board of Environmental Protection is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions. The board shall fulfill its purpose through major substantive rulemaking, decisions on selected permit applications, decisions on appeals of the commissioner's licensing and enforcement actions and recommending changes in the law to the Legislature. [2011, c. 304, Pt. H, §1 (AMD).]

SECTION HISTORY
1989, c. 890, §§A13,40 (NEW). 2011, c. 304, Pt. H, §1 (AMD).

§341-C. BOARD MEMBERSHIP

Membership of the Board of Environmental Protection is governed by this section. [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

1. **Appointments.** The board consists of 7 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.

[2011, c. 304, Pt. H, §2 (AMD) .]

2. **Qualifications and requirements.** Members of the board must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of this Title and all other laws the board is charged with administering. At least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district. The boundaries of the congressional districts are defined in Title 21-A, chapter 15. A county commissioner, county employee, municipal official or municipal employee is not considered to hold

an incompatible office for purposes of simultaneous service on the board. If a county or municipality is a participant in an adjudicatory proceeding before the board, a commissioner, official or employee from that county or municipality may not participate in that proceeding.

[2011, c. 304, Pt. H, §3 (AMD) .]

3. **Terms.** The members must be appointed for staggered 4-year terms, except that a vacancy must be filled for the unexpired portion of the term. A member may not serve more than 2 consecutive 4-year terms.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

4. **Chair.** The Governor shall appoint one member to serve as chair.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

5. **Expired terms.** Any member who has not been renominated by the Governor within 90 days of the expiration of that member's term may not continue to serve on the board unless the Governor notifies the Legislature, in writing and within 90 days of the expiration of that member's term, that extension of the member's term is required to ensure fair consideration of specific major applications pending before the board. That member's term terminates upon final board actions on the specific applications identified in the Governor's communication.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

6. **Compensation.** Members are entitled to compensation according to the provisions of Title 5, section 12004-D.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

7. **Conflict of interest.** Members are governed by the conflict of interest provisions of Title 5, section 18. If a member believes that a conflict of interest may require that member's abstention in a proceeding, unless the member in question objects, the question of the conflict of interest must be submitted to a nonbinding advisory vote of the members present, excluding the member in question.

[1999, c. 784, §5 (AMD) .]

8. **Federal standards.** A board member may not participate in the review of or act on an application for a National Pollutant Discharge Elimination System permit or the modification, renewal or appeal of a permit under Section 402 of the Federal Water Pollution Control Act, 33 United States Code, Section 1342 if the board member receives, or during the previous 2 years has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the National Pollutant Discharge Elimination System. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement. Board members whose participation is restricted under this paragraph shall recuse themselves and may not participate in any National Pollutant Discharge Elimination System matter as long as the restriction applies. The recusal must be from all National Pollutant Discharge Elimination System permitting, enforcement, establishment of waste load allocations and total maximum daily loads and establishment and implementation of water quality standards but not other Federal Water Pollution Control Act matters such as water quality certification. The restriction imposed by this subsection may not be interpreted to be more restrictive than federal law or the regulations of the United States Environmental Protection Agency.

[2011, c. 357, §3 (AMD) .]

SECTION HISTORY

1989, c. 890, §§A13,40 (NEW). 1995, c. 3, §6 (AMD). 1997, c. 346, §2 (AMD). 1997, c. 794, §A3 (AMD). 1999, c. 784, §5 (AMD). 2011, c. 304, Pt. H, §§2, 3 (AMD). 2011, c. 357, §3 (AMD).

§341-D. BOARD RESPONSIBILITIES AND DUTIES

The board is charged with the following duties and responsibilities. [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

1. **Rulemaking.**

[1995, c. 347, §1 (AMD); T. 38, §341-D, sub-§1 (RP) .]

1-A. **Rulemaking.**

[1997, c. 364, §17 (AMD); T. 38, §341-D, sub-§1-A (RP) .]

1-B. **Rulemaking.**

[2011, c. 304, Pt. H, §4 (RP) .]

1-C. **Rulemaking.** The board shall adopt, amend or repeal rules in accordance with section 341-H.

[2011, c. 304, Pt. H, §5 (NEW) .]

2. **Permit and license applications.** Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

A. [2011, c. 304, Pt. H, §6 (RP).]

B. [2011, c. 304, Pt. H, §6 (RP).]

C. [2011, c. 304, Pt. H, §6 (RP).]

D. [2011, c. 304, Pt. H, §6 (RP).]

E. Will have an environmental or economic impact in more than one municipality, territory or county; [2011, c. 304, Pt. H, §6 (NEW).]

F. Involves an activity not previously permitted or licensed in the State; [2011, c. 304, Pt. H, §6 (NEW).]

G. Is likely to come under significant public scrutiny; and [2011, c. 304, Pt. H, §6 (NEW).]

H. Is located in more than one municipality, territory or county. [2011, c. 304, Pt. H, §6 (NEW).]

The board shall also decide each application for approval of permits and licenses that is referred to it jointly by the commissioner and the applicant.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A when it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4, for a certification pursuant to Title 35-A, section 3456 or for a general permit pursuant to section 480-HH or section 636-A.

Prior to holding a hearing on an application over which the board has assumed jurisdiction, the board shall ensure that the department and any outside agency review staff assisting the department in its review of the application have submitted to the applicant and the board their review comments on the application and any additional information requests pertaining to the application and that the applicant has had an opportunity to respond to those comments and requests. If additional information needs arise during the hearing, the board shall afford the applicant a reasonable opportunity to respond to those information requests prior to the close of the hearing record.

[2011, c. 304, Pt. H, §6 (AMD) .]

3. **Modification or corrective action.** At the request of the commissioner and after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the board finds that any of the criteria in section 342, subsection 11-B have been met.

A. [2011, c. 304, Pt. H, §7 (RP).]

B. [2011, c. 304, Pt. H, §7 (RP).]

C. [2011, c. 304, Pt. H, §7 (RP).]

D. [2011, c. 304, Pt. H, §7 (RP).]

E. [2011, c. 304, Pt. H, §7 (RP).]

F. [2011, c. 304, Pt. H, §7 (RP).]

G. [2011, c. 304, Pt. H, §7 (RP).]

For the purposes of this subsection, "license" includes any license, permit, order, approval or certification issued by the department.

[2011, c. 304, Pt. H, §7 (RPR) .]

4. **Appeal or review.** The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings any of the following:

A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:

(1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time; or

(2) The evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board; [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

B. [2011, c. 304, Pt. H, §8 (RP).]

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A; and [2007, c. 661, Pt. B, §3 (AMD).]

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee serves as a nonvoting member of the board and is entitled to fully participate but is not required to attend hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department. [2011, c. 304, Pt. H, §9 (AMD).]

[2011, c. 304, Pt. H, §§8, 9 (AMD) .]

5. **Requests for reconsideration.**

[2011, c. 304, Pt. H, §10 (RP) .]

6. **Enforcement.** The board shall hear appeals of emergency orders pursuant to section 347-A, subsection 3.

A. [2011, c. 304, Pt. H, §11 (RP).]

B. [2011, c. 304, Pt. H, §11 (RP).]

C. [2011, c. 304, Pt. H, §11 (RP).]

D. [2011, c. 304, Pt. H, §11 (RP).]

[2011, c. 304, Pt. H, §11 (RPR) .]

7. **Reports to the Legislature.** The board shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 15th of the first regular session of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board.

[2011, c. 304, Pt. H, §12 (AMD) .]

8. **Other duties.** The board shall carry out other duties as required by law.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

SECTION HISTORY
1989, c. 890, §§A13,40 (NEW). 1991, c. 804, §A1 (AMD). 1993, c. 328, §1 (AMD). 1993, c. 356, §1 (AMD). 1995, c. 347, §§1,2 (AMD). 1995, c. 642, §§1,2 (AMD). 1997, c. 364, §17 (AMD). 1999, c. 784, §6 (AMD). 2007, c. 661, Pt. B, §§1-4 (AMD). 2009, c. 121, §1 (AMD). 2009, c. 615, Pt. E, §§1, 2 (AMD). 2011, c. 304, Pt. H, §§4-12 (AMD).

§341-E. BOARD MEETINGS

Board meetings held under section 341-D are governed by the following provisions. [2011, c. 304, Pt. H, §13 (AMD).]

1. **Quorum.** Four members of the board constitute a quorum. A quorum is required to open a meeting and for a vote of the board.

[2011, c. 304, Pt. H, §13 (AMD) .]

2. **Proceedings recorded.** All proceedings before the board must be recorded electronically.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

SECTION HISTORY
1989, c. 890, §§A13,40 (NEW). 2011, c. 304, Pt. H, §13 (AMD).

§341-F. ADMINISTRATION

Responsibility for the administration of the board lies with the chair. [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

1. **Staff.** Staff of the board must be hired by the chair with the consent of the board. The executive analyst shall direct the daily administrative and operational functions of the board and board staff in an impartial and objective manner. The board shall prescribe the duties of the executive analyst. The executive analyst is prohibited from participating in any activity that substantially compromises the executive analyst's ability to discharge effectively and impartially the executive analyst's duties to the board.

[1999, c. 784, §7 (AMD) .]

2. **Unclassified employee.** The executive analyst of the board is unclassified and may be removed by majority vote of the board.

[1999, c. 784, §7 (AMD) .]

3. **Conflict of interest.** Notwithstanding Title 5, section 18, subsection 1, each professional staff member of the board is an "executive employee" solely for the purposes of Title 5, section 18.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

4. **Budget.** The board shall prepare and adopt a biennial operating budget to be submitted to the commissioner for inclusion in the department's budget.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

5. **Consultants.** The board may obtain the services of consultants on a contractual basis or otherwise as necessary to carry out the responsibilities under this Title.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

6. **Cooperation with other agencies.** The board may cooperate with other state or federal departments or agencies to carry out the responsibilities under this Title.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

SECTION HISTORY

1989, c. 890, §§A13,40 (NEW). 1999, c. 784, §7 (AMD).

§341-G. BOARD OF ENVIRONMENTAL PROTECTION FUND

There is established the Board of Environmental Protection Fund to be used by the board as a nonlapsing fund to carry out its duties under this Title. Notwithstanding any other provision of law, the funds identified in subsection 1 transfer annually to the Board of Environmental Protection Fund in an amount not to exceed $325,000. Money in the Board of Environmental Protection Fund may only be expended in accordance with allocations approved by the Legislature. [2003, c. 245, §2 (AMD).]

1. **Transfer funds.** The amount transferred from each fund must be proportional to that fund's contribution to the total special revenues received by the department under chapter 2, subchapter 2; sections 551, 569-A and 569-B; and chapter 13, subchapter 4. Any funds received by the board from the General Fund must be credited towards the amount owed by the Maine Environmental Protection Fund, chapter 2, subchapter 2.

[1991, c. 817, §8 (AMD) .]

2. **Investment of funds.** Money in the Board of Environmental Protection Fund not currently needed to meet the obligations of the board in the exercise of its responsibilities under this Title must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund.

[1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

SECTION HISTORY
1989, c. 890, §§A13,40 (NEW). 1991, c. 817, §8 (AMD). 1997, c. 364, §18 (AMD). 2003, c. 245, §2 (AMD).

§341-H. DEPARTMENTAL RULEMAKING

The department may adopt, amend or repeal rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering as provided in this section. [2011, c. 304, Pt. H, §14 (NEW).]

1. **Rule-making authority of the board.** Notwithstanding any other provision of this Title, and except as provided in this subsection, the board shall adopt, amend or repeal only those rules of the department designated as major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A. The board shall also adopt, amend and repeal routine technical rules as necessary for the conduct of the board's business, including the processing of applications, the conduct of hearings and other administrative matters.

[2011, c. 538, §1 (AMD) .]

2. **Rule-making authority of the commissioner.** Notwithstanding any other provision of this Title, the commissioner shall adopt, amend or repeal only those rules of the department that are not designated as major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2011, c. 304, Pt. H, §14 (NEW) .]

3. **Duties of department.** The department shall:

A. Identify in its regulatory agenda under Title 5, section 8060, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than a federal standard, if an applicable federal standard exists; [2011, c. 304, Pt. H, §14 (NEW).]

B. During the consideration of any proposed rule, when feasible, and using information available to it, identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists, and shall explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal standard; and [2011, c. 304, Pt. H, §14 (NEW).]

C. Notwithstanding Title 5, chapter 375, subchapter 2 or 2-A, the department shall accept and consider additional public comment on a proposed rule following the close of the formal rule-making comment period at a meeting that is not a public hearing only if the additional public comment is directly related to comments received during the formal rule-making comment period or is in response to changes to the proposed rule. Public notice of the meeting must comply with Title 1, section 406 and must state that the department will accept additional public comment on the proposed rule at that meeting. [2011, c. 304, Pt. H, §14 (NEW).]

[2011, c. 304, Pt. H, §14 (NEW) .]

4. **Legislative review of a rule.** If a rule adopted by the department is the subject of a request for legislative review of a rule under Title 5, chapter 377-A, the Executive Director of the Legislative Council shall immediately notify the department of that request and of the legislative committee's decision under that chapter on whether or not to review the rule.

[2011, c. 304, Pt. H, §14 (NEW) .]

SECTION HISTORY
2011, c. 304, Pt. H, §14 (NEW). 2011, c. 538, §1 (AMD).

§342. COMMISSIONER, DUTIES

The Commissioner of Environmental Protection shall have the following duties: [1971, c. 618, §8 (NEW).]

1.

[1983, c. 483, §1 (RP) .]

1-A. **Administration of department.** The commissioner is the chief administrative officer of the department and responsible for all administrative matters of the department, except as otherwise specified. The commissioner shall assure that all determinations made by the staff of the department are promptly rendered. The commissioner shall resolve disputes between department staff and applicants with respect to any questions regarding requirements, interpretation or application of the laws, rules or department policy. In resolving disputes, the commissioner shall attempt to reach a fair and appropriate result given all of the circumstances of the issue and may utilize the services of such consultants or experts as the commissioner determines would be helpful to resolve any disputed issue. For purposes of this subsection and section 341-A, subsection 3, paragraph C, staff of the department does not include staff of the board.

[1989, c. 890, Pt. A, §14 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

2. **Employment of personnel.** The commissioner may employ, subject to the Civil Service Law, personnel for the department and prescribe the duties of these employees, except persons occupying the positions defined in Title 5, section 938, subsection 1-A, as the commissioner determines necessary to fulfill the duties of the department. For purposes of this subsection, personnel for the department does not include staff of the board.

[1995, c. 560, Pt. E, §3 (AMD) .]

3.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. A, §16 (RP) .]

3-A. **Negotiating agreements.** The commissioner may negotiate and enter into agreements with federal, state and municipal agencies.

[1989, c. 890, Pt. A, §17 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

4. **Organization of department.** The commissioner, after consultation with the Board of Environmental Protection, shall organize the department into the bureaus, divisions, regional offices and other administrative units necessary to fulfill the duties of the department. After consultation with the board, the commissioner shall prescribe the functions of the bureaus and other administrative units to insure that the powers and duties of the department are administered efficiently so that all license applications and other business of the department may be expeditiously completed in the public interest.

A. In coordination with the Health and Environmental Testing Laboratory in the Department of Health and Human Services, the commissioner shall ensure that sampling, data handling and analytical procedures are carried out in accordance with the highest professional standards so that data generated for departmental programs are of known and predictable precision and accuracy. [1991, c. 499, §26 (AFF); 1991, c. 499, §9 (RPR); 2003, c. 689, Pt. B, §6 (REV).]

B. The Office of Pollution Prevention is established within the department to review department programs and make recommendations to the commissioner on means of integrating pollution prevention into department programs. The Office of Pollution Prevention has the following functions:

(1) To establish pollution prevention priorities within the department;

(2) To coordinate department pollution prevention activities with those of other agencies and entities;

(3) To ensure that rules, programs and activities of the department are consistent with pollution prevention goals and do not hinder pollution prevention initiatives;

(4) To provide technical assistance, training and educational activities to assist the general public, governmental entities and the regulated community with development and implementation of pollution prevention programs as funds allow;

(5) To establish an award program to recognize businesses, local governments, department staff and others that have implemented outstanding or innovative pollution prevention programs, activities or methods;

(6) To identify opportunities to use the state procurement system to encourage pollution prevention;

(7) To develop procedures to determine the effectiveness of the department's pollution prevention programs and activities;

(8) To assume responsibility for the administration and implementation of chapter 27; and

(9) To administer and evaluate the Technical and Environmental Assistance Program established in section 343-B.

The commissioner shall designate an employee of the department to manage the functions of the Office of Pollution Prevention. That person may provide independent testimony to the Legislature, may make periodic reports to the administrator of the federal Environmental Protection Agency for transmittal to the United States Congress and may address problems or concerns related to the functions of the office, including the investigation of complaints concerning the Technical and Environmental Assistance Program.

The commissioner shall identify a staff person or persons in each bureau of the department whose primary responsibility is to provide guidance to any party through the permit review process. [2009, c. 579, Pt. B, §5 (AMD); 2009, c. 579, Pt. B, §13 (AFF).]

[2009, c. 579, Pt. B, §5 (AMD); 2009, c. 579, Pt. B, §13 (AFF) .]

5. **Designation of deputy commissioner.**

[1985, c. 746, §5 (RP) .]

5-A. **Designation of deputy commissioner and directors.** The commissioner may employ, to serve at his pleasure, the following:

A. A deputy commissioner; [1985, c. 746, §6 (NEW).]

B. [1987, c. 419, §3 (RP).]

C. Directors as defined in Title 5, section 938, subsection 1-A. [1995, c. 560, Pt. E, §4 (AMD).]

[1995, c. 560, Pt. E, §4 (AMD) .]

6. **Technical services.**

[1991, c. 66, Pt. A, §1 (RP) .]

7. **Representation in court.** The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to serve civil process and represent the department in District Court in the prosecution of violations of those laws enforced by the department and set forth in Title 4, section 152, subsection 6-A. The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to represent a municipality in an action to obtain an administrative search warrant to allow entry of a local plumbing inspector onto property without the consent of the property owner in order to inspect a subsurface waste water disposal system in an area designated by the department as provided in section 424-A, subsection 3, paragraph A. Licensed Maine attorneys do not need to file the certification referred to in the Maine Rules of Civil Procedure, Rule 80K(h). Certification of nonattorney employees must be provided as under Title 30-A, section 4453.

[2007, c. 568, §7 (AMD) .]

8. **Data base.** The commissioner shall develop by January 1, 1991, and maintain a data base of license applications received and decisions made by the department. The data base must include information on all applications pending or received after January 1, 1990. For each application the data base must include:

A. The type of license sought; [1991, c. 66, Pt. A, §2 (RPR).]

B. The name and address of the applicant and the name of a natural person who is the representative of the applicant; [1991, c. 66, Pt. A, §2 (RPR).]

C. The location of the project; [1991, c. 66, Pt. A, §2 (RPR).]

D. The date of acceptance of the application for processing; [1991, c. 66, Pt. A, §2 (RPR).]

E. The current processing status of the application; [1991, c. 66, Pt. A, §2 (RPR).]

F. An indication of whether the commissioner or the board will decide the application; [1991, c. 66, Pt. A, §2 (RPR).]

G. A brief description of the project, including any substantial issues raised during the licensing process; and [1991, c. 66, Pt. A, §2 (RPR).]

H. A brief description of the final action taken by the department, either by the commissioner or the board, on the application. [1991, c. 66, Pt. A, §2 (RPR).]

The commissioner shall maintain a central archive of all applications received and licenses issued by the department.

[1991, c. 66, Pt. A, §2 (RPR) .]

9. **Rules.** The commissioner may adopt, amend or repeal, in accordance with section 341-H, routine technical rules under Title 5, chapter 375, subchapter 2-A and shall submit to the board new or amended major substantive rules for its adoption.

[2011, c. 304, Pt. H, §15 (AMD) .]

10. **Consultants.** The commissioner may contract with or otherwise employ consultants for services necessary to carry out duties under this Title.

[1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

11. **Administrative duties for the board.** The commissioner shall meet the administrative requirements of the board including bookkeeping, expense reimbursement and payroll matters.

[1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

11-A. **Recommendations and assistance to board.** The commissioner shall make recommendations to the board regarding proposed major substantive rules; permit and license applications over which the board has jurisdiction; modification or corrective action on licenses; appeals of license and permit decisions; and other matters considered by the board. The commissioner shall also provide the board with the technical services of the department.

[2011, c. 304, Pt. H, §16 (AMD) .]

11-B. **Revoke or suspend licenses and permits.** After written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the commissioner may act to revoke or suspend a license whenever the commissioner finds that:

A. The licensee has violated any condition of the license; [2011, c. 304, Pt. H, §17 (NEW).]

B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts; [2011, c. 304, Pt. H, §17 (NEW).]

C. The licensed discharge or activity poses a threat to human health or the environment; [2011, c. 304, Pt. H, §17 (NEW).]

D. The license fails to include any standard or limitation legally required on the date of issuance; [2011, c. 304, Pt. H, §17 (NEW).]

E. There has been a change in any condition or circumstance that requires revocation or suspension of a license; [2011, c. 304, Pt. H, §17 (NEW).]

F. There has been a change in any condition or circumstance that requires a corrective action or a temporary or permanent modification of the terms of the license; [2011, c. 304, Pt. H, §17 (NEW).]

G. The licensee has violated any law administered by the department; or [2011, c. 304, Pt. H, §17 (NEW).]

H. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990. [2011, c. 304, Pt. H, §17 (NEW).]

For the purposes of this subsection, "license" includes any license, permit, order, approval or certification issued by the department and "licensee" means the holder of the license.

[2011, c. 538, §2 (AMD) .]

11-C. **Modification or corrective action.** The commissioner may recommend that the board modify or take corrective action on a license in accordance with section 341-D, subsection 3.

[2011, c. 538, §3 (NEW) .]

12. **Coordination and assistance procedures.** The commissioner shall establish procedures to assist the public and applicants and coordinate processing for all environmental permits issued by the department. These procedures must, to the extent practicable, ensure:

A. Availability to the public of necessary information concerning these environmental permits; [1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

B. Assistance to applicants in obtaining environmental permits from the department; and [1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

C. That the public understands the permitting process and all the procedures of the department including those of the board. Any written material must be in clear, concise language. [1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

[1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

13. **Agricultural impacts.** The commissioner shall notify and regularly inform the Commissioner of Agriculture, Conservation and Forestry on proposed legislation or rules that may affect agricultural activity.

[1991, c. 66, Pt. A, §3 (NEW); 2011, c. 657, Pt. W, §6 (REV) .]

14. **Environmental priorities report.**

[2003, c. 245, §4 (RP) .]

15. **Technical services.** The commissioner shall establish a technical services unit within the department to assist any person involved in a real estate transaction in determining whether real property that is the subject of the transaction has been the site of a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products.

The commissioner may also assist in or supervise the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, review and approval of a requester's investigation plans, site assessments and reports, voluntary response action plans and implementation of those plans.

The person requesting assistance under this subsection shall pay the department an initial nonrefundable fee of up to $500 to be determined by the Commissioner. The person shall also pay the department for its actual direct and indirect costs of providing assistance, which must be determined by the commissioner but which must not on an hourly basis exceed $50 per hour per person. Money received by the department for assistance under this subsection must be deposited in the Uncontrolled Sites Fund.

[1993, c. 355, §3 (NEW) .]

16. **Receipt of funds.** Through the Department of Administrative and Financial Services, the commissioner may establish accounts as necessary for the administration of funds held temporarily by the department and restricted to specific purposes by court order or otherwise, such as escrow funds, funds from court decrees and intervenor fees. The State Budget Officer may provide for allotment of the funds as requested. Funds received must be deposited with the Treasurer of State to the credit of the appropriate account and be invested, as provided by law, with interest credited to the account.

[1993, c. 735, §1 (NEW) .]

17. **Serve as a director of Clean Government Initiative.** The commissioner shall serve as a director, along with the Commissioner of Administrative and Financial Services, of the Clean Government Initiative established in section 343-H.

[2001, c. 333, §4 (NEW) .]

SECTION HISTORY
1971, c. 618, §8 (NEW). 1977, c. 564, §134 (AMD). 1977, c. 596, §1 (AMD). 1981, c. 526, §1 (AMD). 1983, c. 483, §§1-3 (AMD). 1983, c. 536, (AMD). 1983, c. 566, §2 (AMD). 1983, c. 743, §2 (AMD). 1983, c. 796, §15 (AMD). 1985, c. 746, §§4-6 (AMD). 1985, c. 785, §B177 (AMD). 1985, c. 819, §§B6,7 (AMD). 1987, c. 205, (AMD). 1987, c. 419, §3 (AMD). 1987, c. 787, §4 (AMD). 1987, c. 816, §Z4 (AMD). 1989, c. 836, §3 (AMD). 1989, c. 869, §A2 (AMD). 1989, c. 890, §§A14-18 (AMD). 1989, c. 890, §§B1,B2 (AMD). 1989, c. 890, Pt. A, §40 (AFF). 1991, c. 66, §§A1-3 (AMD). 1991, c. 499, §9 (AMD). 1991, c. 499, §26 (AFF). 1991, c. 520, §1 (AMD). 1991, c. 804, §§A2,C2 (AMD). RR 1993, c. 2, §37 (COR). 1993, c. 355, §3 (AMD). 1993, c. 735, §1 (AMD). 1995, c. 560, §§E3,4 (AMD). 1997, c. 296, §10 (AMD). 1999, c. 127, §A53 (AMD). 1999, c. 784, §8 (AMD). 2001, c. 333, §4 (AMD). 2003, c. 245, §§3,4 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 568, §7 (AMD). 2009, c. 579, Pt. B, §5 (AMD). 2009, c. 579, Pt. B, §13 (AFF). 2011, c. 304, Pt. H, §§15-17 (AMD). 2011, c. 538, §§2, 3 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§342-A. OPERATIONS

(REPEALED)

SECTION HISTORY
1987, c. 816, §Z5 (NEW). 1989, c. 546, §4 (AMD). 1991, c. 499, §26 (AFF). 1991, c. 499, §10 (RP).

§342-B. LIABILITY OF FIDUCIARIES AND LENDERS

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

A. The following must be considered in determining whether a secured lender is "acting diligently to sell or otherwise divest" or as "evidence of diligent efforts to sell or divest:"

(1) Use of the property during the period;

(2) Market conditions;

(3) Marketability of the site; or

(4) Legal constraints on the sale or divestment.

If the lender holds the property for longer than the 5-year period but meets the conditions in subsection 4, paragraph C, subparagraph (4) and the requirements enumerated in this paragraph, then liability is not imposed on the lender. [1993, c. 355, §4 (NEW).]

B. "Assets of the estate or trust" means assets of the estate or trust of which the site is a part; assets that subsequent to knowledge of the release are placed by the fiduciary or the grantor in an estate or trust over which the fiduciary has control if the grantor is or was an owner or operator of the release site at the time of the transfer; and assets that are transferred by the fiduciary upon or subsequent to knowledge of the release for less than full and fair consideration, to the extent of the amount that the fair market value exceeded the consideration received by the estate or trust. [1993, c. 355, §4 (NEW).]

C. "Participates in management" means, while the borrower is in possession of the facility, executing decision-making control over the borrower's management of oil or hazardous materials or exercising control over substantially all of the operational aspects of the borrower's enterprise, but does not include the following:

(1) Conducting or requiring site assessments of the property;

(2) Engaging in periodic or regular monitoring of the business;

(3) Financing conditioned on compliance with environmental laws;

(4) Providing general business or financial advice, excluding management of hazardous materials and oil;

(5) Providing general advice with respect to site management;

(6) Policing the security interest or loan;

(7) Engaging in work-out activities prior to foreclosure; or

(8) Participating in foreclosure proceedings. [1993, c. 355, §4 (NEW).]

[1993, c. 355, §4 (NEW) .]

2. **Exemption from liability.** Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings, liable or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367; and 1371 for discharges, releases or threats of releases of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant or a petroleum product or by-product if that person is:

A. A fiduciary, as defined in section 1362, subsection 1-D, but that exclusion does not apply to an estate or trust of which the site is a part; or [1993, c. 355, §4 (NEW).]

B. A lender, as defined in section 1362, subsection 1-B, who, without participating in management of a site, holds indicia of ownership primarily to protect a security interest in the site. [1993, c. 355, §4 (NEW).]

[1993, c. 355, §4 (NEW) .]

3. **Exclusion from exemption for fiduciaries.** The exemption from liability provided by subsection 2 does not apply if:

A. The fiduciary causes, contributes to or exacerbates the discharge, release or threat of release; or [1993, c. 355, §4 (NEW).]

B. After acquiring title to or commencing control or management of the site, the fiduciary does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a release or threat of release;

(2) Provide reasonable access to the site to the department and its authorized representatives so that necessary response actions may be conducted; and

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment. [1993, c. 355, §4 (NEW).]

[1993, c. 355, §4 (NEW) .]

4. **Exclusion from exemption for lenders.** The exemption from liability for lenders provided in subsection 2 does not apply if:

A. The secured lender causes, contributes to or exacerbates the discharge, release or threat of release; [1993, c. 355, §4 (NEW).]

B. The secured lender participates in management of the site prior to acquiring ownership of the site; or [1993, c. 355, §4 (NEW).]

C. After acquiring ownership of the site and upon obtaining knowledge of a release or threat of release, the secured lender does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a release or threat of release;

(2) Provide reasonable access to the department and its authorized representatives so that necessary response actions may be conducted;

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment; and

(4) Act diligently to sell or otherwise divest the property within a limited time period of up to 5 years from the earlier of the lender's possession or ownership. There is a rebuttable presumption that the 2nd lender is acting diligently to sell or otherwise divest the property during the first 18 months after taking possession. The secured lender must demonstrate by a preponderance of the evidence diligent efforts to sell or divest the property during the next 42 months. [1993, c. 355, §4 (NEW).]

When a lender has ownership or possession of a site pursuant to a security interest in the site, the term "owner" or "operator" means a person who owned or operated the site immediately prior to that secured lender obtaining ownership or possession of the site.

[1993, c. 355, §4 (NEW) .]

4-A. **Exemption from liability for discharges during approved site investigation work.** Notwithstanding subsection 3, paragraph A and subsection 4, paragraph A, a fiduciary or lender is exempt from liability under subsection 2 if the fiduciary or lender causes, contributes to or exacerbates a discharge, release or threat of release while undertaking investigations in accordance with a voluntary response action plan approved by the commissioner under section 343-E.

[2011, c. 206, §4 (NEW) .]

5. **Relationship to ground water fund claims.** The exemption provided in subsection 2, paragraph B from liability under section 570 does not exempt lenders who apply to the Ground Water Oil Clean-up Fund for coverage pursuant to section 568-A from the obligation to pay the full amount of deductible determined by the commissioner.

[1993, c. 355, §4 (NEW) .]

6. **Exempt person as party.** Notwithstanding the exemption from liability provided by this section, a fiduciary may be named as a party in an administrative enforcement proceeding or civil action brought by the State pursuant to this Title for purposes of requiring the submission of information or documents relating to an uncontrolled hazardous substance site, for purposes of proceeding against the assets of the estate or trust for reimbursement, fines or penalties or for purposes of compelling the expenditure of assets of the estate

or trust by the fiduciary to abate, clean up or mitigate threats or hazards posed by a discharge or release, or to comply with state environmental laws and regulations or the terms of a department order of enforcement proceeding. This subsection does not require the fiduciary to expend its own funds or to make the fiduciary personally liable for compliance pursuant to an order or enforcement proceeding except as provided in section 568, subsection 4, paragraph B or section 1365, subsection 6.

[1993, c. 1, §111 (COR) .]

SECTION HISTORY
RR 1993, c. 1, §111 (COR). 1993, c. 355, §4 (NEW). 2011, c. 206, §4 (AMD).

§343. REGULATIONS

(REPEALED)

SECTION HISTORY
1977, c. 300, §9 (NEW). 1977, c. 694, §§751,752 (AMD). 1983, c. 566, §3 (RP).

§343-A. RULES

(REPEALED)

SECTION HISTORY
1983, c. 566, §4 (NEW). 1989, c. 890, §§A19,40 (RP).

§343-B. PREAPPLICATION AND PRESUBMISSION MEETINGS

At the request of a potential applicant or when required by rule, the department shall hold a preapplication meeting to identify the issues, types of information and documentation necessary for the department to properly assess a specific project. For any application that has had a preapplication meeting, the department shall also hold a presubmission meeting to review the application prior to the application being filed by the applicant unless the department determines that the presubmission meeting is unnecessary based upon the complexity of the application, status of development of the application or other factors and the applicant agrees not to hold a presubmission meeting. [2005, c. 330, §4 (AMD).]

The board may adopt rules that identify classes of applications that require an applicant to attend a preapplication and presubmission meeting held by the department prior to submitting the application. [1991, c. 804, Pt. B, §1 (NEW); 1991, c. 804, Pt. B, §7 (AFF).]

SECTION HISTORY
1991, c. 804, §B1 (NEW). 1991, c. 804, §B7 (AFF). 2005, c. 330, §4 (AMD).

§343-C. TECHNICAL AND ENVIRONMENTAL ASSISTANCE PROGRAM

The Technical and Environmental Assistance Program, referred to in this section as the "program," is administered by the Office of Pollution Prevention. Participation in the program by any person is voluntary. The department may not require any person to participate in the program. [1991, c. 804, Pt. C, §3 (NEW).]

1. **Program components.** The program must:

A. Provide for the development, collection and coordination of information concerning compliance methods and technologies; [1991, c. 804, Pt. C, §3 (NEW).]

B. Provide for the encouragement of lawful cooperation among persons engaged in activities regulated by the department; [1991, c. 804, Pt. C, §3 (NEW).]

C. Provide assistance with pollution prevention and accidental release detection and prevention; [1991, c. 804, Pt. C, §3 (NEW).]

D. Ensure that a person engaging in an activity that is subject to regulation by the department is informed of that person's rights and obligations under environmental programs administered by the department, and assist persons in determining the applicable permitting and programmatic requirements of the department; and [1991, c. 804, Pt. C, §3 (NEW).]

E. Develop procedures to consider requests from regulated persons to modify work practice or technological compliance methods or the milestones for implementing those methods. [1991, c. 804, Pt. C, §3 (NEW).]

Any instance of noncompliance identified as a result of a person requesting assistance through the program must be corrected by that person. The commissioner is not required to initiate a formal enforcement action against a person found to be in noncompliance as a result of a request for assistance through the program. The commissioner, in cooperation with the Attorney General and in conformity with federal requirements, shall develop a written enforcement policy for responding to violations identified as a result of a small business requesting assistance through the program. The policy must outline conditions under which the department will forego civil penalties when the violation is not a recurrence of a violation for which a prior formal or informal enforcement response has been taken, the violation was inadvertent and did not result in significant environmental harm or risk to human health and the business acts promptly and responsibly to correct the violation.

[1995, c. 234, §1 (AMD) .]

2. **Other duties.** In administering the program, the Office of Pollution Prevention shall:

A. Operate a telephone hotline to enhance accessibility of the program; and [2013, c. 300, §7 (AMD).]

B. [2013, c. 300, §8 (RP).]

C. Periodically review the program with trade associations, municipal organizations and regulated persons. [1991, c. 804, Pt. C, §3 (NEW).]

[2013, c. 300, §§7, 8 (AMD) .]

3. **Staffing.** The commissioner shall establish adequate staffing to effectively carry out the duties of the Technical and Environmental Assistance Program.

[1993, c. 500, §1 (NEW); 1993, c. 500, §5 (AFF) .]

SECTION HISTORY
1991, c. 804, §C3 (NEW). 1993, c. 500, §1 (AMD). 1993, c. 500, §5 (AFF). 1995, c. 234, §1 (AMD). 2013, c. 300, §§7, 8 (AMD).

§343-D. POLLUTION PREVENTION AND SMALL BUSINESS ASSISTANCE ADVISORY PANEL

The Pollution Prevention and Small Business Assistance Advisory Panel, established by Title 5, section 12004-I, subsection 22-B and referred to in this section as "the panel," serves as a review body to assess the progress in the reduction of toxic chemicals and implementation of the provisions of chapter 27, the Office of Pollution Prevention and the Technical and Environmental Assistance Program and may render advisory opinions to the commissioner on the effectiveness of each. [2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF).]

1. **Appointment; composition.** The panel consists of 16 voting members.

A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, 2 representatives of organized labor and 2 representatives from the department. [2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF).]

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source. [1993, c. 500, §2 (AMD); 1993, c. 500, §5 (AFF).]

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source. [1993, c. 500, §2 (AMD); 1993, c. 500, §5 (AFF).]

D. [2011, c. 206, §37 (AFF); 2011, c. 206, §6 (RP).]

E. The Senate Minority Leader and the House Minority Leader shall each appoint one member who is an owner or represents an owner of a small business stationary source. [1993, c. 500, §2 (NEW); 1993, c. 500, §5 (AFF).]

F. [2011, c. 206, §37 (AFF); 2011, c. 206, §6 (RP).]

The Commissioner of Labor and the Director of the Maine Emergency Management Agency serve as ex officio members and do not vote on panel matters.

As used in this subsection, unless the context otherwise indicates, a "small business stationary source" means a source that meets the eligibility requirements of 42 United States Code Annotated, Section 7661f.

[2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF) .]

2. **Terms.** Except for the commissioner, who serves a term coincident with that person's appointment as the commissioner, all members are appointed for staggered terms of 4 years. A vacancy must be filled by the same appointing authority that made the original appointment. There is no limit on the number of terms an individual may serve.

[2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF) .]

3. **Compensation.**

[2011, c. 206, §37 (AFF); 2011, c. 206, §6 (RP) .]

4. **Quorum; actions.** A quorum is a majority of the voting members of the panel. An affirmative vote of the majority of the members present at a meeting is required for any action. Action may not be considered unless a quorum is present.

[2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF) .]

5. **Chair.** The Governor shall appoint one member to serve as chair.

[1991, c. 804, Pt. C, §3 (NEW); 1991, c. 804, Pt. C, §5 (AFF) .]

6. **Meetings.** The panel shall meet at least 4 times per year and at any time at the call of the chair or upon written request to the chair by 4 of the voting members.

[2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF) .]

7. **Staff support.** The commissioner shall provide the panel with staff support.

[2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF) .]

8. **Duties; powers.** The panel may review and may render advisory opinions to the commissioner on the operation and effectiveness of the following:

A. [2009, c. 579, Pt. B, §13 (AFF); 2009, c. 579, Pt. B, §7 (RP).]

A-1. The reduction of toxic chemicals pursuant to chapter 27; [2009, c. 579, Pt. B, §7 (NEW); 2009, c. 579, Pt. B, §13 (AFF).]

B. The Technical and Environmental Assistance Program established under section 343-B. In reviewing that program, the panel may:

(1) Review information developed or distributed by the Technical and Environmental Assistance Program to ensure that the information is understandable to the general public; and

(2) Prepare periodic reports to the Governor on the compliance status of the Technical and Environmental Assistance Program. The reports must be forwarded to the federal Environmental Protection Agency complying with the requirements of the federal Paperwork Reduction Act of 1980, Public Law 96-511, as amended; the federal Regulatory Flexibility Act, 5 United States Code, Sections 601 to 612; and the federal Equal Access to Justice Act, Public Law 96-481, as amended; and [2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF).]

C. The Office of Pollution Prevention established under section 342, subsection 4, paragraph B. [1991, c. 804, Pt. C, §3 (NEW); 1991, c. 804, Pt. C, §5 (AFF).]

In conducting its review under paragraphs A-1 to C, the panel may submit recommendations for statutory changes to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters.

[2011, c. 206, §6 (AMD); 2011, c. 206, §37 (AFF) .]

SECTION HISTORY
1991, c. 804, §C3 (NEW). 1991, c. 804, §C5 (AFF). 1993, c. 500, §2 (AMD). 1993, c. 500, §5 (AFF). 1995, c. 465, §A11 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A18 (AMD). 2009, c. 121, §2 (AMD). 2009, c. 579, Pt. B, §§6, 7 (AMD). 2009, c. 579, Pt. B, §13 (AFF). 2011, c. 206, §§5, 6 (AMD). 2011, c. 206, §37 (AFF).

§343-E. VOLUNTARY RESPONSE ACTION PROGRAM

1. **Liability protection for complete cleanup.** Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 or 1371 for, or as a result of, a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products, if the person investigates the discharge, release or threatened release and undertakes and completes response actions to remove or remedy all known discharges, releases and threatened releases at an identified area of real property in accordance with a voluntary response action plan approved by the commissioner.

[1993, c. 355, §5 (NEW) .]

2. **Liability protection for partial cleanup.** The commissioner may approve a voluntary response action plan submitted under this section that does not require removal or remedy of all discharges, releases and threatened releases at an identified area of real property conditioned upon any or all of the terms identified in subsection 3 and based on consideration of the following:

A. If reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that protects public health and the environment; [1993, c. 355, §5 (NEW).]

B. The response actions and the activities associated with any reuse or development proposed for the property will not cause, contribute or exacerbate discharges, releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan and will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases or threatened releases; and [1993, c. 355, §5 (NEW).]

C. The owner of the property that is the subject of the partial voluntary response action plan agrees to cooperate with the commissioner, the requestor or the commissioner's authorized representatives to avoid any action that interferes with the response actions. [1993, c. 355, §5 (NEW).]

[1993, c. 355, §5 (NEW) .]

3. **Conditions for protection.** The commissioner may condition the protection from liability provided by this section on the requestor's agreement to any or all of the following terms that the commissioner may determine to be necessary:

A. To provide access to the property to the commissioner and the commissioner's authorized representatives; [1993, c. 355, §5 (NEW).]

B. To allow the commissioner or the commissioner's authorized representatives to undertake activities at the property including placement of borings, wells, equipment, and structures on the property; and [1993, c. 355, §5 (NEW).]

C. To the extent the requestor has title to the property, to grant easements or other interests in the property to the department for any of the purposes provided in paragraph A or B. An agreement under this subsection must apply to and be binding upon the successors and assigns of the owner. To the extent the requestor has title to the property, the requestor shall record the agreement or a memorandum approved by the commissioner that summarizes the agreement in the registry of deeds for the county where the property is located. [1993, c. 355, §5 (NEW).]

[1993, c. 355, §5 (NEW) .]

4. **Investigation report.** A voluntary response action plan submitted for approval of the commissioner must include an investigation report prepared by an appropriate professional that identifies and describes the nature and extent of the discharges, releases and threatened releases at the identified area of real property, methods of investigation, the analytical results and the professional's evaluation of this information.

[1993, c. 355, §5 (NEW) .]

5. **Approval of plan.** When the commissioner approves a voluntary response action plan pursuant to subsection 1 or 2, the commissioner shall include in the approval a no-action assurance pursuant to subsection 9, acknowledging that so long as the plan is implemented pursuant to its terms and with the exercise of due care, the person submitting the plan and those persons identified in subsection 6 will receive the protection from liability provided under this section. Upon completion of the voluntary response action plan, the parties implementing the voluntary response action plan shall notify the commissioner who shall issue a certificate of

completion upon demonstration by the parties that the response action is complete. In addition, a person who has submitted and received department approval of a voluntary response action plan and is implementing or has implemented that plan pursuant to its terms is not liable for claims for contribution regarding the site.

[1993, c. 355, §5 (NEW) .]

6. **Additional persons protected from liability.** In addition to the person who undertakes and completes a voluntary response action pursuant to an approved voluntary response action plan, the liability protection provided by this section applies to the following persons:

A. An owner or operator who is a responsible party or who is subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threat of release and who undertakes and completes a voluntary response action plan that fully remediates all known discharges, releases or threatened releases. The liability protection is limited to protection from further clean-up requirements and does not include protection from liability for penalties, fines or natural resource damages, to the extent applicable, unless a no-action assurance issued pursuant to subsection 9 so provides; [1993, c. 355, §5 (NEW).]

B. A person providing financing to the person who undertakes and completes the response actions or who acquires or develops the identified property; [1993, c. 355, §5 (NEW).]

C. A lender or fiduciary as defined in section 1362 who arranges for the undertaking and completion of response actions; [1993, c. 355, §5 (NEW).]

D. A person who seeks to acquire or develop the identified property and who arranges for the undertaking and completion of response actions; [1993, c. 355, §5 (NEW).]

E. A successor or assign of a person to whom the liability protection applies; and [1993, c. 355, §5 (NEW).]

F. A person acting in compliance with a voluntary response action program approved by the commissioner who, while implementing the voluntary response action plan and exercising due care in implementation, causes, contributes or exacerbates a discharge or release, provided that the discharge or release is removed or remediated to the satisfaction of the commissioner. [1993, c. 355, §5 (NEW).]

[1993, c. 355, §5 (NEW) .]

7. **Persons ineligible for protection from liability.** The protection from liability provided by this section does not apply to:

A. A person who causes, contributes or exacerbates a discharge, release or threatened release that was not remedied under an approved voluntary response action plan; [1993, c. 355, §5 (NEW).]

B. For partial voluntary response action plans that do not require removal or remediation of all known releases, a person who was responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threatened release; or [1993, c. 355, §5 (NEW).]

C. A person who obtains approval of a voluntary response action plan for purposes of this section by fraud or intentional misrepresentation, or by knowingly failing to disclose material information, or a successor or assign of the person who obtained approval if that successor or assign had knowledge that the approval was obtained by fraud or intentional misrepresentation or by knowingly failing to disclose material information. [1993, c. 355, §5 (NEW).]

[1993, c. 355, §5 (NEW) .]

8. **Effect of protection from liability.** This section does not affect the authority of the commissioner to exercise the powers or duties under law with respect to a discharge, release or threatened release, or the right of the commissioner or any other person to seek relief available, against a party who is not subject to the liability protection provided under this section.

[1993, c. 355, §5 (NEW) .]

9. **No-action assurance.** The commissioner shall issue a written determination or enter into an agreement pursuant to subsections 1 or 2 to take no action under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 against a person afforded protection for undertaking a voluntary response action plan pursuant to subsection 6 when the commissioner approves a voluntary response action plan pursuant to subsections 1 and 2. For partial voluntary response action plans approved under subsection 2, the commissioner's written determination or agreement to take no action may be limited to the matters addressed by the terms of the voluntary response action plan.

A. A determination issued or agreement entered into under this subsection may be conditioned upon those terms identified in subsection 3 and upon any other reasonable conditions determined necessary by the commissioner. [1993, c. 355, §5 (NEW).]

B. A determination issued or agreement entered into under this subsection may extend to the successors and assigns of the person to whom it originally applies if the successors and assigns are bound by the conditions in the determination or agreements. [1993, c. 355, §5 (NEW).]

C. Issuance of a determination or execution of an agreement under this subsection does not affect the authority of the commissioner to expend funds, to take response action with respect to the discharge or release subject to the determination or agreement, or to take administrative or judicial action with respect to persons not bound by the determination or agreement. [1993, c. 355, §5 (NEW).]

[1993, c. 355, §5 (NEW) .]

SECTION HISTORY
1993, c. 355, §5 (NEW).

§343-F. REPORTING AND DISCLOSURE REQUIREMENTS

An environmental professional who obtains analytical information indicating a discharge or release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products at a site, at levels that, in that professional's best professional judgment, require removal or remedial action to prevent significant threats to public health or the environment shall advise that professional's client of that information. [1993, c. 355, §5 (NEW).]

If the client of the environmental professional is not the owner or operator of the site, the client shall disclose the analytical information to the owner or operator of the site. Upon receipt of that information, the owner or operator shall submit this information to the commissioner within a reasonable time period unless the time period is otherwise prescribed by law. This section does not affect the legal protections afforded to confidential business information or other privileges, if any, that may be applicable. If the client makes a disclosure and the owner or operator does not submit this information to the commissioner, the client and the environmental professional may not be held liable for the owner's or the operator's failure to disclose. [1993, c. 355, §5 (NEW).]

An applicant or permit holder who directly or indirectly retains an environmental professional for the purpose of providing information to the department shall disclose to the department if the environmental professional has a direct or indirect financial interest in the applicant, the permit holder or the property or activity that is the subject of the permit. [2007, c. 399, §8 (NEW).]

SECTION HISTORY
1993, c. 355, §5 (NEW). 2007, c. 399, §8 (AMD).

§343-G. ENVIRONMENTAL MANAGEMENT SYSTEMS

(REPEALED)

SECTION HISTORY
1999, c. 562, §1 (NEW). MRSA T.38 ., §343G/4 (AMD).

§343-H. CLEAN GOVERNMENT INITIATIVE

1. **Initiative established; directors.** The Clean Government Initiative, referred to in this section as the "initiative," is established to assist state agencies and state-supported institutions of higher learning in meeting applicable environmental compliance requirements and to incorporate environmentally sustainable practices into all state government functions. The initiative is jointly directed by the commissioner, the Commissioner of Administrative and Financial Services, the Chancellor of the University of Maine System or the chancellor's designee and the President of the Maine Community College System or the president's designee, referred to in this section as the "directors."

[2001, c. 695, §1 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

1-A. **State-supported institution of higher learning.** For purposes of this section, "state-supported institution of higher learning" means the University of Maine System, the Maine Maritime Academy and the Maine Community College System.

[2001, c. 695, §1 (NEW); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

2. **Duties; responsibilities.** The directors of the initiative shall:

A. Establish a coordinated state government environmental plan to ensure that:

(1) All agencies and state-supported institutions of higher learning comply with state and federal environmental laws; and

(2) Environmentally sustainable practices are incorporated into state government planning, operations and regulatory functions; [2001, c. 695, §1 (AMD).]

B. Establish metrics to measure and assess the environmental compliance and performance of state agencies and state-supported institutions of higher learning. In developing those metrics, the directors shall seek to achieve continuous improvement in environmental compliance and performance of all state agencies through:

(1) Pollution prevention;

(2) Improvements in energy efficiency, including facility siting, design, construction and management; and

(3) Procurement of environmentally friendly commodities and services, as assessed on a life cycle basis, including technically comparable, cost-effective and reasonably available alternatives to products that may release dioxin or mercury to the environment, recycling of waste products and enhanced fleet efficiency; [2001, c. 695, §1 (AMD).]

C. Advise and assist state agencies and state-supported institutions of higher learning in developing environmental compliance audits and plans and in implementing those plans; [2001, c. 695, §1 (AMD).]

D. Advise the Governor and the Legislature in the formulation of policies for the effective achievement of initiative goals; and [2001, c. 333, §5 (NEW).]

E. Ensure that the capital master plan established under Title 5, section 299 is implemented in a manner consistent with the initiative. [2001, c. 333, §5 (NEW).]

[2001, c. 695, §1 (AMD) .]

3. **Responsibilities of state agencies and state-supported institutions of higher learning.** State agencies and state-supported institutions of higher learning shall cooperate with the directors in implementing the initiative and shall provide staff assistance and technical support upon request. In addition, each state agency and state-supported institution of higher learning shall:

A. Complete or demonstrate completion of an audit of its facilities to determine compliance with applicable state and federal environmental laws; [2001, c. 333, §5 (NEW).]

B. [2009, c. 121, §3 (RP).]

C. Appoint an employee in the agency or state-supported institution of higher learning to be responsible for ensuring the development and implementation of agency activities under the initiative; and [2001, c. 695, §1 (AMD).]

D. Establish standards for leasing or building state facilities consistent with the initiative. [2001, c. 333, §5 (NEW).]

Each agency and state-supported institution of higher learning shall fund costs associated with implementing this initiative from within existing budgeted resources.

[2009, c. 121, §3 (AMD) .]

4. **Reporting.** The directors shall jointly report on the activities of all state agencies and state-supported institutions of higher learning under the initiative to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the joint standing committee of the Legislature having jurisdiction over state government matters. The directors must submit their report no later than January 1, 2006, and biennially thereafter. The report must identify the successes of and the obstacles to implementation of the initiative and may include recommendations for any statutory changes necessary to accomplish the initiative.

[2009, c. 121, §4 (AMD) .]

SECTION HISTORY
2001, c. 333, §5 (NEW). 2001, c. 695, §1 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 551, §4 (AMD). 2009, c. 121, §§3, 4 (AMD).

§343-I. SMART TRACKS FOR EXCEPTIONAL PERFORMERS AND UPWARD PERFORMERS PROGRAM

The Smart Tracks for Exceptional Performers and Upward Performers Program, known as "the STEP-UP Program" and referred to in this section as "the program," is established within the department and administered by the commissioner. In cooperation with program participants, the department shall establish guidelines for the program. The department shall create a contractual relationship between the commissioner and state organizations and businesses to achieve sustainability objectives, including energy and natural resources conservation. For the purposes of the program, "sustainability" means meeting the needs of the present without compromising the ability of future generations to meet their needs. The program must include a variety of sustainability tracks and goals and must be publicized at local and state levels. Beginning January

2006 and biennially thereafter, the department shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the status of the program, progress toward meeting goals and recommended changes to improve the program. [2005, c. 90, §1 (NEW).]

SECTION HISTORY
2005, c. 90, §1 (NEW).

§344. PROCESSING OF APPLICATIONS

1. **Acceptance and notification.** The commissioner shall notify the applicant in writing of the official date on which the application was accepted as complete for processing or the reasons the application was not accepted. If a written notice of acceptance or nonacceptance is not mailed to the applicant within 15 working days of receipt of the application, the application is deemed to be accepted as complete for processing on the 15th working day after receipt by the department. If the application is not accepted, the commissioner shall return the application to the applicant with the reasons for nonacceptance specified in writing. Any applicant whose application has not been accepted by the commissioner shall attend a presubmission meeting with the department before resubmitting that application. The commissioner shall notify the board of all applications accepted as complete.

An application is acceptable as complete for processing if the application is properly filled out and information is provided for each of the items included on the form. Acceptance of an application as complete for review does not constitute a determination by the department on the sufficiency of that information and does not preclude the department from requesting additional information during processing.

The commissioner shall require the applicant to provide notice to the public for each application for a permit or license accepted. The commissioner shall solicit comments from the public for each application in a manner prescribed by the board in the rules.

A. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. A, §20 (RP).]

B. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. A, §20 (RP).]

All correspondence notifying an applicant of denial of an application by the board or commissioner must be by certified mail, return receipt requested.

[1991, c. 804, Pt. B, §2 (AMD); 1991, c. 804, Pt. B, §7 (AFF) .]

1-A. **Governing rules.** An application for a permit, license or approval is processed under the substantive rules in effect on the date the application or request for approval is determined to be complete for processing. Notwithstanding Title 1, section 302, after the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402 (c)(1) of the Federal Water Pollution Control Act, as amended, any waste discharge license issued or modified by the State pursuant to its authority to grant permits under the Federal Water Pollution Control Act must comply with State statutory or regulatory requirements that take effect prior to final issuance of that license.

[1997, c. 794, Pt. A, §4 (AMD) .]

2. **Delegation.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. A, §21 (RP) .]

2-A. **Processing time limits, decisions and appeals.** After the commissioner accepts an application for processing, the commissioner may approve, approve with conditions, disapprove or refer the application as follows.

A. Except as otherwise provided in this paragraph, the commissioner shall decide as expeditiously as possible if an application meets 3 of the 4 criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If an interested person requests that the commissioner refer an application to the board and the commissioner determines that the criteria are not met, the commissioner shall notify the board of that request. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, a certification pursuant to Title 35-A, section 3456 or a general permit pursuant to section 480-HH or section 636-A. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application for an expedited wind energy development, an offshore wind power project or a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power within 185 days of the date on which the department accepts the application as complete pursuant to this section or within 270 days of the department's acceptance of the application if the commissioner holds a hearing on the application pursuant to section 345-A, subsection 1-A.

(2) The expedited review periods of 185 days and 270 days specified in subparagraph (1) do not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the development if the commissioner determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development. If an expedited review period does not apply, a review period specified pursuant to section 344-B applies.

The commissioner may stop the processing time with the consent of the applicant for a period of time agreeable to the commissioner and the applicant. [2011, c. 304, Pt. H, §18 (AMD).]

B. The commissioner shall decide whether an application meets the permit by rule provisions under subsection 7 within 20 working days after notifying the applicant of acceptance of the application. [1989, c. 890, Pt. A, §22 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

C. For those applications that do not fall under the permit by rule provisions of subsection 7, the commissioner shall decide upon the application pursuant to the provisions of section 344-B. [1991, c. 804, Pt. B, §3 (AMD); 1991, c. 804, Pt. B, §7 (AFF).]

D. For an application for a permit for a grid-scale wind energy development, as defined in Title 35-A, section 3451, subsection 6, the following procedures apply.

(1) Except as provided in subparagraph (2), if 5 or more interested persons request in writing that the commissioner hold a public hearing, a hearing must be held as follows.

(a) Notwithstanding any other provision of law, the Secretary of State shall publish a notice of the hearing in a newspaper of general circulation in the State. The published notice must:

(i) State the time and place of any scheduled hearing or state the manner in which a hearing may be requested;

(ii) State the manner and time within which data, views or arguments may be submitted to the department for consideration;

(iii) State the name, address and phone number of the department staff person responsible for providing additional information regarding the hearing; and

(iv) Include a brief and general summary of the purpose of the hearing.

The department shall reimburse the Secretary of State for any costs incurred under this division.

(b) The department shall post a notice of the hearing on its publicly accessible website 17 to 24 days prior to the hearing.

(c) The hearing is not an adjudicatory hearing and is not subject to the requirements of Title 5, chapter 375, subchapter 4.

(d) The commissioner or a designee who has decision-making responsibility over the subject matter to be discussed at the hearing shall hold and conduct the hearing.

(e) Written statements and arguments concerning the application must be filed within 10 days after the close of the hearing unless a longer period is established by the commissioner.

(f) All witnesses must be sworn in.

(g) All public comments must be transcribed and included as part of the record.

(2) The commissioner shall hold an adjudicatory hearing under Title 5, chapter 375, subchapter 4 if 2 or more interested parties who qualify as intervenors request an adjudicatory hearing in writing stating an intent to offer a witness or cross-examine a witness, unless the commissioner determines and records in writing why an adjudicatory hearing will not assist the commissioner in understanding information relevant to the application.

(3) The commissioner shall accept public comment on an application during the course of processing the application. The commissioner shall set a deadline for receiving public comments.

(4) The commissioner may not issue the final decision until 10 business days after the close of the public comment period. The commissioner's final decision must include responses to the public comments. [2013, c. 325, §4 (NEW).]

Any person aggrieved by a final license or permit decision of the commissioner may appeal that decision to the board. The filing of an appeal with the board is not a prerequisite for the filing of a judicial appeal.

[2013, c. 325, §4 (AMD) .]

2-B. **Conflict with federal requirements.** The commissioner may waive the time requirements of this section for those activities which require a federal permit or license when those provisions are inconsistent with federal law.

[1989, c. 890, Pt. A, §22 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

3. **Time limits for processing applications.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. A, §23 (RP) .]

4. **Exceptions.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. A, §24 (RP) .]

4-A. **Draft decisions and commissioner recommendations.** Draft permits and licenses and commissioner recommendations are subject to the following provisions.

A. For those applications to be decided by the commissioner that do not fall under the permit by rule provisions of subsection 7, the commissioner shall, if requested by the applicant or any interested party, issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of an interest in the application before the commissioner takes final action on the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 5 working days before the commissioner takes final action on the application. [1989, c. 890, Pt. A, §25 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

B. For those applications to be decided by the board, the commissioner shall provide a summary of the application to the board, all interested governmental agencies and other interested parties in a manner prescribed by the board by rule. The rule must provide at least 10 working days for the receipt

of comments on the application prior to the preparation of a draft permit or license. If requested by the applicant or any interested party, the commissioner shall prepare a draft permit or license and shall give reasonable notice of the date the board will act on the application to the applicant and to any other person who has notified the commissioner of an interest in the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 15 working days before the board acts on the application. [1989, c. 890, Pt. A, §25 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

The commissioner may incorporate comments on draft permits at the discretion of the commissioner. The commissioner may make any revised draft available for public comment. If the commissioner decides the draft is substantially revised, the commissioner shall make it available for public comment.

[1989, c. 890, Pt. A, §25 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

5. **Reconsideration.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. A, §26 (RP) .]

6. **Fees.** The commissioner may establish reasonable fees for the reproduction of materials in the department's custody, including all or part of any application submitted to the department and any records of public hearings. All such fees may be retained by the department and deposited in the Maine Environmental Protection Fund to reimburse expenses incurred in reproducing these materials.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §3 (AMD) .]

7. **Permit by rule.** The Board of Environmental Protection may permit, by rule, any class of activities that would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no significant impact upon the environment. Any such rule must describe with specificity the class of activities covered by the rule and may establish standards of design, construction or use as may be considered necessary to avoid adverse environmental impacts. Any such rule must require notification to the commissioner prior to the undertaking of the regulated activity.

[2011, c. 120, §2 (AMD) .]

8. **Effective date of license.** Except as provided in this subsection, a license granted by the commissioner is effective when the commissioner signs the license. The commissioner may attach a condition to the license requiring up to a 30-day delay in any physical alteration of the project area and any construction activity authorized by the license. A license granted by the board is effective when the chair of the board or the chair's designee signs the license.

[1989, c. 890, Pt. A, §27 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

9. **License or permit renewals, amendments, revisions, surrenders and transfers.** For purposes of this section, a request for a license or permit renewal, amendment, revision, surrender or transfer is considered an application that, unless specifically exempted by law, is subject to a decision by the department.

[2011, c. 538, §4 (AMD) .]

10. **Voluntary surrender.** Unless otherwise provided in this Title or rules adopted pursuant to this Title, a license may be voluntarily surrendered by the license holder upon department approval.

[2009, c. 121, §5 (NEW) .]

SECTION HISTORY

1977, c. 300, §9 (NEW). 1977, c. 694, §§753,754 (AMD). 1983, c. 453, §§1-4 (AMD). 1983, c. 779, §1 (AMD). 1985, c. 589, §1 (AMD). 1985, c. 746, §§7-9 (AMD). 1987, c. 274, §§1,2 (AMD). 1989, c. 546, §§5,6 (AMD). 1989, c. 890, §§A20-27, B3 (AMD). 1989, c. 890, Pt. A, §40 (AFF). 1991, c. 183, (AMD). 1991, c. 804, §§A3,B2,3 (AMD). 1991, c. 804, §B7 (AFF). 1997, c. 794, §A4 (AMD). 2007, c. 661, Pt. B, §5 (AMD). 2009, c. 121, §5 (AMD). 2009, c. 615, Pt. E, §3 (AMD). 2011, c. 120, §2 (AMD). 2011, c. 304, Pt. H, §18 (AMD). 2011, c. 538, §4 (AMD). 2013, c. 325, §4 (AMD).

§344-A. OUTSIDE REVIEW OF APPLICATIONS

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred to throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as state agencies, the University of Maine System or the soil and water conservation districts. Except for an agreement for outside review regarding review of an application for a wind energy development as defined in Title 35-A, section 3451, subsection 11, a certification pursuant to Title 35-A, section 3456, an application for an offshore wind power project as defined in section 480-B, subsection 6-A or a general permit pursuant to section 480-HH or section 636-A or an application for a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power, the commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review. [2009, c. 615, Pt. E, §4 (AMD).]

1. **Standards for outside review.** Prior to entering into an agreement with an outside reviewer, the commissioner must determine that:

A. The agreement protects the public interest and the interest of the applicant; [1991, c. 471, (NEW).]

B. The agreement ensures a fair, consistent and adequate review of the application; [1991, c. 471, (NEW).]

C. The agreement provides the public with the same opportunity to comment on the application as would be provided if the application were reviewed by the department; [1991, c. 471, (NEW).]

D. The outside reviewer meets the minimum qualification standards established by the commissioner; and [1991, c. 471, (NEW).]

E. The application can not be reviewed by existing departmental personnel in a reasonable period of time. [1991, c. 471, (NEW).]

[1991, c. 471, (NEW) .]

2. **Qualifications.** The commissioner shall establish qualification standards for outside reviewers and shall develop a list of qualified outside reviewers. Standards established by the commissioner must include initial qualification standards and standards ensuring that outside reviewers continue to maintain a high level of scientific and regulatory expertise in one or more relevant areas of knowledge.

[1991, c. 471, (NEW) .]

3. **Conflict of interest.** An outside reviewer may not review any portion of an application submitted by an applicant who directly or indirectly employed the reviewer in any capacity at any time during the 12-month period immediately preceding the submission of the application. An outside reviewer must sign a written agreement with the commissioner not to be employed, directly or indirectly, by any applicant whose application was reviewed by that reviewer for at least 12 months from the date the review of the application is complete.

[1991, c. 471, (NEW) .]

4. **Penalty.** Notwithstanding section 349, any person who knowingly violates subsection 3 is guilty of a Class D crime. Notwithstanding Title 17-A, sections 4-A and 1301, the fine for each violation may not be less than $5,000 nor more than $25,000.

[1991, c. 471, (NEW) .]

5. **Repeal.**

[1993, c. 356, §2 (RP) .]

SECTION HISTORY
1991, c. 471, (NEW). 1993, c. 356, §2 (AMD). 2007, c. 661, Pt. B, §6 (AMD). 2009, c. 270, Pt. A, §1 (AMD). 2009, c. 615, Pt. E, §4 (AMD).

§344-B. TIMETABLES FOR PROCESSING PERMIT APPLICATIONS

Pursuant to the provisions of this section, the commissioner shall determine and annually publish a processing time for each type of permit or license issued by the department. When establishing processing times for permits or licenses, the commissioner shall take into consideration all duties and responsibilities of the department and the availability of resources. [1991, c. 804, Pt. B, §4 (NEW); 1991, c. 804, Pt. B, §7 (AFF).]

The provisions of this section apply only to new permit and license applications. [1991, c. 804, Pt. B, §4 (NEW); 1991, c. 804, Pt. B, §7 (AFF).]

1. **Publication of timetables.** No later than November 1st of each year, the commissioner shall publish processing timetables for each permit and license issued by the department. Permit and license processing timetables must be published simultaneously in all newspapers designated by the Secretary of State as papers of record under Title 5, section 8053, subsection 5. The commissioner shall enter the published processing timetables into the record of the board at the first meeting of the board following publication.

Except as provided in this section, the deadline governing the processing of an application is determined by the timetable in effect on the date the application is determined to be complete.

[2001, c. 212, §1 (AMD) .]

2. **Consultation.** Prior to publishing timetables pursuant to subsection 1, the commissioner shall review the proposed processing timetables with an advisory committee established for that purpose. The commissioner shall appoint the members of the advisory committee. In appointing the members, the commissioner shall seek to appoint a committee that is broadly representative of business, environmental and other interest groups. The purpose of the committee is solely advisory.

[1991, c. 804, Pt. B, §4 (NEW); 1991, c. 804, Pt. B, §7 (AFF) .]

3. **Processing period.** The processing period for an application begins on the date the commissioner notifies the applicant that the application is complete. Except as provided in paragraph A, the consent of the applicant is required to stop the processing period or to extend the deadline.

A. The processing time for an application stops if:

(1) The commissioner determines that a public hearing is required. Under this subparagraph, the processing period may be stopped only for as long as necessary to accommodate the public hearing process and must commence at the end of the comment period following the public hearing;

(2) The board assumes jurisdiction over an application. If the board assumes jurisdiction over an application, the board shall set a new timetable for the application and shall stop the processing period or extend the deadline subject to the conditions of this subsection. The forfeiture provisions of subsection 5 do not apply to timetables set by the board; or

(3) The commissioner determines that the applicant has significantly modified the application. Under this subparagraph, the processing period is stopped until the applicant and the commissioner agree to a new timetable. [1991, c. 804, Pt. B, §4 (NEW); 1991, c. 804, Pt. B, §7 (AFF).]

B. The commissioner may stop the processing time with the consent of the applicant for any period of time agreeable to the commissioner and the applicant if the commissioner determines that:

(1) Additional information is required from the applicant;

(2) Agencies other than the department that are required to comment on an application do not respond within the time frames established by a memorandum of understanding between the agencies; or

(3) The applicant wishes to stop the processing period or to extend the deadline. [1991, c. 804, Pt. B, §4 (NEW); 1991, c. 804, Pt. B, §7 (AFF).]

Expiration of a processing period may not be the sole reason for denial of an application.

[1991, c. 804, Pt. B, §4 (NEW); 1991, c. 804, Pt. B, §7 (AFF) .]

4. **Multiple permits.** For projects that require more than one permit from the department, the commissioner and the applicant shall determine the timetable or timetables applicable to all permit or license applications required for that project at a presubmission meeting.

[1991, c. 804, Pt. B, §4 (NEW); 1991, c. 804, Pt. B, §7 (AFF) .]

5. **Forfeiture.** If the commissioner fails to approve or deny an application prior to the applicable deadline, the commissioner shall pay the applicant an amount equal to 50% of the permit or license processing fee. The remainder of the permit or license processing fee is payable to the applicant if the commissioner does not approve or deny the application within 120 calendar days after that deadline. Forfeitures payable under this subsection may not exceed the permit or license processing fee paid by the applicant.

[1991, c. 804, Pt. B, §4 (NEW); 1991, c. 804, Pt. B, §7 (AFF) .]

6. **Report.**

[2007, c. 619, §5 (RP) .]

SECTION HISTORY
1991, c. 804, §B4 (NEW). 1991, c. 804, §B7 (AFF). 2001, c. 212, §1 (AMD). 2007, c. 619, §5 (AMD).

§345. HEARINGS

(REPEALED)

SECTION HISTORY

1977, c. 300, §9 (NEW). 1977, c. 694, §§755-757 (AMD). 1981, c. 524, §16 (AMD). 1983, c. 566, §5 (RP).

§345-A. HEARINGS

1. **Hearings.**

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

1-A. **Department hearings.** The board and commissioner may hold public hearings as necessary to carry out responsibilities under this Title.

[1989, c. 890, Pt. A, §29 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

2. **Maine Administrative Procedure Act.** Except as provided elsewhere, all hearings of the department must be conducted in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

[1989, c. 890, Pt. A, §30 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

2-A. **Intervenor procedures.** The board shall adopt rules that define the procedures and scope of participation for intervenors.

[1991, c. 804, Pt. A, §4 (NEW) .]

3. **Fees.** The Commissioner of Environmental Protection may establish fees which recover the expenses entailed in providing notice to interested persons required by this section or reproducing all or any part of the record of any hearings for the applicant or interested persons.

[1983, c. 566, §6 (NEW) .]

4. **Subpoena power.** The board and commissioner may each issue subpoenas to compel the production of books, records and other data related to the matters in issue at any hearing. If any person served with a subpoena demonstrates to the satisfaction of the issuer of the subpoena that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, the information shall be disclosed only at a nonpublic portion of the hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the issuer of the subpoena may apply to any Justice of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.

[1985, c. 746, §10 (NEW) .]

5. **Public meetings.** At the board's or commissioner's discretion, the board or commissioner may schedule and hold public meetings in the geographic area of a proposed project for the purpose of collecting comments that become part of the record in a pending action. Any such meeting must be held during the period when written public comments may be submitted to the department. This subsection and the conduct of a public meeting do not change any other obligation the department has to hold public hearings that are mandatory by statute or required after a timely request is filed.

[2007, c. 43, §1 (NEW) .]

SECTION HISTORY

1983, c. 566, §6 (NEW). 1983, c. 743, §3 (AMD). 1985, c. 589, §2 (AMD). 1985, c. 746, §10 (AMD). 1989, c. 890, §§A28-30,40 (AMD). 1991, c. 804, §A4 (AMD). 2007, c. 43, §1 (AMD).

§346. JUDICIAL APPEALS

1. **Appeal to Superior Court.** Except as provided in subsection 4 and section 347-A, subsection 3 or 4, any person aggrieved by any order or decision of the board or commissioner may appeal to the Superior Court. These appeals to the Superior Court must be taken in accordance with Title 5, chapter 375, subchapter 7.

[2009, c. 642, Pt. B, §3 (AMD) .]

2.

[1977, c. 694, §759 (RP) .]

2-A. **Appeal.** Any party to the appeal in the Superior Court under this section may obtain review by appeal to the Supreme Judicial Court sitting as the law court. The appeal shall be taken as in other civil cases.

[1977, c. 696, §342 (NEW) .]

3. **Limitation.**

[2001, c. 232, §4 (RP) .]

4. **Appeal of decision.** A judicial appeal of final action by the board or commissioner regarding an application for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a general permit pursuant to section 480-HH or section 636-A must be taken to the Supreme Judicial Court sitting as the Law Court. The Law Court has exclusive jurisdiction over request for judicial review of final action by the commissioner or the board regarding expedited wind energy developments or a general permit pursuant to section 480-HH or section 636-A. These appeals to the Law Court must be taken in the manner provided in Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2011, c. 420, Pt. A, §34 (RPR) .]

SECTION HISTORY
1977, c. 300, §9 (NEW). 1977, c. 694, §§758,759 (AMD). 1977, c. 696, §342 (AMD). 1989, c. 890, §§A40,B4 (AMD). 2001, c. 232, §4 (AMD). 2007, c. 661, Pt. B, §§7, 8 (AMD). 2009, c. 615, Pt. E, §5 (AMD). 2009, c. 642, Pt. B, §§3, 4 (AMD). 2011, c. 420, Pt. A, §34 (AMD).

§347. VIOLATIONS

(REPEALED)

SECTION HISTORY
1977, c. 300, §9 (NEW). 1977, c. 694, §760 (AMD). 1979, c. 444, §§1,2 (AMD). 1983, c. 566, §§7,8 (AMD). 1983, c. 743, §4 (AMD). 1983, c. 796, §16 (AMD). 1985, c. 496, §A3 (AMD). 1985, c. 746, §11 (AMD). 1987, c. 810, §§7,8,11 (AMD). 1989, c. 311, §3 (RP).

§347-A. VIOLATIONS

1. **General procedures.** This subsection sets forth procedures for enforcement actions.

A. Whenever it appears to the commissioner, after investigation, that there is or has been a violation of this Title, of rules adopted under this Title or of the terms or conditions of a license, permit or order issued by the board or the commissioner, the commissioner may initiate an enforcement action by taking one or more of the following steps:

(1) Resolving the violation through an administrative consent agreement pursuant to subsection 4, signed by the violator and approved by the commissioner and the Attorney General;

(2) Referring the violation to the Attorney General for civil or criminal prosecution;

(3) Scheduling and holding an enforcement hearing on the alleged violation pursuant to subsection 2; or

(4) With the prior approval of the Attorney General, commencing a civil action pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3. [2011, c. 304, Pt. H, §19 (AMD).]

B. Before initiating a civil enforcement action pursuant to paragraph A, the commissioner shall issue a notice of violation to the person or persons the commissioner considers likely to be responsible for the alleged violation or violations. The notice of violation must describe the alleged violation or violations, to the extent then known by the commissioner; cite the applicable law, rule and term or condition of the license, permit or order alleged to have been violated; and provide time periods for the alleged violator to take necessary corrective action and to respond to the notice. For violations the commissioner finds to be minor, the notice may state that further enforcement action will not be pursued if compliance is achieved within the time period specified in the notice or under other appropriate circumstances. The commissioner is not required to issue a notice of violation before issuing an emergency order pursuant to subsection 3 or other applicable provision of this Title; nor is the commissioner required to issue a notice of violation before referring an alleged violation to the Attorney General for criminal prosecution or in a matter requiring immediate enforcement action. [1993, c. 204, §1 (RPR).]

C. [1993, c. 204, §1 (RP).]

D. [1993, c. 204, §1 (RP).]

[2011, c. 304, Pt. H, §19 (AMD) .]

2. **Hearings.** The commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of any hearing held pursuant to subsection 1, paragraph A, subparagraph (3). The notice must specify the act or omission which is claimed to be in violation of law or regulation.

Any hearing conducted under the authority of this subsection must be in accordance with the provisions of Title 5, chapter 375, subchapter IV. At the hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by that person to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the commissioner shall, as soon as practicable, make findings of fact based on the record and, if the commissioner finds that a violation exists, shall issue an order aimed at ending the violation. The person to whom an order is directed shall immediately comply with the terms of that order.

[1999, c. 127, Pt. A, §54 (AMD) .]

3. **Emergency orders.** Whenever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations the department administers or of the terms or conditions of any of the department's orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery

by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. In the event that the persons are so numerous that the specified method of service is a practical impossibility or the commissioner is unable to identify the person or persons causing or contributing to the hazard, the commissioner shall make the order known through prominent publication or announcement in news media serving the affected area.

The person to whom the order is directed shall comply with the order immediately. The order may not be appealed to the Superior Court in the manner provided in section 346, but within 48 hours after receipt of the order the person may apply to the board for a hearing on the order. Within 7 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing is 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 decision of the board may be appealed to the Superior Court in the manner provided by section 346.

[2005, c. 330, §5 (AMD) .]

4. **Administrative consent agreements.** Following issuance of a notice of violation pursuant to subsection 1 and after receipt of the alleged violator's response to that notice or expiration of the time period specified in the notice for a response, in situations determined by the commissioner appropriate for further enforcement action, the commissioner may send a proposed administrative consent agreement to the alleged violator or violators.

A. Except as otherwise expressly agreed to by the Attorney General, all proposed administrative consent agreements must be reviewed and approved by the Department of the Attorney General before being sent to the alleged violator. [1993, c. 204, §2 (NEW).]

B. All proposed administrative consent agreements sent to the alleged violator must be accompanied by written correspondence from the department, in language reasonably understandable to a citizen, explaining the alleged violator's rights and responsibilities with respect to the proposed administrative consent agreement. The correspondence must include an explanation of the factors considered by the commissioner in determining the proposed civil penalty, a statement indicating that the administrative consent agreement process is a voluntary mechanism for resolving enforcement matters without the need for litigation and an explanation of the department's procedures for handling administrative consent agreements. The correspondence must also specify a reasonable time period for the alleged violator to respond to the proposed administrative consent agreement and offer the opportunity for a meeting with department staff to discuss the proposed agreement. Consent agreements shall, to the greatest extent possible, clearly set forth all the specific requirements or conditions with which the alleged violator must comply. [1995, c. 123, §3 (AMD).]

C. After a proposed administrative consent agreement has been sent to the alleged violator, the commissioner may revise and resubmit the agreement if further circumstances become known to the commissioner, including information provided by the alleged violator, that justify a revision. [1993, c. 204, §2 (NEW).]

D. The public may make written comments to the commissioner at the commissioner's discretion on an administrative consent agreement entered into by the commissioner. [2011, c. 304, Pt. H, §20 (AMD).]

E. When the department and the alleged violator can not agree to the terms of a consent agreement and the department elects to bring an enforcement action in District Court pursuant to section 342, subsection 7, the District Court shall refer the parties to mediation if either party requests mediation at or before the time the alleged violator appears to answer the department's complaint. The parties must meet with a mediator appointed by the Court Alternative Dispute Resolution Service created in Title 4, section 18-B

at least once and try in good faith to reach an agreement. After the first meeting, mediation must end at the request of either party. If the parties have been referred to mediation, the action may not be removed to Superior Court until after mediation has occurred. [1995, c. 560, Pt. I, §16 (AMD).]

[2011, c. 304, Pt. H, §20 (AMD) .]

5. **Enforcement.** All orders of the department and administrative consent agreements entered into by the department may be enforced by the Attorney General or the department. If any order of the department is not complied with, the commissioner shall immediately notify the Attorney General.

[2011, c. 538, §5 (AMD) .]

6. **Public participation in enforcement settlements.** After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, Section 1251 et seq., as amended, in any civil enforcement action brought under this section, section 348 or 349 involving discharges regulated by the Federal Water Pollution Control Act, the department shall publish notice of and provide at least 30 days for public comment on any proposed settlement as follows.

A. In the case of an administrative consent agreement, notice of the proposed agreement and the proposed agreement must be posted on the department's publicly accessible website at least 30 days before the commissioner takes any action on the agreement. The Attorney General and the department shall receive and consider any written comments relating to the proposed agreement. [2011, c. 538, §6 (AMD).]

B. In the case of judicial enforcement, each proposed judgment by consent must be filed with the court at least 30 days before the judgment is entered by the court. Prior to the entry of judgment, notices of the proposed judgment must be published in a newspaper having general circulation in the area in which the alleged violation occurred, and the Attorney General and the department shall receive and consider, and file with the court, any written comments relating to the proposed judgment. [1997, c. 794, Pt. A, §5 (NEW).]

C. The Attorney General shall reserve the right to withdraw or withhold its consent to the proposed judgment if the comments, views or allegations concerning the judgment disclose facts or considerations that indicate that the proposed judgment is inappropriate, improper or inadequate and oppose an attempt by any person to intervene in the action. When the public interest in this notification process is not compromised, the Attorney General may permit an exception to publication as set forth in this section in a specific case where extraordinary circumstances require a period shorter than 30 days or a notification procedure other than that set forth in this section. [1997, c. 794, Pt. A, §5 (NEW).]

[2011, c. 538, §6 (AMD) .]

7. **Landowner liability for actions of others.** An owner, lessee, manager, easement holder or occupant of premises is not subject to criminal sanctions or civil penalties or forfeitures for a violation of laws or rules enforced by the department or the board if that person provides substantial credible evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, manager, easement holder or occupant. This subsection does not prevent the department, the board or a court from requiring an owner, lessee, manager, easement holder or occupant of premises to remediate or abate environmental hazards or damage or to reimburse the department for the cost of such remediation or abatement. An owner, lessee, manager, easement holder or occupant of premises is subject to criminal sanctions or civil penalties or forfeitures for failure to comply with a lawful administrative order or court order to remediate or abate environmental hazards or damage.

A. The department shall investigate substantiated allegations by an owner, lessee, manager, easement holder or occupant that the violation was caused by another person. [2001, c. 365, §2 (NEW).]

B. If an owner, lessee, manager, easement holder or occupant is subjected to criminal sanctions or civil penalties or forfeitures, or if such a person is required to remediate or abate environmental hazards or damage as a result of violations by another person, the owner, lessee, manager, easement holder or occupant has a cause of action against the actual violator to recover all damages and costs, including attorney's fees, incurred in connection with the environmental damage, and all costs, including attorney's fees, incurred in bringing the action to recover. [2001, c. 365, §2 (NEW).]

C. This subsection does not apply to persons who are defined as "responsible parties" under chapter 3, subchapters II-A and II-B; chapter 13, subchapter II-A; or chapter 13-B. [2001, c. 365, §2 (NEW).]

[2001, c. 365, §2 (NEW) .]

8. **Limitations on air and wastewater discharge enforcement actions.**

[2011, c. 350, §1 (RP) .]

9. **Limitations on enforcement actions.** This subsection applies to enforcement actions for civil penalties.

A. An enforcement action must be commenced by the commissioner or the Attorney General within 6 years of the following, whichever occurs latest:

(1) The discovery by the commissioner or the Attorney General of an act or omission giving rise to a violation;

(2) The identification by the commissioner or the Attorney General of the person responsible for the violation; and

(3) The last day of an ongoing violation. [2011, c. 350, §2 (NEW).]

B. For purposes of this subsection, an enforcement action is commenced when any of the following occurs:

(1) The commissioner proposes an administrative consent agreement in writing to the violator pursuant to subsection 4;

(2) The commissioner schedules an enforcement hearing on the alleged violation pursuant to subsection 2;

(3) The commissioner, with the prior approval of the Attorney General, files a complaint in District Court pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3; and

(4) The Attorney General files a complaint in District Court or Superior Court. [2011, c. 350, §2 (NEW).]

C. The commencement of an enforcement action by any of the means set forth in paragraph B tolls the running of the 6-year limitation period for the purpose of bringing any other action pursuant to subsection 1, paragraph A. [2011, c. 350, §2 (NEW).]

[2011, c. 350, §2 (NEW) .]

SECTION HISTORY
1989, c. 311, §4 (NEW). 1989, c. 890, §§A31,32 (AMD). 1989, c. 890, Pt. A, §40 (AFF). 1993, c. 204, §§1,2 (AMD). 1995, c. 123, §§3,4 (AMD). 1995, c. 560, §I16 (AMD). 1997, c. 794, §A5 (AMD). 1999, c. 127, §A54 (AMD). 2001, c. 365, §2 (AMD). 2003, c. 245, §5 (AMD). 2005, c. 330, §5 (AMD). 2007, c. 292, §12 (AMD). 2007, c. 337, §1 (AMD). 2011, c. 304, Pt. H, §§19, 20 (AMD). 2011, c. 350, §§1, 2 (AMD). 2011, c. 538, §§5, 6 (AMD).

§347-B. MODIFICATION, REVOCATION OR SUSPENSION OF LICENSE

(REPEALED)

SECTION HISTORY
1989, c. 311, §4 (NEW). 1989, c. 890, §§A33,40 (RP).

§347-C. RIGHT OF INSPECTION AND ENTRY

Employees and agents of the Department of Environmental Protection may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of an industrial user of a publicly owned treatment works, and to take samples, inspect records relevant to any regulated activity or conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the commissioner or of the board. [1997, c. 794, Pt. A, §6 (AMD).]

SECTION HISTORY
1989, c. 311, §4 (NEW). 1989, c. 890, §§A40,B5 (AMD). 1997, c. 794, §A6 (AMD).

§348. JUDICIAL ENFORCEMENT

1. **General.** In the event of a violation of any provision of the laws administered by the department or of any order, regulation, license, permit, approval, administrative consent agreement or decision of the board or commissioner or decree of the court, as the case may be, the Attorney General or the department may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the department.

[2011, c. 538, §7 (AMD) .]

2. **Restoration.** The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the department or of any order, rule, regulation, license, permit, approval or decision of the board or commissioner or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible. Where the court finds that the violation was wilful, the court shall order restoration under this subsection unless the restoration will:

A. Result in a threat or hazard to public health or safety; [1983, c. 796, §17 (NEW).]

B. Result in substantial environmental damage; or [1983, c. 796, §17 (NEW).]

C. Result in a substantial injustice. [1983, c. 796, §17 (NEW).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §6 (AMD) .]

3. **Injunction proceedings.** If the department finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property, the department shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge or the commissioner may authorize pursuit of such an action in District Court. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347-B.

[2007, c. 292, §14 (AMD) .]

4. **Settlement.** A person who has resolved that person's liability to the State in an administrative or judicially approved settlement and is implementing or has fully implemented that settlement pursuant to its terms is not liable for claims by other potentially liable persons regarding response actions, response costs or

damages, including without limitation natural resource damages, addressed in the settlement. The settlement does not discharge any other potentially liable persons unless its terms so provide. The protection afforded by this subsection includes protection against contribution claims and all other types of claims under state law that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another potentially liable person, if those actions, costs or damages are addressed in the settlement, but does not include protection against claims based on contractual indemnification or other express contractual agreements to pay the costs or damages. A potentially liable person who commences an action against a person who is protected from suits under this subsection is liable to the person against whom the claim is brought for all reasonable costs of defending against the claim, including all reasonable attorney's and expert witness fees. This section is not intended to create a right to contribution or other cause of action or to make a person liable to pay a portion of another person's response costs, damages or civil penalties.

[1993, c. 732, Pt. A, §1 (NEW) .]

SECTION HISTORY
1977, c. 300, §9 (NEW). 1983, c. 796, §17 (AMD). 1989, c. 890, Pt. A, §40 (AFF). 1989, c. 890, Pt. B, §6 (AMD). 1993, c. 732, Pt. A, §1 (AMD). 2007, c. 292, §§13, 14 (AMD). 2011, c. 538, §7 (AMD).

§349. PENALTIES

1. **Criminal penalties.** Except as otherwise specifically provided, a person who intentionally, knowingly, recklessly or with criminal negligence violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264-A, commits a Class E crime. Notwithstanding Title 17-A, section 1301, the fine for a violation of this subsection may not be less than $2,500 and not more than $25,000 for each day of the violation, except that the minimum amount for knowing violations is $5,000 for each day of violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.

[2003, c. 452, Pt. W, §2 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Civil penalties.** Except as otherwise specifically provided, a person who violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264-A, is subject to a civil penalty, payable to the State, of not less than $100 and not more than $10,000 for each day of that violation or, if the violation relates to hazardous waste, of not more than $25,000 for each day of the violation. This penalty is recoverable in a civil action.

[2009, c. 2, §116 (COR) .]

2-A. **Supplemental environmental projects.** In settling a civil enforcement action for any violation of any of the provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, the parties may agree to a supplemental environmental project that mitigates not more than 80% of the assessed penalty. "Supplemental environmental project" means an environmentally beneficial project primarily benefiting public health or the environment that a violator is not otherwise required or likely to perform.

A. An eligible supplemental environmental project is limited to the following categories:

(1) Pollution prevention projects that eliminate all or a significant portion of pollutants at the point of generation;

(2) Pollution reduction projects that significantly decrease the release of pollutants into a waste stream at the point of discharge to a point significantly beyond levels required for compliance;

(3) Environmental enhancement projects in the same ecosystem or geographic area of the violation that significantly improve an area beyond what is required to remediate any damage caused by the violation that is the subject of the enforcement action;

(4) Environmental awareness projects substantially related to the violation that provide training, publications or technical support to members of the public regulated by the department;

(5) Scientific research and data collection projects that advance the scientific basis on which regulatory decisions are made;

(6) Emergency planning and preparedness projects that assist state or local emergency response and planning entities in preparing or responding to emergencies; and

(7) Public health projects that provide a direct and measurable benefit to public health. [1997, c. 570, §1 (NEW).]

B. Supplemental environmental projects may not be used for the following situations:

(1) Repeat violations of the same or a substantially similar law administered by the department by the same person;

(2) When a project is required by law;

(3) If the violator had previously planned and budgeted for the project;

(4) To offset any calculable economic benefit of noncompliance;

(5) If the violation is the result of reckless or intentional conduct; or

(6) If the project primarily benefits the violator.

Any settlement that includes a supplemental environmental project must provide that expenditures are not tax deductible and are ineligible for certification as tax exempt pollution control facilities pursuant to Title 36, chapters 105 and 211. [1997, c. 570, §1 (NEW).]

[1997, c. 570, §1 (NEW) .]

3. **Falsification and tampering.** A person may not knowingly:

A. Make a false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained by any law administered by the department or by any order, rule, license, permit, approval or decision of the board or commissioner; [2003, c. 452, Pt. W, §4 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Tamper with or render inaccurate a monitoring device or method required by any law or by any order, rule, license, permit, approval or decision of the board or commissioner; or [2003, c. 452, Pt. W, §4 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Fail to comply with an information submittal required by the commissioner pursuant to section 568, subsection 3 or section 1364, subsection 3. [2003, c. 452, Pt. W, §4 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

A person who violates this subsection commits a Class E crime. Notwithstanding Title 17-A, section 1301, a fine for a violation of this subsection may not be more than $10,000.

[2003, c. 452, Pt. W, §4 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

4. **Violations.**

[1987, c. 402, Pt. A, §195 (RP) .]

5. **Considerations.** In setting a penalty, the court shall consider, but shall not be limited to, the following:

A. Prior violations by the same party; [1983, c. 796, §19 (NEW).]

B. The degree of environmental damage that cannot be abated or corrected; [1983, c. 796, §19 (NEW).]

C. The extent to which the violation continued following an order of the commissioner or board to correct it; and [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §8 (AMD).]

D. The importance of setting a civil penalty substantial enough to deter others from similar violations. [1983, c. 796, §19 (NEW).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §8 (AMD) .]

6. **Maximum penalties.** The maximum civil penalty may exceed $10,000 for each day of that violation, but may not exceed $25,000 for each day of the violation, when it can be shown that there has been a previous violation of the same law by the same party within the 5 preceding years, and the maximum criminal penalty may exceed $25,000 for each day of violation, but may not exceed twice the amounts in subsection 1, when it can be shown that there has been a previous violation of the same law by the same party.

[1997, c. 794, Pt. A, §8 (AMD) .]

7. **Notification.** The commissioner shall notify all newspapers of general circulation in the State of all administrative consent agreements, court-ordered consent decrees and adjudicated violations involving laws administered by the department.

[1989, c. 110, (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §9 (AMD) .]

8. **Economic benefit.** If the economic benefit resulting from the violation exceeds the applicable penalties under subsection 2, the maximum civil penalties may be increased for each day of the violation. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic benefit, without limitation, the costs avoided or enhanced value accrued at the time of the violation by the violator not complying with the applicable legal requirements.

[1989, c. 282, §5 (NEW) .]

9. **Unavoidable malfunctions.** The following considerations apply to violations resulting from unavoidable malfunctions.

A. The commissioner may exempt from civil penalty an air emission in excess of license limitations if the emission occurs during start-up or shutdown or results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner in writing within 48 hours and submit a written report, together with any exemption requests, to the department on a quarterly basis. [2003, c. 245, §6 (AMD).]

B. An affirmative defense is established for a wastewater discharge in excess of license limitations if the discharge results exclusively from unintentional and temporary noncompliance with technology-based limitations because of factors entirely beyond the reasonable control of the licensee and the

licensee has taken all reasonable steps to minimize or prevent any discharge and takes corrective action as soon as possible. There is not an affirmative defense if the malfunction is caused, entirely or in part, by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation. The burden of proof is on the licensee seeking the affirmative defense under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner orally within 24 hours, and in writing within 5 days. [2003, c. 245, §6 (AMD).]

[2003, c. 245, §6 (AMD) .]

SECTION HISTORY
1977, c. 300, §9 (NEW). 1977, c. 510, §§89-91 (AMD). 1979, c. 127, §207 (AMD). 1979, c. 663, §226 (AMD). 1979, c. 699, §§1,2 (AMD). 1981, c. 470, §A162 (AMD). 1983, c. 566, §9 (AMD). 1983, c. 785, §8 (AMD). 1983, c. 796, §§18,19 (AMD). 1985, c. 162, §§2,3 (AMD). 1985, c. 485, §§1,2 (AMD). 1985, c. 746, §12 (AMD). 1987, c. 402, §A195 (AMD). 1987, c. 491, §3 (AMD). 1987, c. 517, §3 (AMD). 1989, c. 110, (AMD). 1989, c. 282, §§2-5 (AMD). 1989, c. 820, §§9,10 (AMD). 1989, c. 890, §§A40,B7-9 (AMD). 1991, c. 483, §1 (AMD). 1993, c. 232, §1 (AMD). 1993, c. 349, §71 (AMD). 1995, c. 235, §1 (AMD). 1997, c. 570, §1 (AMD). 1997, c. 794, §§A7-9 (AMD). 2003, c. 245, §6 (AMD). 2003, c. 452, §§W2-4 (AMD). 2003, c. 452, §X2 (AFF). RR 2009, c. 2, §116 (COR).

§349-A. MINING RULES

(REPEALED)

SECTION HISTORY
1989, c. 874, §1 (NEW). 2011, c. 653, §33 (AFF). 2011, c. 653, §7 (RP).

§349-B. DEBARMENT FROM DEPARTMENT CONTRACTS

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

A. "Repeat violation" means a violation of any legal requirement under this Title, or rules adopted under this Title, or of the terms or conditions of a license, permit or order issued by the board or the commissioner when a previous violation of any legal requirement under this Title, or rules adopted under this Title, or of the terms or conditions of a license, permit or order issued by the board or the commissioner was found. [2007, c. 300, §1 (NEW).]

B. "Business" means a corporation, business trust, trust, partnership, limited liability company, association, joint venture, firm, association, organization or any other legal or commercial entity. [2009, c. 360, §1 (NEW).]

C. "Direct financial interest" means ownership or part ownership of a business, including lands, stocks, bonds, debentures, warrants, partnership shares or other holdings, and also means any other arrangement where the individual may benefit from that individual's holding in or salary from that business. "Direct financial interest" includes employment, pensions, creditor relationships, real property and other financial relationships. [2009, c. 360, §2 (NEW).]

[2009, c. 360, §§1, 2 (AMD) .]

2. **Debarment.** The commissioner may, after hearing, debar from participation in contracts with the department for 2 years any individual or business found to have committed a repeat violation when either the time for filing an appeal of the determination of that violation has expired or the appeals process has been exhausted.

A. If an individual is debarred under this section, any business in which that individual holds a direct financial interest may also be debarred if the commissioner finds that the individual is in a position to substantially influence the business's compliance with the laws and rules administered by the department. [2009, c. 360, §3 (NEW).]

B. If a business is debarred under this section:

(1) Any individual that holds a direct financial interest in that debarred business may also be debarred if the commissioner finds that the individual knew or should have known of the actions or inactions upon which the debarment of the business is based and was or is in a position to substantially influence the debarred business's compliance with the laws and rules administered by the department; and

(2) Any other business that holds a direct financial interest in that debarred business may also be debarred if the commissioner finds that either business was or is in a position to substantially influence compliance by the other business with the laws and rules administered by the department. [2009, c. 360, §3 (NEW).]

[2009, c. 360, §3 (AMD) .]

SECTION HISTORY
2007, c. 300, §1 (NEW). 2009, c. 360, §§1-3 (AMD).

Subchapter 1-A: ENVIRONMENTAL AUDIT PROGRAM

§349-L. SCOPE OF PROGRAM

This subchapter is intended to enhance the protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of state and federal environmental requirements. An environmental audit program and a compliance management system developed under this subchapter may be part of a regulated entity's comprehensive environmental management system. [2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY
2011, c. 304, Pt. A, §1 (NEW).

§349-M. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 304, Pt. A, §1 (NEW).]

1. **Compliance management system.** "Compliance management system" means a system implemented by a regulated entity appropriate to the size and nature of its activities to prevent, detect and correct violations of environmental requirements through all of the following:

A. Compliance policies, standards and procedures that identify how employees and agents of the regulated entity are to meet environmental requirements and the conditions of permits, enforceable agreements and other sources of authority for environmental requirements; [2011, c. 304, Pt. A, §1 (NEW).]

B. Assignment of overall responsibility within a regulated entity for overseeing compliance with policies, standards and procedures and assignment of specific responsibility for ensuring compliance at each facility or operation of the regulated entity; [2011, c. 304, Pt. A, §1 (NEW).]

C. Mechanisms for systematically ensuring that compliance policies, standards and procedures of the regulated entity are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system and a means for employees or agents of the regulated entity to report violations of environmental requirements without fear of retaliation; [2011, c. 304, Pt. A, §1 (NEW).]

D. Procedures to communicate effectively the regulated entity's standards and procedures to all employees and agents of the regulated entity; [2011, c. 304, Pt. A, §1 (NEW).]

E. Appropriate incentives to managers and employees of the regulated entity to perform in accordance with the compliance policies, standards and procedures of the regulated entity, including consistent enforcement through appropriate disciplinary mechanisms; and [2011, c. 304, Pt. A, §1 (NEW).]

F. Procedures for the prompt and appropriate correction of any violations and any necessary modifications to the regulated entity's compliance management system to prevent future violations. [2011, c. 304, Pt. A, §1 (NEW).]

[2011, c. 304, Pt. A, §1 (NEW) .]

2. **Environmental audit program.** "Environmental audit program" means a systematic, documented, periodic and objective review by a regulated entity of facility operations and practices that are related to meeting environmental requirements.

[2011, c. 304, Pt. A, §1 (NEW) .]

3. **Environmental audit report.** "Environmental audit report" means the documented analysis, conclusions and recommendations resulting from an environmental audit program, but does not include data obtained in, or testimonial evidence concerning, the environmental audit.

[2011, c. 304, Pt. A, §1 (NEW) .]

4. **Environmental requirement.** "Environmental requirement" means any law or rule administered by the department.

[2011, c. 304, Pt. A, §1 (NEW) .]

5. **Gravity-based penalty.** "Gravity-based penalty" means the punitive portion of a penalty for a violation of an environmental requirement that exceeds the economic gain from noncompliance with the requirement; and

[2011, c. 304, Pt. A, §1 (NEW) .]

6. **Regulated entity.** "Regulated entity" means an entity subject to environmental requirements.

[2011, c. 304, Pt. A, §1 (NEW) .]

SECTION HISTORY
2011, c. 304, Pt. A, §1 (NEW).

§349-N. INCENTIVES

Subject to section 349-Q, and notwithstanding any other provision of law relating to penalties, the department may adjust or mitigate penalties for violations of environmental requirements in accordance with this section. [2011, c. 304, Pt. A, §1 (NEW).]

1. **No gravity-based penalties.** If the department determines that a regulated entity satisfies all of the conditions of section 349-O, the department may not impose in any administrative proceeding or seek in any civil action any gravity-based penalty for a violation that is discovered and disclosed by the regulated entity.

[2011, c. 304, Pt. A, §1 (NEW) .]

2. **Reduction of gravity-based penalties by 75%.** If the department determines that the regulated entity satisfies the conditions of section 349-O, subsections 2 to 9, the department shall reduce by 75% gravity-based penalties that would otherwise be associated with violations discovered and disclosed by the regulated entity.

[2011, c. 304, Pt. A, §1 (NEW) .]

3. **No recommendation for criminal prosecution.** If the department determines that the regulated entity satisfies the conditions of section 349-O, subsections 2 to 9, the department may not recommend that criminal charges be brought against the regulated entity if the department determines that the violation is not part of a pattern or practice that demonstrates or involves:

A. A prevalent management philosophy or practice that conceals or condones environmental violations; or [2011, c. 304, Pt. A, §1 (NEW).]

B. High-level corporate officials' or managers' conscious involvement in, or willful blindness to, violations of state or federal environmental laws. [2011, c. 304, Pt. A, §1 (NEW).]

Whether or not the department recommends the regulated entity for criminal prosecution under this section, the department may recommend for prosecution the criminal acts of individual managers or employees under existing policies guiding the exercise of enforcement discretion.

[2011, c. 304, Pt. A, §1 (NEW) .]

4. **No routine request for environmental audit reports.** The department may not request an environmental audit report in connection with a routine inspection of a regulated entity. If the department has reason to believe that a violation by a regulated entity of an environmental requirement has occurred, the department may seek any information relevant to identifying violations or determining liability or the extent of harm resulting from the violation.

[2011, c. 304, Pt. A, §1 (NEW) .]

SECTION HISTORY
2011, c. 304, Pt. A, §1 (NEW).

§349-O. CONDITIONS OF DISCOVERY

The incentives established in section 349-N apply to a violation of an environmental requirement only if: [2011, c. 304, Pt. A, §1 (NEW).]

1. **Systematic discovery.** The violation was discovered through:

A. An environmental audit program; or [2011, c. 304, Pt. A, §1 (NEW).]

B. A compliance management system that demonstrates the regulated entity's due diligence in preventing, detecting and correcting violations. The regulated entity shall notify the department when it has a compliance management system in place and shall make available to the department upon request a copy of the system components. The regulated entity shall provide accurate and complete documentation to the department describing how its compliance management system meets the criteria specified in

section 349-M, subsection 1 and how the regulated entity discovered the violation through its compliance management system. The department may require the regulated entity to make publicly available a description of its compliance management system; [2011, c. 304, Pt. A, §1 (NEW).]

[2011, c. 304, Pt. A, §1 (NEW) .]

2. **Voluntary discovery.** The violation was discovered by the regulated entity. Incentives under section 349-N do not apply to violations discovered through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order or consent agreement, including:

A. Emissions violations detected through a continuous emissions monitor or an alternative monitor established in a permit where any such monitoring is required; [2011, c. 304, Pt. A, §1 (NEW).]

B. Violations of National Pollutant Discharge Elimination System discharge limits established under the federal Clean Water Act, 33 United States Code, Section 1342 (2010) detected through required sampling or monitoring; [2011, c. 304, Pt. A, §1 (NEW).]

C. Violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement, unless the audit is a component of agreement terms to implement a comprehensive environmental management system; and [2011, c. 304, Pt. A, §1 (NEW).]

D. Violations discovered by a department inspection; [2011, c. 304, Pt. A, §1 (NEW).]

[2011, c. 304, Pt. A, §1 (NEW) .]

3. **Prompt disclosure.** The regulated entity fully discloses the specific violation in writing to the department within 21 days after the entity discovered that the violation has, or may have, occurred, unless the amount of time to report the violation is otherwise prescribed in statute, rule or order. The time at which the regulated entity discovers that a violation has, or may have, occurred begins when a person authorized to speak on behalf of the regulated entity has an objectively reasonable basis for believing that a violation has, or may have, occurred. Persons authorized to speak on behalf of the regulated entity must be listed in the management audit by position title. The department's response to a violation disclosed by a regulated entity under this subsection must be made in writing to the regulated entity within 3 months of the disclosure of the violation by the entity;

[2011, c. 304, Pt. A, §1 (NEW) .]

4. **Discovery and disclosure independent of government or 3rd-party plaintiff.** The regulated entity discovers and discloses to the department the potential violation prior to:

A. The commencement of an inspection or investigation related to the violation. If the department determines that the regulated entity did not know that it was under investigation and the department determines that the entity is otherwise acting in good faith, the department may determine that the requirements of this paragraph are met; [2011, c. 304, Pt. A, §1 (NEW).]

B. The regulated entity's receipt of notice that it is the subject of a lawsuit; [2011, c. 304, Pt. A, §1 (NEW).]

C. The filing of a complaint by a 3rd party; [2011, c. 304, Pt. A, §1 (NEW).]

D. The reporting of the violation to the department or other state agency by an employee other than the person authorized to speak on behalf of the regulated entity under subsection 3; or [2011, c. 304, Pt. A, §1 (NEW).]

E. The imminent disclosure of the violation by a regulatory agency. [2011, c. 304, Pt. A, §1 (NEW).]

For regulated entities that own or operate multiple facilities, the fact that one facility is the subject of an investigation, inspection, information request or 3rd-party complaint does not preclude the department from exercising its discretion to apply the regulated entity's compliance management system to other facilities owned or operated by that regulated entity;

[2011, c. 304, Pt. A, §1 (NEW) .]

5. **Correction and remediation.** The regulated entity corrects the violation within 60 days from the date of discovery, unless the amount of time to correct is otherwise prescribed in statute, rule or order, certifies in writing to the department that the violation has been corrected and takes appropriate measures as determined by the department to remedy any environmental or human harm due to the violation. The department retains the authority to order an entity to correct a violation within a specific time period shorter than 60 days whenever correction in a shorter period of time is feasible and necessary to protect public health and the environment adequately. If more than 60 days will be needed to correct the violation, the regulated entity shall so notify the department in writing before the 60-day period has passed. To satisfy conditions of this subsection and subsection 6, the department may require a regulated entity to enter into a publicly available written agreement, administrative consent order or judicial consent decree as a condition of obtaining relief under this subchapter, particularly when compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required;

[2011, c. 304, Pt. A, §1 (NEW) .]

6. **Prevent recurrence.** The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental audit program or compliance management system;

[2011, c. 304, Pt. A, §1 (NEW) .]

7. **No repeat violations.** The specific violation, or a closely related violation, has not occurred within the past 3 years at the same facility and has not occurred within the past 5 years as part of a pattern at multiple facilities owned or operated by the same regulated entity. For the purposes of this subsection, a violation or closely related violation is any violation previously identified in a judicial or administrative order, a consent agreement or order, a complaint, letter of warning or notice of violation, a conviction or plea agreement or any act or omission for which the regulated entity has previously received penalty mitigation from the United States Environmental Protection Agency or the department;

[2011, c. 304, Pt. A, §1 (NEW) .]

8. **Other violations excluded.** The violation did not result in serious actual harm, or present an imminent and substantial endangerment, to human health or the environment, did not violate the specific terms of any judicial or administrative order or consent agreement or was not a knowing, intentional or reckless violation; and

[2011, c. 304, Pt. A, §1 (NEW) .]

9. **Cooperation.** The regulated entity cooperates as requested by the department and provides such information requested by the department to determine the applicability of this subchapter.

[2011, c. 304, Pt. A, §1 (NEW) .]

SECTION HISTORY
2011, c. 304, Pt. A, §1 (NEW).

§349-P. ECONOMIC BENEFIT

1. **Department discretion.** In order to ensure that regulated entities that violate environmental requirements do not gain an economic advantage over regulated entities that comply with environmental requirements, this subchapter may not be construed to limit the discretion of the department to recover any economic benefit gained as a result of noncompliance by a regulated entity.

[2011, c. 304, Pt. A, §1 (NEW) .]

2. **Waiver; insignificant economic benefit.** The department may waive the entire penalty, including any penalty for economic benefit gained as a result of noncompliance, for a regulated entity that meets all the requirements of section 349-O when, in the department's opinion, the violation does not merit any penalty due to the insignificant amount of any economic benefit.

[2011, c. 304, Pt. A, §1 (NEW) .]

SECTION HISTORY
2011, c. 304, Pt. A, §1 (NEW).

§349-Q. APPLICATION

This subchapter does not limit any authority of the department to adjust or otherwise mitigate any penalty imposed or sought by the department for a violation when the regulated entity responsible for the violation does not receive an incentive under this subchapter for the same violation. [2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY
2011, c. 304, Pt. A, §1 (NEW).

§349-R. RULES

The board may adopt rules to implement the regulation of environmental audit programs established in this subchapter. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A. [2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY
2011, c. 304, Pt. A, §1 (NEW).

Subchapter 2: MAINE ENVIRONMENTAL PROTECTION FUND

§351. MAINE ENVIRONMENTAL PROTECTION FUND

The Maine Environmental Protection Fund, referred to in this subchapter as "the fund," is established as a nonlapsing fund to supplement licensing programs administered by the Department of Environmental Protection. Except as otherwise provided in this section, all fees established under this subchapter must be credited to the fund, and administrative expenses directly related to licensing programs must be charged to the fund. [2011, c. 653, §8 (AMD); 2011, c. 653, §33 (AFF).]

All fees related to metallic mineral mining applications and permits under section 352, subsection 4-A must be credited to the Metallic Mining Fund, Other Special Revenue Funds account, which is established as a subaccount of the Maine Environmental Protection Fund to provide for prompt and effective planning, oversight and implementation of metallic mineral mining operations. [2011, c. 653, §9 (NEW); 2011, c. 653, §33 (AFF).]

Money in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities under its licensing programs shall be deposited with the Treasurer of State to the credit of the fund and may be invested in as provided by statute. Interest on these investments shall be credited to the fund. [1983, c. 574, §1 (NEW).]

Money in the fund may only be expended in accordance with allocations approved by the Legislature. These allocations shall be based on estimates of the actual costs necessary for the department to administer licensing and permitting programs. Allowable expenditures include Personal Services, All Other and Capital Expenditures associated with prelicense or permit activities such as application reviews, public hearings and appeals, the actual license or permit processing activities and associated post-license or permit compliance activities required to assure continued licensee or permittee compliance and enforcement activities as a result of license or permit noncompliance. [1987, c. 787, §5 (AMD).]

The commissioner may, subject to the approval of the Governor, apply for, accept on behalf of the State and deposit to the fund, funds, grants, bequests, gifts or contributions from any person, corporation or governmental entity. The funds must be allocated by the Legislature and expended consistent with the purposes of the department as established in section 341-A. [1991, c. 9, Pt. E, §27 (NEW).]

SECTION HISTORY
1983, c. 574, §1 (NEW). 1987, c. 192, §8 (AMD). 1987, c. 787, §5 (AMD). 1991, c. 9, §E27 (AMD). 2011, c. 653, §§ 8, 9 (AMD). 2011, c. 653, §33 (AFF).

§352. FEES

1. **Fees established.** The commissioner shall establish procedures to charge applicants for costs incurred in reviewing license and permit applications. For the purposes of this subchapter, costs may include, but are not limited to, personnel costs, travel, supplies, legal and computer services.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §10 (AMD) .]

2. **Fee categories.** Fees shall be assessed for the following.

A. Except for those fees assessed under sections 353-A and 353-B, processing fees must be assessed for costs incurred in determining the acceptability of an application for processing and in processing an application to determine whether it meets statutory and regulatory criteria. [1997, c. 794, Pt. B, §1 (AMD).]

C. Except for those fees assessed under sections 353-A and 353-B, licensing fees must be assessed for direct costs incurred in monitoring, inspecting and sampling to ensure proper compliance by a licensee. [1997, c. 794, Pt. B, §2 (AMD).]

D. Certification fees shall be assessed for direct costs incurred in issuing a certification. [1985, c. 746, §13 (NEW).]

E. The air emission license fees assessed under section 353-A for those facilities licensed under section 590 must be assessed to support activities for air quality control including licensing, compliance, enforcement, monitoring, data acquisition and administration. [2013, c. 300, §9 (AMD).]

F. Waste discharge license fees assessed under section 353-B for facilities licensed under Title 36, section 656 and sections 362-A, 413, 418, 451 and 1101 must be used to support activities for water quality control operations, including licensing, compliance evaluation, monitoring, data acquisition, data management and administration. [1997, c. 794, Pt. B, §3 (AMD).]

G. The total amount of fees due for acceptance of a license, notice, registration and certification administered by the department under this Title must be doubled at the time an application is submitted if it is received after the date on which submission is required by law. This increase may be reduced at the commissioner's discretion with a showing of mitigating circumstances. [2007, c. 292, §15 (AMD).]

[2013, c. 300, §9 (AMD) .]

2-A. **Fee adjustment.** The commissioner may adjust the fees established in this subchapter on an annual basis according to the United States Consumer Price Index established by the federal Department of Labor, Bureau of Labor Statistics. These adjustments may be compounded and assessed at an interval greater than one year if the commissioner determines that such periodic increases lower administrative costs for the department and continue effective public service.

[1999, c. 243, §1 (AMD) .]

3. **Maximum fee.** The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. The maximum fee for processing an application may not exceed $250,000, except that the maximum fee for processing an application under chapter 3, subchapter 1, article 9 is as provided for in subsection 4-A. All staff of the department, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry and the Department of Marine Resources who have worked on the review of the application, including, but not limited to, preapplication consultations, shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application, including the costs of any appeals filed by the applicant and, after taking into consideration the interest of fairness and equity, any other appeals if the commissioner finds it in the public interest to do so. Any appeal filed by the applicant of an application fee must be to the agency of jurisdiction of the application. The costs associated with assistance to the board on an appeal before the board may be separately charged. The processing fee for that application must be the actual cost to the department, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry and the Department of Marine Resources. The processing fee must be distributed to each department that incurs a cost to be deposited in the account in which the expenses were incurred in that department to reimburse the actual cost to that department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit. At the time of the quarterly billing by the department, the commissioner shall review the ongoing work of the department to identify, prevent and mitigate undue delays or vague requirements of the application processing. Nothing in this section limits the commissioner's authority to enter into an agreement with an applicant for payment of costs in excess of the maximum fee established in this subsection.

[2011, c. 653, §10 (AMD); 2011, c. 653, §33 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

4. **Accounting system.**

[1991, c. 499, §11 (RP) .]

4-A. **Fees for metallic mineral mining.** Metallic mineral mining permit applications under chapter 3, subchapter 1, article 9 are subject to the following fees. Fees under this subsection must be deposited in the Metallic Mining Fund, Other Special Revenue Funds subaccount.

A. The initial processing fee is $500,000. [2011, c. 653, §33 (AFF); 2011, c. 653, §11 (RPR).]

B. Preapplication and processing fees are special fees subject to subsection 3. The maximum fee for processing an application must be discussed by the department and the applicant during preapplication meetings. If the applicant does not agree to the maximum fee as determined by the commissioner, the refund provisions of paragraph F apply. [2011, c. 653, §33 (AFF); 2011, c. 653, §11 (RPR).]

C. The costs associated with the department's preparation for and attendance at any application proceeding held by the board, including the costs associated with assistance to the board, must be paid by the applicant. [2011, c. 653, §33 (AFF); 2011, c. 653, §11 (RPR).]

D. The costs associated with the department's assistance to the board on an appeal by the applicant before the board must be paid by the applicant and may be separately charged to the applicant by the department. The costs associated with the department's assistance to the board on an appeal by a person other than the applicant before the board may not be charged to the applicant. [2011, c. 653, §11 (NEW); 2011, c. 653, §33 (AFF).]

E. The annual license fee must be at least $20,000 and may not exceed $50,000 and must be set by the department prior to the issuance of the permit. [2011, c. 653, §11 (NEW); 2011, c. 653, §33 (AFF).]

F. If at any time the application is withdrawn by the applicant, the department shall calculate the portion of the processing fee that was expended or committed by the department or the department's agents or contractors for processing the application prior to the withdrawal and the remainder of the processing fee not expended or committed must be refunded to the applicant. [2011, c. 653, §11 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §33 (AFF); 2011, c. 653, §11 (RPR) .]

5. **Maximum fees after 1991.**

[1991, c. 824, Pt. A, §82 (RP) .]

5-A. **Accounting system.** In order to determine the extent to which the functions set out in this section are necessary for the licensing process or are being performed in an efficient and expeditious manner, the commissioner shall require that all employees of the department involved in any aspect of these functions keep accurate and regular daily time records. These records must describe the matters worked on, services performed and the amount of time devoted to those matters and services, as well as amounts of money expended in performing those functions. Records must be kept for a sufficient duration of time as determined by the commissioner to establish to the commissioner's satisfaction that the fees are appropriate.

TABLE I

MAXIMUM FEES IN DOLLARS

TITLE 36 SECTION 656, sub-§1, ¶E, Pollution Control Facilities	PROCESSING FEE	CERTIFICATION FEE
A. Water pollution control facilities with capacities at least 4,000 gallons of waste per day and §1760, sub-§29, water pollution control facilities	$250	$20

B. Air pollution control and §1760, sub-§30, air pollution control facilities			250	20
PROCESSING FEE	LICENSE FEE			
38 SECTION 344, sub-§7, Permit by rule 413, See section B-420-D, Storm water management	$50	$0		
A. If structural means of storm water control are used	$400 for the first acre of disturbed area, plus $200 for each additional whole acre of disturbed area	$100 for the first acre of disturbed area, plus $50 for each additional whole acre of disturbed area		
B. If solely vegetative means of storm water control are used	$200 for the first acre of disturbed area, plus $100 for each additional whole	$50 for the first acre of disturbed area, plus $25 for each additional whole acre of disturbed area		

acre of disturbed area

C. $55 none

When a permit by rule is required

If a project described in paragraph A or B is reviewed and approved by a professional engineer at a soil and water conservation district office that has a memorandum of understanding with the department concerning review of projects pursuant to this section, the total applicable fee is

	reduced to a processing fee of $100 for the first acre of disturbed area, plus a license fee of $50 for each additional whole acre of disturbed area.		
480-E, Natural resources protection	A. 140 Any alteration of a protected natural resource, except coastal wetlands and coastal sand dunes, causing less than 20,000 square feet of		50

alteration of the resource		
B. Any alteration of a coastal wetland causing less than 20,000 square feet of alteration of the resource	240	60
C. Any alteration of a protected natural resource, except coastal sand dunes, causing 20,000 square feet or more of alteration of the resource	.015/sq. ft. alteration	.005/sq. ft. alteration
C-1. Significant groundwater well	4,577	1,961
C-2. Activity within a community public water	183	64

supply primary protection area			
D. Any alteration of a coastal sand dune	3,500		1,500
E. Condition compliance	84		0
F. Minor modification	184		0
485-A, Site location of development			
A. Residential subdivisions			
1. Affordable housing		50/lot	50/lot
2. On public water and sewers		175/lot	175/lot
3. All Other		250/lot	250/lot
B. Industrial parks	460/lot		460/lot
C. Mining	1,500		1,000
D. Structures	4,000		2,000
E. Other	1,000		1,000
543, Oily waste discharge	40	160	

560, Vessels at anchorage	125	100
587, Ambient air quality or emissions standards variances	5,050	50
590, See section 353-A	See licenses	
633, Hydropower projects		
A. New or expanded generating capacity	450/MW	50/MW
B. Maintenance and repair or other structural alterations not involving an increase in generating capacity	150	150
33 United States Code, Chapter 26, Water Quality Certifications, in conjunction with applications for		

hydropower project licensing or relicensing		
A. Initial consultation	1,000	0
B. Second consultation	1,000	0
C. Application		
1. Storage	1,000	0
2. Generating	300/MW	50/MW
1304, Waste management		
A. Septage disposal		
1. Site designation	50	25
B. Land application of sludges and residuals program approval		
1. Industrial sludge	400	400
2. Municipal sludge	300	275
3. Bioash	300	275
4. Wood ash	300	75
5. Food waste	300	75
6. Other residuals	300	175
C. Landfill		

1. Closing plans for secure landfills	1,500	1,500	
2. Closing plans for attenuation landfills	500	500	
3. Post-closure report	175	175	
4. Preliminary information reports	175	175	
5. License transfers	500	175	
6. Special waste disposal			
a. One-time disposal of quantities of 6 cubic yards or less		50	50
b. One-time disposal of quantities greater than 6 cubic yards		100	100
c. Program approval for routine disposal of a special waste		300	300
7. Minor revision for secure landfills	600	100	
8. Minor revision for attenuation landfills	100	100	
9. Public benefit determination	175	175	
D. Incineration facility			

2. License transfer	175	175
E. License transfer other than for landfills and incinerators	100	100
F. Minor revision for septage facilities and solid waste facilities other than landfills	100	100
G. Permit by rule for one-time activities	100	100

TABLE II
WASTE MANAGEMENT FEES - ANNUAL LICENSE
MAXIMUM FEES IN DOLLARS

PROCESSING FEE	ANNUAL LICENSE FEE
38 SECTION 1278, Asbestos abatement	
A. Asbestos abatement contractor	$0 $650
B. Asbestos abatement worker	0 50

C. Asbestos consultant	0	650	
D. Asbestos analytical laboratory	0	400	
E. Training provider	0	500	
F. Other categories of asbestos professionals except asbestos abatement workers	0	100	
G. Notification			
1. Project size greater than 100 square feet or 100 linear feet and less than 500 square feet or 2,500 linear feet		100	0
2. Project size 500 square feet or 2,500 linear feet,		150	0

or greater, and less than 1,000 square feet or 5,000 linear feet		
3. Project size 1,000 square feet or 5,000 linear feet, or greater	300	0
1304, Waste management		
A. Septage disposal		
1. Landspreading	$550	$250
2. Storage	50	75
B. Residuals compost facility		
1. Type I	150	150
3. Type II and Type III less than 3,500 cubic yards	700	500

5. Type II and Type III 3,500 cubic yards or greater	1,400	850	
C. Land application of sludges and residuals			
1. Sites with program approval			
a. Industrial sludge		150	250
b. Municipal sludge		75	200
c. Bioash		75	200
d. Wood ash		50	125
e. Food waste		50	125
f. Other residuals		50	125
2. Sites without program approval			
a. Industrial sludge		300	550
b. Municipal sludge		150	250
c. Bioash		150	250
d. Wood ash		75	200
e. Food waste		75	200
f. Other		75	200
1310-N, Solid waste facility siting			
A. Landfill			
1. Existing, nonsecure municipal solid waste	3,500	1,000	

landfills accepting waste from fewer than 15,000 people		
2. Existing, nonsecure municipal solid waste landfills accepting waste from more than 15,000 people	3,500	3,500
3. New or expanded for secure landfill	5,000	8,500
5. Nonsecure wood waste or demolition debris landfills, or both, if less than or equal to 6 acres	700	750
B. Incineration facilities		
1. New or expanded for	3,500	5,000

the acceptance of municipal or special wastes, or both		
2. Municipally owned and operated solid waste incinerators with licensed capacity of 10 tons per day or less	3,500	1,000
C. Transfer station and storage facility	750	175
D. Tire storage facility	400	450
F. Processing facility other than municipal solid waste composting	700	700
G. Beneficial use activities other than agronomic utilization		

3. Fuel substitution	700	500
4. Beneficial use without risk assessment	700	200
5. Beneficial use with risk assessment	1,400	500
H. Permit by rule for ongoing activities	100	100

[2009, c. 374, §1 (AMD) .]

5-B. **Accounting system.**

[1995, c. 462, Pt. A, §73 (RP) .]

6. **Reporting requirements.**

[2011, c. 120, §3 (RP) .]

SECTION HISTORY
1983, c. 574, §1 (NEW). 1983, c. 743, §5 (AMD). 1985, c. 746, §§13,14 (AMD). 1987, c. 180, §1 (AMD). 1987, c. 419, §§4-7 (AMD). 1987, c. 787, §§6-10 (AMD). 1989, c. 405, §1 (AMD). 1989, c. 502, §A167 (AMD). 1989, c. 874, §2 (AMD). 1989, c. 890, §§A40,B10-12 (AMD). 1991, c. 384, §§1-4 (AMD). 1991, c. 384, §16 (AFF). 1991, c. 499, §§11-13 (AMD). 1991, c. 528, §§U1,2 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§U1,2 (AMD). 1991, c. 824, §§A82,C4 (AMD). 1993, c. 356, §§3,4 (AMD). 1993, c. 370, §2 (AMD). 1993, c. 378, §§2,3 (AMD). 1993, c. 410, §G1 (AMD). 1993, c. 410, §G2 (AFF). 1993, c. 632, §§1,2 (AMD). 1993, c. 632, §3 (AFF). 1993, c. 735, §13 (AFF). 1995, c. 173, §1 (AMD). 1995, c. 462, §A73 (AMD). 1995, c. 493, §1 (AMD). 1995, c. 642, §3 (AMD). 1995, c. 704, §A1 (AMD). 1995, c. 704, §C2 (AFF). 1997, c. 374, §§1,2 (AMD). 1997, c. 624, §1 (AMD). 1997, c. 794, §§B1-4 (AMD). 1999, c. 243, §§1,2 (AMD). 1999, c. 385, §§1,2 (AMD). 1999, c. 468, §3 (AMD). 1999, c. 731, §Z1 (AMD). 2001, c. 212, §2 (AMD). 2005, c. 330, §6 (AMD). 2007, c. 292, §15 (AMD). 2007, c. 399, §9 (AMD). 2007, c. 558, §1 (AMD). 2007, c. 661, Pt. B, §9 (AMD). 2009, c. 160, §1 (AMD). 2009, c. 374, §1 (AMD). 2009, c. 642, Pt. A, §8 (AMD). 2011, c. 120, §3 (AMD). 2011, c. 653, §§10, 11 (AMD). 2011, c. 653, §33 (AFF). 2011, c. 657, Pt. W, §6 (REV). 2013, c. 300, §9 (AMD).

§353. PAYMENT OF FEES

1. **Filing fee.**

[1987, c. 419, §8 (RP) .]

1-A. **Preapplication fee for nonferrous metal mining.**

[2011, c. 653, §33 (AFF); 2011, c. 653, §12 (RP) .]

2. **Processing fee.** Except for annual air emission fees pursuant to section 353-A and annual waste discharge fees pursuant to section 353-B, a processing fee must be paid at the time of filing the application. Failure to pay the processing fee at the time of filing the application results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner may not refund the processing fee if the application is denied by the board or the commissioner. Except as provided in section 352, subsection 4-A, if the application is withdrawn by the applicant within 30 days of the start of processing, the portion of the processing fee that was expended or committed by the department or the department's agents or contractors for the cost of processing the application prior to the withdrawal of the application must be calculated, and the remainder of the processing fee not expended or committed must be refunded.

[2011, c. 653, §13 (AMD); 2011, c. 653, §33 (AFF) .]

3. **License fee.** The license fee must be paid at the time of filing the application. Failure to pay the license fee at the time of filing results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner shall refund the license fee if the board or commissioner denies the application or if the application is withdrawn by the applicant. Notwithstanding the provisions of this subsection, the license fee for a subdivision must be paid prior to the issuance of the license.

The license fees for nonferrous metal mining must be paid annually on the anniversary date of the license for the life of the project, up to and including the period of closure and reclamation.

The license fee for a solid waste facility must be paid annually. Failure to pay the annual fee within 30 days of the anniversary date of a license is sufficient grounds for modification, revocation or suspension of the license under section 341-D, subsection 3 or section 342, subsection 11-B.

[2011, c. 304, Pt. H, §21 (AMD) .]

3-A. **Certification fee.** A certification fee must be paid prior to the issuance of any certification. If the certification is withdrawn or denied, the commissioner shall refund the certification fee.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §13 (AMD) .]

3-B. **Certification fee for asbestos professionals.** A person applying for certification as an asbestos professional under more than one category under section 352, subsection 5-A shall pay the highest fee among the categories for which certification is sought and $50 for each additional category.

[2009, c. 374, §2 (NEW) .]

4. **Duplicate fees.** The commissioner may not assess applicants for direct costs associated with filing, processing or licensing if those costs were previously assessed as the result of the filing, processing or licensing of separate but related applications.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §13 (AMD) .]

4-A. **Hydropower projects; refiling for certification.** Notwithstanding any other provision of this section, a person refiling an application for state certification of a hydropower project under Section 401 of the Federal Water Pollution Control Act is not required to pay a license or processing fee at the time the same application is refiled if, in order to avoid a waiver of the State's certification authority:

A. The applicant withdrew the application at the written request of the commissioner; or [1993, c. 332, §1 (NEW).]

B. The commissioner denied the application. [1993, c. 332, §1 (NEW).]

[1993, c. 332, §1 (NEW) .]

5. **Renewals or amendments.** As set forth in sections 353-A and 353-B, except for renewals or amendments issued under sections 413 and 590, the processing fee for renewals or amendments is equal to direct costs up to 1/2 the processing fee for initial applications. The license fee for renewals is identical to the initial license fee. The license fee for amendments may not exceed the initial license fee.

[1997, c. 794, Pt. B, §6 (AMD) .]

6. **Application determined unacceptable for processing.** An application determined unacceptable for processing that has been returned to the applicant may be resubmitted to the commissioner within 60 days of the date the application was returned. If the application is resubmitted after the 60-day period has transpired, the resubmitted application is considered a new application and the appropriate processing fees are assessed.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §13 (AMD) .]

7. **Fees for minor revisions.** All fees assessed for the costs of processing permits issued in accordance with section 344, subsection 7, must be paid in full when the notification is submitted to the commissioner. All fees for any minor license or permit revision must be paid in full when the request for the revision is submitted to the commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §13 (AMD) .]

8. **Processing fee for certification.** The processing fee for certification must be assessed on the actual direct costs incurred by the department, but may not be greater than the processing fee found in Table I, section 352. The processing fee is due according to subsection 2. Upon completion of processing, when direct costs are less than the processing fee found in section 352 in Table I, a refund must be made to the applicant.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §13 (AMD) .]

9. **Finance charges.** In addition to other remedies specifically authorized in this Title, the department shall charge interest at a rate of 15% per annum, unless the commissioner finds the amount too small or the likelihood of recovery too uncertain, and may pursue enforcement, including, but not limited to, penalties pursuant to section 349 and suspension or revocation pursuant to section 341-D, subsection 3 for the failure of a licensee to pay any portion of licensing fees owed by the date due.

[2007, c. 655, §1 (AMD) .]

SECTION HISTORY

1983, c. 574, §1 (NEW). 1983, c. 743, §§6, 7 (AMD). 1985, c. 162, §4 (AMD). 1985, c. 746, §§15,16 (AMD). 1987, c. 419, §8 (AMD). 1987, c. 787, §11 (AMD). 1989, c. 874, §§3-5 (AMD). 1989, c. 890, Pt. A, §§40,B13 (AMD). 1991, c. 66, Pt. A, §§4, 5 (AMD). 1991, c. 384, §§5-7 (AMD). 1991, c. 384, §16 (AFF). 1993, c. 332, §1 (AMD). 1993, c. 410, Pt. G, §§3, 4 (AMD). 1993, c. 735, §7 (AMD). 1995, c. 462, Pt. A, §74 (AMD). 1997, c. 624, §2 (AMD). 1997, c. 794, Pt. B, §§5, 6 (AMD). 2007, c. 187, §1 (AMD). 2007, c. 655, §1 (AMD). 2009, c. 374, §2 (AMD). 2011, c. 304, Pt. H, §21 (AMD). 2011, c. 653, §§12, 13 (AMD). 2011, c. 653, §33 (AFF).

§353-A. ANNUAL AIR EMISSIONS LICENSE FEES

1. **Fees assessed.** After the effective date of this section, a licensee must pay an annual fee assessed on the sum of all licensed allowable air pollutants, except for carbon monoxide, as follows:

Annual licensed emissions in tons	Per ton fee
1 - 1,000	$5
1,001 - 4,000	$10
over 4,001	$15

[1993, c. 412, §1 (AMD); 1993, c. 412, §10 (AFF) .]

1-A. **Annual fee surcharge.** Beginning November 1, 2008, a licensee shall pay an annual fee surcharge of $2 per every 1,000 air quality units as defined in section 582, subsection 11-E. The minimum revenue threshold for the annual fee surcharge is established at $1,250,000 per year. The commissioner may increase the annual fee surcharge to up to $4 per every 1,000 air quality units if the annual revenue derived from this annual fee surcharge is less than $1,250,000 per year. The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2010 and every 2 years thereafter on any fee adjustment and the justification for the fee adjustment and the adequacy of the minimum revenue threshold and its ability to support the long-term sustainability of state air quality protection and improvement activities.

[2007, c. 589, §1 (AMD); 2007, c. 589, §9 (AFF) .]

2. **Fee adjustment.** The commissioner may adjust the per ton fees, the annual fee surcharge set forth in subsection 1-A and the maximum and minimum fees set forth in subsection 4 on an annual basis according to the United States Consumer Price Index established by the federal Department of Labor, Bureau of Labor Statistics.

[1997, c. 374, §3 (AMD) .]

3. **Schedule.** The effective date of a license is deemed to be the anniversary date. The license fee for a license with an anniversary date in January, February or March must be paid by the end of February. The license fee for a license with an anniversary date in April, May or June must be paid by the end of May. The license fee for a license with an anniversary date in July, August or September must be paid by the end of August. The license fee for a license with an anniversary date in October, November or December must be paid by the end of November. The annual fee for new applications must be estimated and paid at the time of filing the application. When the processing of the application is complete, the final annual fee is determined. Any additional amount is due prior to the issuance of the license. Any overpayment must be refunded. If the application is denied, 50% of the initial annual fee must be refunded.

[2007, c. 589, §2 (AMD); 2007, c. 589, §9 (AFF) .]

4. **Maximum and minimum fees.** The minimum annual fee is $250 per year. The maximum annual fee is $150,000 per year. Beginning November 1, 1994, the minimum annual fee surcharge is $100 per year and the maximum annual fee surcharge is $50,000 per year. The commissioner may reduce any fee required under the federal Clean Air Act Amendments of 1990 to take into account the financial resources of a small business stationary source as defined in section 343-D, subsection 1.

[1993, c. 500, §3 (AMD); 1993, c. 500, §5 (AFF) .]

5. **Transition for existing licenses.** A licensee of a source in existence on the effective date of this section may request a revision to that license to reduce the sum of the licensed allowable air pollutants.

[1991, c. 384, §8 (NEW); 1991, c. 384, §16 (AFF) .]

6. **Electrical generating facilities.**

[1999, c. 657, §22 (RP) .]

7. **Renewals and amendments.** There are no additional fees assessed for license renewals or amendments.

[1991, c. 384, §8 (NEW); 1991, c. 384, §16 (AFF) .]

8. **Nonpayment of fee.** Failure to pay the annual fee within 60 days of the anniversary date of a license is sufficient grounds for revocation of the license under section 341-D, subsection 3.

[2007, c. 589, §3 (AMD); 2007, c. 589, §9 (AFF) .]

9. **Funds used solely for air pollution control activities.** The money collected from the annual air emission fees must be used solely for air pollution control activities.

[1993, c. 412, §4 (NEW) .]

10. **Fees for general permit.** Licensees regulated under a general permit from the department are subject to an annual fee not to exceed the minimum license fee established under subsection 4.

[2013, c. 300, §10 (AMD) .]

SECTION HISTORY
1991, c. 384, §8 (NEW). 1991, c. 384, §16 (AFF). 1993, c. 412, §§1-4 (AMD). 1993, c. 412, §10 (AFF). 1993, c. 500, §3 (AMD). 1993, c. 500, §5 (AFF). 1997, c. 374, §3 (AMD). 1999, c. 657, §22 (AMD). 2007, c. 297, §1 (AMD). 2007, c. 589, §§1-3 (AMD). 2007, c. 589, §9 (AFF). 2013, c. 300, §10 (AMD).

§353-B. ANNUAL WASTE DISCHARGE LICENSE FEES

1. **Fees assessed.** After the effective date of this section, licensees must pay annual waste discharge license fees. Annual waste discharge license fees for existing licensees are determined as set out in subsection 2. Annual waste discharge license fees for new licensees, or licensees that have been reclassified to a new discharge group, are determined by the discharge group to which the facility is assigned. The fee for a new waste discharge license is the median fee for the selected discharge group, and this fee must be paid at the time of application. If the application for a new license is denied, 50% of the initial annual fee must be refunded.

A. [2011, c. 546, §1 (RP).]

B. [2011, c. 546, §1 (RP).]

C. [2011, c. 546, §1 (RP).]

D. If there are no discharges pursuant to a waste discharge license during an entire year, the fee for that year must be reduced to 25% of the fee amount that would otherwise apply to that license. [2011, c. 546, §1 (AMD).]

E. If a licensee continues to discharge following expiration of the license, the licensee must continue to pay any applicable waste discharge license fees provided for in this section. This paragraph does not authorize the discharge and does not affect the applicability of any penalty or enforcement provision. [2011, c. 546, §1 (AMD).]

[2011, c. 546, §1 (AMD) .]

2. Fee amounts. Waste discharge license fees are determined as specified in this subsection.

A. The fees for waste discharge license groups are as follows.

Discharge group		Basis for annual fee	Median fee for discharge group	Water c surchar
Publicly owned treatment facilities, 10,000 gallons per day or less	annual fee	2011 bill amount	$306	
Publicly owned treatment facilities, more than 10,000 gallons per day to 0.1 million gallons per day	annual fee	2011 bill amount	$400	
Publicly owned treatment facilities, more than 0.1 million gallons per day to 1.0 million gallons per day	annual fee	Average of 2009, 2010 and 2011 bill amounts	$617	
Publicly owned treatment facilities, more than 1.0 million gallons per day to 5.0 million gallons per day	annual fee	Average of 2009, 2010 and 2011 bill amounts	$1,300	
Publicly owned treatment facilities, greater than 5 million gallons per day or with significant industrial waste	annual fee	Average of 2009, 2010 and 2011 bill amounts	$4,553	
Major industrial facility, process wastewater (based on EPA list of major source discharges)	annual fee	Average of 2009, 2010 and 2011 bill amounts	$19,672	

Other industrial facility, process wastewater	annual fee	2011 bill amount	$1,214	
Food handling or packaging wastewater	annual fee	2011 bill amount	$659	
Fish-rearing facility 0.1 million gallons per day or less	annual fee	2011 bill amount	$312	
Fish-rearing facility over 0.1 million gallons per day	annual fee	2011 bill amount	$794	
Marine aquaculture facility	annual fee	2011 bill amount	$308	
Noncontact cooling water	annual fee	2011 bill amount	$192	
Industrial or commercial sources, miscellaneous or incidental nonprocess wastewater	annual fee	2011 bill amount	$363	
Municipal combined sewer overflow	annual fee	2011 bill amount	$413	
Sanitary wastewater, excluding overboard discharge	annual fee	2011 bill amount	$736	
Sanitary overboard discharge, commercial sources	annual fee	2011 bill amount	$446	$75
Sanitary overboard discharge, residential sources 600 gallons per day or less	annual fee	2011 bill amount	$231	$75
Sanitary overboard discharge, residential sources more than 600 gallons per day	annual fee	2011 bill amount	$313	$75
Sanitary overboard discharge, public sources	annual fee	2011 bill amount	$315	$75
Aquatic pesticide application	annual fee	2011 bill amount	$644	
Snow dumps	annual fee	2011 bill amount	$319	

Salt and sand storage pile	annual fee	2011 bill amount	$429
Log storage permit	annual fee	2011 bill amount	$422
General permit coverage for industrial storm water discharges (except construction)	annual fee	2011 bill amount	$300
General permit coverage for marine aquaculture facility	annual fee	2011 bill amount	$134
General permit coverage (other)	annual fee	2011 bill amount	$164
Experimental discharge license	license fee	2011 bill amount	$899
New or amended mixing zone, in addition to other applicable fees	flat fee	$5,368	---
Formation of sanitary district	flat fee	$402	---
Transfer of license for residential or commercial sanitary wastewater	flat fee	$100	---

On an annual basis, municipalities and publicly owned treatment works whose combined sewer overflows have the potential to affect shellfish harvesting areas as determined by the department by virtue of their locations within estuarine or marine waters of the State must be assessed a surcharge on their wastewater discharge licenses in a total amount of $12,000. This amount must be allocated among the municipalities and publicly owned treatment works according to their prior 3-year average annual flows as reported to the department.

On an annual basis, publicly owned treatment works whose outfalls licensed for the discharge of treated effluent cause adjacent shellfish growing areas to be closed for the purposes of harvesting shellfish must be assessed a license surcharge in a total amount of $25,000. This amount must be allocated among the publicly owned treatment works according to the acreage that each licensed outfall closes. This acreage must be determined by the Department of Marine Resources in consultation with the department. [2011, c. 2, §43 (COR).]

[2011, c. 2, §43 (COR) .]

3. **Schedule.** The fee for existing licenses must be paid on the anniversary date of the license or another date initially established by the department. This date, once established, remains the scheduled date for paying the annual fee, regardless of future changes of the anniversary date.

[2011, c. 546, §3 (AMD) .]

4. **Renewals, amendments and modifications.** Except for transfers of licenses for discharges of sanitary wastewater from commercial or residential sources as provided for in subsection 2, there are no additional fees assessed for license renewals, amendments or modifications. Upon significant changes in

discharge flow, a licensee may apply for modification of the license to change the licensed discharge flow. The percent change in discharge flow must be used to adjust the annual waste discharge license fee by an equivalent percentage.

[2011, c. 546, §3 (AMD) .]

5. **Nonpayment of fees.** Failure to pay an annual fee within 30 days of the anniversary date of a license is sufficient grounds for revocation of the license, permit or privilege under section 341-D, subsection 3.

[1997, c. 794, Pt. B, §7 (NEW) .]

6. **Initial year fee rates.**

[2007, c. 558, §4 (RP) .]

7. **Revenues derived from surcharge.** Revenues derived from a water quality improvement surcharge must be paid to the Treasurer of State, who shall credit those revenues to the Water Quality Improvement Fund established under section 424-B.

[2009, c. 213, Pt. FFFF, §3 (NEW) .]

SECTION HISTORY
1997, c. 794, §B7 (NEW). 2001, c. 230, §1 (AMD). 2003, c. 246, §1 (AMD). 2005, c. 602, §1 (AMD). RR 2007, c. 2, §28 (AFF). 2007, c. 558, §§2-4 (AMD). 2009, c. 213, Pt. FFFF, §§2, 3 (AMD). RR 2011, c. 2, §43 (COR). 2011, c. 546, §§1-3 (AMD).

§353-C. BORROW PIT AND MINING FEES

Fees received under chapter 3, subchapter 1, article 7 and article 8-A must be deposited in the Maine Environmental Protection Fund and are governed by the general provisions of this subchapter. [2003, c. 673, Pt. GG, §1 (NEW).]

SECTION HISTORY
2003, c. 673, §GG1 (NEW).

§354. FEDERAL PROGRAMS

Notwithstanding section 352, if the department is required by federal law to issue any certificate, permit or license, the commissioner shall establish a fee schedule identical to the federal program that is most like the state program. If there are no similar state programs, the commissioner shall adopt the appropriate fee schedule based upon identified costs including liaison costs. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §14 (AMD).]

SECTION HISTORY
1983, c. 574, §1 (NEW). 1989, c. 890, §§A40,B14 (AMD).

Subchapter 3: LAKE ENVIRONMENTAL PROTECTION FUND HEADING: PL 1987, C. 349, PT. H, §28 (NEW)

§355. LAKE ENVIRONMENTAL PROTECTION FUND

The Lake Environmental Protection Fund, referred to in this subchapter as the "fund," is established as a nonlapsing fund to assist the municipalities of the State in defraying legal expenses which may be incurred as a result of the regulation of land use activities and the enforcement of land use laws and ordinances in lake

watersheds. The fund consists of such money as is appropriated to it from time to time by the Legislature. It is administered by the department and the money in it deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §15 (AMD).]

SECTION HISTORY
1987, c. 349, §H28 (NEW). 1989, c. 890, §§A40,B15 (AMD).

§356. DISBURSEMENTS

The fund is available to compensate the municipalities of the State for legal expenses, including court costs, attorneys' fees and expert and other witness fees, incurred in the enforcement of local land use laws and ordinances affecting great ponds and the defense of regulatory actions taken pursuant to such land use laws and ordinances. The State shall provide 75% of a municipality's legal expenses which must be matched with a 25% local share, except that no single municipality may receive more than $25,000 from the fund in any fiscal year. For purposes of this subchapter, "land use laws and ordinances" means those laws and ordinances enumerated in Title 30-A, section 4452, subsection 5. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §16 (AMD).]

SECTION HISTORY
1987, c. 349, §H28 (NEW). 1987, c. 769, §A171 (AMD). 1989, c. 890, §§A40,B16 (AMD).

§357. PROCEDURE

Within 90 days of the completion of litigation or settlement for which compensation for legal expenses is available under section 356, a municipality may apply to the commissioner for reimbursement of those expenses that have not been awarded to it by the court and paid pursuant to Title 30-A, section 4452, subsection 3, paragraph D. The commissioner shall make an award of compensation that the commissioner determines to be just under the circumstances. In order to be awarded compensation, it is not necessary that the municipality prevail in the litigation or the settlement, but only that its position be determined by the commissioner to have been reasonable. Awards are made on a first-come first-served basis. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §17 (AMD).]

SECTION HISTORY
1987, c. 349, §H28 (NEW). 1987, c. 884, §C4 (AMD). 1989, c. 890, §§A40,B17 (AMD).

Subchapter 4: MAINE POLLUTION PREVENTION FUND HEADING: PL 1991, C. 520, §2 (NEW)

§358. MAINE POLLUTION PREVENTION FUND

1. **Fund established.** The Maine Pollution Prevention Fund, referred to in this subchapter as the "fund," is established as a nonlapsing fund administered by the commissioner for the purpose of strengthening environmental protection in the State through pollution prevention activities and methods. The money deposited with the Treasurer of State to the credit of the fund may be invested as provided by law. Interest on these investments is credited to the fund.

[1991, c. 520, §2 (NEW) .]

2. **Fund sources.** The fund may receive money from the following sources:

A. Contributions from other entities, both public and private; and [1991, c. 520, §2 (NEW).]

B. Registration and associated fees for pollution prevention workshops held by the commissioner. [1991, c. 520, §2 (NEW).]

[1991, c. 520, §2 (NEW) .]

3. **Purposes.** Money in the fund may be used to establish and support pollution prevention programs and activities. This fund may:

A. Support the reduction of toxic chemicals under chapter 27; and [2009, c. 579, Pt. B, §8 (AMD); 2009, c. 579, Pt. B, §13 (AFF).]

B. Support functions and activities of the Office of Pollution Prevention as outlined in section 342, subsection 4. [1991, c. 520, §2 (NEW).]

[2009, c. 579, Pt. B, §8 (AMD); 2009, c. 579, Pt. B, §13 (AFF) .]

SECTION HISTORY
1991, c. 520, §2 (NEW). 2009, c. 579, Pt. B, §8 (AMD). 2009, c. 579, Pt. B, §13 (AFF).

Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

Subchapter 1: ENVIRONMENTAL PROTECTION BOARD

Article 1: ORGANIZATION AND GENERAL PROVISIONS

§361. ORGANIZATION; COMPENSATION; MEETINGS; DUTIES

(REPEALED)

SECTION HISTORY
1967, c. 475, §§1,2 (AMD). 1969, c. 431, §9 (AMD). 1969, c. 499, §§1-3 (AMD). 1969, c. 571, §1 (AMD). 1971, c. 256, §1 (AMD). 1971, c. 414, (AMD). 1971, c. 527, §§1,2 (AMD). 1971, c. 618, §9 (AMD). 1973, c. 217, (AMD). 1973, c. 450, §1 (AMD). 1973, c. 712, §5 (AMD). 1973, c. 788, §206 (AMD). 1975, c. 228, §1 (AMD). 1975, c. 395, (AMD). 1975, c. 614, §1 (AMD). 1975, c. 771, §419 (AMD). 1977, c. 300, §§10-12 (AMD). 1977, c. 596, §2 (AMD). 1983, c. 483, §§4,5 (AMD). 1983, c. 566, §10 (AMD). 1983, c. 574, §2 (AMD). 1983, c. 743, §8 (AMD). 1983, c. 812, §§290,291 (AMD). 1985, c. 746, §17 (AMD). 1987, c. 125, §1 (AMD). 1989, c. 503, §B175 (AMD). 1989, c. 890, §§A34,40 (RP).

§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: [1973, c. 423, §1 (RPR).]

1. **Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

[1973, c. 450, §2 (RPR) .]

1-A. **Coastal streams.**

[1985, c. 698, §1 (RP) .]

1-B. **Agricultural activities.** "Agricultural activities" means the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm woodlot products, including Christmas trees.

[1979, c. 380, §1 (NEW) .]

1-B. **Aquifer.**

[1981, c. 470, Pt. A, §163 (RP) .]

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.

[1979, c. 472, §8 (NEW) .]

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 Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey within the Department of Agriculture, Conservation and Forestry.

[2013, c. 405, Pt. C, §19 (AMD) .]

1-E. **Commissioner.** "Commissioner" means the Commissioner of Environmental Protection.

[1985, c. 481, Pt. A, §82 (NEW) .]

1-F. **Affordable housing.** "Affordable housing" means dwellings, apartments or other living accommodations for households making at or below 80% of the median household income as determined by the Department of Economic and Community Development.

[1987, c. 787, §12 (NEW) .]

1-G. **Board.** "Board" means the Board of Environmental Protection.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §18 (NEW) .]

1-H. **Department.** "Department" means the Department of Environmental Protection composed of the board and the commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §18 (NEW) .]

1-I. **Clean Water Act.** "Clean Water Act" means the Federal Water Pollution Control Act, as defined in subsection 1-K.

[1997, c. 2, §63 (COR) .]

1-J. **Code of Federal Regulations.** "Code of Federal Regulations" means the codification of regulations published in the Federal Register by the Federal Government, and includes those regulations effective on or before July 1, 2009.

[2009, c. 121, §6 (AMD) .]

1-K. **Federal Water Pollution Control Act.** "Federal Water Pollution Control Act" means federal Public Law 92-500 or 33 United States Code, Sections 1251 et seq., including all amendments effective on or before July 1, 2009.

[2009, c. 121, §7 (AMD) .]

2. **Fresh surface waters.** "Fresh surface waters" means all waters of the State other than estuarine and marine waters and ground water.

[1985, c. 698, §2 (AMD) .]

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.

[1979, c. 472, §9 (NEW) .]

2-B. **Handle.** "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

[1985, c. 496, Pt. A, §4 (NEW) .]

3. **Municipality.** "Municipality" means a city, town, plantation or unorganized township.

[1971, c. 470, §1 (NEW) .]

3-A. **Nonferrous metal mining.** "Nonferrous metal mining" means hard rock mining for base and precious metals including copper, lead, tin, zinc, gold, silver, platinum, paladium and unspecified platinoid metals. "Nonferrous metal mining" does not include thorium or uranium.

[1989, c. 874, §6 (NEW) .]

3-B. **Pollution prevention.** "Pollution prevention" means the application of the toxics use reduction principles in chapter 27 to manufacturing, commercial and consumer chemical use and energy production and consumption.

[2009, c. 579, Pt. B, §9 (AMD); 2009, c. 579, Pt. B, §13 (AFF) .]

3-C. **Overboard discharge.** "Overboard discharge" has the same meaning as in section 466, subsection 9-A.

[2003, c. 246, §2 (NEW) .]

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

[1971, c. 470, §1 (NEW) .]

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.

[1973, c. 450, §3 (NEW) .]

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.

[1979, c. 296, §1 (NEW) .]

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.

[1985, c. 479, §2 (NEW) .]

4-B. **Surface waste water disposal system.** "Surface waste water disposal system" shall mean any system for disposal of waste waters on the surface of the earth, including, but not limited to, holding ponds, surface application and injection systems.

[1977, c. 271, §3 (NEW) .]

5. **Estuarine and marine waters.** "Estuarine and marine waters" means those portions of the Atlantic Ocean within the jurisdiction of the State, and all other waters of the State subject to the rise and fall of the tide except those waters listed and classified in sections 467 and 468.

[1987, c. 402, Pt. A, §196 (AMD) .]

6. **Transfer of ownership.** "Transfer of ownership" means a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the department.

[1995, c. 642, §4 (RPR) .]

7. **Coastal streams.**

[1973, c. 625, §269 (RP) .]

7. **Waters of the State.** "Waters of the State" means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, 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, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

[1997, c. 794, Pt. A, §11 (AMD) .]

SECTION HISTORY
1971, c. 470, §1 (NEW). 1973, c. 423, §§1,2 (AMD). 1973, c. 450, §§2-4 (AMD). 1973, c. 625, §§269,270 (AMD). 1977, c. 271, §3 (AMD). 1979, c. 296, §1 (AMD). 1979, c. 380, §1 (AMD). 1979, c. 472, §§8,9 (AMD). 1981, c. 470, §§A163,A164 (AMD). 1985, c. 479, §2 (AMD). 1985, c. 481, §A82 (AMD). 1985, c. 496, §A4 (AMD). 1985, c. 698, §§1-3 (AMD). 1987, c. 402, §A196 (AMD). 1987, c. 787, §12 (AMD). 1989, c. 874, §6 (AMD). 1989, c. 890, §§A40,B18 (AMD). 1991, c. 520, §3 (AMD). 1995, c. 502, §E32 (AMD). 1995, c. 642, §4 (AMD). RR 1997, c. 2, §63 (COR). 1997, c. 794, §§A10,11 (AMD). 1999, c. 556, §30 (AMD). 2001, c. 232, §§5,6 (AMD). 2003, c. 246, §2 (AMD). 2005, c. 330, §§7,8 (AMD). 2007, c. 292, §§16,17 (AMD). 2009, c. 121, §§6, 7 (AMD). 2009, c. 579, Pt. B, §9 (AMD). 2009, c. 579, Pt. B, §13 (AFF). 2011, c. 655, Pt. KK, §24 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2013, c. 405, Pt. C, §19 (AMD).

§361-B. PROCESSING APPLICATIONS

(REPEALED)

SECTION HISTORY
1975, c. 301, (NEW). 1977, c. 300, §13 (RP).

§361-C. PETITION FOR RECONSIDERATION

(REPEALED)

SECTION HISTORY
1975, c. 390, (NEW). 1975, c. 770, §208 (AMD). 1977, c. 300, §14 (RP).

§361-D. RADIOACTIVE WASTE FACILITIES

(REPEALED)

SECTION HISTORY
1979, c. 519, §2 (NEW). 1983, c. 381, §8 (RP).

§362. AUTHORITY TO ACCEPT FEDERAL FUNDS

The department is designated the public agency of the State for the purpose of accepting federal funds in relation to water pollution control, water resources and air pollution studies and control. The commissioner may, subject to the approval of the Governor, accept federal funds available for water pollution control, water resources and air pollution studies and control and meet such requirements with respect to the administration of the funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving federal funds. The Treasurer of State shall be the appropriate fiscal officer of the State to receive federal grants on account of water pollution control, water resources and air pollution studies and control, and the State Controller shall authorize expenditures therefrom as approved by the commissioner. [1983, c. 483, §6 (AMD).]

SECTION HISTORY
1967, c. 475, §3 (AMD). 1971, c. 618, §12 (AMD). 1975, c. 771, §420 (AMD). 1983, c. 483, §6 (AMD).

§362-A. EXPERIMENTS AND SCIENTIFIC RESEARCH IN THE FIELD OF POLLUTION AND POLLUTION CONTROL

Notwithstanding any other law administered or enforced by the department, the board is authorized to permit persons to discharge, emit or place any substances on the land or in the air or waters of the State, in limited quantities and under the strict control and supervision of the commissioner or the commissioner's designees, exclusively for the purpose of scientific research and experimentation in the field of pollution and pollution control. The research and experimentation conducted under this section is subject to such terms and conditions as the board determines necessary in order to protect the public's health, safety and general welfare, and may be terminated by the board or commissioner at any time upon 24 hours' written notice. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §19 (AMD).]

Prior to applying for approval of any project involving discharge of petroleum products to tidal waters under this section, the applicant shall first obtain written approval from the municipal officers of the municipality in which the project is proposed to take place. The applicant shall provide the municipal officers with a complete description of the project at least 90 days prior to the proposed date of the project. The municipal officers may hold a public hearing, provided that it is held within 45 days of the filing of the application with the municipality. The municipal officers shall approve a project within 60 days of receipt if they find that the project will not constitute a hazard to the health, safety or welfare of the residents of the municipality. [1981, c. 623, (NEW).]

SECTION HISTORY
1973, c. 423, §3 (NEW). 1981, c. 623, (AMD). 1989, c. 890, §§A40,B19 (AMD).

§363. STANDARDS OF CLASSIFICATION OF FRESH WATERS

(REPEALED)

SECTION HISTORY
1967, c. 475, §4 (RPR). 1969, c. 431, §§1,2 (AMD). 1971, c. 461, §2 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 450, §§5,6 (AMD). 1973, c. 788, §207 (AMD). 1977, c. 373, §§1-5 (AMD). 1979, c. 529, (AMD). 1985, c. 698, §4 (RP).

§363-A. STANDARDS OF CLASSIFICATION OF GREAT PONDS

(REPEALED)

SECTION HISTORY
1977, c. 373, §6 (NEW). 1979, c. 495, §§1,2 (AMD). 1981, c. 153, §§1,2 (AMD). 1985, c. 698, §5 (RP).

§363-B. STANDARDS OF CLASSIFICATION OF GROUND WATER

(REPEALED)

SECTION HISTORY
1979, c. 472, §10 (NEW). 1985, c. 698, §6 (RP).

§363-C. CLASSIFICATION FOR CERTAIN HYDROELECTRIC IMPOUNDMENTS

(REPEALED)

SECTION HISTORY
1985, c. 772, §1 (NEW). 1989, c. 309, §1 (RP).

§363-D. WAIVER OR MODIFICATION OF PROTECTION AND IMPROVEMENT LAWS

The commissioner or the commissioner's designee may waive or modify any of the provisions of this chapter if that waiver or modification promotes or assists any oil spill response activity conducted in accordance with the national contingency plan, a federal contingency plan, the state marine oil spill contingency plan, or as otherwise directed by the federal on-scene coordinator, the commissioner or commissioner's designee. A waiver issued by the commissioner under this section must be in writing. [1993, c. 579, §1 (NEW).]

SECTION HISTORY
1993, c. 579, §1 (NEW).

§364. TIDAL OR MARINE WATERS

(REPEALED)

SECTION HISTORY
1967, c. 475, §5 (RPR). 1969, c. 431, §3 (AMD). 1969, c. 581, §2 (AMD). 1971, c. 470, §§2,3 (AMD). 1971, c. 618, §12 (AMD). 1977, c. 373, §§7-9 (AMD). 1985, c. 698, §7 (RP).

§365. CLASSIFICATION PROCEDURE

(REPEALED)

SECTION HISTORY
1971, c. 527, §3 (AMD). 1971, c. 618, §12 (AMD). 1977, c. 300, §15 (AMD). 1985, c. 698, §8 (RP).

§366. COOPERATION WITH OTHER DEPARTMENTS AND AGENCIES

(REPEALED)

SECTION HISTORY

1967, c. 475, §6 (AMD). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A35,40 (RP).

§367. CLASSIFICATION OF SURFACE WATERS

(REPEALED)

SECTION HISTORY
1967, c. 475, §§6-A (AMD). 1971, c. 470, §4 (AMD). 1971, c. 527, §4 (AMD). 1971, c. 618, §12 (AMD). 1971, c. 622, §135 (AMD). 1979, c. 127, §208 (AMD). 1979, c. 495, §3 (AMD). 1985, c. 698, §9 (RP).

§368. -- INLAND WATERS

(REPEALED)

SECTION HISTORY
1965, c. 42, §§1-3 (AMD). 1965, c. 83, §§1,2 (AMD). 1965, c. 179, §§1,2 (AMD). 1965, c. 336, (AMD). 1967, c. 18, §1 (AMD). 1967, c. 18, §2 (RP). 1967, c. 19, §§1,2 (AMD). 1967, c. 156, (AMD). 1967, c. 180, §§1-3 (AMD). 1967, c. 304, §§1-18 (AMD). 1967, c. 446, (AMD). 1967, c. 451, §§1,2 (AMD). 1967, c. 475, §7 (AMD). 1969, c. 88, (AMD). 1969, c. 120, (AMD). 1969, c. 268, (AMD). 1969, c. 286, (AMD). 1969, c. 431, §9 (AMD). 1971, c. 106, §§1,2 (AMD). 1971, c. 138, §1 (AMD). 1971, c. 273, (AMD). 1971, c. 612, (AMD). 1971, c. 618, §12 (AMD). 1973, c. 401, (AMD). 1977, c. 373, §§10 TO 27-B (AMD). 1979, c. 495, §§4-6 (AMD). 1985, c. 698, §10 (RP).

§369. -- COASTAL STREAMS

(REPEALED)

SECTION HISTORY
1965, c. 153, (AMD). 1965, c. 425, §22 (AMD). 1967, c. 17, (AMD). 1967, c. 304, §§19-23 (AMD). 1969, c. 538, §1 (AMD). 1971, c. 138, §2 (AMD). 1971, c. 470, §5 (AMD). 1973, c. 423, §§4-6 (AMD). 1977, c. 373, §§28,29 (AMD). 1979, c. 495, §§7,8 (AMD). 1985, c. 698, §11 (RP).

§370. -- TIDAL WATERS

(REPEALED)

SECTION HISTORY
1965, c. 84, (AMD). 1965, c. 179, §§3-7 (AMD). 1965, c. 425, §23 (AMD). 1967, c. 153, §§1,2 (AMD). 1967, c. 154, §§1,2 (AMD). 1967, c. 155, (AMD). 1967, c. 304, §§24-26 (AMD). 1967, c. 447, §§1,2 (AMD). 1967, c. 475, §§8,9 (AMD). 1967, c. 516, §§1-10 (AMD). 1969, c. 121, §§1,2 (AMD). 1969, c. 431, §9 (AMD). 1969, c. 538, §2 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 267, (AMD). 1979, c. 495, §§9,10 (AMD). 1985, c. 698, §12 (RP).

§371. -- GREAT PONDS

(REPEALED)

SECTION HISTORY

1967, c. 342, §§1,2 (AMD). 1971, c. 335, (AMD). 1971, c. 618, §12 (AMD). 1973, c. 29, (AMD). 1977, c. 373, §30 (RP).

§371-A. CLASSIFICATION OF GREAT PONDS

(REPEALED)

SECTION HISTORY
1977, c. 373, §31 (NEW). 1979, c. 281, §2 (AMD). 1979, c. 495, §§11-15 (AMD). 1981, c. 153, §3 (AMD). 1983, c. 743, §9 (AMD). 1985, c. 698, §13 (RP).

§371-B. CLASSIFICATION OF GROUND WATER

(REPEALED)

SECTION HISTORY
1979, c. 472, §11 (NEW). 1985, c. 698, §14 (RP).

§372. EXCEPTIONS

Nothing contained in this subchapter shall limit the powers of the State to initiate, prosecute and maintain actions to abate public nuisances to the extent consistent with the public interest, nor shall any license granted under this subchapter constitute a defense to any action at law for damages. [1971, c. 527, §5 (AMD).]

SECTION HISTORY
1971, c. 527, §5 (AMD).

Article 1-A: GREAT PONDS PROGRAM HEADING: PL 1987, C. 809, §1 (RP)

§380. FINDINGS; PURPOSE

(REPEALED)

SECTION HISTORY
1973, c. 608, §1 (NEW). 1977, c. 123, §1 (RP).

§381. GREAT POND DEFINED

(REPEALED)

SECTION HISTORY
1973, c. 608, §1 (NEW). 1977, c. 123, §1 (RP).

§382. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1973, c. 608, §1 (NEW). 1977, c. 123, §1 (RP).

§383. DATA BANK

(REPEALED)

SECTION HISTORY
1973, c. 608, §1 (NEW). 1977, c. 123, §1 (RP).

§384. RESEARCH

(REPEALED)

SECTION HISTORY
1973, c. 608, §1 (NEW). 1977, c. 123, §1 (RP).

§385. FUNDS

(REPEALED)

SECTION HISTORY
1973, c. 608, §1 (NEW). 1977, c. 123, §1 (RP).

§386. FINDINGS; PURPOSE

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1987, c. 809, §1 (RP).

§387. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1983, c. 566, §11 (AMD). 1987, c. 809, §1 (RP).

§388. DATA BANK

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1987, c. 809, §1 (RP).

§389. RESEARCH

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1987, c. 809, §1 (RP).

§390. FUNDS

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1987, c. 809, §1 (RP).

§390-A. LAKE RESTORATION AND PROTECTION FINANCIAL AID PROGRAM

(REPEALED)

SECTION HISTORY
1981, c. 509, §§1,3 (NEW). 1983, c. 483, §7 (AMD). 1983, c. 566, §12 (AMD). 1985, c. 162, §5 (AMD). 1987, c. 192, §9 (AMD). 1987, c. 809, §1 (RP). 1987, c. 842, §§1,2 (AMD). 1989, c. 502, §A142 (RP).

§391. PROHIBITIONS

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1983, c. 819, §A62 (AMD). 1987, c. 771, §3 (RP). 1987, c. 809, §1 (RP).

§391-A. PROHIBITIONS

(REPEALED)

SECTION HISTORY
1987, c. 771, §4 (NEW). 1989, c. 890, §§A40,B20 (RP).

§392. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1983, c. 566, §13 (AMD). 1987, c. 809, §1 (RP).

§393. PERMIT; STANDARDS

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1987, c. 809, §1 (RP).

§394. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1979, c. 663, §227 (AMD). 1983, c. 566, §14 (AMD). 1983, c. 743, §10 (AMD). 1985, c. 746, §18 (AMD). 1987, c. 192, §10 (RPR). 1987, c. 809, §1 (RP).

§395. VIOLATIONS

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1977, c. 564, §135 (RPR). 1987, c. 809, §1 (RP).

§396. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1979, c. 663, §228 (AMD). 1987, c. 809, §1 (RP).

§397. INJUNCTION; RESTORATION

(REPEALED)

SECTION HISTORY
1977, c. 123, §2 (NEW). 1977, c. 564, §136 (RP).

Article 1-B: GROUND WATER PROTECTION PROGRAM

§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. [1979, c. 472, §12 (NEW).]

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. [1979, c. 472, §12 (NEW).]

The Legislature further finds and declares that ground water resources are endangered by unwise uses and land use practices. [1979, c. 472, §12 (NEW).]

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. [1985, c. 465, §1 (NEW).]

The Legislature further finds and declares it to be the purpose of this Article to require classification of the state's ground water resources. [1979, c. 472, §12 (NEW).]

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. [1979, c. 472, §12 (NEW).]

It is the intention of the Legislature that the Division of Geology, Natural Areas and Coastal Resources 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. [2013, c. 405, Pt. C, §20 (AMD).]

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. [1979, c. 472, §12 (NEW).]

This article is not intended to limit a municipality's power to enact ordinances under Title 30-A, section 3001, to protect and conserve the quality and quantity of ground water. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §21 (AMD).]

SECTION HISTORY
1979, c. 472, §12 (NEW). 1985, c. 465, §1 (AMD). 1987, c. 583, §60 (AMD). 1989, c. 890, §§A40,B21 (AMD). 2011, c. 655, Pt. KK, §25 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2013, c. 405, Pt. C, §20 (AMD).

§402. RESEARCH

The Division of Geology, Natural Areas and Coastal Resources, in cooperation with the Department of Environmental Protection, is authorized to conduct research and studies to determine recharge and cleansing rates of groundwater in different sand and gravel and bedrock formations. [2013, c. 405, Pt. C, §21 (AMD).]

The Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey within the Department of Agriculture, Conservation and Forestry in cooperation with other agencies as appropriate shall conduct a 3-year program to assess the impact of agricultural practices and chemicals on groundwater quality in selected agricultural areas and selected aquifers. The program must evaluate the extent and level of contamination associated with pesticide use, the mechanisms by which pesticides move through the soil and into groundwater supplies, the synergistic effects of these substances and their persistence in groundwater. [2013, c. 405, Pt. C, §21 (AMD).]

The survey shall report annually its progress to the joint standing committee of the Legislature having jurisdiction over natural resources. [1985, c. 465, §2 (NEW).]

SECTION HISTORY
1979, c. 472, §12 (NEW). 1985, c. 465, §2 (AMD). 1995, c. 502, §E32 (AMD). 1999, c. 556, §31 (AMD). 2011, c. 655, Pt. KK, §26 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2013, c. 405, Pt. C, §21 (AMD).

§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.

[1983, c. 521, (NEW) .]

2. **Determination of ground water quality.** The commissioner and the Department of Agriculture, Conservation and Forestry 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 commissioner and the Department of Agriculture, Conservation and Forestry shall determine depth to bedrock, depth to water table, surficial material stratigraphy and generalized ground water flow directions of the aquifers. The commissioner and the Department of Agriculture, Conservation and Forestry 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.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §22 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY
1983, c. 521, (NEW). 1989, c. 890, §§A40,B22 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§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. [1987, c. 491, §4 (NEW).]

B. "Ground water" means all the waters found beneath the surface of the earth. [1987, c. 491, §4 (NEW).]

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. [1987, c. 491, §4 (NEW).]

[1987, c. 491, §4 (NEW) .]

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.

[1987, c. 491, §4 (NEW) .]

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. [1987, c. 491, §4 (NEW).]

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. [1987, c. 491, §4 (NEW).]

[1987, c. 491, §4 (NEW) .]

SECTION HISTORY
1987, c. 491, §4 (NEW).

Article 1-C: FRESHWATER WETLANDS HEADING: PL 1987, C. 809, §1 (RP)

§405. STATEMENT OF FINDINGS AND PURPOSE

(REPEALED)

SECTION HISTORY
1985, c. 485, §3 (NEW). 1987, c. 809, §1 (RP).

§406. DEFINITIONS

(REPEALED)

SECTION HISTORY
1981, c. 705, §W1 (NEW). 1987, c. 809, §1 (RP).

§407. IDENTIFICATION OF FRESHWATER WETLANDS

(REPEALED)

SECTION HISTORY
1981, c. 705, §W1 (NEW). 1985, c. 485, §4 (RP).

§407-A. IDENTIFICATION OF FRESHWATER WETLANDS

(REPEALED)

SECTION HISTORY
1985, c. 485, §5 (NEW). 1987, c. 402, §A197 (AMD). 1987, c. 809, §1 (RP).

§408. PROHIBITIONS

(REPEALED)

SECTION HISTORY
1985, c. 485, §6 (NEW). 1987, c. 809, §1 (RP).

§409. STANDARDS

(REPEALED)

SECTION HISTORY
1985, c. 485, §6 (NEW). 1987, c. 809, §1 (RP).

§410. DELEGATION OF PERMIT GRANTING AUTHORITY TO MUNICIPALITY

(REPEALED)

SECTION HISTORY
1985, c. 485, §6 (NEW). 1987, c. 809, §1 (RP).

§410-A. PERMITS; GRANTS; DENIALS; SUSPENSIONS

(REPEALED)

SECTION HISTORY
1985, c. 485, §6 (NEW). 1987, c. 809, §1 (RP).

§410-B. VIOLATIONS

(REPEALED)

SECTION HISTORY
1985, c. 485, §6 (NEW). 1987, c. 809, §1 (RP).

§410-C. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1985, c. 485, §6 (NEW). 1987, c. 809, §1 (RP).

§410-D. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1985, c. 485, §6 (NEW). 1987, c. 809, §1 (RP).

§410-E. FEES

(REPEALED)

SECTION HISTORY
1985, c. 746, §19 (NEW). 1987, c. 809, §1 (RP).

Article 1-E: MARINE ENVIRONMENTAL MONITORING PROGRAM HEADING: PL 1987, C. 843, §1 (NEW)

§410-F. MARINE ENVIRONMENTAL MONITORING PROGRAM

The Department of Environmental Protection in cooperation with the Department of Marine Resources shall establish the Marine Environmental Monitoring Program. The initial purpose of this program is to design a monitoring program to examine the extent and effect of industrial contaminants and pollutants on marine and estuarine ecosystems and to determine compliance with and attainment of water quality standards under article 4-A. This study must include, but is not limited to: [1991, c. 242, §4 (AMD).]

1. **Sources.** The sources, fates and biological availability of these contaminants;

[1987, c. 843, §1 (NEW) .]

2. **Impact.** The impact of these contaminants on marine and estuarine biota; and

[1987, c. 843, §1 (NEW) .]

3. **Assessment.** An assessment of the condition of marine and estuarine habitats.

[1987, c. 843, §1 (NEW) .]

The commissioner shall establish a task force to coordinate the continuing activities of the monitoring program. The Commissioner of Agriculture, Conservation and Forestry, the Commissioner of Environmental Protection, the Commissioner of Health and Human Services and the Commissioner of Marine Resources shall appoint representatives to serve as members of the task force. The task force shall address the identification and removal of sources of marine pollution. [1991, c. 242, §4 (NEW); 2003, c. 689, Pt. B, §7 (REV); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1987, c. 843, §1 (NEW). 1991, c. 242, §4 (AMD). 2003, c. 689, §B7 (REV). 2011, c. 657, Pt. W, §6 (REV).

§410-G. REPORT REQUIRED

The commissioner in cooperation with the Department of Marine Resources shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources and the joint standing committee of the Legislature having jurisdiction over marine resources during the first regular session of each Legislature. The report is due on or before March 15th. The report must address the problems or potential problems of marine and estuarine resources caused by industrial contaminants. The commissioner also shall prescribe remedial steps to address problems identified in the report. If the department does not

receive funding for the Marine Environmental Monitoring Program described in section 410-F during all or part of the calendar year prior to the first regular session of a Legislature, then the reporting requirements of this section are waived. [2001, c. 232, §7 (AMD).]

SECTION HISTORY
1987, c. 843, §1 (NEW). 1989, c. 890, §§A40,B23 (AMD). 2001, c. 232, §7 (AMD).

Article 1-F: NONPOINT SOURCE POLLUTION PROGRAM HEADING: PL 1991, C. 345 (NEW)

§410-H. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 345, (NEW).]

1. **Best management practice guidelines.** "Best management practice guidelines" means recommended techniques or procedures or a combination of techniques or procedures that are determined by the appropriate agency identified in section 410-J to be the most effective practicable means of preventing or reducing pollution generated by nonpoint sources.

[1991, c. 345, (NEW) .]

2. **Nonpoint source.** "Nonpoint source" means any source, excluding any source defined as a direct discharge in section 466, that discharges pollutants into the surface or ground waters of the State, including, but not limited to, sources related to agriculture, construction and maintenance of bridges, railways and roads, forest management and commercial, industrial or residential development.

[1991, c. 345, (NEW) .]

SECTION HISTORY
1991, c. 345, (NEW).

§410-I. COOPERATION WITH AGENCIES

1. **Agency cooperation.** The commissioner shall cooperate and coordinate with the Commissioner of Agriculture, Conservation and Forestry; the Commissioner of Transportation; the Commissioner of Economic and Community Development; the Commissioner of Health and Human Services; and the Commissioner of Marine Resources to ensure a coordinated approach to nonpoint source pollution control for agriculture, forestry, transportation and development.

[2011, c. 655, Pt. KK, §27 (AMD); 2011, c. 655, Pt. KK, §34 (AFF); 2011, c. 657, Pt. W, §6 (REV) .]

2. **Ranking of watersheds.** In cooperation with the commissioner, the agencies identified in subsection 1 shall identify those watersheds that should receive highest priority for corrective action for nonpoint source pollution and those actions recommended in great pond watersheds to control phosphorus runoff.

[1991, c. 838, §17 (AMD) .]

3. **Annual coastal water quality monitoring and remediation planning.** The department shall in coordination with the public health division of the Department of Marine Resources create an annual work plan outlining priorities for the monitoring and classification of shellfish growing areas and for hydrographic studies in shellfish growing areas. The work plan must also prioritize remediation projects that will improve water quality within shellfish growing areas. Staff from both agencies must be assigned in determining

responsibilities of the work plan. The Department of Marine Resources shall solicit priorities from the Shellfish Advisory Council established under Title 12, section 6038 and from municipalities with approved municipal shellfish programs for work within shellfish growing areas in those communities. In order for municipal recommendations to be considered for inclusion in a work plan, the municipality must commit to assist in the identification and remediation of nonpoint source pollution, including failing subsurface wastewater disposal systems, in areas affecting the water quality of shellfish growing areas.

The agencies shall prepare a draft work plan by February 1st of each year and make it available for review at a regularly scheduled meeting of the Shellfish Advisory Council, set out under Title 12, section 6038.

The agencies shall begin implementing the work plan by March 1st annually.

[2009, c. 213, Pt. FFFF, §4 (NEW) .]

SECTION HISTORY
1991, c. 345, (NEW). 1991, c. 838, §17 (AMD). 2003, c. 689, §B7 (REV). 2009, c. 213, Pt. FFFF, §4 (AMD). 2011, c. 655, Pt. KK, §27 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 657, Pt. W, §6 (REV).

§410-J. PROGRAM IMPLEMENTATION

1. **Agriculture.** The Department of Agriculture, Conservation and Forestry shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from agricultural activities. The Department of Agriculture, Conservation and Forestry may recommend to farmers the use of best management practice guidelines.

[1991, c. 345, (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

2. **Forestry.** The Department of Agriculture, Conservation and Forestry, Bureau of Forestry in cooperation with the commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from wood harvesting and forest management activities. The Bureau of Forestry may publish best management practice guidelines for use by landowners and wood harvesters. Landowners and wood harvesters must be notified of these guidelines and assisted in their efforts to implement the guidelines in accordance with the Bureau of Forestry advisory programs under Title 12, sections 8611 and 8612.

[1991, c. 345, (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

3. **Transportation.** The Department of Transportation in cooperation with the commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from transportation-related activities. The Department of Transportation shall encourage all state or federally funded projects to use the best management practice guidelines. The Department of Transportation may provide technical assistance to municipalities.

[1991, c. 345, (NEW) .]

4. **Development.** The commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from development-related activities. State agencies shall follow these guidelines in construction or remodeling activities for state buildings and other capital improvements. The

commissioner shall provide guidance and technical assistance to the Office of Community Development and municipalities to support implementation through growth management programs authorized by the growth management laws, Title 30-A, chapter 187, subchapter II and municipal subdivision ordinances.

[1991, c. 838, §18 (AMD) .]

SECTION HISTORY
1991, c. 345, (NEW). 1991, c. 838, §18 (AMD). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §23 (REV).

§410-K. PROGRAM REVIEW

Prior to January 1, 1993, the commissioner shall submit to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters a report detailing the effectiveness of the program and making recommendations for program improvements and fee amounts for permit applications under chapter 3, subchapter I, articles 5-A and 6. The commissioner shall make recommendations on the advisability of enacting statutory or regulatory exemptions from the water quality discharge licensing requirements of section 413 for those activities conducted in compliance with best management practice guidelines under this article. The commissioner shall submit with these recommendations an analysis of the legal and enforcement issues raised by these exemptions, specifically, the need to adopt by rule best management practice guidelines. In recommending fees pursuant to this section, the commissioner shall consider the cost of technical review and compliance inspection for best management practices and shall recommend fees that cover these costs. [1991, c. 838, §19 (AMD).]

SECTION HISTORY
1991, c. 345, (NEW). 1991, c. 838, §19 (AMD).

Article 1-G: LAKES ASSESSMENT AND PROTECTION PROGRAM HEADING: PL 1997, C. 643, PT. YY, §1 (NEW)

§410-L. LAKES ASSESSMENT AND PROTECTION PROGRAM ESTABLISHED

The Lakes Assessment and Protection Program is established within the department to monitor and protect the health and integrity of the State's lakes. [1997, c. 643, Pt. YY, §1 (NEW).]

SECTION HISTORY
1997, c. 643, §YY1 (NEW).

§410-M. LAKES ASSESSMENT AND PROTECTION

In implementing the Lakes Assessment and Protection Program, the commissioner shall conduct activities within the following areas: [1997, c. 643, Pt. YY, §1 (NEW).]

1. **Education and technical assistance.** Education and technical assistance relating to lake functions and values, watershed planning and management, implementation of best management practices, effects of cumulative impacts and applicable laws and rules;

[1997, c. 643, Pt. YY, §1 (NEW) .]

2. **Resource monitoring and research.** Monitoring and research relating to the ecology and quality of lake resources, the vulnerability and the status of lakes, the relationship between the quality of lake resources and development, the design and effectiveness of best management practices and the effectiveness of efforts to protect lakes; and

[1997, c. 643, Pt. YY, §1 (NEW) .]

3. **Compliance monitoring and enforcement.** Promoting and monitoring compliance with and enforcement of the natural resources protection laws, the mandatory shoreland zoning laws, the storm water management laws, the erosion and sedimentation control laws and other state and local laws providing standards for the protection of lakes.

[1997, c. 643, Pt. YY, §1 (NEW) .]

SECTION HISTORY
1997, c. 643, §YY1 (NEW). 2011, c. 655, Pt. EE, §22 (AMD). 2011, c. 655, Pt. EE, §30 (AFF).

§410-N. AQUATIC NUISANCE SPECIES CONTROL

1. **Definitions.** As used in this section and section 419-C, unless the context otherwise indicates, the following terms have the following meanings.

A. "Aquatic plant" means a plant species that requires a permanently flooded freshwater habitat. [2011, c. 47, §2 (AMD).]

B. "Invasive aquatic plant" means a species identified by the department as an invasive aquatic plant or one of the following species:

(1) Eurasian water milfoil, Myriophyllum spicatum;

(2) Variable-leaf water milfoil, Myriophyllum heterophyllum;

(3) Parrot feather, Myriophyllum aquaticum;

(4) Water chestnut, Trapa natans;

(5) Hydrilla, Hydrilla verticillata;

(6) Fanwort, Cabomba caroliniana;

(7) Curly pondweed, Potamogeton crispus;

(8) European naiad, Najas minor;

(9) Brazilian elodea, Egeria densa;

(10) Frogbit, Hydrocharis morsus-ranae; and

(11) Yellow floating heart, Nymphoides peltata. [2005, c. 561, §1 (AMD).]

[2011, c. 47, §2 (AMD) .]

2. **Education.** The department shall prepare educational materials that inform the public about problems associated with invasive aquatic plants, how to identify invasive aquatic plants, why it is important to prevent the transportation of aquatic plants and the prohibitions relating to aquatic plants contained in section 419-C. The department shall make the materials available to municipalities, lake associations, water quality monitors, law enforcement agents, businesses that sell aquatic plants in the State and other interested individuals.

A. The department shall provide signs for installation at all state boat launch facilities on fresh waters informing the public about the prohibition of aquatic plant transportation on boats and trailers and may provide these signs, as available funds allow, for installation at other boat launch sites including municipal boat launch facilities, campground boat launch facilities and other commonly used launch sites. [1999, c. 722, §1 (NEW).]

B. The department shall work with the Department of Transportation and the Maine Turnpike Authority to provide signs and educational materials on all major roads at the State's borders advising incoming boat owners that state law requires all boats and trailers to be free of aquatic plant material. [1999, c. 722, §1 (NEW).]

[1999, c. 722, §1 (NEW) .]

3. **Control.** The department shall investigate and document the occurrence of invasive aquatic plants in state waters and may undertake activities to control invasive aquatic plant populations as follows.

A. The department or a person designated by the department may attempt eradication of an invasive aquatic plant from a water body if determined feasible by the department. If the commissioner determines that eradication activities must be undertaken immediately, a license is not required under section 480-C for the use of a physical, chemical or biological control material by the department or a person designated by the department if the use of the control material is specifically related to the immediate eradication of invasive aquatic plant populations in the water body. Prior to undertaking an eradication activity and to the extent practical, the department shall notify landowners whose property is adjacent to the area where the activity will be undertaken. [2001, c. 232, §8 (AMD).]

B. The department may conduct research to test new control methods for the eradication of invasive aquatic plants pursuant to section 362-A. [1999, c. 722, §1 (NEW).]

C. The department may study and develop a plan that includes the use of water level drawdown for the eradication of invasive aquatic plants. If determined feasible by the department, the department may implement a plan developed pursuant to this paragraph. The department may seek funding from private sources to support the activities described in this paragraph. [2003, c. 136, §1 (NEW).]

[2003, c. 136, §1 (AMD) .]

SECTION HISTORY
1999, c. 722, §1 (NEW). 2001, c. 232, §8 (AMD). 2003, c. 136, §1 (AMD). 2005, c. 561, §1 (AMD). 2011, c. 47, §2 (AMD).

Article 2: POLLUTION CONTROL

§411. STATE CONTRIBUTION TO POLLUTION ABATEMENT

The commissioner may pay an amount not to exceed 80% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners. The commissioner may make payments to the Maine Municipal Bond Bank to supply the State's share of the revolving loan fund established by Title 30-A, section 6006-A. The commissioner may pay up to 90% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners in which the construction cost of the project does not exceed $100,000 as long as not more than one grant is made to any applicant each year, except that the commissioner may pay a percentage of the cost of individual projects serving single-family dwellings, seasonal dwellings or commercial establishments according to the following schedule:

ANNUAL INCOME	SINGLE-FAMILY DWELLING	SEASONAL DWELLING
$0 to $5,000	100%	50%
$5,001 to $20,000	90%	50%
$20,001 to $30,000	50%	25%
$30,001 to $40,000	25%	25%
$40,001 or more	0%	0%
GROSS PROFIT	COMMERCIAL ESTABLISHMENT	

$0 to $50,000	50%
$50,001 to $100,000	25%
$100,001 or more	0%

[2001, c. 232, §9 (AMD).]

For the purposes of this section, "annual income" means the sum of all the property owner's federal taxable income for the previous year for single-family or seasonal dwellings and "gross profit" means the sum of all the commercial establishment owner's gross profits for the previous year as listed on the relevant federal income tax returns. [1999, c. 375, §2 (AMD).]

To determine eligibility, the commissioner may require an applicant to submit a copy of the relevant federal income tax return of the owner or owners. In addition to any penalty adjudged under section 349, a person who knowingly makes any false statement, representation or certification in the application for a grant under this section and who receives such a grant shall, upon conviction, make restitution to the department in an amount equal to the amount of the grant plus interest and reasonable recovery cost incurred by the department. [1995, c. 186, §2 (NEW).]

For small individual projects, following a period of 90 days from the date of application for assistance under this section, or as ground conditions permit, the unavailability of financial assistance under this section does not relieve an applicant of an obligation to comply with the state water classification program, Title 38, chapter 3, subchapter I, article 4-A or any other provision of law. [1991, c. 238, §2 (NEW).]

State grant-in-aid participation under this section is limited to grants for waste treatment facilities, interceptor systems and outfalls. The word "expense" does not include costs relating to land acquisition or debt service, unless allowed under federal statutes and regulations. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §24 (AMD).]

The commissioner shall develop a project priority list, for approval and adoption by the board, for pollution abatement construction and salt or sand-salt storage building projects. The factors considered in developing the priority lists include, but are not limited to, protection of groundwater and surface water, land use, shellfish, general public health hazards and water contact activities. The commissioner shall revise the project priority list for municipal and county salt and sand-salt storage facilities by October 1, 1999 and for all other sand and salt storage facilities by April 1, 2000. An owner or operator of a salt or sand-salt storage area may appeal the ranking and provide new information to the commissioner within 120 days of notification, which may change final priority ranking. The board shall release a final project priority list of municipal and county sites by April 1, 2000, and for all other sand and salt storage facilities by July 1, 2000. The board may not change the priority ranking for a municipality or county that prior to January 1, 1999 built a facility and also registered the site with the department pursuant to section 413. [1999, c. 387, §3 (AMD).]

All proceeds of the sale of bonds for the construction and equipment of pollution abatement facilities expended under the direction and supervision of the commissioner must be segregated, apportioned and expended as provided by the Legislature. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §24 (AMD).]

SECTION HISTORY
1965, c. 425, §24 (AMD). 1965, c. 513, §79 (AMD). 1967, c. 268, (AMD). 1967, c. 475, §§9-A (AMD). 1967, c. 538, §§1,3 (RPR). 1969, c. 431, §9 (AMD). 1969, c. 499, §§5-8 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 694, §1 (RPR). 1981, c. 398, §§1,2 (AMD). 1983, c. 566, §15 (AMD). 1985, c. 479, §3 (RPR). 1985, c. 689, §§1-3 (AMD). 1987, c. 502, §§1,2 (AMD). 1987, c. 751, §12 (AMD). 1989, c. 104, §§B13,C10 (AMD). 1989, c. 890, §§A40,B24 (AMD). 1991, c. 96, (AMD). 1991, c. 238, §2 (AMD). 1991, c. 824, §A83 (AMD). 1993, c. 223, §1 (AMD). 1995, c. 186, §§1,2 (AMD). 1999, c. 243, §3 (AMD). 1999, c. 375, §§1,2 (AMD). 1999, c. 387, §3 (AMD). 1999, c. 790, §A50 (AMD). 2001, c. 232, §9 (AMD).

§411-A. STATE CONTRIBUTION TO RESIDENTIAL OVERBOARD DISCHARGE REPLACEMENT PROJECTS

1. **General authority.** Subject to the availability of funds under section 411, the commissioner shall pay a portion of an alternative to an overboard discharge system as provided in this section. In the event the overboard discharge owner is not eligible for complete funding through a grant, the commissioner may loan the balance of the eligible alternative system costs not funded through a grant as provided in this section.

A. Pursuant to the cost-share schedule in subsection 2-A, the commissioner shall pay a portion of the expense of a technologically proven alternative system construction project that results in the elimination of an overboard discharge to the waters of the State when that elimination is required under section 414-A, subsection 1-B. The department may not provide grant funds to an overboard discharge owner for the removal of an overboard discharge at a residence unless the residence is the owner's primary residence. [2009, c. 654, §1 (NEW).]

B. If the overboard discharge owner is not eligible for complete funding through a grant, the overboard discharge owner may be eligible for funding provided by the revolving loan fund established by Title 30-A, section 6006-A as administered through the Maine Municipal Bond Bank or its designee for the expense of a technologically proven alternative system construction project that results in the elimination of an overboard discharge to the waters of the State when that elimination is required under section 414-A, subsection 1-B. [2009, c. 654, §1 (NEW).]

C. The costs eligible for payment through a grant or loan under this section include the costs that the department requires for abandonment of the overboard discharge and the design, engineering and construction costs of the replacement system. Grants or loans made under this section may be made directly to the owners of the overboard discharges and may also be made to sanitary and sewer districts that have agreed to establish operation and maintenance programs for holding tanks within their boundaries. [2009, c. 654, §1 (NEW).]

[2009, c. 654, §1 (RPR) .]

2. **Cost-share.**

[2003, c. 246, §3 (RP) .]

2-A. **Cost-share.** The commissioner shall determine the portion of project expenses eligible for grants under this section as follows:

A. For an owner of an overboard discharge with an annual income less than $25,000, 100%; [2009, c. 654, §2 (AMD).]

B. For an owner of an overboard discharge with an annual income from $25,000 to $50,000, 90%; [2009, c. 654, §2 (AMD).]

C. For an owner of an overboard discharge with an annual income from $50,001 to $75,000, 50%; [2009, c. 654, §2 (AMD).]

D. For an owner of an overboard discharge with an annual income from $75,001 to $100,000, 35%; [2009, c. 654, §2 (AMD).]

E. For an owner of an overboard discharge with an annual income from $100,001 to $125,000, 25%; [2009, c. 654, §2 (AMD).]

E-1. For an owner of an overboard discharge with an annual income over $125,000, $0; and [2009, c. 654, §2 (NEW).]

F. For a publicly owned overboard discharge facility, 50% to a maximum of $150,000. [2003, c. 246, §4 (NEW).]

For purposes of this subsection, annual income is determined separately for residential property owners and commercial establishments. For a residential property owner, including a trust, "annual income" means the sum of the taxable incomes of each owner of the property if it is jointly owned or of each beneficiary and grantor if the property owner is a trust for the previous year as listed on the relevant federal income tax returns for the previous year. For a commercial establishment, “annual income” means taxable income or ordinary business income for the previous year as listed on the relevant federal income tax return plus any depreciation or other noncash expense that was deducted to compute taxable or ordinary business income on that return. A rental property must be considered a commercial establishment or as contributing to annual income depending on how it is reported on the overboard discharge owner’s federal income tax return from the previous year.

[2009, c. 654, §2 (AMD) .]

3. **Priority.** The commissioner shall utilize grants made under this section to eliminate sources of contamination to shellfish harvesting areas and to eliminate public nuisance conditions.

[1989, c. 442, §1 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §25 (AMD) .]

4. **Reimbursement.** The commissioner shall utilize grants under this section to reimburse individuals for the cost of removing any overboard discharge, subject to the provisions of subsection 2-A, when:

A. The removal occurred after September 30, 1989 but was carried out according to plans and specifications approved by the commissioner in advance of construction and prior to the offering of a grant under this section; [2003, c. 246, §5 (RPR).]

B. The removal resulted in the elimination of sources of contamination to shellfish areas or public nuisance conditions; and [2003, c. 246, §5 (RPR).]

C. The removal is required under section 413, subsection 3 or section 414-A, subsection 1-B. [2003, c. 246, §5 (RPR).]

[2003, c. 246, §5 (RPR) .]

SECTION HISTORY
1989, c. 442, §1 (NEW). 1989, c. 890, §§A40,B25 (AMD). 1991, c. 499, §14 (AMD). 1993, c. 223, §2 (AMD). 1999, c. 243, §4 (AMD). 2001, c. 232, §10 (AMD). 2003, c. 246, §§3-5 (AMD). 2009, c. 654, §§1, 2 (AMD).

§411-B. PLANNING

The department is authorized to establish and conduct a continuous planning process in cooperation with federal, state, regional and municipal agencies consistent with the requirements of the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251, et seq., as amended. [1989, c. 890, Pt. A, §36 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY
1989, c. 890, §§A36,40 (NEW).

§411-C. MAINE CLEAN WATER FUND

1. **Establishment; administration.** The Maine Clean Water Fund, referred to in this section as "the fund," is established as provided in this section.

A. The fund is established as a nonlapsing fund to provide financial assistance, in accordance with subsection 2, for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection and improvement of public wastewater systems and treatment facilities and water pollution abatement systems. [2009, c. 377, §3 (NEW).]

B. The department shall administer the fund. The fund must be invested in the same manner as permitted for investment of funds belonging to the State or held in the State Treasury. The fund must be established and held separate from any other funds and used and administered exclusively for the purpose of this section. The fund consists of the following:

(1) Sums that are appropriated by the Legislature or transferred to the fund from time to time from the State Water and Wastewater Infrastructure Fund pursuant to Title 30-A, section 6006-H;

(2) Interest earned from the investment of fund balances; and

(3) Other funds from any public or private source received for use for any of the purposes for which the fund has been established. [2009, c. 377, §3 (NEW).]

[2009, c. 377, §3 (NEW) .]

2. **Uses.** The fund may be used for one or more of the following purposes:

A. To make grants to public wastewater systems under sections 411 and 412; [2009, c. 377, §3 (NEW).]

B. To forgive loans held by public wastewater systems for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection or improvement of public wastewater systems and treatment facilities and water pollution abatement systems; [2009, c. 377, §3 (NEW).]

C. To provide a state match for federal funds allocated to the state revolving loan fund established in Title 30-A, section 6006-A; [2009, c. 377, §3 (NEW).]

D. To invest available fund balances and to credit the net interest income on those balances to the fund; and [2009, c. 377, §3 (NEW).]

E. To pay the costs of the department associated with the administration of the fund as long as no more than 5% of the aggregate of the highest fund balance in any fiscal year is used for these purposes. [2009, c. 377, §3 (NEW).]

[2009, c. 377, §3 (NEW) .]

SECTION HISTORY
2009, c. 377, §3 (NEW).

§412. GRANTS BY STATE FOR PLANNING

1. **Grants by State for planning.** The commissioner is authorized to pay an amount at least 15%, but not to exceed 25%, of the expense incurred by a municipality or quasi-municipal corporation in preliminary or final planning of a pollution abatement program in the form of a grant. The amount may not be paid until the governing body of the municipality or the quasi-municipal corporation duly votes to proceed with preliminary or final planning of a pollution abatement program, as appropriate.

A. For the purposes of this section, "preliminary planning" means engineering studies that include analysis of existing pollution problems; estimates of the cost of alternative methods of waste treatment, studies of areas to be served by the proposed facilities and estimates of the cost of serving such areas; preliminary sketches of existing and proposed sewer and treatment plant layouts; and estimates of alternative methods of financing, including user charges, and other studies and estimates designed to

aid the municipality or quasi-municipal corporation in deciding whether and how best to proceed with a pollution abatement program. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §26 (AMD).]

B. For the purposes of this section, "final planning" means the preparation of engineering drawings and specifications for the construction of waste treatment facilities, interceptor systems and outfalls or other facilities specifically designated in departmental rules. All proceeds from the sale of bonds for the planning of pollution abatement facilities expended under the direction and supervision of the commissioner must be segregated, apportioned and expended as provided by the Legislature. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §26 (AMD).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §26 (AMD) .]

SECTION HISTORY
1969, c. 546, §1 (RPR). 1971, c. 340, §1 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 694, §2 (RPR). 1977, c. 81, (RPR). 1989, c. 890, §§A40,B26 (AMD).

§412-A. TECHNICAL AND LEGAL ASSISTANCE

At the request of any recipient of state funds under section 411 or 412, the commissioner is authorized to provide technical assistance and, through the Attorney General, legal assistance in the administration or enforcement of any contract entered into, by or for the benefit of the recipient in connection with wastewater treatment works or other facilities assisted by these funds. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §27 (AMD).]

Whenever any state funds have been disbursed pursuant to section 411 or 412, the State, acting through the Attorney General, shall have a direct right of action against the recipient thereof, or any contractor, subcontractor, architect, engineer or manufacturer of any equipment purchased with these funds, to recover the funds, as well as any federal funds administered by the commissioner for the same purposes, which may be properly awarded as actual damages in an action alleging negligence or breach of contract. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §27 (AMD).]

SECTION HISTORY
1979, c. 243, (NEW). 1989, c. 890, §§A40,B27 (AMD).

§412-B. CONSULTATION ON WASTE WATER DISPOSAL

1. **Consultation on disposal methods.** The commissioner shall consult with and advise any person proposing or operating drainage, sewerage or industrial waste systems as to the best methods of disposal. In making recommendations, the commissioner shall consider the needs of the municipality, other municipalities and other persons affected.

[1989, c. 890, Pt. A, §36 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

2. **Consultation on water pollution abatement and prevention.** The commissioner may consult with and advise persons or corporations who are licensed or apply for a license under this subchapter on water pollution abatement and prevention.

[1989, c. 890, Pt. A, §36 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

3. **Submission of plans for waste disposal.** Any person who proposes a new system of drainage, sewage disposal, sewage treatment or industrial waste disposal into any waters of the State shall submit plans and specifications for the system to the commissioner for approval. Purely storm water systems located in or on or draining from public ways and any alterations in existing facilities are exempt from this requirement.

[1989, c. 890, Pt. A, §36 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

SECTION HISTORY
1989, c. 890, §§A36,40 (NEW).

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

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

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

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

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, or some other time period acceptable to the department, 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.

This subsection applies to overboard discharge licenses issued before September 1, 2010.

[2011, c. 121, §1 (AMD) .]

3-A. **Transfer of ownership, significant expansion, division and public sewer connection.** Beginning September 1, 2010, if property containing an overboard discharge is transferred or a significant action is proposed, the following procedures apply. For purposes of this subsection, "significant action" means a single construction project performed on a primary residence with an overboard discharge when the total material and labor cost of the construction project exceeds $50,000. "Significant action" does not include construction that makes the residence accessible to a person with a disability who resides in or regularly uses the residence or reconstruction performed in response to an event beyond the control of the owner, such as a hurricane, flood, fire or the unanticipated physical destruction of the residence.

A. Application for transfer of an overboard discharge 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 as long as the parties to the transfer are jointly and severally liable for any violation thereof 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. [2011, c. 121, §2 (AMD).]

B. If there is a transfer, or if a significant action is proposed, the owner of an overboard discharge must conduct an alternatives analysis and may be required to remove the overboard discharge system as provided in this paragraph.

(1) Except when it has been demonstrated within 5 years prior to a transfer, or some other time period acceptable to the department, 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.

(2) Except when it has been demonstrated within 5 years prior to the significant action, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to the significant action the owner of the overboard discharge shall determine the feasibility of a technologically proven alternative to the overboard discharge that is consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

(3) The determination concerning whether there is a technologically proven alternative to an overboard discharge must be based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection that the system constitutes a best practicable treatment under section 414-A, subsection 1-B. If an alternative to the overboard discharge is identified, the alternative system must be installed within 180 days of property transfer or significant action, 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. On a property transfer, a commercial establishment may request an extension of the 180-day period based on information that an extension is necessary due to technical, economic or environmental considerations. The department may authorize an extension for a commercial establishment for as short an additional period as the department considers reasonable but in no case may an extension be authorized to continue beyond the expiration of the current waste discharge license or 2 years from the property transfer, whichever is later. Within 10 business days of receipt of a complete extension request, the department shall issue a written decision approving or denying the extension.

(4) When the ownership of a property containing an overboard discharge has been transferred, the transferee may request from the department a waiver from the requirement in subparagraph (3) to install an alternative system. The department shall grant the waiver upon demonstration by the transferee that the transferee's annual income as defined in section 411-A, subsection 2-A is less than $25,000. A request for a waiver must be submitted with an application for transfer of the overboard discharge license in accordance with paragraph A.

Nothing in this paragraph requires a municipality to withhold a local permit or approval associated with a significant action until the provisions of this paragraph have been met. [2011, c. 121, §2 (AMD).]

C. An overboard discharge must be removed without regard to available funding from the department where connection to a public sewer is practicable. [2009, c. 654, §4 (NEW).]

[2011, c. 121, §2 (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. A, §40 (AFF); 1989, c. 890, Pt. B, §28 (AMD) .]

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

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, 1982, 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); 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). 2009, c. 654, §§3, 4 (AMD). 2011, c. 121, §§1, 2 (AMD).

§414. APPLICATIONS FOR LICENSES

1. **Administration.**

[1977, c. 300, §17 (RP) .]

2. **Terms of licenses.** Licenses are issued by the department for a term of not more than 5 years.

[2003, c. 246, §7 (AMD) .]

2-A. **Relicensing.** The relicensing of an existing licensed waste discharge prior to or after the expiration of the term of the existing license is subject to all of the requirements of this chapter. For the purposes of this chapter, the term "relicense" includes, without limitation, the terms "renewal," "renew," "reissue" and "extend." Relicensing of a waste discharge may be denied for any of the reasons set forth in section 341-D.

[1997, c. 794, Pt. A, §20 (AMD) .]

3. **Inspection and records.** Authorized representatives of the commissioner and the Attorney General have access at any reasonable time, to and through any premises where a discharge originates or is located or where required records are kept, including records of industrial users of publicly owned treatment works, for the purposes of inspection, testing and sampling. The department may order a discharger to produce and has the right to copy any records relating to the handling, treatment or discharge of pollutants and may require any licensee to keep such records relating to the handling, treatment or discharge of pollutants as the department determines necessary. The department also may order, in writing, a discharger or industrial user of publicly owned treatment works to produce such records, reports and other information as may reasonably be required in order to determine if that person is in violation of any law, order, rule, license, permit, approval or decision of the board or commissioner related to a wastewater discharge.

[1997, c. 794, Pt. A, §20 (AMD) .]

3-A. **Inspection of overboard discharge systems.** The department shall inspect all licensed overboard discharge systems. The cost of the inspections must be assessed as part of the annual license fee. For residential overboard discharges owned by individuals, the department shall provide a fee reduction based on the adjusted gross income of the license holder on the most recent tax return under the federal Internal Revenue Code of 1986. If the license holder's adjusted gross income is less than $15,000, the license holder may reduce the total fee by $125. Any overboard discharge license owner with a mechanical treatment system must provide annual proof of a private maintenance contract for maintenance of that system.

A. [2003, c. 246, §8 (RP).]

B. [2003, c. 246, §8 (RP).]

[2003, c. 246, §8 (RPR) .]

3-B. **Waiver of inspection; reduced fees.**

[2003, c. 246, §9 (RP) .]

4. **Schedule of fees for discharge licenses.**

[1973, c. 712, §6 (RP) .]

5. **Unlawful to violate license.** After the issuance of a license by the department, it is unlawful to violate the terms or conditions of the license, whether or not such violation actually lowers the quality of the receiving waters below the minimum requirements of their classification.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §29 (AMD) .]

6. **Confidentiality of records.** Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part of any record, report or information, other than the names and addresses of applicants, license applications, licenses and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department.

[1997, c. 794, Pt. A, §20 (AMD) .]

7. **Processing.**

[1977, c. 300, §19 (RP) .]

8. **Effect of license.** Issuance of a license under section 413 does not convey any property right of any sort, or exclusive privilege. Except for toxic effluent standards and prohibitions imposed under the Federal Water Pollution Control Act, Section 307, as amended, compliance with a license issued under section 413 during its terms constitutes compliance with sections 413 to 414-C and section 423-D. It is not a defense for a licensee in an enforcement action that it would have been necessary to halt or reduce the licensed activity in order to maintain compliance with the conditions of the license. The licensee shall take all reasonable steps to minimize or prevent any discharge in violation of a license that has a reasonable likelihood of adversely affecting human health or the environment.

[2009, c. 537, §1 (AMD) .]

SECTION HISTORY
1969, c. 431, §§3-A (AMD). 1969, c. 499, §10 (RPR). 1969, c. 567, (AMD). 1971, c. 256, §2 (AMD). 1971, c. 461, §4 (AMD). 1971, c. 618, §12 (AMD). 1971, c. 622, §§136,137 (AMD). 1973, c. 450, §§11-14 (AMD). 1973, c. 712, §6 (AMD). 1977, c. 300, §§17-19 (AMD). 1979, c. 444, §4 (AMD). 1983, c. 566, §18 (AMD). 1987, c. 180, §2 (AMD). 1989, c. 442, §2 (AMD). 1989, c. 807, (AMD). 1989, c. 890, §§A40,B29 (AMD). 1991, c. 66, §A6 (AMD). 1991, c. 294, §§1,2 (AMD). 1993, c. 410, §G5 (AMD). 1997, c. 794, §§A19-21 (AMD). 2003, c. 246, §§7-9 (AMD). 2009, c. 537, §1 (AMD).

§414-A. CONDITIONS OF LICENSES

1. **Generally.** The department 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; [1973, c. 450, §15 (NEW).]

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; [1973, c. 450, §15 (NEW).]

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 department 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; [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §30 (AMD).]

D. The discharge will be subject to effluent limitations that 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 that 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 that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations. If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgment, after consultation with the applicant and other interested parties of record. In determining best practicable treatment for each category or class, the department shall consider the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives; and [1997, c. 794, Pt. A, §22 (AMD).]

E. A pesticide discharge is unlikely to exert a significant adverse impact on nontarget species. This standard is only applicable to applications to discharge pesticides. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §30 (AMD).]

[1997, c. 794, Pt. A, §22 (AMD) .]

1-A. **License for copper sulfate applications in public water supplies.** The commissioner may issue licenses to treat public water supplies with copper sulfate or related compounds. The commissioner may not issue more than 2 consecutive licenses for the same body of water.

A. A license may only be issued if the Department of Human Services, Division of Health Engineering has determined that:

(1) An abundant growth of algae producing taste or odor exists to such a degree that the water supply is in danger of becoming unhealthful or unpalatable;

(2) The abundance of algae is a sporadic event. For purposes of this section, "sporadic" means occurring not more than 2 years in a row; and

(3) The algae cannot effectively be controlled by other methods. [1997, c. 794, Pt. A, §22 (AMD).]

B. Any license issued under this subsection is for one application or series of applications not to exceed 6 months, as provided in the terms of the license. [1997, c. 794, Pt. A, §22 (AMD).]

C. The commissioner shall impose all conditions necessary to meet the requirements of this section and all other relevant provisions of law. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §30 (AMD).]

D. [1997, c. 794, Pt. A, §22 (RP).]

[1997, c. 794, Pt. A, §22 (AMD) .]

1-B. **Licensing of overboard discharges.** The following provisions govern the licensing of overboard discharges.

A. The department shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of licensing when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge.

(1) The department's finding must be based on documentation from a licensed site evaluator provided by the overboard discharge owner and approved by the department. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharges.

(2) If a technologically proven alternative system is identified and is eligible for grant funding according to the cost-share schedule under section 411-A and grant funding is available, the alternative system must be installed within 180 days of written notification from the department, unless soil conditions are poor due to seasonal weather, in which case the alternative may be installed as soon as soil conditions permit.

(3) If a technologically proven alternative system eligible for grant funding according to the cost-share schedule is identified and funding is not available, then the owner of the overboard discharge is not required to install the system until grant funds are available or as provided in section 413, subsection 3. The department may determine that grant funds are not available when there are insufficient funds available for all alternative systems and the alternative system is not one of the systems identified as a priority for funding from available grant funds by the department.

(4) If a technologically proven alternative system for an overboard discharge from a residence is identified and is not eligible for grant funding according to the cost-share schedule under section 411-A, subsection 2-A and the overboard discharge is subject to a license that expires on or after July 2, 2010 and prior to July 2, 2012, the department may not require the alternative to be installed earlier than July 2, 2012.

(5) If a technologically proven alternative system for an overboard discharge from a commercial establishment is identified and is not eligible for grant funding according to the cost-share schedule under section 411-A, subsection 2-A and the overboard discharge is subject to a license that expires on or after July 2, 2010 and prior to July 2, 2012, the department may not require the alternative to be installed earlier than July 2, 2012. [2009, c. 654, §5 (AMD).]

B. For the purposes of this subsection, the department may not require the installation or use of wastewater holding tanks as a "technologically proven alternative method of wastewater disposal" except in the following cases:

(1) Seasonal residential overboard discharges that are located on the mainland or on any island connected to the mainland by vehicle bridge or by scheduled car ferry service, when the elimination of the discharge alone or in conjunction with the elimination of other discharges will result in the opening of a shellfish harvesting area or the removal of a public nuisance condition;

(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; and

(3) All overboard discharges located within the municipality when the municipality 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 municipality's services who are physically connected to the sewers of the municipality. [2003, c. 246, §11 (AMD).]

C. [2003, c. 246, §12 (RP).]

D. [2003, c. 246, §13 (RP).]

E. At the time of each relicensing of an overboard discharge, the department shall impose all conditions necessary to meet the requirements of this section and all other relevant laws. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §30 (AMD).]

F. For the purposes of this subsection, the department may not require the installation or use of an identified technologically proven alternative system unless the department finds that the identified alternative constitutes best practicable treatment under subsection 1, paragraph D. [2009, c. 654, §5 (NEW).]

[2009, c. 654, §5 (AMD) .]

1-C. **License for the use of algicides in Class GPA waters.** The commissioner may issue a license to a municipality for the discharge of copper compounds or other materials registered by the Department of Agriculture, Conservation and Forestry to control excessive algae growth in Class GPA waters when the commissioner has determined that:

A. A lake restoration plan to reduce algae growth has been designed and implemented in cooperation with the department; [1995, c. 642, §5 (NEW).]

B. That plan has been found by the department to have failed to achieve the desired level of restoration in a reasonable period of time; [1995, c. 642, §5 (NEW).]

C. Because of technical or financial limitations, there is no further plan for restoration; [1995, c. 642, §5 (NEW).]

D. The affected water has a recent history of severe algae blooms of less than one meter Secchi disk transparency; [1995, c. 642, §5 (NEW).]

E. A watershed plan to further reduce phosphorus loading to the affected water is being implemented by responsible parties including the department and all affected municipalities; and [1995, c. 642, §5 (NEW).]

F. The Department of Inland Fisheries and Wildlife has found that the discharge will not have an adverse impact on the fishery management plan of that water body. [1995, c. 642, §5 (NEW).]

This license allows for no more than one application of copper compounds or other registered algicides per year for a period not to exceed 5 years. Algicides must be applied in an amount and in a manner that minimizes risk to nontarget organisms. The individual conducting the treatment must be certified by the Board of Pesticides Control for the use of aquatic pesticides. Application of an algicide may only occur after the Secchi disk transparency of the water is less than 2 meters. Relicensing is contingent upon an assessment of the water quality and the effectiveness of the phosphorus reduction plan for the watershed.

[1995, c. 642, §5 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

2. **Schedules of compliance.** Within the terms and conditions of a license, the department may establish a schedule of compliance for a final effluent limitation based on a water quality standard adopted after July 1, 1977. When a final effluent limitation is based on new or more stringent technology-based treatment requirements, the department may establish a schedule of compliance consistent with the time limitations permitted for compliance under the Federal Water Pollution Control Act, Public Law 92-500, as amended. A schedule of compliance may include interim and final dates for attainment of specific standards necessary to carry out the purposes of this subchapter and must be as short as possible, based on consideration of the technological, economic and environmental impact of the steps necessary to attain those standards.

[1993, c. 501, §1 (RPR) .]

3. **Federal law.** When the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402(c)(1) of the Federal Water Pollution Control Act, as amended, the department shall refuse to issue a license for the discharge of pollutants which it finds would violate the provisions of any federal

law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after this determination must contain provisions, including effluent limitations, that the department determines necessary to carry out the purposes of this subchapter and any federal laws or regulations.

Notwithstanding the foregoing, the department is authorized to issue licenses containing a variance from thermal effluent limitations, or from applicable compliance deadlines to accommodate an innovative technology. The variances may be granted only in accordance with the Federal Water Pollution Control Act, Sections 316 and 301(k), as amended, and applicable regulations.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §30 (AMD) .]

4. **License conditions affecting bypasses.** In fashioning license decisions and conditions, the department shall consider the extent to which operation of the licensed facility will require an allowance for bypass of wastewater from any portion of a treatment facility when necessary for essential maintenance to assure efficient operation of the licensed facility, when unavoidable to prevent loss of life, personal injury or severe property damage and otherwise subject to applicable effluent limitations and standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, reasonably controlled and infrequent bypasses will be necessary for this purpose, and there is no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal equipment downtime, the department shall fashion appropriate license allowances and conditions.

[2013, c. 2, §47 (COR) .]

5. **Modification, reopening and revocation.** The following actions may be taken to reopen, modify or revoke and reissue waste discharge licenses. All actions taken under this subsection must be with notice to the licensee and all other interested parties of record and with opportunity for hearing. Actions may be appealed as set forth in sections 341-D and 346.

A. The department may reopen a license to add or change conditions or effluent limitations for toxic compounds identified in 40 Code of Federal Regulations, Section 401 or to include schedules of compliance to implement industrial pretreatment rules adopted by the board. Additionally, at the time of license issuance, the department may include as a condition of a license a provision for reopening the license for inclusion or change of specific limitations when facts available upon issuance indicate that changed circumstances or new information may be anticipated. [1997, c. 794, Pt. A, §25 (NEW).]

B. A request for modification of a license may be made by the licensee for any valid cause or changed circumstance. The department may initiate a license modification:

(1) When necessary to correct legal, technical or procedural mistakes or errors;

(2) When there has been or will be a substantial change in the activity or means of treatment that occurred after the time the license was issued;

(3) When new information other than revised rules, guidance or test methods becomes available that would have justified different conditions at the time the license was issued;

(4) When a pollutant not included in the license may be present in the discharge in quantities sufficient to require treatment, such as when the pollutant exceeds the level that can be achieved by the technology-based treatment standards appropriate to the licensee, or contribute to water quality violations;

(5) When necessary to remove net limits based on pollutant concentration in intake water when the licensee is no longer eligible for them, consistent with federal law;

(6) When necessary to make changes as a result of the failure of one state to notify another state whose waters may be affected by a discharge; or

(7) When necessary to include pretreatment compliance schedules required pursuant to federal law. [1997, c. 794, Pt. A, §25 (NEW).]

C. Notwithstanding Title 5, section 10051, the board may modify a license and the commissioner may revoke or suspend a license when the board or the commissioner finds that any of the conditions specified in section 342, subsection 11-B exist or upon an application for transfer of a license. [2011, c. 304, Pt. H, §22 (AMD).]

[2011, c. 304, Pt. H, §22 (AMD) .]

6. **Cooling water intake structures.** Any standard established by the department pursuant to section 413 or this section with respect to cooling water discharges and applicable to a point source must require that the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts.

[2001, c. 232, §11 (NEW) .]

SECTION HISTORY
1973, c. 450, §15 (NEW). 1973, c. 788, §210 (AMD). 1979, c. 127, §209 (AMD). 1979, c. 281, §4 (AMD). 1979, c. 444, §§5-7 (AMD). 1979, c. 663, §230 (AMD). 1983, c. 566, §19 (AMD). 1987, c. 192, §11 (AMD). 1987, c. 394, §2 (AMD). 1989, c. 442, §3 (AMD). 1989, c. 856, §§1,7 (AMD). 1989, c. 890, §§A40,B30 (AMD). 1991, c. 66, §A7 (AMD). 1991, c. 66, §A43 (AFF). 1991, c. 483, §2 (AMD). 1993, c. 232, §2 (AMD). 1993, c. 410, §G6 (AMD). 1993, c. 501, §1 (AMD). 1995, c. 642, §5 (AMD). 1997, c. 794, §§A22-25 (AMD). 2001, c. 232, §11 (AMD). 2003, c. 246, §§10-13 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 654, §5 (AMD). 2011, c. 304, Pt. H, §22 (AMD). 2011, c. 657, Pt. W, §5 (REV). RR 2013, c. 2, §47 (COR).

§414-B. PUBLICLY OWNED TREATMENT WORKS

1. **Definition.** "Publicly owned treatment works" means any device or system for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity. "Publicly owned treatment works" includes sewers, pipes or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

[2001, c. 232, §12 (AMD) .]

2. **Pretreatment standards.** The department may establish pretreatment standards for the introduction into publicly owned treatment works of pollutants that interfere with, pass through or otherwise are incompatible with those treatment works. In addition, the department may establish pretreatment standards for designated toxic pollutants that may be introduced into a publicly owned treatment works. In order to assume and properly administer the authority to issue and enforce permits under the Federal Water Pollution Control Act, the department may adopt rules as necessary, provided that the rules comply with the Federal Water Pollution Control Act or 40 Code of Federal Regulations, Part 403.

The department 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.

[1997, c. 794, Pt. A, §26 (AMD) .]

2-A. **Prohibited discharge through publicly owned treatment works.** The discharge to a publicly owned treatment works of any pollutant that interferes with, passes through or otherwise is incompatible with these works, or that is a designated toxic pollutant, is prohibited unless in compliance with pretreatment standards established for the applicable class or category of discharge. Violation of the terms and conditions of local pretreatment regulations or a user contract, permit or similar agreement between an industrial user and the owner of a publicly owned treatment works is prohibited. A violation may be enforced by the State or the owner of the treatment works or through joint action.

[1997, c. 794, Pt. A, §27 (AMD) .]

3. **User charges.** The department may impose as a condition in any license for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by users of such treatment works with any system of user charges required by state or federal law or regulations promulgated thereunder.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §32 (AMD) .]

4. **Acceptance of wastewater.** Municipal and quasi-municipal wastewater treatment facilities constructed wholly or in part with funding allocated pursuant to section 411 shall accept for treatment holding tank wastewater from any watercraft sewage pump-out facilities required pursuant to section 423-B. Municipal and quasi-municipal wastewater treatment facilities may charge an annual or per visit fee for this service to be approved by the commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §33 (AMD) .]

SECTION HISTORY
1973, c. 450, §15 (NEW). 1979, c. 444, §§8,9 (AMD). 1989, c. 433, §1 (AMD). 1989, c. 890, §§A40,B31-33 (AMD). 1997, c. 794, §§A26,27 (AMD). 2001, c. 232, §12 (AMD).

§414-C. COLOR POLLUTION CONTROL

1. **Color pollution control; finding.** The Legislature finds that further, rigorous control of color, odor and foam pollutants is consistent with modernization of the State's kraft pulp industry and that process technologies to accomplish this objective will enhance the competitive position of this industry.

[1989, c. 864, §1 (NEW) .]

2. **Best practicable treatment; color pollution.** For the purposes of section 414-A, subsection 1, paragraph D, "best practicable treatment" for color pollution control for discharges of color pollutants from the kraft pulping process is:

A. For discharges licensed and in existence prior to July 1, 1989:

(1) On July 1, 1998 and until December 31, 2000, 225 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and

(2) On and after January 1, 2001, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and [1997, c. 444, §1 (RPR).]

B. For discharges licensed for the first time after July 1, 1989, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis. [1989, c. 864, §1 (NEW).]

A discharge from a kraft pulp mill that is in compliance with this subsection is exempt from the provisions of subsection 3.

[1997, c. 444, §1 (AMD) .]

3. **Instream color pollution standard.** An individual waste discharge may not increase the color of any water body by more than 20 color pollution units. The total increase in color pollution units caused by all waste discharges to the water body must be less than 40 color pollution units. This subsection applies to all flows greater than the minimum 30-day low flow that can be expected to occur with a frequency of once in 10 years. A discharge that is in compliance with this subsection is exempt from the provisions of subsection 2, paragraph A. Such a discharge may not exceed 175 pounds of color pollutants per ton of unbleached pulp produced after January 1, 2001.

[1997, c. 444, §2 (AMD) .]

4. **Schedule of compliance.**

[1997, c. 444, §3 (RP) .]

4-A. **Compliance deadlines.**

[1997, c. 444, §4 (RP) .]

4-B. **Progress report.**

[1997, c. 444, §4 (RP) .]

4-C. **Color reduction evaluation.** If a discharge is not in compliance with either subsection 2 or 3 after January 1, 2001, the kraft pulp mill with a noncompliant discharge shall evaluate the potential for further color reductions. This evaluation must include the identification of each internal source of color, the contribution of color from each internal source, the options available for further color reductions for each internal source, the cost of these options for each internal source, the estimated final color discharge after implementation of the options given in pounds of color per ton of unbleached product and an assessment of the final impact on the in-stream color after implementation of the options including the amount of change expressed in color pollution units. This evaluation must be submitted to the commissioner for review no later than July 1, 2001 and by September 1, 2001 the commissioner shall modify the license to provide for a mill-specific best practicable treatment and compliance schedule.

[1997, c. 444, §5 (NEW) .]

5. **Interstate waters.** For the purposes of the commissioner's responsibilities under the Federal Water Pollution Control Act, Public Law 92-500, Section 401(a)(2), as amended, the commissioner shall find that the discharge of color pollution in excess of the standard established under subsection 2, paragraph A, into any surface water that subsequently enters the State affects the quality of the State's waters so as to violate the water quality requirements of the State.

[1989, c. 864, §1 (NEW) .]

6. **Monitoring established.** The commissioner shall incorporate as part of the department's ongoing water quality monitoring program, monitoring of color, odor and foam pollutants.

[1997, c. 444, §6 (AMD) .]

SECTION HISTORY

1989, c. 864, §1 (NEW). 1991, c. 835, §1 (AMD). 1997, c. 444, §§1-6 (AMD).

§415. APPEALS

(REPEALED)

SECTION HISTORY
1967, c. 475, §10 (RPR). 1969, c. 431, §§3-B (AMD). 1971, c. 304, (RPR). 1971, c. 461, §5 (AMD). 1971, c. 618, §12 (AMD). 1977, c. 300, §20 (RP).

§416. DISCHARGE OF OIL PROHIBITED

(REPEALED)

SECTION HISTORY
1969, c. 431, §§4,9 (AMD). 1969, c. 572, §2 (AMD). 1971, c. 458, §1 (RPR). 1971, c. 618, §12 (AMD). 1973, c. 450, §16 (AMD). 1977, c. 375, §1 (RP).

§417. CERTAIN DEPOSITS AND DISCHARGES PROHIBITED

No person, firm, corporation or other legal entity may 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 it may fall or be washed into these waters, or in such a manner that the drainage from any of the following may flow or leach into these waters, except as otherwise provided by law: [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §34 (RPR).]

1. **Forest products refuse.** Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse;

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §34 (NEW) .]

2. **Potatoes.** Any potatoes or any part or parts of potatoes; or

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §34 (NEW) .]

3. **Refuse.** Any scrap metal, junk, paper, garbage, septage, sludge, rubbish, old automobiles or similar refuse.

[2003, c. 650, §1 (AMD) .]

This section does 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 department pursuant to the requirements of chapter 13 and the rules adopted thereunder. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §34 (RPR).]

SECTION HISTORY
1969, c. 431, §5 (AMD). 1971, c. 458, §2 (RPR). 1973, c. 450, §17 (AMD). 1977, c. 373, §33 (AMD). 1989, c. 890, §§A40,B34 (RPR). 2003, c. 650, §1 (AMD).

§417-A. MANURE SPREADING

Notwithstanding Title 7, section 4207, when the ground is frozen, a person may not spread manure on agricultural fields within a great pond watershed unless this activity is in accordance with a conservation plan for that land on file with a state soil and water conservation district. [1997, c. 642, §6 (AMD).]

SECTION HISTORY
1991, c. 838, §20 (NEW). 1997, c. 642, §6 (AMD).

§418. LOG DRIVING AND STORAGE

1. **Prohibitions.** A person, firm, corporation or other legal entity may not place logs or pulpwood:

A. Into the inland waters of the State for the purpose of driving the logs or pulpwood to pulp mills, lumber mills or any other destination, except to transport logs or pulpwood from islands to the mainland; [2003, c. 452, Pt. W, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. On the ice of any inland waters of the State, except to transport logs or pulpwood from islands to the mainland; or [2003, c. 452, Pt. W, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Into the inland waters of the State for the purpose of storage or curing the logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, without a permit from the department as described in subsection 2. [2003, c. 452, Pt. W, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. W, §5 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Storage; permit.** Whoever proposes to use the inland waters of this State for the storage or curing of logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, shall apply to the department for a permit for that use. Applications for these permits must be in a form prescribed by the commissioner.

If the department finds, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein, and that inability to conduct that use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 5 years, with such terms and conditions as, in its judgment, may be necessary to protect the quality, standards and rights.

In the event the department determines it necessary to solicit further evidence regarding the proposed use, it shall schedule a public hearing on the application.

At that hearing the department shall solicit and receive testimony concerning the nature and extent of the proposed use and its impact on existing water quality, water classification standards and the public rights of fishing and navigation and the economic implications upon the applicant of the use. If, after hearing, the department determines that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct the use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 5 years, with such terms and conditions as in its judgment may be necessary to protect the quality, standards and rights.

[1997, c. 794, Pt. A, §28 (AMD) .]

3. **Exception.**

[1973, c. 422, (RP) .]

SECTION HISTORY

1971, c. 323, (NEW). 1971, c. 355, (NEW). 1971, c. 372, (NEW). 1971, c. 544, §§127,131 (RP). 1971, c. 544, §§129,131 (RP). 1971, c. 618, §12 (AMD). 1973, c. 422, (AMD). 1973, c. 625, §272 (AMD). 1973, c. 712, §7 (AMD). 1977, c. 300, §§21,22 (AMD). 1983, c. 375, §§1,2 (AMD). 1983, c. 566, §§20,21 (AMD). 1983, c. 743, §11 (AMD). 1985, c. 506, §A79 (AMD). 1989, c. 890, §§A40,B35 (AMD). 1997, c. 794, §A28 (AMD). 2003, c. 452, §W5 (AMD). 2003, c. 452, §X2 (AFF).

§418-A. PROTECTION OF THE LOWER PENOBSCOT RIVER

1. **Findings.** The Legislature finds that the lower Penobscot River is a unique and valuable natural resource. The lower Penobscot River serves as an example to the Nation that good public policy carefully implemented can restore and preserve our natural resources. The river has supported, and is again beginning to support, the greatest run of Atlantic salmon in North America, providing a unique fishing opportunity for Maine residents. The Legislature declares that the preservation and restoration of the lower Penobscot River is of the highest priority.

[1981, c. 674, (NEW) .]

2. **Prohibition.** To protect water quality and aquatic resources, fisheries and fishing opportunities, and as an exercise of the public trust of the State, no person, firm, corporation, municipality or other legal entity may erect, operate, maintain or use any dam on that portion of the Penobscot River downstream from the Bangor Hydroelectric Company Dam located at Veazie to the southernmost point of Verona Island for any purpose not previously authorized by act, resolve or operation of law, unless specifically authorized by the Legislature.

[1981, c. 674, (NEW) .]

3. **Study authorized.** Any person, firm, corporation, municipality or other legal entity may study the feasibility of erecting, operating, maintaining or using a dam for hydroelectric generation on the portion of the Penobscot River described in subsection 2.

[1981, c. 674, (NEW) .]

SECTION HISTORY
1981, c. 674, (NEW).

§419. CLEANING AGENTS AND LAWN AND TURF FERTILIZER CONTAINING PHOSPHATE BANNED

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

A. "Dairy equipment" means equipment used by farmers or processors for the manufacture or processing of milk and dairy products. [2007, c. 65, §1 (AMD).]

A-1. "Compost" means a biologically stable material derived from the composting process. [2007, c. 65, §1 (NEW).]

A-2. "Composting" means the biological decomposition of organic matter. It is accomplished by mixing and piling organic matter in such a way as to promote aerobic decay, anaerobic decay or both. [2007, c. 65, §1 (NEW).]

A-3. "Fertilizer" means a substance containing one or more recognized plant nutrients that is used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth. "Fertilizer" does not include animal and vegetable manures that are not manipulated, marl, lime, limestone or topsoil. [2007, c. 65, §1 (NEW).]

A-4. "Fertilizer containing phosphorus" means a fertilizer containing more than 0.67% phosphate by weight. [2007, c. 65, §1 (NEW).]

B. "Food processing equipment" means equipment used for the processing and packaging of food for sale, except that equipment used at restaurants and similar places of business is not included within the meaning of "food processing equipment." [2007, c. 65, §1 (AMD).]

C. "High phosphorous detergent" 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 that contains less than 7 grams of phosphorous by weight. [2007, c. 65, §1 (AMD).]

C-1. "Household laundry detergent" means a cleaning agent used primarily in private residences for washing clothes. [2007, c. 65, §1 (AMD).]

D. "Industrial equipment" means equipment used by industrial concerns that are located on any brook, stream or river. [2007, c. 65, §1 (AMD).]

D-1. "Manipulated" means a process by which fertilizers are manufactured, blended or mixed or animal or vegetable manures are treated in any manner, including mechanical drying, grinding, pelleting and other means, or by adding other chemicals or substances. [2007, c. 65, §1 (NEW).]

E. "Person" means any individual, firm, association, partnership, corporation, municipality, quasi-municipal organization, agency of the State or other legal entity. [2007, c. 65, §1 (AMD).]

[2007, c. 65, §1 (AMD) .]

2. **Prohibition.** A person may not:

A. Sell or use a high phosphorus detergent; or [2007, c. 65, §1 (NEW).]

B. Sell fertilizer containing phosphorus at a retail store after January 1, 2008 unless the seller posts a department-approved sign that indicates that the product is not appropriate for use on nonagricultural lawns or turf due to potential adverse effects on water quality, except when:

(1) Soil test results from a laboratory indicate that additional phosphorus is needed for that lawn or turf; or

(2) The fertilizer will be used in establishing a new lawn or turf, including establishing turf at a sod farm, or for reseeding or overseeding an existing lawn or turf.

The sign required by this paragraph must be positioned between 4 and 7 feet above the floor and prominently posted where fertilizers containing phosphorus for use on lawns or turf are displayed. For purposes of this paragraph, "retail store" means a commercial establishment that sells fertilizer on the store premises for use off the premises. [2007, c. 65, §1 (NEW).]

[2007, c. 65, §1 (AMD) .]

2-A. **Household laundry detergent.** After July 1, 1993, a person may not sell or offer for sale in this State a household laundry detergent that contains more than 0.5% phosphorus by weight expressed as elemental phosphorus.

[1991, c. 838, §22 (NEW) .]

3. **Exception.** Subsection 2 does not apply to :

A. A high phosphorous detergent sold and used for the purpose of cleaning dairy equipment, food processing equipment and industrial equipment; [2007, c. 65, §1 (NEW).]

B. Fertilizers used for agricultural crops or for flower or vegetable gardening; or [2007, c. 65, §1 (NEW).]

C. Compost. [2007, c. 65, §1 (NEW).]

[2007, c. 65, §1 (AMD) .]

4. **Penalty.**

[1977, c. 300, §23 (RP) .]

SECTION HISTORY
1971, c. 544, §128 (NEW). 1977, c. 300, §23 (AMD). 1983, c. 566, §22 (AMD). 1985, c. 332, (AMD). 1991, c. 838, §§21,22 (AMD). 2007, c. 65, §1 (AMD).

§419-A. PROHIBITION ON THE USE OF TRIBUTYLTIN AS AN ANTIFOULING AGENT

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

A. [1989, c. 763, §1 (RPR); T. 38, §419-A, sub-§1, ¶ A (RP).]

A-1. "Acceptable release rate" means a measured release rate equal to or less than 4.0 micrograms per square centimeter per day at steady state conditions determined in accordance with federal Environmental Protection Agency testing procedures on tributyltin in antifouling paints under the Federal Insecticide, Fungicide and Rodenticide Act. [1993, c. 15, §1 (AMD); 1993, c. 15, §2 (AFF).]

B. "Antifouling paint" means a compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels. [1987, c. 769, Pt. B, §8 (AMD).]

C. "Commercial boatyard" means:

(1) A facility that engages for hire in the construction, storage, maintenance, repair or refurbishing of vessels; or

(2) An independent marine maintenance contractor who engages in any of the activities listed in subparagraph (1). [1987, c. 474, (NEW).]

D. "Trap dip" means a liquid antifouling agent or preservative with which wooden lobster traps are treated. [1987, c. 474, (NEW).]

E. "Tributyltin compound" means any organotin compound that has 3 normal butyl groups attached to a tin atom, with or without an anion, such as chloride, fluoride or oxide. [1987, c. 474, (NEW).]

F. "Vessel" means a watercraft or other conveyance used as a means of transportation on water, whether self-propelled or otherwise. This definition includes barges and tugs. [1987, c. 474, (NEW).]

[1993, c. 15, §1 (AMD); 1993, c. 15, §2 (AFF) .]

2. **Prohibition on use.** Prohibition on use includes the following.

A. Except as provided in subsection 3, a person may not distribute, possess, sell, offer for sale, apply or offer for application any antifouling paint or trap dip containing a tributyltin compound. [1987, c. 474, (NEW).]

B. No person may distribute, possess, sell, offer for sale, apply or offer for application any substance that contains a tributyltin compound in concentrated form that is labeled for mixing with paint or solvents to produce an antifouling paint for use on vessels, wooden lobster traps, fishing gear for marine waters, floats, moorings or piers. [1987, c. 474, (NEW).]

C. The Board of Pesticides Control is the enforcement agency for this section. The Board of Pesticides Control shall make available a list of paints with acceptable tributyltin release rates by January 1, 1988. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §36 (AMD).]

D. This section shall take effect on January 1, 1988. [1987, c. 474, (NEW).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §36 (AMD) .]

3. **Exceptions.** Exceptions to the prohibition are as follows.

A. A person may distribute or sell an antifouling paint containing a tributyltin compound with an acceptable release rate to the owner or agent of a commercial boatyard. The owner or agent of a commercial boatyard may purchase, possess and apply an antifouling paint containing tributyltin compounds with an acceptable release rate, if the antifouling paint is applied only within a commercial boatyard and is applied only to vessels exceeding 25 meters in length or that have aluminum hulls. [1987, c. 474, (NEW).]

B. This section does not prohibit the sale, application or possession of an antifouling paint containing a tributyltin compound, if the antifouling paint is in a spray can of 16 ounces or less, is commonly referred to as an outboard or lower drive unit paint and has an acceptable release rate. [1987, c. 474, (NEW).]

[1987, c. 474, (NEW) .]

SECTION HISTORY
1987, c. 474, (NEW). 1987, c. 769, §B8 (AMD). 1989, c. 763, §§1,2 (AMD). 1989, c. 890, §§A40,B36 (AMD). 1993, c. 15, §1 (AMD). 1993, c. 15, §2 (AFF).

§419-B. GOALS FOR DATES OF REMOVAL OF TRANSFORMERS CONTAINING POLYCHLORINATED BIPHENYLS

The State's goals for the dates of removal of transformers owned by public utilities that contain polychlorinated biphenyls in concentrations at or above 50 parts per million are as follows. For the purposes of this section, removal of a transformer that contains polychlorinated biphenyls may be accomplished through the retrofilling of the transformer with oil that contains polychlorinated biphenyls in concentrations below 50 parts per million. [1999, c. 193, §1 (NEW).]

1. **Transformers near surface waters.** The goal for the date of removal of pole-mounted or pad-mounted transformers owned by public utilities that contain polychlorinated biphenyls in concentrations at or above 50 parts per million and that are located within 100 feet of any surface water or an elementary school or secondary school as defined in Title 20-A, section 1 is October 1, 2005.

For the purposes of this subsection, "surface water" means a wetland mapped by the United States Fish and Wildlife Service under the National Wetlands Inventory project; a great pond as defined in section 480-B; or a river, stream or brook as defined in section 480-B.

[1999, c. 193, §1 (NEW) .]

2. **Remaining transformers.** Subject to a utility's existing commercial storage facility license for polychlorinated biphenyls issued by the department, the goal for the date of removal of all pole-mounted or pad-mounted transformers, other than those described in subsection 1, owned by public utilities that contain polychlorinated biphenyls in concentrations at or above 50 parts per million is October 1, 2011.

[1999, c. 193, §1 (NEW) .]

3. **Uninterruptible service.** The dates in this section may be extended to allow for adequate planning for the removal of transformers that provide electrical service to institutions for which service may not be interrupted without extensive planning, including, but not limited to, hospitals and schools.

[1999, c. 193, §1 (NEW) .]

4. **Exception.** This section does not apply to transformers located in substations.

[1999, c. 193, §1 (NEW) .]

5. **Voluntary goals.** A public utility is not required to meet the goals in this section.

[1999, c. 193, §1 (NEW) .]

SECTION HISTORY
1999, c. 193, §1 (NEW).

§419-C. PREVENTION OF THE SPREAD OF INVASIVE AQUATIC PLANTS

1. **Prohibition.** A person may not:

A. Transport any aquatic plant or parts of any aquatic plant, including roots, rhizomes, stems, leaves or seeds, on the outside of a vehicle, boat, personal watercraft, boat trailer or other equipment on a public road; [1999, c. 722, §2 (NEW).]

B. Possess, import, cultivate, transport or distribute any invasive aquatic plant or parts of any invasive aquatic plant, including roots, rhizomes, stems, leaves or seeds, in a manner that could cause the plant to get into any state waters; [2003, c. 627, §6 (AMD).]

C. After September 1, 2000, sell or offer for sale in this State any invasive aquatic plant; or [2003, c. 627, §6 (AMD).]

D. Fail to remove any aquatic plant or parts of any aquatic plant, including roots, rhizomes, stems, leaves or seeds, from the outside of a vehicle, boat, personal watercraft, boat trailer or other equipment on a public road. [2003, c. 627, §7 (NEW).]

[2003, c. 627, §§6, 7 (AMD) .]

2. **Penalty.** A person who violates this section commits a civil violation for which a forfeiture not to exceed $500 may be adjudged for the first violation and a forfeiture not to exceed $2,500 may be adjudged for a subsequent violation.

[2001, c. 434, Pt. A, §6 (AMD) .]

SECTION HISTORY
1999, c. 722, §2 (NEW). 2001, c. 434, §A6 (AMD). 2003, c. 627, §§6,7 (AMD).

§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 water, inland 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, or in such manner that the drainage therefrom may flow into such waters, any of the following substances: [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §37 (AMD).]

1. **Mercury.**

[1999, c. 500, §1 (RP) .]

1-A. **Mercury.**

[2001, c. 418, §2 (RP) .]

1-B. **Mercury.** Facilities discharging mercury into the waters of the State shall make reasonable progress to develop, incorporate and continuously improve pollution prevention practices, and implement economically achievable future improvements in wastewater technology, in order to reduce their dependence upon mercury products, reduce or remove discharges of mercury over time, and help in the restoration of the waters of the State. This subsection establishes ambient water quality criteria for mercury that identify that level of mercury considered safe for human health and the environment.

A. The ambient criteria for mercury are as follows:

(1) Ambient water quality criteria for aquatic life:

(a) Freshwater acute: 1.7 micrograms per liter;

(b) Freshwater chronic: 0.91 micrograms per liter;

(c) Saltwater acute: 2.1 micrograms per liter; and

(d) Saltwater chronic: 1.1 micrograms per liter; and

(2) Fish tissue residue criterion for human health: 0.2 milligrams per kilogram in the edible portion of fish. [2001, c. 418, §3 (NEW).]

B. A facility is not in violation of the ambient criteria for mercury if:

(1) The facility is in compliance with an interim discharge limit established by the department pursuant to section 413, subsection 11; or

(2) The facility is in compliance with a remediation or corrective action plan, license or order approved either by the department pursuant to section 1301, 1304, 1319, 1364 or 1365, or by the United States Environmental Protection Agency under federal law with the concurrence of the department. [2001, c. 418, §3 (NEW).]

C. The department may establish a site-specific bioaccumulation factor for mercury when there is sufficient information to indicate that a site-specific bioaccumulation factor will be protective of human health and wildlife. A site-specific bioaccumulation factor may only be established:

(1) As part of a licensing proceeding pursuant to section 413 by the board; or

(2) As part of a remediation or corrective action plan, license or order approved either by the department pursuant to section 1301, 1304, 1319, 1364 or 1365, or by the United States Environmental Protection Agency under federal law with the concurrence of the department. [2001, c. 418, §3 (NEW).]

D. The department shall establish by rule a statewide bioaccumulation factor protective of 95% of the waters of the State based upon data of acceptable quality and representing the species consumed by the public following guidelines published by the United States Environmental Protection Agency. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 418, §3 (NEW).]

E. The department shall establish by rule statewide ambient water quality criteria for mercury concerning wildlife based upon data of acceptable quality from the State or the United States Environmental Protection Agency. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 418, §3 (NEW).]

F. The department may require mercury testing once per year for facilities that maintain at least 5 years of mercury testing data. [2011, c. 194, §1 (NEW).]

The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2005 and by January 15th every 5th year thereafter on the status of mercury discharges, progress in implementing pollution prevention plans and progress toward attainment of ambient water quality criteria for mercury under this subsection. The report may include proposed statutory amendments. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out any necessary implementing legislation related to these mercury issues in each session in which a report is required under this subsection.

[2011, c. 194, §1 (AMD) .]

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.

A. Except as naturally occurs or as provided in paragraphs B and C, the board shall regulate toxic substances in the surface waters of the State at the levels set forth in federal water quality criteria as established by the United States Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended. [1989, c. 856, §2 (NEW); 1989, c. 856, §7 (AFF).]

B. The board may change the statewide criteria established under paragraph A for a particular toxic substance established pursuant to the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended, as follows:

(1) By adopting site-specific numerical criteria for the toxic substance to reflect site-specific circumstances different from those used in, or any not considered in, the derivation of the statewide criteria. The board shall adopt site-specific numerical criteria only as part of a licensing proceeding pursuant to sections 413, 414 and 414-A; or

(2) By adopting alternative statewide criteria for the toxic substance. The alternative statewide criteria must be adopted by rule.

The board may substitute site-specific criteria or alternative statewide criteria for the criteria established in paragraph A only upon a finding that the site-specific criteria or alternative statewide criteria are based on sound scientific rationale and are protective of the most sensitive designated use of the water body, including, but not limited to, human consumption of fish and drinking water supply after treatment. [1989, c. 856, §2 (NEW); 1989, c. 856, §7 (AFF).]

C. When surface water quality standards are not being met due to the presence of a toxic substance for which no water quality criteria have been established pursuant to the Federal Water Pollution Control Act, Section 304(a), as amended, the board shall:

(1) Adopt statewide numerical criteria by rule; or

(2) Adopt site-specific numerical criteria as part of a licensing proceeding under sections 413, 414 and 414-A.

Nothing in this section restricts the authority of the board to adopt, by rule, statewide or site-specific numerical criteria for toxic substances that are not presently causing water quality standards to be violated. [1989, c. 856, §2 (NEW); 1989, c. 856, §7 (AFF).]

D. For any criteria established under this subsection, the board shall establish the acceptable level of additional risk of cancer to be borne by the affected population from exposure to the toxic substance believed to be carcinogenic. [1989, c. 856, §2 (NEW); 1989, c. 856, §7 (AFF).]

E. In regulating substances that are toxic to humans, including any rulemaking to regulate these substances, the board shall consider any information provided by the Department of Health and Human Services. [1989, c. 856, §2 (NEW); 1989, c. 856, §7 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

F. The Department of Health and Human Services may request that the board adopt or revise the statewide or site-specific criteria for any toxic substance based on the need to protect public health. If the request is filed with the board, the board may propose a rule and initiate a rule-making proceeding. The board shall incorporate in its proposal for rulemaking under this paragraph the statewide or site-specific criteria recommended by the Department of Health and Human Services. [1989, c. 856, §2 (NEW); 1989, c. 856, §7 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

G. Numeric water quality criteria for 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin established by the United States Environmental Protection Agency under the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended, do not apply until June 1, 1991, and only apply on that date if the board has not adopted through rulemaking or individual licensing proceedings under this section alternative numeric water quality criteria for 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin. Pursuant to section 414-A, subsection 2, the board shall establish schedules for compliance with criteria established under this section. These schedules must be consistent with the compliance deadlines established under the Federal Water Pollution Control Act, Public Law 92-500, Section 304(l), as amended. [1989, c. 856, §2 (NEW); 1989, c. 856, §7 (AFF).]

H. Notwithstanding paragraphs D and G, the board may not adopt any numeric water quality criteria for, or acceptable level of additional cancer risk from exposure to, 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin prior to January 1, 1994. [1993, c. 240, §1 (NEW).]

I. Notwithstanding any other provision of this section, the following standards apply only to a bleach kraft pulp mill, referred to in this paragraph as a "mill."

(1) After July 31, 1998, a mill may not have a detectable quantity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin as measured in any internal waste stream of its bleach plant. For purposes of compliance, the detection level is 10 picograms per liter, unless the department adopts a lower detection level by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter 2-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency.

(2) After December 31, 1999, a mill may not have a detectable quantity of 2, 3, 7, 8-tetrachlorodibenzo-p-furan as measured in any internal waste stream of its bleach plant. The commissioner may extend this time frame up to 6 months for a mill if the commissioner determines, based on information presented by the mill, that compliance is not achievable by the deadline due to engineering constraints, availability of equipment or other justifiable technical reasons. For purposes of compliance, the detection level is 10 picograms per liter, unless the department adopts a lower level of detection by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter 2-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency. If a mill fails to achieve this requirement, as documented by confirmatory sampling, it shall conduct a site-specific evaluation of feasible technologies or measures to achieve it. This evaluation must be submitted to the commissioner within 6 months of the date of confirmatory sampling and include a timetable for implementation, acceptable to the commissioner, with an implementation date no later than December 31, 2002. The commissioner may establish a procedure for confirmatory sampling.

(3) After December 31, 2002, a mill may not discharge dioxin into its receiving waters. For purposes of this subparagraph, a mill is considered to have discharged dioxin into its receiving waters if 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin or 2, 3, 7, 8-tetrachlorodibenzo-p-furan is detected in any of the mill's internal waste streams of its bleach plant and in a confirmatory sample at levels exceeding 10 picograms per liter, unless the department adopts a lower detection level by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter 2-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency, or if levels of dioxin, as defined in section 420-B, subsection 1-A, paragraph A detected in fish tissue sampled below the mill's wastewater outfall are higher than levels in fish tissue sampled at an upstream reference site not affected by the mill's discharge or on the basis of a comparable surrogate procedure acceptable to the commissioner. The commissioner shall consult with the technical advisory group established in section 420-B, subsection 1, paragraph B, subparagraph (5) in making this determination and in evaluating surrogate procedures. The fish-tissue sampling test must be performed with differences between the average concentrations of dioxin in the fish samples taken upstream and downstream from the mill measured with at least 95% statistical confidence. If the mill fails to meet the fish-tissue sampling-result requirements in this subparagraph and does not demonstrate by December 31, 2004 and annually thereafter to the commissioner's satisfaction that its wastewater discharge is not the source of elevated dioxin concentrations in fish below the mill, then the commissioner may pursue any remedy authorized by law.

(4) For purposes of documenting compliance with subparagraphs (1) and (2) the internal waste stream of a bleach plant must be sampled twice per quarter by the mill. The department may conduct its own sampling and analysis of the internal waste stream of a bleach plant. Analysis of the samples must be conducted by a 3rd-party laboratory using methodology approved by the United States Environmental Protection Agency. A mill shall report to the department for informational purposes the actual laboratory results including sample detection limits on a frequency to be established by the commissioner.

The commissioner shall assess the mill for the costs of any sampling performed by the department and any analysis performed for the department under this paragraph and credit funds received to the Maine Environmental Protection Fund.

The commissioner may reduce the frequency of sampling required by a mill after 3 consecutive years of sampling have demonstrated the mill does not have a detectable quantity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin or 2, 3, 7, 8-tetrachlorodibenzo-p-furan. [2007, c. 565, §1 (AMD).]

J. Notwithstanding any other provision of law to the contrary, the department shall use a one in 10,000 risk level when calculating ambient water quality criteria for inorganic arsenic. [2011, c. 194, §2 (NEW).]

[2011, c. 194, §2 (AMD) .]

3. **Radiological, chemical or biological warfare agents.** Radiological, chemical or biological warfare agents or high level radioactive wastes.

[1973, c. 450, §18 (NEW) .]

SECTION HISTORY
1971, c. 544, §130 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 450, §18 (AMD). 1979, c. 127, §210 (AMD). 1979, c. 472, §14 (AMD). 1983, c. 566, §23 (AMD). 1989, c. 856, §§2,7 (AMD). 1989, c. 890, §§A40,B37,38 (AMD). RR 1991, c. 2, §141 (COR). 1993, c. 240, §1 (AMD). 1997, c. 444, §7 (AMD). 1997, c. 722, §§1,2 (AMD). 1999, c. 500, §§1,2 (AMD). 2001, c. 418, §§2,3 (AMD). 2003, c. 165, §1 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 565, §1 (AMD). 2011, c. 194, §§1, 2 (AMD).

§420-A. DIOXIN MONITORING PROGRAM

(REPEALED)

SECTION HISTORY
1987, c. 762, §1 (NEW). 1989, c. 856, §§3-5,7 (AMD). 1989, c. 890, §§A40,B39,40 (AMD). RR 1991, c. 2, §142 (COR). 1991, c. 66, §§A8,9 (AMD). 1991, c. 66, §A43 (AFF). 1995, c. 223, §§1-3 (AMD). 1997, c. 179, §§1-3 (AMD). 1997, c. 444, §8 (AMD). 2001, c. 626, §10 (AMD). 2007, c. 565, §2 (RP). MRSA T. 38, §420-A, sub-§6 (RP).

§420-B. SURFACE WATER AMBIENT TOXIC MONITORING PROGRAM

The discharge of pollutants from certain direct and indirect sources into the State's waters introduces toxic substances, as defined under section 420, into the environment. In order to determine the nature, scope and severity of toxic contamination in the surface waters and fisheries of the State, the commissioner shall conduct a scientifically valid monitoring program. [1993, c. 720, §1 (NEW).]

The program must be designed to comprehensively monitor the lakes, rivers and streams and marine and estuarine waters of the State on an ongoing basis. The program must incorporate testing for suspected toxic contamination in biological tissue and sediment, may include testing of the water column and must include biomonitoring and the monitoring of the health of individual organisms that may serve as indicators of toxic contamination. This program must collect data sufficient to support assessment of the risks to human and ecological health posed by the direct and indirect discharge of toxic contaminants. [1993, c. 720, §1 (NEW).]

1. **Development of monitoring plans and work programs.** The commissioner shall:

A. Prepare a plan every 5 years that outlines the monitoring objectives for the following 5 years, resources to be allocated to those objectives and a plan for conducting the monitoring, including methods, scheduling and quality assurance; and [1993, c. 720, §1 (NEW).]

B. Prepare a work program each year that defines the work to be conducted that year toward the objectives of the 5-year plan. This work program must identify specific sites, the sampling media and the contaminants that will be tested.

(1) The commissioner shall consider the following factors when selecting monitoring sites for the annual work program:

(a) The importance of the water body to fisheries, wildlife and humans;

(b) Known or likely sources of contamination and their relative risk to human or ecological health;

(c) The existence of pending waste discharge licenses affecting the water body;

(d) The availability of reference sites that are relatively unaffected by human activity;

(e) Anticipated improvement or degradation of the water body; and

(f) The availability of current, valid data from other sources on the level of toxic contamination of the water body.

(2) The commissioner shall incorporate the following types of testing in the program:

(a) Monitoring of toxic contaminant levels in biological tissue and water body sediments, and monitoring of the water column may be included;

(b) Analysis of the resident biological community in the monitored water body; and

(c) Monitoring of the health of individual organisms that may serve as indicators of toxic contamination.

(3) When selecting the specific toxic substances to be monitored in the annual program, the commissioner shall consider:

(a) Toxic substances that have the potential to affect human or ecological health at expected concentrations;

(b) Toxic substances from both natural and human sources;

(c) Toxic substances that serve as tracers for human sources of pollution;

(d) Toxic substances or measures of contamination that may be more cost-effective indicators of other toxic substances; and

(e) Toxic substances for which there are analytical test methods approved by the United States Environmental Protection Agency or, where such methods have not been approved, for which the commissioner determines, with the assistance of the technical advisory group established under this section, that proven, reliable methods have been established.

The commissioner shall include in the annual work program a written statement providing the factual basis for the selection of the specific toxic substances to be monitored. Prior to implementation of the annual work program, the toxic substances to be monitored and, if not approved by the United States Environmental Protection Agency, the analytical test methods to be used must be approved by the technical advisory group by a 2/3 vote.

(4) When determining the intensity of the monitoring effort in the annual program, the commissioner shall consider:

(a) The potential for annual variation in toxic contamination at a monitoring site;

(b) The degree of homogeneity in the materials to be sampled; and

(c) The uncertainty in observations due to possible systematic and analytic error.

(5) A technical advisory group composed of 12 individuals is established. The commissioner shall appoint 2 members with scientific backgrounds in toxic contamination or monitoring, ecological assessment or public health from each of the following interests: business, municipal, conservation, public health and academic interests. The President of the Senate shall appoint as a nonvoting member one Senator who serves on the joint standing committee of the Legislature having jurisdiction over natural resources matters. The Speaker of the House shall appoint as a nonvoting member one member of the House of Representatives who serves on the joint standing

committee of the Legislature having jurisdiction over marine resources matters. The commissioner shall appoint the chair from among the voting members. A quorum of 6 voting members must be present for the conduct of business. Members do not receive compensation or reimbursement for expenses.

The members appointed by the commissioner serve for terms of 3 years except that, for the initial appointments, 2 members serve terms of one year, 4 members serve terms of 2 years and 4 members serve terms of 3 years. The Legislators serve for the duration of the Legislature to which the Legislators are elected.

The group shall advise the commissioner during the development of the 5-year monitoring plan and the annual work programs. [2007, c. 445, §1 (AMD).]

[2007, c. 445, §1 (AMD) .]

1-A. **Dioxin monitoring.** In order to determine the nature of dioxin contamination in the waters and fisheries of the State, the commissioner shall conduct a monitoring program as described in this subsection. This monitoring must be undertaken to determine the need for fish consumption advisories on affected waters.

A. As used in this subsection, the term "dioxin" means any polychlorinated dibenzo-para-dioxins, PCDDs, and any polychlorinated dibenzo-para-furans, PCDFs. [2007, c. 565, §3 (NEW).]

B. The commissioner shall:

(1) Select a representative sample of wastewater treatment plant sludges from municipal wastewater treatment plants, bleached pulp mills or other sources. These facilities must be selected on the basis of known or likely dioxin contamination of their discharged effluent;

(2) Sample and test the sludge of selected facilities for dioxin contamination at least once during each season of the year. The commissioner shall specify which congeners of dioxin will be analyzed;

(3) At appropriate intervals, sample and test for dioxin contamination in a selection of fish representative of those species present in the receiving waters or where there are consumption advisories for dioxin. Sufficient numbers of fish must be analyzed to provide a reasonable estimate of the level of contamination in the population of each water body affected; and

(4) Assess the selected facilities for the costs of sample collection and analysis except that, if the selected facility is a publicly owned treatment works, the commissioner may assess the primary industrial generator discharging effluent into the treatment facility if the generator is known or likely to be discharging dioxin into the treatment facility. Fees received under this subparagraph must be credited to the Maine Environmental Protection Fund. Payment of these fees is a condition of the discharge license issued pursuant to section 413 for continued operation of the selected facilities, except that, if the selected facility is a publicly owned treatment works and the commissioner assesses the fee on an industrial generator, payment of the fee is not a condition of the discharge license of the selected facility. The fees assessed under this subparagraph may not exceed a total of $250,000 in any fiscal year. The fees assessed under this subparagraph to facilities subject to section 420, subsection 2, paragraph I may not exceed a total of $10,000 in any fiscal year. [2007, c. 565, §3 (NEW).]

[2007, c. 565, §3 (NEW) .]

2. **Data management.** The commissioner shall maintain data collected under this section in a manner consistent with standards established under Title 5, chapter 163, subchapter 3 for the State's geographic information system. All data is available to the public.

[2005, c. 12, Pt. SS, §22 (AMD) .]

3. **Coordination and notice of monitoring.** The commissioner shall coordinate the monitoring program established under this section with other toxics monitoring programs conducted by the department, the Maine Center for Disease Control and Prevention, the United States Environmental Protection Agency and other federal agencies or dischargers of wastewater. At least 30 days prior to submitting the plan described under subsection 1, paragraph A to the technical advisory group, the commissioner shall notify the owners or operators of each selected facility proposed for dioxin monitoring of the facility's inclusion in the plan.

[2007, c. 565, §4 (AMD) .]

4. **Report.** No later than March 31st of each year, the commissioner shall report on the monitoring program to the joint standing committees of the Legislature having jurisdiction over natural resources matters and marine resources matters. This report must contain:

A. At the start of each 5-year period, the 5-year monitoring plan; [1993, c. 720, §1 (NEW).]

B. The annual work program for the past year and the current year; [1993, c. 720, §1 (NEW).]

C. The commissioner's conclusions as to the levels of toxic contamination in the State's waters and fisheries; [1997, c. 179, §4 (AMD).]

D. Any trends of increasing or decreasing levels of contaminants found; and [1997, c. 179, §4 (AMD).]

E. The results of the dioxin monitoring program required under subsection 1-A. [2007, c. 565, §5 (AMD).]

[2007, c. 565, §5 (AMD) .]

SECTION HISTORY
1993, c. 720, §1 (NEW). 1995, c. 152, §6 (AMD). 1997, c. 179, §4 (AMD). 2005, c. 12, §SS22 (AMD). 2007, c. 445, §§1, 2 (AMD). 2007, c. 565, §§3-5 (AMD).

§420-C. EROSION AND SEDIMENTATION CONTROL

A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation. [1997, c. 502, §1 (AMD).]

A person who owns property that is subject to erosion because of a human activity before July 1, 1997 involving filling, displacing or exposing soil or other earthen materials shall take measures in accordance with the dates established under this paragraph to prevent unreasonable erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. Adequate and timely temporary and permanent stabilization measures must be taken and maintained on that site to prevent unreasonable erosion and sedimentation. This paragraph applies on and after July 1, 2005 to property that is located in the watershed of a body of water most at risk as identified in the department's storm water rules adopted pursuant to section 420-D and that is subject to erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. This paragraph applies on and after July 1, 2010 to other property that is subject to erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. [1997, c. 748, §1 (NEW).]

This section applies to a project or any portion of a project located within an organized area of this State. This section does not apply to agricultural fields. Forest management activities, including associated road construction or maintenance, conducted in accordance with applicable standards of the Maine Land Use Planning Commission, are deemed to comply with this section. This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section. [1995, c. 704, Pt. B, §2 (NEW); 1995, c. 704, Pt. C, §2 (AFF); 2011, c. 682, §38 (REV).]

SECTION HISTORY
1995, c. 704, §B2 (NEW). 1995, c. 704, §C2 (AFF). 1997, c. 502, §1 (AMD). 1997, c. 748, §1 (AMD). 2011, c. 682, §38 (REV).

§420-D. STORM WATER MANAGEMENT

A person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department and may not begin construction until approval is received. This section applies to a project or any portion of a project that is located within an organized area of this State. [2005, c. 219, §3 (AMD).]

1. **Standards.** The department shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates and suspended solids but may not directly address other dissolved or hazardous materials unless infiltration is proposed.

[2005, c. 219, §4 (AMD) .]

2. **Review.** If the applicant is able to meet the standards for storm water using solely vegetative means, the department shall review the application within 45 calendar days. If structural means are used to meet those standards, the department shall review the application within 90 calendar days. The review period begins upon receipt of a complete application and may be extended pursuant to section 344-B or if a joint order is required pursuant to subsection 5. The department may request additional information necessary to determine whether the standards of this section are met. The application is deemed approved if the department does not notify the applicant within the applicable review period.

The department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit requirement applicable to projects in a designated area of the municipality. The municipality or quasi-municipality may elect to have this substitution take effect at the time the system is approved by the department, or at the time the system is completed as provided in an implementation schedule approved by the department.

[2005, c. 330, §9 (AMD) .]

3. **Watersheds of bodies of water most at risk.** The department shall establish by rule a list of watersheds of bodies of water most at risk from new development. In regard to lakes, the list must include, but is not limited to, public water supply lakes and lakes identified by the department as in violation of class GPA water quality standards or as particularly sensitive to eutrophication based on current water quality, potential for internal recycling of phosphorus, potential as a cold water fishery, volume and flushing rate or projected growth rate in a watershed. The department shall review and update the list as necessary. A municipality within the watershed of a body of water most at risk may petition the department to have the body of water added to or dropped from the list.

[1995, c. 704, Pt. B, §2 (NEW); 1997, c. 603, §§8, 9 (AFF) .]

4. **Degraded, sensitive or threatened regions or watersheds.** The department shall establish by rule a list of degraded, sensitive or threatened regions or watersheds. These areas include the watersheds of surface waters that:

A. Have been degraded or are susceptible to degradation of water quality or fisheries because of the cumulative effect of past or reasonably foreseeable levels of development activity within the watershed of the affected surface waters; and [2011, c. 206, §7 (AMD).]

B. Are not classified as "watersheds of bodies most at risk" under subsection 3. [1995, c. 704, Pt. B, §2 (NEW); 1997, c. 603, §§8, 9 (AFF).]

[2011, c. 206, §7 (AMD) .]

5. **Relationship to other laws.** A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; article 9, the Maine Metallic Mineral Mining Act; sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or 1319-X, waste facility licenses. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B.

[2011, c. 653, §14 (AMD); 2011, c. 653, §33 (AFF) .]

6. **Urbanizing areas.** The department shall work with the Department of Agriculture, Conservation and Forestry to identify urban bodies of water most at risk and incorporate model ordinances protective of these bodies of water into assistance provided to local governments.

[2011, c. 655, Pt. JJ, §29 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

7. **Exemptions.** The following exemptions apply.

A. Forest management activities as defined in section 480-B, subsection 2-B, including associated road construction or maintenance, do not require review pursuant to this section as long as any road construction is used primarily for forest management activities that do not constitute a change in land use under rules adopted by the Department of Agriculture, Conservation and Forestry, Bureau of Forestry concerning forest regeneration and clear-cutting and is not used primarily to access development, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads within a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State. [2009, c. 537, §2 (RPR); 2011, c. 657, Pt. W, §5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV).]

B. Disturbing areas for the purpose of normal farming activities, such as clearing of vegetation, plowing, seeding, cultivating, minor drainage and harvesting, does not require review pursuant to this section. A manure storage facility that is designed, constructed, managed and maintained in accordance with the United States Department of Agriculture, Natural Resources Conservation Service guidelines does not require review pursuant to this section. For purposes of this paragraph, "manure storage facility" means a facility used primarily for containing manure. [2003, c. 607, §1 (AMD).]

C. If the commissioner determines that a municipality's ordinance meets or exceeds the provisions of this section and that the municipality has the resources to enforce that ordinance, the commissioner shall exempt any project within that municipality. The department shall maintain a list of municipalities meeting these criteria and update this list at least every 2 years. The commissioner shall immediately notify municipalities on the list of municipalities meeting these criteria of new or amended rules adopted by the department pursuant to this article. If a municipality on the list no longer meets these criteria, it must be removed from the list, except that if the municipality no longer meets these criteria due to new or amended department rules, then the municipality remains on the list if:

(1) The municipality adopts amendments to its ordinances within one calendar year of the effective date of the new or amended department rules;

(2) The municipality submits the amended ordinances to the commissioner within 45 calendar days of adoption for review; and

(3) The commissioner determines that the amended ordinances meet or exceed the provisions of this section.

A project constructed after a municipality is removed from the list must obtain approval pursuant to this section. [2005, c. 2, §23 (COR).]

D. [2005, c. 219, §5 (RP).]

E. Impervious and disturbed areas associated with construction or expansion of a single-family, detached residence on a parcel do not require review pursuant to this section. [1995, c. 704, Pt. B, §2 (NEW); 1997, c. 603, §§8, 9 (AFF).]

F. [2011, c. 206, §9 (RP).]

G. Projects involving roads, railroads and associated facilities conducted by or under the supervision of the Department of Transportation or the Maine Turnpike Authority, do not require review under this section as long as the projects are constructed pursuant to storm water quality and quantity standards set forth in a memorandum of agreement between the department and the conducting or supervising agency and the project does not require review under article 6. A memorandum of agreement described in this paragraph must be updated whenever the rules concerning storm water management adopted by the department are finalized or updated. [1995, c. 704, Pt. B, §2 (NEW); 1997, c. 603, §§8, 9 (AFF).]

H. Trail management activities that are part of the development and maintenance of the statewide snowmobile or all-terrain vehicle trail system developed as part of the Maine Trails System under Title 12, section 1892, including new construction and maintenance of trails, do not require review pursuant to this section if, for each trail being managed:

(1) The trail is constructed and maintained in accordance with best management practices for motorized trails established by the Department of Agriculture, Conservation and Forestry;

(2) The trail is the minimum feasible width for its designated use; and

(3) No lane exceeds 12 feet in width and no trail includes more than 2 lanes.

As used in this paragraph, "trail management activities" includes the construction and maintenance of motorized trails used for motorized or multiple use. [2013, c. 43, §1 (AMD).]

[2013, c. 43, §1 (AMD); 2013, c. 405, Pt. A, §23 (REV) .]

8. **Enforcement.** Any activity that takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity is a violation of this article. Each day of a violation is a separate offense. A finding that any such violation has occurred is prima facie evidence that the

activity was performed or caused to be performed by the owner of the property where the violation occurred. Prior to July 1, 1998, the department may not seek to impose civil or criminal penalties for a violation of this section against any person who has made a good faith effort to comply.

[1995, c. 704, Pt. B, §2 (NEW); 1997, c. 603, §§8, 9 (AFF) .]

9. **Rules.** With the exception of minor clerical corrections and technical clarifications that do not alter the substance of requirements applying to projects, rules adopted pursuant to this section after January 1, 2010 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 359, §2 (AMD) .]

10. **Fees.**

[2005, c. 219, §6 (RP) .]

11. **Compensation project or fee.** The department may establish a nonpoint source reduction program to allow an applicant to carry out a compensation project or pay a compensation fee in lieu of meeting certain requirements, as provided in this subsection.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through implementation of a compensation project or payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to payment of the costs and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and implementing compensation projects. If the authorized agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than $25,000 per pound of available phosphorus.

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation project must be carried out or a compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the Department of Agriculture, Conservation and Forestry.

(5) Projects carried out or funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid. [2011, c. 655, Pt. JJ, §30 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

B. The department may allow an applicant with a project within the direct watershed of a coastal wetland, river, stream or brook to address all or part of the storm water quality standards for the project through implementation of a compensation project or payment of a compensation fee as provided by rules adopted pursuant to this subsection. [2011, c. 206, §10 (AMD).]

[2011, c. 655, Pt. JJ, §30 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

12. **Fees.**

[2007, c. 558, §5 (RP) .]

13. **Significant existing sources.** The department may require a person owning or operating a significant existing source of storm water to implement a storm water management system. The owner or operator shall obtain approval from the department pursuant to this subsection for the storm water management system.

For the purposes of this subsection, "significant existing source" means a significant existing source of storm water pollution based on quantity or quality standards for storm water from a developed area that was in existence prior to July 1, 1997 and is located in the direct watershed of a waterbody that is impaired due to urban runoff. The department shall identify significant existing sources as provided in this subsection.

A. The department shall develop a total maximum daily load for the watershed of a waterbody impaired due to urban runoff prior to designating significant existing sources within the watershed. [2005, c. 219, §7 (NEW).]

B. The department shall adopt rules prior to requiring that an owner or operator of a significant existing source within the direct watershed of a specific waterbody obtain approval of a storm water management system. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must include, but are not limited to, the following:

(1) The name of or other means of identifying the waterbody that is impaired due to urban runoff;

(2) A list of significant existing sources or a description of the types or classes of significant existing sources;

(3) A date or schedule indicating when approvals must be obtained; and

(4) Storm water quantity and quality standards for storm water management systems. [2005, c. 219, §7 (NEW).]

C. The owner or operator of a site designated as a significant existing source shall apply to the department for approval of a storm water management system. [2005, c. 219, §7 (NEW).]

D. "Significant existing source" does not include:

(1) Types of sources or activities described in subsection 7;

(2) The developed area of a facility required to meet ongoing storm water management standards pursuant to a storm water general or individual permit issued pursuant to section 413; and

(3) A municipal storm water conveyance system unless the storm water pollution originates with the conveyance system. [2005, c. 219, §7 (NEW).]

[2005, c. 219, §7 (NEW) .]

14. **Rescission.** The commissioner shall rescind a permit upon request and application of the permittee if no outstanding permit violation exists, the project is not continued and the permittee has not constructed or caused to be constructed, or operated or caused to be operated, a project requiring a permit. For purposes of this section, "a project requiring a permit" is a project that requires a permit as defined either at the time of permit issuance or at the time of application for rescission.

[2007, c. 292, §19 (NEW) .]

This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section. [1995, c. 704, Pt. B, §2 (NEW); 1997, c. 603, §§8, 9 (AFF).]

SECTION HISTORY
1995, c. 704, Pt. B, §2 (NEW). 1995, c. 704, Pt. C, §2 (AFF). 1997, c. 502, §§2-4 (AMD). 1997, c. 603, §§8, 9 (AFF). 2001, c. 232, §§13, 14 (AMD). 2003, c. 318, §1 (AMD). 2003, c. 607, §1 (AMD). RR 2005, c. 2, §23 (COR). 2005, c. 219, §§3-7 (AMD). 2005, c. 330, §9 (AMD). 2005, c. 602, §§2-4 (AMD). 2007, c. 292, §19 (AMD). 2007, c. 558, §5 (AMD). 2007, c. 593, §1 (AMD). 2009, c. 537, §2 (AMD). 2009, c. 602, §1 (AMD). 2011, c. 206, §§7-10 (AMD). 2011, c. 359, §§1, 2 (AMD). 2011, c. 653, §14 (AMD). 2011, c. 653, §33 (AFF). 2011, c. 655, Pt. JJ, §§29, 30 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 43, §1 (AMD). 2013, c. 405, Pt. A, §23 (REV).

§421. SOLID WASTE DISPOSAL AREAS; LOCATION

(REPEALED)

SECTION HISTORY
1971, c. 440, (NEW). 1971, c. 618, §12 (AMD). 1971, c. 622, §138 (AMD). 1973, c. 156, (AMD). 1979, c. 472, §15 (AMD). 1981, c. 545, §§1,2 (AMD). 1989, c. 890, §§A40,B41-43 (AMD). 1991, c. 499, §15 (AMD). 1993, c. 378, §1 (RP).

§422. DREDGING PERMITS

(REPEALED)

SECTION HISTORY
1971, c. 599, (NEW). 1971, c. 618, §10 (NEW). 1973, c. 423, §7 (AMD). 1973, c. 625, §273 (RP). 1973, c. 788, §211 (AMD). 1975, c. 388, §§3,4 (AMD). 1977, c. 564, §137 (RP).

§423. DISCHARGE OF WASTE FROM WATERCRAFT

1. **Discharge from watercraft prohibited.** A person, firm, corporation or other legal entity may not discharge, spill or permit to be discharged sewage, septic fluids, garbage or other pollutants from watercraft:

A. Into inland waters of the State; [2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §15 (AFF); 2003, c. 688, Pt. B, §14 (RPR).]

B. On the ice of inland waters of the State; or [2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §15 (AFF); 2003, c. 688, Pt. B, §14 (RPR).]

C. On the banks of inland waters of the State in a manner that the pollutants may fall or be washed into the waters or in a manner in which the drainage from the banks may flow into the waters. [2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §15 (AFF); 2003, c. 688, Pt. B, §14 (RPR).]

[2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §15 (AFF); 2003, c. 688, Pt. B, §14 (RPR) .]

2. **Holding tank required.** A person, firm, corporation or other legal entity may not operate upon the inland waters of the State a watercraft that has a permanently installed sanitary waste disposal system if it does not have securely affixed to the interior discharge opening of the sanitary waste disposal system a holding tank or suitable container for holding sanitary waste material so as to prevent its discharge or drainage into the inland waters of the State.

[2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §15 (AFF); 2003, c. 688, Pt. B, §14 (RPR) .]

3. **Watercraft defined.**

[2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §15 (AFF); 2003, c. 688, Pt. B, §14 (RPR); T. 38, §423, sub-§3 (RP) .]

4. **Watercraft defined.** For the purposes of this section, "watercraft" has the same meaning as provided in Title 12, section 13001, subsection 28, except that "watercraft" includes houseboats. This subsection takes effect August 31, 2004.

[2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §14 (NEW); 2003, c. 688, Pt. B, §15 (AFF) .]

SECTION HISTORY
1973, c. 625, §274 (NEW). 1975, c. 770, §210 (AMD). 1977, c. 300, §24 (AMD). 1979, c. 444, §10 (AMD). 1989, c. 502, §B49 (AMD). 2003, c. 277, §3 (AMD). 2003, c. 414, §B70 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 452, §W6 (RPR). 2003, c. 614, §9 (AFF). 2003, c. 688, §B15 (AFF). 2003, c. 688, §B14 (RPR). MRSA T.38 , §423, sub-§3 (AMD).

§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, or in such manner that the drainage from the discharge may flow 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. [1987, c. 163, (NEW).]

SECTION HISTORY
1987, c. 163, (NEW).

§423-B. WATERCRAFT SANITARY WASTE PUMP-OUT FACILITIES AT MARINAS

1. **Definitions.** For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Marina" means a facility that provides supplies or services and has the capacity to provide any combination of slip space or mooring for 18 or more vessels that exceed 24 feet in length. [1999, c. 655, Pt. B, §1 (NEW).]

B. "Pump-out facility" means a facility that pumps or receives sanitary wastes out of marine sanitation devices that are specifically designed to receive, retain and discharge sanitary wastes and that are installed on board watercraft. "Pump-out facility" includes a stationary pump-out station, a portable marine toilet dump station and a mobile pump-out vessel. [1999, c. 655, Pt. B, §1 (NEW).]

[1999, c. 655, Pt. B, §1 (NEW) .]

2. **Pump-out facilities required.** A marina serving coastal or inland waters shall provide a pump-out facility or provide through a written contractual agreement approved by the commissioner a facility to remove sanitary waste from the holding tanks of watercraft. The pump-out facility must be easily accessible and functional during normal working hours and at all stages of the tide. If a marina serves vessels year-round, the provisions of this subsection apply to the marina year-round. The fee charged by the marina is limited to 200% of the fee limit set pursuant to the federal Clean Vessel Act of 1992, 50 Code of Federal Regulations, Section 85.11 (2008) regardless of the pump-out facility funding source.

[2009, c. 654, §6 (AMD) .]

3. **Exception.** A marina is not required to meet the requirements in subsection 2 until a grant for the construction or renovation of a pump-out facility or the initial cost of a contractual agreement is offered to that marina pursuant to subsection 4.

[1999, c. 655, Pt. B, §1 (NEW) .]

4. **Cost share.** Subject to the availability of funds, the commissioner shall award grants using a combination of federal and state funds for the costs of constructing, renovating, operating and maintaining pump-out facilities and providing facilities through contractual agreements according to the following schedule:

A. The commissioner shall pay 90% of these costs incurred by municipal marinas; and [1999, c. 655, Pt. B, §1 (NEW).]

B. The commissioner shall pay up to 75% of these costs incurred by marinas other than municipal marinas. [1999, c. 655, Pt. B, §1 (NEW).]

When awarding grants, the commissioner shall give priority to a pump-out facility over a contractual agreement and shall give priority to a pump-out facility that the Commissioner of Marine Resources certifies is likely to result in the opening of a shellfish harvesting area that is closed under Title 12, section 6172.

[1999, c. 655, Pt. B, §1 (NEW) .]

SECTION HISTORY
1989, c. 433, §2 (NEW). 1999, c. 655, §B1 (RPR). 2009, c. 654, §6 (AMD).

§423-C. REGISTERED OWNER'S LIABILITY FOR VEHICLE ILLEGALLY DISCHARGING WASTE

A person who is a registered owner of a vehicle at the time that vehicle is involved in a violation of section 423-A commits a civil violation subject to the provisions of section 349, subsection 2, except as provided in subsection 4. For purposes of this section, "registered owner" includes a person issued a dealer or transporter registration plate. [1991, c. 867, §1 (NEW).]

1. **Report violation; investigation.** A person who observes a violation of section 423-A may report the violation to a police officer. If a report is made, the person shall report the time and the location of the violation and the registration plate number and a description of the vehicle involved. The officer shall initiate an investigation of the reported violation and, if possible, contact the registered owner of the motor vehicle involved and request that the registered owner supply information identifying the operator.

[1991, c. 867, §1 (NEW) .]

2. **Summons.** The investigating officer may cause the registered owner of the vehicle to be served with a summons for a violation of this section.

[1991, c. 867, §1 (NEW) .]

3. **Registered owner not operator.** Except as provided in subsection 4, it is not a defense to a violation of this section that a registered owner was not operating the vehicle at the time of the violation.

[1991, c. 867, §1 (NEW) .]

4. **Defenses.** The following are defenses to a violation of this section.

A. If a person other than the owner is convicted of operating the vehicle at the time of the violation in violation of section 423-A, the registered owner may not be found in violation of this section. [1991, c. 867, §1 (NEW).]

B. If the registered owner is a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee and the lessor provides the investigating officer with a copy of the lease agreement containing the information required by Title 29-A, section 254, the lessee and not the lessor may be charged under this section. [1995, c. 65, Pt. A, §149 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF).]

C. If the vehicle is operated using a dealer or transporter registration plate and at the time of the violation the vehicle was operated by a person other than the dealer or transporter and if the dealer or transporter provides the investigating officer with the name and address of the person who had control over the vehicle at the time of the violation, that person and not the dealer or transporter may be charged under this section. [1991, c. 867, §1 (NEW).]

D. If a report that the vehicle was stolen is given to a law enforcement officer or agency before the violation occurs or within a reasonable time after the violation occurs, the registered owner may not be charged under this section. [1991, c. 867, §1 (NEW).]

[1995, c. 65, Pt. A, §149 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF) .]

SECTION HISTORY
1991, c. 867, §1 (NEW). 1995, c. 65, §A149 (AMD). 1995, c. 65, §§A153,C15 (AFF).

§423-D. GRAYWATER AND BLACKWATER DISCHARGES FROM COMMERCIAL PASSENGER VESSELS

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

A. "Blackwater" means human bodily wastes and the wastes from toilets and other receptacles intended to receive or retain human bodily wastes. [2003, c. 650, §2 (NEW).]

B. "Coastal waters" means those portions of the Atlantic Ocean within the jurisdiction of the State and all other waters of the State subject to the rise and fall of the tide. [2003, c. 650, §2 (NEW).]

C. "Commercial passenger vessel" means a large or small commercial passenger vessel. [2003, c. 650, §2 (NEW).]

D. "Graywater" means galley, dishwasher, bath and laundry wastewater. "Graywater" does not include other wastes or waste streams. [2003, c. 650, §2 (NEW).]

E. "Large commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for 250 or more passengers for hire, determined with reference to the number of lower berths. [2003, c. 650, §2 (NEW).]

F. "No-discharge zone" means an area within coastal waters that has been designated by the United States Environmental Protection Agency pursuant to 33 United States Code, Section 1322, to be an area in which discharge of blackwater is prohibited. [2003, c. 650, §2 (NEW).]

G. "Small commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for fewer than 250 passengers for hire, determined with reference to the number of lower berths. [2003, c. 650, §2 (NEW).]

[2003, c. 650, §2 (NEW) .]

2. **Licensing exemptions.** A license is not required pursuant to section 413 prior to the discharge of graywater to coastal waters from:

A. A small commercial passenger vessel; [2003, c. 650, §2 (NEW).]

B. A commercial passenger vessel operated by the United States or a foreign government; or [2003, c. 650, §2 (NEW).]

C. A commercial passenger vessel if the discharge is made for the purpose of securing the vessel or saving life at sea, and as long as all reasonable precautions have been taken to prevent or minimize the discharge. A discharge as described in this paragraph must be reported in accordance with subsection 3. [2003, c. 650, §2 (NEW).]

[2003, c. 650, §2 (NEW) .]

3. **Report of unauthorized discharge.** Discharges of blackwater or graywater from a large commercial passenger vessel to coastal waters must be reported to the department as provided in this subsection.

A. The owner or operator of a large commercial passenger vessel that discharges blackwater within a no-discharge zone or discharges blackwater in violation of federal law outside a no-discharge zone shall immediately report that discharge to the department. The owner or operator shall submit a written report concerning the discharge to the department within 30 days of the discharge. [2003, c. 650, §2 (NEW).]

B. Beginning January 1, 2006, the owner or operator of a large commercial passenger vessel that discharges graywater without a license or in a manner inconsistent with a license issued pursuant to section 413 shall immediately report that discharge to the department. The owner or operator shall also submit a written report concerning the discharge to the department within 30 days of the discharge. [2003, c. 650, §2 (NEW).]

[2003, c. 650, §2 (NEW) .]

4. **Prohibited discharges; exemption; general permit requirement.** The following provisions govern the discharge of graywater and a mixture of graywater and blackwater from large commercial passenger vessels.

A. The owner or operator of a large commercial passenger vessel may not discharge graywater or a mixture of graywater and blackwater to coastal waters. [2003, c. 650, §2 (NEW).]

B. Notwithstanding paragraph A, beginning January 1, 2006, the owner or operator of a large commercial passenger vessel may discharge graywater or a mixture of graywater and blackwater to coastal waters if:

(1) The discharge is permitted and meets standards for continuous discharge under the federal Consolidated Appropriations Act of 2001, Public Law 106-554, Section 1(a)(4) and Appendix D, Division B, Title XIV, Section 1404(b) or (c), 114 Stat. 2763, 2763A-316;

(2) While operating in coastal waters, the owner or operator of the large commercial passenger vessel maintains a discharge record book as required by 33 Code of Federal Regulations 159.315 (2003);

(3) The owner or operator of the large commercial passenger vessel meets the sampling and reporting requirements of 33 Code of Federal Regulations 159.317 (2003) prior to and while operating in coastal waters, except that instead of meeting the requirements in 33 Code of Federal Regulations 159.317(a)(2) the owner or operator of the large commercial passenger vessel shall, not less than 30 days nor more than 120 days prior to the large commercial passenger vessel's initial entry into the coastal waters during any calendar year, provide a certification to the department that the large commercial passenger vessel's graywater and mixture of graywater and blackwater meets the standards specified in subparagraph (1); and

(4) The department issues the owner or operator of the large commercial passenger vessel a general permit to discharge graywater or a mixture of graywater and blackwater.

For purposes of this paragraph, the department shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, to implement the requirements in the federal Consolidated Appropriations Act of 2001, Public Law 106-554, Section 1(a)(4) and Appendix D, Division B, Title XIV, Section 1404(b) or (c), 114 Stat. 2763, 2763A-316 and Code of Federal Regulations 159.315 and 159.317 (2003) with the following changes: "Maine" is substituted for "Alaska," "Department of Environmental Protection" is substituted for "Captain of the Port" and for "Coast Guard," and "graywater or a mixture of graywater and blackwater" is substituted for "treated sewage and/or graywater."

The department shall enter into a memorandum of agreement with the United States Coast Guard to consolidate information requirements of the department and the United States Coast Guard to the extent acceptable to the United States Coast Guard. [2003, c. 650, §2 (NEW).]

[2003, c. 650, §2 (NEW) .]

5. **Agent for service of process.** The owner or operator of a commercial passenger vessel shall continuously maintain a designated agent for service of process whenever the commercial passenger vessel is in coastal waters. The agent must be an individual resident of the State, a domestic corporation or a foreign corporation having a place of business in and authorized to do business in the State. "Agent for service of process" means an agent upon whom process, notice of or demand required or permitted by law to be served upon the owner or operator may be served.

[2003, c. 650, §2 (NEW) .]

6. **Innocent passage.** This section does not apply to a commercial passenger vessel that operates in the coastal waters of the State solely in innocent passage. For purposes of this paragraph, a commercial passenger vessel is engaged in innocent passage if its operation in coastal waters of the State, regardless of whether the vessel is a United States or foreign-flag vessel, would constitute innocent passage under the:

A. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 U.S.T. 1606; or [2003, c. 650, §2 (NEW).]

B. United Nations Convention on the Law of the Sea 1982, December 10, 1982, United Nations publication No. E.83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel. [2003, c. 650, §2 (NEW).]

[2003, c. 650, §2 (NEW) .]

SECTION HISTORY
2003, c. 650, §2 (NEW).

§424. VOLUNTARY WATER QUALITY MONITORS

The Commissioner of Environmental Protection may appoint voluntary water quality monitors to serve at the will and pleasure of the commissioner. [1973, c. 572, §1 (NEW).]

Such monitors are authorized to take water samples and tests of the waters of this State at such times and at such places and in such manner as the commissioner shall direct and to forward such water samples and test results to the commissioner for analysis. [1973, c. 572, §1 (NEW).]

The commissioner is authorized to provide such monitors with such sampling materials and equipment as he deems necessary, provided that such equipment and materials shall at all times remain the property of the State and shall be immediately returned to the commissioner upon his direction. [1973, c. 572, §1 (NEW).]

Such monitors shall not be construed to be employees of this State for any purpose. [1973, c. 572, §1 (NEW).]

The commissioner or his representative shall conduct schools to instruct said monitors in the methods and techniques of water sample taking and issue to said monitors an identification card or certificate showing their appointment and training. [1973, c. 572, §1 (NEW).]

SECTION HISTORY
1973, c. 572, §1 (NEW).

§424-A. COORDINATION FOR ADDRESSING WATER QUALITY PROBLEMS RELATED TO SUBSURFACE WASTE WATER DISPOSAL SYSTEMS IN SHELLFISH GROWING AREAS

1. **Definitions.** For purposes of this section, the following terms have the following meanings:

A. "System" means a subsurface waste water disposal system; [2007, c. 568, §8 (NEW).]

B. "Local plumbing inspector" means a plumbing inspector for the municipality where the system is located; [2007, c. 568, §8 (NEW).]

C. "Municipality" means the municipality where the system is located; and [2007, c. 568, §8 (NEW).]

D. "Certified inspector" means a person certified pursuant to rules adopted by the Department of Health and Human Services to inspect systems. [2007, c. 568, §8 (NEW).]

[2007, c. 568, §8 (NEW) .]

2. **Notification to municipality.** If the department or the Department of Marine Resources identifies a violation of a bacteria or toxics standard that is reasonably believed to have resulted in whole or in part from one or more malfunctioning systems and is contributing to closure of a shellfish area, the agency shall notify the municipality.

[2007, c. 568, §8 (NEW) .]

3. **Inspection.** If the department or the Department of Marine Resources has notified a municipality pursuant to subsection 2, and by mutual agreement inspections are not to be conducted by the department, the Department of Marine Resources or the municipality, the system or systems must be inspected and an abatement order issued and enforced according to the procedures in this subsection.

A. The department shall designate an area suspected of containing one or more malfunctioning systems and inform the municipality of the designation. The municipality shall provide the department sufficient information concerning property ownership within the designated area to enable the department to send a letter to the owner of each property containing a system within the designated area. [2007, c. 568, §8 (NEW).]

B. The department shall notify each owner of property containing a system within the designated area that the system is suspected of contributing to water quality problems and must be inspected to determine compliance with the rules regulating subsurface waste water disposal adopted by the Department of Health and Human Services. [2007, c. 568, §8 (NEW).]

C. Within 60 days of notification by the department pursuant to paragraph B or within a lesser time period as provided in the notification of the department, the property owner shall:

(1) Submit to the department results of an inspection by a certified inspector that has occurred within the last 12 months pursuant to requirements in Title 30-A, section 4216;

(2) Provide evidence to the department that the system was installed or repaired within the last 12 months; or

(3) Provide for an inspection by a certified inspector. The property owner shall notify the department of the results of the inspection on a form provided by the department and signed by the certified inspector. The inspection must be conducted at a time of year when the system is operating under representative conditions of use for the property. If representative conditions of use will not occur within the period specified by the department, such as if the residence is seasonal and not currently in use, the property owner may request an extension from the department during the inspection period and the department may grant an extension. [2007, c. 568, §8 (NEW).]

D. If an inspection is required pursuant to paragraph C, subsection (3), the provisions of this paragraph apply.

(1) It is the responsibility of the property owner to pay for inspection of the system or systems by a certified inspector.

(2) The local plumbing inspector is not required to conduct the inspection.

(3) If a property owner is unwilling or unable to provide for an inspection, the municipality shall contract with an independent certified inspector. The municipality may assess a fee or a special tax against the land on which the system is located for the amount necessary to hire the certified inspector for the system. The amount of the special tax must 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, must 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 must be added to and become part of the tax. When determining whether or not to assess a fee or special tax pursuant to this paragraph the municipality shall consider the availability of municipal resources. [2007, c. 568, §8 (NEW).]

[2007, c. 568, §8 (NEW) .]

4. **Abatement orders.** If a system is determined to be malfunctioning, the municipality shall issue an abatement order pursuant to Title 30-A, section 3428 to the owner of the property and send a copy of the abatement order to the department.

[2007, c. 568, §8 (NEW) .]

5. **Enforcement of abatement order.** This section is enforced primarily at the local level pursuant to Title 30-A, section 4452. In addition to and in coordination with enforcement of the abatement order by the municipality under subsection 4, the department and the Department of Health and Human Services may enforce an abatement order.

[2007, c. 568, §8 (NEW) .]

6. **Rules.** The department in coordination with the Department of Health and Human Services and the Department of Marine Resources may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 568, §8 (NEW) .]

SECTION HISTORY
2007, c. 568, §8 (NEW).

§424-B. WATER QUALITY IMPROVEMENT FUND

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

A. "Fund" means the Water Quality Improvement Fund established in this section. [2009, c. 213, Pt. FFFF, §5 (NEW).]

[2009, c. 213, Pt. FFFF, §5 (NEW) .]

2. **Fund established.** The Water Quality Improvement Fund is established as a nonlapsing fund under the jurisdiction and control of the department. The fund is established in order to improve and protect water quality in coastal areas through support of the growing area classification program within the water quality and public health program at the Department of Marine Resources, improve the State's wastewater infrastructure, remove licensed overboard discharges, abate pollution from failed subsurface wastewater disposal systems and improve the identification of pollution in shellfish harvesting areas.

[2009, c. 213, Pt. FFFF, §5 (NEW) .]

3. **Sources of the fund.** The fund consists of:

A. Dedicated revenue derived from surcharges in accordance with section 353-B, subsection 2, paragraph A; [2009, c. 213, Pt. FFFF, §5 (NEW).]

B. Dedicated revenue derived from surcharges in accordance with Title 30-A, section 4211, subsection 5, paragraph D; [2009, c. 213, Pt. FFFF, §5 (NEW).]

C. Sums that are appropriated by the Legislature or transferred to the fund from time to time by the State Controller; [2009, c. 213, Pt. FFFF, §5 (NEW).]

D. Capitalization grants and awards made to the State or an instrumentality of the State by the Federal Government for any of the purposes for which the fund has been established; [2009, c. 213, Pt. FFFF, §5 (NEW).]

E. Interest earned from the investment of fund balances; [2009, c. 213, Pt. FFFF, §5 (NEW).]

F. Private gifts or bequests, directed or advised, and donations made to the State for any of the purposes for which the fund has been established; and [2009, c. 213, Pt. FFFF, §5 (NEW).]

G. Other funds from any public or private source received for use for any of the purposes for which the fund has been established. [2009, c. 213, Pt. FFFF, §5 (NEW).]

[2009, c. 213, Pt. FFFF, §5 (NEW) .]

4. **Distribution.** After administrative costs, revenue credited to the fund must be distributed as follows.

A. Those funds necessary to support 3 positions in the growing area classification program, including All Other costs and $20,000 each year for overtime, within the water quality and public health program at the Department of Marine Resources or 50% of the fund, whichever is greater, must be transferred to the Department of Marine Resources. Any funds transferred in excess of those necessary to support the 3 positions is to be used to support flood sampling and processing overtime work by staff in the growing area classification program. At the end of each fiscal year, any remaining funds must be transferred to the fund and used for the purposes described in paragraph B. [2009, c. 213, Pt. FFFF, §5 (NEW).]

B. The remaining balance of the fund must be used to support the removal of licensed overboard discharges; investment in the improvement of the State's wastewater infrastructure; abate or remove sources of pollution from failing subsurface wastewater disposal systems; and support municipal or other qualified applicants in identifying pollution in shellfish harvesting areas. [2009, c. 213, Pt. FFFF, §5 (NEW).]

The department is authorized to be reimbursed from the fund for administrative costs. "Administrative costs" for purposes of this subsection means personal services directly associated with the processing and collection of the license surcharges in section 353-B, subsection 2, paragraph A. The department and the Department of Marine Resources shall annually provide an itemized description of the prior year's expenses from the fund and a proposed budget for the following year to the Shellfish Advisory Council established under Title 12, section 6038 and to representatives of publicly owned treatment works.

[2009, c. 213, Pt. FFFF, §5 (NEW) .]

5. **Grants.** Provided there are available funds, the department shall establish procedures and criteria for the grant application process, eligibility for grants and the award and use of grants made under this section.

[2009, c. 213, Pt. FFFF, §5 (NEW) .]

6. **Rules.** The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2009, c. 213, Pt. FFFF, §5 (NEW) .]

SECTION HISTORY
2009, c. 213, Pt. FFFF, §5 (NEW).

Article 2-A: ALTERATION OF RIVERS STREAMS AND BROOKS HEADING: PL 1987, C. 809, §1 (RP)

§425. PROHIBITED ACTS

(REPEALED)

SECTION HISTORY
1985, c. 481, §A83 (NEW). 1987, c. 809, §1 (RP).

§426. SPECIAL PROTECTION FOR OUTSTANDING RIVER SEGMENTS

(REPEALED)

SECTION HISTORY
1985, c. 481, §A85 (NEW). 1987, c. 809, §1 (RP).

§427. PERMITS

(REPEALED)

SECTION HISTORY
1985, c. 481, §A86 (NEW). 1987, c. 192, §12 (AMD). 1987, c. 809, §1 (RP).

§428. APPEAL

(REALLOCATED FROM TITLE 12, SECTION 7778)
(REPEALED)

SECTION HISTORY
1979, c. 420, §1 (NEW). 1985, c. 481, §A48 (RAL). 1987, c. 809, §1 (RP).

§429. PENALTIES

(REALLOCATED FROM TITLE 12, SECTION 7779)
(REPEALED)

SECTION HISTORY
1979, c. 420, §1 (NEW). 1983, c. 796, §6 (RPR). 1985, c. 481, §A49 (RAL). 1987, c. 809, §1 (RP).

§430. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1985, c. 481, §A87 (NEW). 1985, c. 746, §20 (AMD). 1987, c. 192, §13 (AMD). 1987, c. 809, §1 (RP).

§431. TRANSFER OF FILES

(REPEALED)

SECTION HISTORY
1985, c. 481, §A88 (NEW). 1987, c. 809, §1 (RP).

Article 2-B: MANDATORY SHORELAND ZONING HEADING: PL 1991, C. 346, §1 (RPR)

§435. SHORELAND AREAS

To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls. Shoreland areas include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal wetland, within 250 feet of the upland edge of a freshwater wetland except as otherwise provided in section 438-A, subsection 2, or

within 75 feet of the high-water line of a stream. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas. [1995, c. 625, Pt. B, §15 (AMD).]

It is further declared that, in accordance with Title 12, section 402, certain river and stream segments, as identified in the former Department of Conservation's 1982 Maine Rivers Study and as specifically delineated in section 437, are significant river segments and deserve special shoreland zoning controls designed to protect their natural and recreational features. [2013, c. 405, Pt. D, §15 (AMD).]

Zoning ordinances adopted pursuant to this article need not depend upon the existence of a zoning ordinance for all of the land and water areas within a municipality, notwithstanding Title 30-A, section 4352, as it is the intention of the Legislature to recognize that it is reasonable for municipalities to treat shoreland areas specially and immediately to zone around water bodies rather than to wait until such time as zoning ordinances may be enacted for all of the land within municipal boundaries. [2011, c. 691, Pt. C, §6 (AMD).]

All existing municipal ordinances dealing with subjects of this section currently in effect and operational on April 18, 1986, are declared to be valid and shall continue in effect until rescinded, amended or changed according to municipal ordinance, charter or state law. [1987, c. 815, §§1,11 (RPR).]

SECTION HISTORY
1985, c. 481, §A89 (NEW). 1985, c. 737, §A110 (AMD). 1987, c. 94, §§1,2 (AMD). 1987, c. 815, §§1,11 (RPR). 1989, c. 403, §3 (AMD). 1993, c. 196, §1 (AMD). 1995, c. 625, §B15 (AMD). 2011, c. 691, Pt. C, §6 (AMD). 2013, c. 405, Pt. D, §15 (AMD).

§436. DEFINITIONS

(REALLOCATED FROM TITLE 12, SECTION 4811-A)
(REPEALED)

SECTION HISTORY
1973, c. 564, §2 (NEW). 1983, c. 458, §3 (RPR). 1983, c. 796, §3 (AMD). 1985, c. 481, §A24 (RAL). 1985, c. 553, (AMD). 1985, c. 794, §§A6,7 (AMD). 1987, c. 402, §A198 (AMD). 1987, c. 419, §9 (AMD). 1987, c. 815, §§2,11 (RP).

§436-A. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 815, §§3, 11 (NEW).]

1. Coastal wetlands. "Coastal wetlands" means all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

[2005, c. 330, §10 (AMD) .]

1-A. **Basement.** "Basement" means any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

[1997, c. 748, §2 (NEW) .]

1-B. **Agriculture.** "Agriculture" means the production, keeping or maintenance for sale or lease of plants or animals, including, but not limited to, forages and sod crops, grains and seed crops, dairy animals and dairy products, poultry and poultry products, livestock, fruits and vegetables and ornamental and greenhouse products. "Agriculture" does not include forest management and timber harvesting activities.

[2013, c. 242, §1 (NEW); 2013, c. 320, §1 (NEW) .]

2. **Commercial fishing activities.** "Commercial fishing activities" means activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing, such as the manufacture or sale of ice, bait and nets, and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats.

[1987, c. 815, §§3, 11 (NEW) .]

3. **Densely developed area.** "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with a density of at least one principal structure per 2 acres.

[1987, c. 815, §§3, 11 (NEW) .]

4. **Floodway.** "Floodway" means the channel of a river or other water course and the adjacent land areas that must be reserved to allow for the discharge of a 100-year flood without cumulatively increasing the water surface elevation of the 100-year flood by more than one foot.

[1987, c. 815, §§3, 11 (NEW) .]

4-A. **Footprint.** "Footprint" means the entire area of ground covered by the structures on a premises, including cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

[2013, c. 320, §2 (NEW) .]

5. **Freshwater wetlands.** "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

A. Of 10 or more contiguous acres, or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that, in a natural state, the combined surface area is in excess of 10 acres; and [1989, c. 403, §4 (AMD).]

B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. [1989, c. 403, §4 (AMD).]

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

[1991, c. 346, §2 (AMD) .]

5-A. **Forested wetland.** "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall or taller.

[1989, c. 838, §1 (NEW) .]

6. **Functionally water-dependent uses.** "Functionally water-dependent uses" means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. These uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

[2013, c. 320, §3 (AMD) .]

7. **Great pond.** "Great pond" means any inland body of water which in a natural state has a surface area in excess of 10 acres and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres except for the purposes of this article, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

[1989, c. 403, §4 (AMD) .]

7-A. **Height of a structure.** "Height of a structure" means the vertical distance between the mean original grade at the downhill side of the structure, prior to construction, and the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area.

[2011, c. 231, §1 (NEW) .]

8. **Maritime activities.** "Maritime activities" means the construction, repair, storage, loading and unloading of boats, chandlery and other commercial activities designed and intended to facilitate maritime trade.

[1987, c. 815, §§3, 11 (NEW) .]

9. **Normal high-water line.** "Normal high-water line" means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

[1987, c. 815, §§3, 11 (NEW) .]

9-A. **Outlet stream.** "Outlet stream" means any perennial or intermittent stream, as shown on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

[2013, c. 320, §4 (AMD) .]

10. **Principal structure.** "Principal structure" means a building other than one which is used for purposes wholly incidental or accessory to the use of another building on the same premises.

[1987, c. 815, §§3, 11 (NEW) .]

11. **River.** "River" means a free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

[1989, c. 403, §4 (AMD) .]

11-A. **Stream.** "Stream" means a free-flowing body of water from the outlet of a great pond or the confluence of 2 perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

[2013, c. 320, §5 (AMD) .]

12. **Structure.** "Structure" means anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind and anything constructed or erected on or in the ground. "Structure" does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8. As used in this subsection, "service drop" has the same meaning as in section 952.

[2013, c. 489, §1 (AMD) .]

13. **Timber harvesting.** "Timber harvesting" means the cutting and removal of timber for the primary purpose of selling or processing forest products. "Timber harvesting" does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities.

[2013, c. 320, §6 (AMD) .]

SECTION HISTORY
1987, c. 815, §§3,11 (NEW). 1989, c. 403, §§4,5 (AMD). 1989, c. 838, §1 (AMD). 1991, c. 346, §§2,3 (AMD). 1993, c. 196, §2 (AMD). 1995, c. 92, §1 (AMD). 1997, c. 726, §1 (AMD). 1997, c. 748, §2 (AMD). 2005, c. 330, §10 (AMD). 2011, c. 231, §1 (AMD). 2013, c. 242, §1 (AMD). 2013, c. 320, §§1-6 (AMD). 2013, c. 489, §1 (AMD).

§437. SIGNIFICANT RIVER SEGMENTS IDENTIFIED

(REALLOCATED FROM TITLE 12, SECTION 4811-B)

For purposes of this chapter, significant river segments include the following: [1985, c. 481, Pt. A, §25 (RAL).]

1. **Aroostook River.** The Aroostook River from St. Croix Stream in Masardis to the Masardis and T.10, R.6, W.E.L.S. townline, excluding segments in T.9, R.5, W.E.L.S.; including its tributary the Big Machias River from the Aroostook River in Ashland to the Ashland and Garfield Plantation townlines;

[1985, c. 481, Pt. A, §25 (RAL) .]

2. **Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the dam at Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;

[1985, c. 481, Pt. A, §25 (RAL) .]

3. **East Machias River.** The East Machias River from 1/4 of a mile above the Route 1 bridge in East Machias to the East Machias and T.18, E.D., B.P.P. townline, and from the T.19, E.D., B.P.P. and Wesley townline to the outlet of Crawford Lake in Crawford, excluding Hadley Lake;

[1985, c. 481, Pt. A, §25 (RAL) .]

4. **Fish River.** The Fish River from the former bridge site at the dead end of Mill Street in Fort Kent Mills to the outlet of Eagle Lake in Wallagrass, and from the Portage Lake and T.14, R.6, townline to the Portage Lake and T.13, R.7, W.E.L.S. townline, excluding Portage Lake;

[2007, c. 292, §20 (AMD) .]

5. **Machias River.** The Machias River from the Whitneyville and Machias townline to the Northfield T.19, M.D., B.P.P. townline;

[1985, c. 481, Pt. A, §25 (RAL) .]

6. **Mattawamkeag River.** The Mattawamkeag River from the outlet of Mattakeunk Stream in Winn to the Mattawamkeag and Kingman Township townline, and from the Reed Plantation and Bancroft townline to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville T.3, R.3, W.E.L.S. townline and from its inlet into Upper Mattawamkeag Lake to the Route 2 bridge; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township townline and from the T.4, R 3, W.E.L.S. and Oakfield townline to Red Bridge in Oakfield; the Fish Stream from the Route 95 bridge in Island Falls to the Crystal-Patten townline; and the Baskehegan Stream from its inlet into Crooked Brook Flowage in Danforth to the Danforth and Brookton Township townline;

[1985, c. 481, Pt. A, §25 (RAL) .]

7. **Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township townline, excluding Beddington Lake;

[1985, c. 481, Pt. A, §25 (RAL) .]

8. **East Branch of Penobscot.** The East Branch of the Penobscot from the Route 157 bridge in Medway to the East Millinocket and Grindstone Township townline;

[1985, c. 481, Pt. A, §25 (RAL) .]

9. **Pleasant River.** The Pleasant River from the railroad bridge in Columbia Falls to the Columbia and T.18, M.D., B.P.P. townline, and from the T.24, M.D., B.P.P. and Beddington townline to the outlet of Pleasant River Lake;

[1985, c. 481, Pt. A, §25 (RAL) .]

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

[1985, c. 481, Pt. A, §25 (RAL) .]

11. **West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township townline; and

[1985, c. 481, Pt. A, §25 (RAL) .]

12. **West Branch of Union River.** The West Branch of the Union River from the Route 9 bridge in Amherst to the outlet of Great Pond in the Town of Great Pond.

[1985, c. 481, Pt. A, §25 (RAL) .]

SECTION HISTORY
1983, c. 458, §4 (NEW). 1985, c. 481, §A25 (RAL). 1989, c. 403, §6 (AMD). 2007, c. 292, §20 (AMD).

§438. MUNICIPAL CONTROL

(REPEALED)

SECTION HISTORY
1985, c. 481, §A91 (NEW). 1987, c. 737, §§C84,C106 (AMD). 1987, c. 815, §§4,11 (RP). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 502, §A143 (AMD).

§438-A. MUNICIPAL AUTHORITY; STATE OVERSIGHT

With respect to all shoreland areas described in section 435, municipalities shall adopt zoning and land use control ordinances pursuant to existing enabling legislation, under home rule authority and in accordance with the following requirements. The deadline for municipalities to adopt a shoreland zoning ordinance meeting the minimum guidelines adopted by the Board of Environmental Protection is extended to July 1, 1992. [1991, c. 622, Pt. X, §12 (AMD).]

Notwithstanding other provisions of this article, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Commissioner of Agriculture, Conservation and Forestry pursuant to Title 12, section 8867-B. [2005, c. 226, §2 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

1. **Land use guidelines.** In accordance with Title 5, chapter 375, subchapter II, the Board of Environmental Protection shall adopt, and from time to time shall update and amend, minimum guidelines for municipal zoning and land use controls that are designed to carry out the legislative purposes described in section 435 and the provisions of this article. These minimum guidelines must include provisions governing building and structure size, setback and location and establishment of resource protection, general development, limited residential, commercial fisheries and maritime activity zones and other zones. Within each zone, the board shall prescribe uses that may be allowed with or without conditions and shall establish criteria for the issuance of permits and nonconforming uses, land use standards and administrative and enforcement procedures. These guidelines must also include a requirement for a person issued a permit pursuant to this article in a great pond watershed to have a copy of the permit on site while work authorized by the permit is being conducted. The board shall comprehensively review and update its guidelines and shall reevaluate and update the guidelines at least once every 4 years.

A. Minimum guidelines adopted by the board under this subsection may not require the issuance of a municipal permit for the repair and maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

(2) Not more than 25% longer than the culvert being replaced; and

(3) Not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this paragraph shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course. [1993, c. 315, §1 (AMD).]

[1993, c. 315, §1 (AMD) .]

1-A. **Minimum guidelines; limitations.** The minimum guidelines adopted under subsection 1 may not require a municipality, in adopting an ordinance, to:

A. Treat an increase in hours or days of operation of a nonconforming use as an expansion of a nonconforming use; or [1991, c. 419, (NEW).]

B. Treat as a single lot, 2 or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date of the municipal ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with state subsurface wastewater disposal rules, and:

(1) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(2) Any lots that do not meet the frontage and lot size requirements of subparagraph (1) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

For purposes of this paragraph the term "nonconforming" means that a lot does not meet the minimum standards for lot area and shore frontage required by municipal ordinances adopted pursuant to this article. [1991, c. 419, (NEW).]

[1991, c. 419, (NEW) .]

1-B. **Notification to landowners.** This subsection governs notice to landowners whose property is being considered for placement in a resource protection zone.

A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a municipality shall provide written notification to landowners whose property is being considered by the municipality for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the municipal clerk a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The municipality must send notice not later than 14 days before it holds a public hearing on adoption or amendment of a zoning ordinance or map that places the landowners' property in the resource protection zone. Once a landowner's property has been placed in a resource protection zone, individual notice is not required to be sent to the landowner when the zoning ordinance or map is later amended in a way that does not affect the inclusion of the landowner's property in the resource protection zone. [2013, c. 320, §7 (AMD).]

B. In addition to the notice required by this Title or by rules adopted pursuant to this Title, the board shall provide written notification to landowners whose property is being considered by the board for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The board shall prepare and file with the commissioner a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The board must send notice not later than 30 days before the close of the public comment period prior to formal consideration of placement of the property in a resource protection zone by the board. Upon request of the board, the municipality for which the ordinance is being adopted shall provide the board with the names and addresses of persons entitled to notice under this subsection. Notification and filing of a certificate by the department are deemed to be notification and filing by the board for purposes of this section. [1995, c. 542, §1 (NEW).]

C. Any action challenging the validity of an ordinance based on failure by the board or municipality to comply with this subsection must be brought in Superior Court within 30 days after adoption or amendment of the ordinance or map. The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive notice under this subsection, that the municipality or board failed to send notice as required, that the appellant had no knowledge

of the proposed adoption or amendment of the ordinance or map and that the appellant was materially prejudiced by that lack of knowledge. This paragraph does not alter the right of a person to challenge the validity of any ordinance or map based on the failure of a municipality to provide notice as required by Title 30-A, section 4352, subsection 9 or the failure of the board to provide notice as required by this Title. [1995, c. 542, §1 (NEW).]

[2013, c. 320, §7 (AMD) .]

2. **Municipal ordinances.** In accordance with a schedule adopted by the board and acting in accordance with a local comprehensive plan, municipalities shall prepare and submit to the commissioner zoning and land use ordinances that are consistent with or are no less stringent than the minimum guidelines adopted by the board and, for coastal communities, that address the coastal management policies cited in section 1801. When a municipality determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the commissioner for review and approval.

Notwithstanding section 435, a municipality may limit to 75 feet the shoreland zone around a freshwater wetland that has not been rated by the Department of Inland Fisheries and Wildlife as having moderate or high value provided that the municipality applies the requirements of this article regarding streams as defined under section 436-A to any outlet stream from any freshwater wetland.

[1993, c. 196, §3 (AMD) .]

3. **Commissioner approval.** Municipal ordinances, amendments and any repeals of ordinances are not effective unless approved by the commissioner. In determining whether to approve municipal ordinances or amendments, the commissioner shall consider the legislative purposes described in section 435, the minimum guidelines and any special local conditions which, in the judgment of the commissioner, justify a departure from the requirements of the minimum guidelines in a manner not inconsistent with the legislative purposes described in section 435. Recognizing that the guidelines are intended as minimum standards, the commissioner shall approve a municipal ordinance that imposes more restrictive standards than those in the guidelines. If an ordinance or an amendment adopted by a municipality contains standards inconsistent with or less stringent than the minimum guidelines, the commissioner, after notice to the municipality, may approve the proposed ordinances or amendment with conditions imposing the minimum guidelines in place of the inconsistent or less stringent standard or standards. Those conditions are effective and binding within the municipality and must be administered and enforced by the municipality. If the commissioner fails to act on any proposed municipal ordinance or amendment within 45 days of the commissioner's receipt of the proposed ordinance or amendment, the ordinance or amendment is automatically approved. Any application for a shoreland zoning permit submitted to a municipality within the 45-day period is governed by the terms of the proposed ordinance or amendment if the ordinance or amendment is approved under this subsection. A municipality may appeal to the board a decision of the commissioner under this subsection.

[1991, c. 346, §4 (AMD) .]

4. **Failure to adopt ordinances.** If the commissioner determines, after notice to a municipality, that the municipality has failed to adopt ordinances as required under this article or that an ordinance that the municipality has adopted does not satisfy the requirements and purposes under this article, and that the commissioner is unable to make the ordinance consistent with the minimum guidelines by the imposition of conditions, as set forth in subsection 3, then the commissioner shall request and the board may adopt, acting in accordance with Title 5, chapter 375, subchapter II, suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality. Notwithstanding subsections 2 and 3, if the board determines that special water quality considerations on a great pond warrant more restrictive standards than those contained in the minimum guidelines, the board may adopt the additional standards for all municipalities outside the jurisdiction of the Maine Land Use Planning Commission, which abut those waters. Following adoption by the board, these ordinances or provisions are effective and binding within the municipality and must be

administered and enforced by that municipality. The board may adopt modifications to ordinances adopted pursuant to this subsection. Preparation and notice of proposed modifications, prior to consideration by the board, may be initiated by the commissioner.

[1995, c. 493, §3 (AMD); 2011, c. 682, §38 (REV) .]

5. **Exemptions.** Any areas within a municipality that are subject to nonmunicipal zoning and land use controls may be exempted from the operation of this section upon a finding by the commissioner that the purposes of this chapter have been accomplished by nonmunicipal measures.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §46 (AMD) .]

6. **Variances.**

[1991, c. 346, §6 (RP) .]

6-A. **Variances.** A copy of a request for a variance under an ordinance approved or imposed by the commissioner or board under this article must be forwarded by the municipality to the commissioner at least 20 days prior to action by the municipality. The material submitted must include the application and all supporting information provided by the applicant. The commissioner may comment when the commissioner determines that the municipal issuance of the variance would not be in compliance with the requirements of state law for a zoning variance or that the variance would undermine the purposes stated in section 435. These comments, if submitted by the commissioner prior to the action by the municipality, must be made part of the record and must be considered by the municipality prior to taking action on the variance request.

[2005, c. 440, §1 (NEW) .]

7. **Exclusion of recreational boat storage buildings.** Notwithstanding subsection 3, the exclusion of recreational boat storage buildings from the definition of "functionally water-dependent uses" is deemed to be incorporated into each municipal shoreland zoning ordinance on the effective date of this subsection, regardless of any prior approval of the ordinance by the commissioner.

[1997, c. 726, §2 (NEW) .]

SECTION HISTORY
1987, c. 815, §§5,11 (NEW). 1989, c. 143, (AMD). 1989, c. 403, §7 (AMD). 1989, c. 890, §§A40,B44-46 (AMD). RR 1991, c. 2, §143 (COR). 1991, c. 46, §2 (AMD). 1991, c. 346, §§4-6 (AMD). 1991, c. 419, (AMD). 1991, c. 622, §X12 (AMD). 1991, c. 838, §23 (AMD). 1993, c. 196, §3 (AMD). 1993, c. 315, §1 (AMD). 1995, c. 493, §3 (AMD). 1995, c. 542, §1 (AMD). 1997, c. 726, §2 (AMD). 2003, c. 335, §4 (AMD). 2005, c. 226, §2 (AMD). 2005, c. 440, §1 (AMD). 2011, c. 657, Pt. W, §6 (REV). 2011, c. 682, §38 (REV). 2013, c. 320, §7 (AMD).

§438-B. TIMBER HARVESTING AND TIMBER HARVESTING ACTIVITIES IN SHORELAND AREAS; AUTHORITY OF DIRECTOR OF THE BUREAU OF FORESTRY IN THE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

Except as provided in subsection 4, beginning on the effective date established under subsection 5, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide for the purpose of regulating timber harvesting and timber harvesting activities in shoreland areas. [2005, c. 226, §3 (AMD).]

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

A. "Director" means the Director of the Bureau of Forestry within the Department of Agriculture, Conservation and Forestry. [2003, c. 335, §5 (NEW); 2011, c. 657, Pt. W, §5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV).]

B. "Statewide standards" means the performance standards for timber harvesting activities adopted pursuant to Title 12, section 8867-B. [2003, c. 335, §5 (NEW).]

C. "Timber harvesting" means cutting or removal of timber for the primary purpose of selling or processing forest products. [2003, c. 335, §5 (NEW).]

D. "Timber harvesting activities" means the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. [2003, c. 335, §5 (NEW).]

[2003, c. 335, §5 (NEW); 2011, c. 657, Pt. W, §5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

2. **Municipal acceptance of statewide standards.** A municipality may choose to have the statewide standards apply to timber harvesting and timber harvesting activities in that municipality by authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas and notifying the director of the repeal. The authorization must specify a repeal date. When a municipality accepts the statewide standards in accordance with this subsection, the director shall administer and enforce the statewide standards within that municipality beginning on the effective date established under subsection 5 or the municipal repeal date specified in the notification received under this subsection.

[2011, c. 599, §10 (AMD) .]

3. **Municipal adoption of ordinance identical to statewide standards.** A municipality may adopt an ordinance to regulate timber harvesting and timber harvesting activities that is identical to the statewide standards. A municipality that adopts an ordinance under this subsection may request the director to administer and enforce the ordinance or to participate in joint administration and enforcement of the ordinance with the municipality beginning on the effective date established under subsection 5 or within 60 days of the director's receiving a request. When a municipality requests joint responsibilities, the director and the municipality shall enter into an agreement that delineates the administrative and enforcement duties of each. To continue to receive administrative and enforcement assistance from the director under this subsection, a municipality must amend its ordinance as necessary to maintain identical provisions with the statewide standards.

[2011, c. 599, §10 (AMD) .]

4. **Municipal ordinances that are not identical to statewide standards.** A municipal ordinance regulating timber harvesting and timber harvesting activities that is in effect and consistent with state laws and rules in effect on December 31, 2005 continues in effect unless action is taken in accordance with subsection 2 or 3. A municipality that retains an ordinance with provisions that differ from the statewide standards shall administer and enforce that ordinance unless the municipality requests that the director administer and enforce the ordinance and the director agrees with the request after reviewing the ordinance. The director may not administer or enforce any ordinance that is more stringent than or significantly different from the requirements of section 438-A. A municipality may not amend a municipal ordinance regulating timber harvesting and timber harvesting activities unless the process established in Title 12, section 8869,

subsection 8 is followed. Beginning on the effective date established under subsection 5, a municipality may not amend an ordinance regulating timber harvesting and timber harvesting activities in a manner that results in standards that are less stringent than or otherwise conflict with the statewide standards.

[2011, c. 599, §10 (AMD) .]

5. **Effective date for statewide standards.** Except as provided in subsection 4, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide beginning on the first day of January of the 2nd year following the year in which the Commissioner of Agriculture, Conservation and Forestry determines that at least 252 of the 336 municipalities identified by the Commissioner of Agriculture, Conservation and Forestry as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3. Within 30 days of making the determination that the 252-municipality threshold has been met, the Commissioner of Agriculture, Conservation and Forestry shall notify the Secretary of State in writing and advise the secretary of the effective date for the statewide standards.

[2005, c. 397, Pt. C, §23 (AMD); 2005, c. 397, Pt. C, §24 (AFF); 2011, c. 657, Pt. W, §6 (REV) .]

6. **Effective date for statewide standards in certain municipalities.** Notwithstanding any provision in a local ordinance to the contrary, beginning January 1, 2013 rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply in all municipalities that have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3.

[2011, c. 599, §10 (NEW) .]

SECTION HISTORY
2003, c. 335, §5 (NEW). 2005, c. 226, §§3-5 (AMD). 2005, c. 397, §C23 (AMD). 2005, c. 397, §C24 (AFF). 2011, c. 599, §10 (AMD). 2011, c. 657, Pt. W, §5-7 (REV). 2013, c. 405, Pt. A, §23 (REV).

§439. REQUIREMENTS

(REPEALED)
(REALLOCATED FROM TITLE 12, SECTION 4812-A)

SECTION HISTORY
1973, c. 564, §4 (NEW). 1975, c. 293, §4 (AMD). 1975, c. 438, (AMD). 1985, c. 481, §A27 (RAL). 1987, c. 737, §§C85,C106 (AMD). 1987, c. 815, §§6,11 (RP). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 502, §A144 (RP).

§439-A. ADDITIONAL MUNICIPAL POWERS, LIMITATIONS

1. **Additional controls.** In addition to the ordinances required by this chapter, municipalities may adopt zoning and land use controls applicable to other bodies of water as may be required to protect the public health, safety and general welfare and further the purposes of this article.

[1987, c. 815, §§7, 11 (NEW) .]

2. **Jurisdiction.** Notwithstanding the scope of shoreland areas as identified in section 435, the jurisdiction of municipal shoreland zoning and land use control ordinances adopted under this article may include any structure built on, over or abutting a dock, wharf, pier or other structure extending or located

below the normal high-water line or within a wetland. Accordingly, municipalities may enact ordinances affecting structures that extend or are located over the water or are placed on lands lying between high and low waterlines or within wetlands.

[1999, c. 243, §5 (AMD) .]

3. **Soil evaluation reports.** Any other law notwithstanding, when a zoning ordinance adopted in conformity with this article requires a written report of soil suitability for subsurface waste disposal or commercial or industrial development, that report must be prepared and signed by a duly qualified person who has made an on-the-ground evaluation of the soil properties involved. Persons qualified to prepare these reports must be certified by the Department of Health and Human Services and include Maine State Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties and can provide proof of this training and experience in a manner specified by the Department of Health and Human Services. The Department of Health and Human Services may promulgate rules for the purpose of establishing training and experience standards required by this subsection.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §47 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

4. **Setback requirements.** Notwithstanding any provision in a local ordinance to the contrary and except as provided in this subsection, all new principal and accessory structures and expansions of such structures within the shoreland zone as established by section 435 must meet the water body or wetland setback requirements approved by the board, except functionally water-dependent uses. This subsection is not intended to prohibit a municipal board of appeals from granting a variance, subject to the requirements of this article and Title 30-A, section 4353, nor is it intended to prohibit an otherwise permissible expansion of a legally existing nonconforming structure, as long as the expansion does not create further nonconformity with the water body or wetland setback requirement.

A. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body or wetland setback requirements approved by the board. An expansion of a legally existing nonconforming structure pursuant to this subsection may not create further nonconformity with the water body or wetland setback requirement. [2013, c. 320, §8 (NEW).]

B. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement.

(1) Notwithstanding this paragraph, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards of land use adopted by the municipality are met and the expansion is not prohibited by paragraph A.

(a) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater. [2013, c. 320, §8 (NEW).]

C. All other legally existing nonconforming principal and accessory structures that do not meet the water body or wetland setback requirements may be expanded or altered as follows, as long as other applicable standards of land use adopted by the municipality are met and the expansion is not prohibited by paragraph A or B.

(1) For structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(2) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland must meet the footprint and height limits in subparagraph (1).

(3) In addition to the limitations in subparagraphs (1) and (2), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland must meet the footprint and height limits in subparagraph (1). [2013, c. 320, §8 (NEW).]

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

(1) "Water body" means a great pond, river or stream.

(2) "Wetland" means a coastal wetland or freshwater wetland. [2013, c. 320, §8 (NEW).]

Plans approved by the municipality for expansions under this subsection must be filed in the registry of deeds of the county in which the property is located within 90 days of approval.

[2013, c. 320, §8 (AMD) .]

4-A. **Alternative expansion requirement.**

[2013, c. 320, §9 (RP) .]

4-B. **Exemption from setback requirements for decks over rivers within a downtown revitalization project.** In accordance with the provisions of this subsection, a municipality may adopt an ordinance that exempts a deck from the water and wetland setback requirements otherwise applicable under this section.

A. Notwithstanding subsection 4, a municipality may adopt an ordinance pursuant to this subsection that exempts a deck from the otherwise applicable water or wetland setbacks if the following requirements are met:

(1) The deck does not exceed 700 square feet in area;

(2) The deck is cantilevered over a segment of a river that is located within the boundaries of a downtown revitalization project; and

(3) The deck is attached to or accessory to a use in a structure that was constructed prior to 1971 and is located within a downtown revitalization project. [2013, c. 588, Pt. A, §48 (AMD).]

B. A downtown revitalization project under this subsection must be defined in a project plan approved by the legislative body of the municipality and may include the revitalization of buildings formerly used as mills that do not meet the water or wetland setback requirements in subsection 4. [2013, c. 588, Pt. A, §48 (AMD).]

C. Except for the water and wetland setback requirements in subsection 4, a deck that meets the requirements of this subsection must meet all other state and local permit requirements and comply with all other applicable rules. [2013, c. 588, Pt. A, §48 (AMD).]

D. A deck exempt under this subsection may be either privately or publicly owned and maintained. [2013, c. 140, §1 (NEW).]

[2013, c. 588, Pt. A, §48 (AMD) .]

5. **Timber harvesting.** Municipal ordinances must regulate timber harvesting within the shoreland area. Notwithstanding any provision in a local ordinance to the contrary, standards for timber harvesting activities may not be less restrictive than the following:

A. Selective cutting of no more than 40% of the trees 4.5 inches or more in diameter, measured at 4 1/2 feet above ground level, in any 10-year period, as long as a well-distributed stand of trees and other natural vegetation remains; [2007, c. 292, §21 (AMD).]

B. Within a shoreland area zoned for resource protection abutting a great pond there may not be timber harvesting within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards or if a municipality adopts an ordinance pursuant to this paragraph. A municipality may adopt an ordinance that allows limited timber harvesting within the 75-foot strip in the resource protection zone when the following conditions are met:

(1) The ground is frozen;

(2) There is no resultant soil disturbance;

(3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;

(4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 1/2 feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and

(5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality; and [1999, c. 370, §2 (AMD).]

C. Any site within a shoreland area zoned for resource protection abutting a great pond, beyond the 75-foot strip restricted in paragraph B, where timber is harvested must be reforested within 2 growing seasons after the completion of the harvest, according to guidelines adopted by the board. The board shall adopt guidelines consistent with minimum stocking standards established under Title 12, section 8869. [1991, c. 66, Pt. A, §10 (RPR).]

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter that must then be incorporated into local ordinances. Timber harvesting operations exceeding the 40% limitation in paragraph A may be allowed by a planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and is carried out in accordance with the purposes of shoreland zoning. The planning board shall notify the commissioner of each exception allowed.

[2007, c. 292, §21 (AMD) .]

6. **Clearing of vegetation.** Within the shoreland area, municipal ordinances must provide for effective vegetative screening between buildings and shorelines. Notwithstanding any provision in a local ordinance to the contrary, vegetative screening requirements must be no less restrictive than the following:

A. Within a strip extending 100 feet inland from the normal high-water line of a great pond classified as GPA under section 465-A or a river that flows to a great pond classified as GPA under section 465-A or within a strip extending 75 feet inland from the normal high-water line of other water bodies or the upland edge of a wetland, there may be no cleared opening or openings greater than 250 square feet and a well-distributed stand of vegetation must be retained. The restrictions in this paragraph do not apply to the construction of a structure or the establishment of a land use within 75 feet of the normal high-water line of a water body or upland edge of a wetland that is specifically allowed by municipal ordinance in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner; [2013, c. 231, §1 (AMD); 2013, c. 320, §10 (AMD).]

B. Within a shoreland area zoned for resource protection abutting a great pond there may be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards; and [2013, c. 231, §1 (AMD); 2013, c. 320, §10 (AMD).]

C. Except as otherwise provided in this paragraph, selective cutting of no more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period. Rules adopted by the board may allow for 70% of a lot to be nonvegetated in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner. [2013, c. 231, §1 (AMD); 2013, c. 320, §10 (AMD).]

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter, which must then be incorporated into local ordinances.

[2013, c. 231, §1 (AMD); 2013, c. 320, §10 (AMD) .]

6-A. **Clearing of vegetation; exception.** The following exceptions to the standards governing the clearing of vegetation apply.

A. The standards in subsection 6, paragraphs A and C do not apply to properties that are located within areas designated as commercial fisheries and maritime activities districts or other equivalent zoning districts approved by the commissioner that support commercial fisheries and maritime activities if:

(1) The commissioner determines that special local conditions exist and a local municipal ordinance is approved in accordance with section 438-A, subsection 3; and

(2) The districts are in existence at the time this subsection becomes effective. [2013, c. 231, §2 (NEW); 2013, c. 320, §11 (NEW).]

B. The standards in subsection 6, paragraphs A and C and any standards related to the clearing of vegetation contained in a municipal ordinance enacted in accordance with section 438-A, subsection 3 do not apply to remediation activities that are necessary to clean up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner that is part of a state or federal brownfields program or a voluntary response action program under section 343-E and that is located along:

(1) A coastal wetland; or

(2) A river that does not flow to a great pond classified as GPA under section 465-A. [2013, c. 231, §2 (NEW); 2013, c. 320, §11 (NEW).]

[2013, c. 231, §2 (NEW); 2013, c. 320, §11 (NEW) .]

7. **Special exception.** A municipal ordinance adopted pursuant to this article may include a provision for the municipal planning board to issue a permit for construction of a single-family residence in a Resource Protection District if the applicant demonstrates that all of the following conditions are met.

A. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built. [1993, c. 318, §1 (NEW).]

B. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District. [1993, c. 318, §1 (NEW).]

C. The proposed location of all buildings, sewage disposal systems and other improvements are:

(1) Located on natural ground slopes of less than 20%; and

(2) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency maps, it is deemed to be 1/2 the width of the 100-year floodplain. For purposes of this subparagraph, "floodway" means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot in height and "velocity zone" means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources. [1993, c. 318, §1 (NEW).]

D. The total footprint of all principal and accessory structures is limited to a maximum of 1,500 square feet. [2013, c. 320, §12 (AMD).]

E. All structures, except functionally water-dependent structures, are set back from the normal high-water line or upland edge of a wetland to the greatest practical extent, but not less than 75 feet. In determining the greatest practical extent, the planning board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain and its proximity to moderate-value and high-value wetlands. [1993, c. 318, §1 (NEW).]

[2013, c. 320, §12 (AMD) .]

8. **Archaeological excavation.** A permit is not required for an archaeological excavation that is within a shoreland zone as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

[2001, c. 207, §1 (NEW) .]

9. **Cupolas.** For the purpose of determining the height of a structure, a municipal ordinance adopted pursuant to this article may exempt a cupola, dome, widow's walk or similar feature added to a legally existing conforming structure if:

A. The legally existing conforming structure is not located in a Resource Protection District or a stream protection district as defined in guidelines adopted by the board; and [2011, c. 231, §2 (NEW).]

B. The cupola, dome, widow's walk or other similar feature:

(1) Does not extend beyond the exterior walls of the existing structure;

(2) Has a floor area of 53 square feet or less; and

(3) Does not increase the height of the existing structure, as determined under section 436-A, subsection 7-A, by more than 7 feet. [2011, c. 231, §2 (NEW).]

For purposes of this subsection, "cupola, dome, widow's walk or other similar feature" means a nonhabitable building feature mounted on a building roof for observation purposes.

[2011, c. 231, §2 (NEW) .]

SECTION HISTORY
1987, c. 815, §§7,11 (NEW). 1989, c. 403, §8 (AMD). 1989, c. 803, §1 (AMD). 1989, c. 838, §2 (AMD). 1989, c. 878, §G7 (AMD). 1989, c. 890, §§A40,B47 (AMD). 1991, c. 66, §A10 (AMD). 1991, c. 346, §§7-9 (AMD). 1993, c. 55, §1 (AMD). 1993, c. 318, §1 (AMD). 1993, c. 383, §1 (AMD). 1993, c. 383, §42 (AFF). 1997, c. 726, §3 (AMD). 1997, c. 748, §3 (AMD). 1999, c. 243, §§5-7 (AMD). 1999, c. 370, §2 (AMD). 2001, c. 207, §1 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 292, §§21, 22 (AMD). 2011, c. 231, §2 (AMD). 2013, c. 140, §1 (AMD). 2013, c. 231, §§1, 2 (AMD). 2013, c. 320, §§8-12 (AMD). 2013, c. 588, Pt. A, §48 (AMD).

§439-B. CONTRACTORS CERTIFIED IN EROSION CONTROL

1. **Definition.** For purposes of this section, "excavation contractor" means an individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

[2007, c. 593, §2 (NEW) .]

2. **Certification required.** An excavation contractor conducting excavation activity in a shoreland area shall ensure that a person certified in erosion control practices by the department:

A. Is responsible for management of erosion and sediment control practices at the site; and [2007, c. 593, §2 (NEW).]

B. Is present at the site each day earth-moving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. [2007, c. 593, §2 (NEW).]

The requirements of this subsection apply until erosion control measures that will permanently stay in place have been installed at the site or, if the site is to be revegetated, erosion control measures that will stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion have been installed.

[2007, c. 593, §2 (NEW) .]

3. **Application.** This section does not apply to:

A. Activities resulting in less than one cubic yard of earth material being added or displaced; [2013, c. 242, §2 (NEW); 2013, c. 320, §13 (NEW).]

B. A person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and [2013, c. 242, §2 (NEW); 2013, c. 320, §13 (NEW).]

C. Municipal, state and federal employees engaged in projects associated with that employment. [2013, c. 242, §2 (NEW); 2013, c. 320, §13 (NEW).]

[2013, c. 242, §2 (RPR); 2013, c. 320, §13 (RPR) .]

4. **Effective date.** This section takes effect January 1, 2013.

[2007, c. 593, §2 (NEW) .]

SECTION HISTORY
2007, c. 593, §2 (NEW). 2013, c. 242, §2 (AMD). 2013, c. 320, §13 (AMD).

§440. FEDERAL FLOOD INSURANCE

(REALLOCATED FROM TITLE 12, SECTION 4812-B)

In addition to controls required by this chapter, municipalities may extend or adopt zoning and subdivision controls beyond the limits established by this chapter in order to protect the public health, safety and welfare and to avoid problems associated with flood plain development. [1985, c. 481, Pt. A, §28 (RAL).]

A zoning ordinance adopted or extended pursuant to this section must be pursuant to and consistent with a comprehensive plan unless the ordinance complies with the requirements of the Federal Flood Insurance Program or other provisions of this section. [2003, c. 641, §18 (AMD).]

Zoning ordinances adopted or extended pursuant to this section need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30-A, section 4503, to the contrary, provided such ordinances are required for entrance of the municipality into the Federal Flood Insurance Program. Ordinances or amendments adopted by authority of this section shall not extend beyond an area greater than that necessary to comply with the requirements of the Federal Flood Insurance Program. [1987, c. 737, Pt. C, §§86, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

Zoning ordinances adopted or amended pursuant to this section shall designate as a resource protection zone or its equivalent, as defined in the guidelines adopted pursuant to section 438-A, subsection 1, all areas within the floodway of the 100-year flood plain along rivers and in the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps. This provision does not apply to areas zoned for general development or its equivalent, as defined in the guidelines adopted pursuant to section 438-A, subsection 1, as of the effective date of this paragraph, or within areas designated by ordinances as densely developed. The determination of which areas are densely developed shall be based on a finding that, as of the effective date of this paragraph, existing development meets the definition in section 436, subsection 3. [1989, c. 403, §9 (AMD).]

All communities shall designate floodway areas, as set out in this section, as resource protection zones as of the effective date of a community's entry into the regular program of the National Flood Insurance Program or July 1, 1987, whichever comes later. [1985, c. 794, Pt. A, §8 (NEW).]

In those areas that are within the floodway, as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, all proposed activities which are permitted within the shoreland area must be shown not to increase the 100-year flood elevation. In addition, all structures built in the floodway shall have their lowest floor, including the basement, one foot above the 100-year flood elevation. [1985, c. 794, Pt. A, §8 (NEW).]

SECTION HISTORY
1975, c. 330, (NEW). 1975, c. 623, §§15A,15B (AMD). 1985, c. 481, §A28 (RAL). 1985, c. 794, §A8 (AMD). 1987, c. 737, §§C86,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 403, §9 (AMD). 2003, c. 641, §18 (AMD).

§440-A. PUBLIC ACCESS

In addition to controls required in this chapter, municipalities may extend or adopt zoning and subdivision controls to protect any public rights for physical and visual access to the shoreline. [1985, c. 794, Pt. A, §9 (NEW).]

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan. [1985, c. 794, Pt. A, §9 (NEW).]

SECTION HISTORY
1985, c. 794, §A9 (NEW).

§441. CODE ENFORCEMENT OFFICERS

(REALLOCATED FROM TITLE 12, SECTION 4812-C)

1. **Appointment.** In every municipality, the municipal officers shall annually by July 1st appoint or reappoint a code enforcement officer, whose job may include being a local plumbing inspector or a building official and who may or may not be a resident of the municipality for which that person is appointed. The municipal officers may appoint the planning board to act as the code enforcement officer. The municipal officers may remove a code enforcement officer for cause, after notice and hearing. This removal provision only applies to code enforcement officers who have completed a reasonable period of probation as established by the municipality pursuant to Title 30-A, section 2601. If not reappointed by a municipality, a code enforcement officer may continue to serve until a successor has been appointed and sworn.

[2007, c. 2, §25 (COR) .]

2. **Certification; authorization by municipal officers.** No person may serve as a code enforcement officer who is authorized by the municipal officers to represent the municipality in District Court unless that person is currently certified under Title 30-A, section 4453, as being familiar with court procedures.

Upon written authorization by the municipal officers, a certified code enforcement officer may serve civil process on persons whom that officer determines to be in violation of ordinances adopted pursuant to this chapter and, if authorized by the municipal officers, may represent the municipality in District Court in the prosecution of violations of ordinances adopted pursuant to this chapter.

[1997, c. 296, §11 (AMD) .]

3. **Powers and duties.** The duties of the code enforcement officer shall include the following:

A. Enforce the local shoreland zoning ordinance in accordance with the procedures contained therein; [1985, c. 481, Pt. A, §29 (RAL).]

B. Collect a fee, if authorized by a municipality, for every shoreland permit issued by the code enforcement officer. The amount of any such fee shall be set by the municipality. The fee shall be remitted to the municipality; [1985, c. 481, Pt. A, §29 (RAL).]

C. Keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected; and [2013, c. 320, §14 (AMD).]

D. Investigate complaints of alleged violations of local land use laws. [1985, c. 481, Pt. A, §29 (RAL).]

[2013, c. 320, §14 (AMD) .]

SECTION HISTORY

1983, c. 796, §4 (NEW). 1985, c. 481, §A29 (RAL). 1985, c. 737, §A111 (AMD). 1987, c. 737, §§C87,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 403, §§10,11 (AMD). 1991, c. 346, §10 (AMD). 1997, c. 296, §11 (AMD). RR 2007, c. 2, §25 (COR). 2013, c. 320, §14 (AMD).

§442. MUNICIPAL FAILURE TO ACCOMPLISH PURPOSES

(REPEALED)

SECTION HISTORY
1985, c. 481, §A92 (NEW). 1987, c. 815, §§8,11 (RP).

§443. COOPERATION

(REPEALED)

SECTION HISTORY
1985, c. 481, §A93 (NEW). 1987, c. 815, §§9,11 (RP).

§443-A. COOPERATION; ENFORCEMENT

1. **Consultation with state agencies.** All agencies of State Government shall cooperate to accomplish the objectives of this article. To that end, the commissioner shall consult with the governing bodies of municipalities and with other state agencies to achieve the purposes of this article, and shall extend to municipalities all possible technical and other assistance for that purpose.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §48 (AMD) .]

2. **Legal actions.** In any legal action in which the pleadings challenge the validity or legality of any ordinance adopted pursuant to this article, the Attorney General shall be made a party until removed by the Attorney General's consent.

[1987, c. 815, §§10, 11 (NEW) .]

3. **Remedies.** Any municipality that fails to adopt, administer or enforce zoning and land use ordinances as required under this article is subject to the enforcement procedures, equitable remedies and civil penalties set forth in sections 347-A to 349.

[2011, c. 2, §44 (COR) .]

SECTION HISTORY
1987, c. 815, §§10,11 (NEW). 1989, c. 890, §§A40,B48 (AMD). RR 2011, c. 2, §44 (COR).

§444. ENFORCEMENT

(REALLOCATED FROM TITLE 12, SECTION 4815)

Any person who orders or conducts any activity in violation of a municipal ordinance adopted under this chapter is penalized in accordance with Title 30-A, section 4452. [1991, c. 824, Pt. A, §84 (AMD).]

The Attorney General, the district attorney or municipal officers or their designee may enforce ordinances adopted under this chapter. [1985, c. 481, Pt. A, §32 (RAL).]

A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in a shoreland area, as defined by section 435, unless written authorization attesting to the validity and currency of all local permits required under this chapter has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officers and the utility, except that if a public utility, water district, sanitary district or utility company of any kind has installed services to a new structure in accordance with this paragraph, a subsequent public utility, water district, sanitary district or utility company of any kind may install services to the new structure without first receiving written authorization pursuant to this section. [2001, c. 40, §2 (AMD).]

SECTION HISTORY
1983, c. 306, §2 (NEW). 1983, c. 458, §5 (NEW). 1983, c. 796, §5 (RPR). 1985, c. 481, §A32 (RAL). 1985, c. 737, §A112 (AMD). 1989, c. 403, §12 (AMD). 1991, c. 824, §A84 (AMD). 1997, c. 199, §2 (AMD). 2001, c. 40, §2 (AMD).

§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 Planning Commission, the commission must be given notice in place of the department and the municipality.

[1989, c. 733, §2 (NEW); 2011, c. 682, §38 (REV) .]

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). 2011, c. 682, §38 (REV).

§445. GUIDELINES FOR SHORELAND ZONING ALONG SIGNIFICANT RIVER SEGMENTS

In addition to the guidelines adopted under section 438-A, the following guidelines for the protection of the shorelands shall apply along significant river segments identified in section 437. These guidelines are intended to maintain the special values of these particular river segments by protecting their scenic beauty and undeveloped character. [1989, c. 403, §13 (AMD).]

1. **New principal structures.** New principal structures, except for structures related to hydropower facilities, shall be set back a minimum of 125 feet from the normal high-water line of the river. These structures shall be screened from the river by existing vegetation.

[1989, c. 403, §13 (AMD) .]

2. **New roads.** Developers of new permanent roads, except for those providing access to a structure or facility allowed in the 250-foot zone, shall demonstrate that no reasonable alternative route outside of the zone exists. When roads must be located within the zone, they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

[1989, c. 403, §13 (AMD) .]

3. **New gravel pits.** Developers of new gravel pits shall demonstrate that no reasonable mining site outside of the zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than 75 feet and screened from the river by existing vegetation.

[1989, c. 403, §13 (AMD) .]

SECTION HISTORY
1985, c. 481, §A94 (NEW). 1989, c. 403, §13 (AMD).

§446. MUNICIPAL ORDINANCE REVIEW AND CERTIFICATION

Each municipality with shorelands along significant river segments, as identified in section 437, shall review the adequacy of the zoning on these shorelands to protect the special values cited for these river segments by the former Department of Conservation's 1982 Maine Rivers Study and for consistency with the guidelines established under section 445. Prior to December 15, 1984, each such municipality shall certify to the Board of Environmental Protection either that its existing zoning for these areas is at least as restrictive as the guidelines established under section 445, or that it has amended its zoning for this purpose. This certification must be accompanied by the ordinances and zoning maps covering these areas. Failure to accomplish the purposes of this section results in adoption of suitable ordinances for these municipalities, as provided for in section 438-A. [2013, c. 405, Pt. D, §16 (AMD).]

SECTION HISTORY
1985, c. 481, §A95 (NEW). 1989, c. 403, §14 (AMD). RR 1991, c. 2, §144 (COR). 2013, c. 405, Pt. D, §16 (AMD).

§447. FUNCTIONALLY WATER-DEPENDENT USE ZONES

Municipalities are encouraged to give preference, when appropriate, to functionally water-dependent uses and may extend zoning controls to accomplish this. [1985, c. 794, Pt. A, §10 (NEW).]

A municipality may, within coastal shoreland areas, adopt zoning ordinances for functionally water-dependent uses. Municipalities may establish districts within these zones to give preference to commercial fishing and other maritime activities. [1985, c. 794, Pt. A, §10 (NEW).]

In creating such a zone, a municipality shall consider the demand for and availability of shorefront property for functionally water-dependent uses. [1985, c. 794, Pt. A, §10 (NEW).]

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan. [1985, c. 794, Pt. A, §10 (NEW).]

SECTION HISTORY
1985, c. 794, §A10 (NEW).

§448. MUNICIPALITIES ESTABLISH COMMERCIAL FISHING AND MARITIME ACTIVITY ZONES

A municipality may, within coastal shoreland areas of that municipality, adopt zoning ordinances establishing a commercial fishing and maritime activity zone. In creating that zone, the municipality shall consider at least the following: [1989, c. 403, §15 (NEW).]

1. **Utilization.** The number of commercial fishermen and the utilization of the shoreland area;

[1989, c. 403, §15 (NEW) .]

2. **Availability.** The availability of shoreland area for commercial fishing;

[1989, c. 403, §15 (NEW) .]

3. **Demand for property.** The demands for shoreland property for commercial and residential purposes not related to commercial fishing or maritime activity; and

[1989, c. 403, §15 (NEW) .]

4. **Access.** Access to the shore and availability of space appropriate for commercial fishing and maritime activities.

[1989, c. 403, §15 (NEW) .]

SECTION HISTORY
1989, c. 403, §15 (NEW). RR 1993, c. 1, §112 (COR).

§449. SHORELAND ZONING REPORT TO LEGISLATURE

(REALLOCATED FROM TITLE 12, SECTION 4812-D)
(REPEALED)

SECTION HISTORY
1989, c. 403, §1 (RAL). 1989, c. 890, §§A40,B49 (AMD). 2011, c. 120, §4 (RP).

Article 3: ENFORCEMENT

§451. ENFORCEMENT GENERALLY

After adoption of any classification by the Legislature for surface waters or tidal flats or sections thereof, it is unlawful for any person, firm, corporation, municipality, association, partnership, quasi-municipal body, state agency or other legal entity to dispose of any pollutants, either alone or in conjunction with another or others, in such manner as will, after reasonable opportunity for dilution, diffusion or mixture with the receiving waters or heat transfer to the atmosphere, lower the quality of those waters below the minimum requirements of such classifications, or where mixing zones have been established by the department, so

lower the quality of those waters outside such zones, notwithstanding any exemptions or licenses which may have been granted or issued under sections 413 to 414-B. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §50 (AMD).]

The department may establish a mixing zone for any discharge at the time of application for a waste discharge license. The department shall attach a description of the mixing zone as a condition of a license issued for that discharge. After opportunity for a hearing in accordance with section 345-A, the department may establish by order a mixing zone with respect to any discharge for which a license has been issued pursuant to section 414 or for which an exemption has been granted by virtue of section 413, subsection 2. [1997, c. 794, Pt. A, §29 (AMD).]

The purpose of a mixing zone is to allow a reasonable opportunity for dilution, diffusion or mixture of pollutants with the receiving waters before the receiving waters below or surrounding a discharge will be tested for classification violations. In determining the extent of any mixing zone to be established under this section, the department may require from the applicant testimony concerning the nature and rate of the discharge; the nature and rate of existing discharges to the waterway; the size of the waterway and the rate of flow therein; any relevant seasonal, climatic, tidal and natural variations in such size, flow, nature and rate; the uses of the waterways in the vicinity of the discharge, and such other and further evidence as in the department's judgment will enable it to establish a reasonable mixing zone for such discharge. An order establishing a mixing zone may provide that the extent thereof varies in order to take into account seasonal, climatic, tidal and natural variations in the size and flow of, and the nature and rate of, discharges to the waterway. [1991, c. 824, Pt. A, §85 (AMD).]

Where no mixing zones have been established by the department, it is unlawful for any person, corporation, municipality or other legal entity to dispose of any pollutants, either alone or in conjunction with another or others, into any classified surface waters, tidal flats or sections thereof, in such manner as will, after reasonable opportunity for dilution, diffusion, mixture or heat transfer to the atmosphere, lower the quality of any significant segment of those waters, tidal flats or sections thereof, affected by such discharge, below the minimum requirements of such classification, and notwithstanding any licenses which may have been granted or issued under sections 413 to 414-B. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §50 (AMD).]

1. **Time schedule.**

[1983, c. 566, §25 (RP) .]

2. **Revocation, modification or suspension of licenses.**

[1977, c. 300, §26 (RP) .]

SECTION HISTORY
1967, c. 475, §11 (RPR). 1967, c. 528, §§1,2 (AMD). 1969, c. 431, §§6-9 (AMD). 1969, c. 499, §§11-13 (AMD). 1969, c. 590, §72 (AMD). 1971, c. 359, §§1-3 (AMD). 1971, c. 461, §6 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 450, §19 (AMD). 1977, c. 300, §§25,26 (AMD). 1979, c. 127, §211 (RPR). 1979, c. 444, §§11,12 (AMD). 1979, c. 663, §231 (AMD). 1983, c. 566, §§24,25 (AMD). 1989, c. 878, §B39 (AMD). 1989, c. 890, §§A40,B50 (AMD). 1991, c. 66, §A11 (AMD). 1991, c. 824, §A85 (AMD). 1997, c. 794, §A29 (AMD).

§451-A. TIME SCHEDULE VARIANCES

1. **Power to grant variances.** The department may grant a variance from any statutory water pollution abatement requirement, pursuant to section 414-A, subsection 1, paragraph D, to any municipality or quasi-municipal entity, hereinafter called the "municipality," upon application by it. The department may grant a variance only upon a finding that:

A. Federal funds for the construction of municipal waste water treatment facilities are not available for the project; [1983, c. 566, §26 (AMD).]

B. The municipality has demonstrated that it has completed preliminary plans acceptable to the department for the treatment of municipal wastes and for construction of that portion of the municipal sewage system intended to be served by the planned municipal treatment plant when that plant first begins operations; and [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §51 (AMD).]

C. Beginning on October 1, 1976, the municipality shall collect, from each discharger into its sewage system and each discharger not connected to the sewage system that has signed an approved agreement with the municipality pursuant to subsection 2, a fee sufficient to equal their proportionate share of the actual current cost of operating the sewage system for which preliminary plans have been completed and approved pursuant to paragraph B. Actual current costs include but are not limited to preliminary plans, final design plans, site acquisition, legal fees, interest fees, sewer system maintenance and rehabilitation and other administrative costs. A municipality may provide, when permitted under the federal construction grant program, that in lieu of such annual fees paid by dischargers, the municipality may apportion an appropriate amount from general revenues to cover that share of fees to be paid by dischargers.

The funds collected or apportioned pursuant to this paragraph and interest collected thereon must be invested and expended pursuant to Title 30-A, subpart 9.

Any funds paid by a discharger or discharger not connected to the sewage system pursuant to this paragraph may be credited to the account of the discharger if the municipality is subsequently reimbursed by the federal construction grant program. The credit arrangement must be determined by agreement between the municipality and the discharger. [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §51 (AMD).]

Variances are issued for a term certain not to exceed 3 years, and may be renewed, except that no variance may run longer than the time specified for completion of the municipal waste treatment facility. Notwithstanding the provisions of this subsection, no variance issued under this section may extend beyond July 1, 1988. Upon notice of the availability of federal funds, the municipality shall present to the department for approval an implementation schedule for designing, constructing and placing the waste collection and treatment facilities in operation.

Variances may be conditioned upon reasonable and necessary terms relating to appropriate interim measures to be taken by the municipality to maintain or improve water quality.

[1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §51 (AMD) .]

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 groundwater classification or reclassification adopted on or after January 1, 1980 with respect to discharges to the groundwater from those facilities, if the owner or operator has completed all steps required to be completed by the schedules set forth in this subchapter. The commissioner 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 municipal or county site classified as Priority 4 or Priority 5 as of April 1, 2000, which was registered pursuant to section 413 prior to October 15, 1997, is not in violation of any groundwater classification or reclassification with respect to discharges to the groundwater from those facilities.

A. Preliminary notice for municipal and county Priority 3 projects must be completed and submitted to the Department of Transportation within 2 months of receipt of a certified letter from the Department of Transportation notifying the municipality or county of funds available for the construction of a facility. [2013, c. 523, §3 (AMD).]

B. [1999, c. 387, §5 (RP).]

C. [1999, c. 387, §5 (RP).]

D. For municipal and county Priority 3 projects, review of final plans with the Department of Transportation must be completed within 14 months of receipt of a certified letter from the Department of Transportation notifying the municipality or county of funds available for the construction of a facility. [2013, c. 523, §3 (AMD).]

E. Construction of municipal and county Priority 3 projects must be completed and the facility must be in operation within 26 months of receipt of a certified letter from the Department of Transportation notifying the municipality or county of funds available for the construction of a facility. [2013, c. 523, §3 (AMD).]

In no case may violations of the lowest groundwater classification be allowed. In addition, no violations of any groundwater classifications adopted after January 1, 1980 may be allowed for more than 26 months from the date of an offer of a state grant for the construction of those facilities.

The department 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.

[2013, c. 523, §3 (AMD) .]

1-B. **Department of Transportation storage areas.** A sand and salt storage area owned by the Department of Transportation and registered prior to October 1, 1999 is not in violation of a groundwater classification or reclassification adopted on or after January 1, 1980 with respect to discharges of groundwater from that area if:

A. The Department of Transportation biennially submits to the Legislature a budget request sufficient to comply with this subsection and section 413; [2003, c. 502, §2 (NEW).]

B. Prior to the use of funds appropriated by the Legislature to carry out the purposes of this subsection, the Department of Transportation presents to the department for comment and response a plan for the use of those funds by outlining a sand and salt storage area specific expenditure plan to prevent pollution, avoid future abatement or clean-up costs and comply with applicable federal guidelines; and [2003, c. 502, §2 (NEW).]

C. The Department of Transportation reports annually to the department on the status of available funds and the department determines that pursuant to this report the Department of Transportation is making timely use of the funds consistent with the plan and comments provided pursuant to paragraph B. [2003, c. 502, §2 (NEW).]

[2003, c. 502, §2 (NEW) .]

2. **Exemptions.** Any person, other than a municipality, maintaining a discharge subject to the requirements of section 413, 414 and 414-A shall be exempt from the requirements of section 414-A, subsection 1, paragraph D, Effluent Limitations and Best Practicable Treatment, if, by July 1, 1976 or on the commencement of a licensed discharge, whichever occurs later, such discharger presents to the Department of Environmental Protection and receives approval of a contract agreeing to connect to the existing or planned municipal sewage system immediately upon completion of construction and commencement of operation of such treatment plant. Such contract must insure that, in the case of a new discharge, such new discharge will not cause serious water quality problems, including but not limited to downgrading the receiving waters so

as to make them unsuitable for currently existing uses. For the purpose of this section, a "new discharge" is a discharge which commences or a discharge which changes characteristics or increases licensed volume by more than 10% on or after the effective date of this Act.

[1975, c. 700, §1 (AMD) .]

3. **Failure to comply with agreement.** Failure to comply with any of the terms of an agreement approved pursuant to subsection 2 shall immediately render such agreement null and void and discharges included in such an agreement shall immediately cease or shall only discharge in accordance with the standards of best practicable treatment specified in section 414-A, subsection 1, paragraph D, and all other requirements of sections 414 and 414-A.

[1975, c. 209, (NEW) .]

4. **Pretreatment systems.** Where a discharger otherwise exempted from constructing treatment facilities pursuant to this section will be required to pretreat effluents before discharge into the municipal system pursuant to any requirement of state or federal law, the pretreatment system shall be installed upon commencement of the discharge.

[1983, c. 566, §27 (AMD) .]

5. **Fees.** Municipalities and quasi-municipal entities shall assess and collect the fees to be charged pursuant to this section in accordance with the provisions of chapter 11, and Title 30-A, chapters 161 and 213.

[1987, c. 737, Pt. C, §§89, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §8, 10 (AMD) .]

6. **Power to grant variances to owners of private dwellings.**

[1983, c. 566, §28 (RP) .]

7. **Power to grant variances to owners of a single family dwelling.**

[1987, c. 180, §3 (RP); 1987, c. 192, §15 (RP) .]

SECTION HISTORY
1973, c. 423, §8 (NEW). 1975, c. 209, (RPR). 1975, c. 700, §§1,2 (AMD). 1977, c. 185, (AMD). 1977, c. 564, §§138,139 (AMD). 1983, c. 566, §§26-29 (AMD). 1985, c. 162, §6 (AMD). 1987, c. 180, §3 (AMD). 1987, c. 192, §§14,15 (AMD). 1987, c. 492, (AMD). 1987, c. 737, §§C88,C89, C106 (AMD). 1987, c. 769, §A176 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 890, §§A40,B51,52 (AMD). 1989, c. 926, §1 (AMD). 1991, c. 9, §II5 (AMD). 1991, c. 622, §X13 (AMD). 1991, c. 824, §A86 (AMD). 1993, c. 54, §1 (AMD). 1999, c. 387, §5 (AMD). 2003, c. 502, §2 (AMD). 2013, c. 523, §3 (AMD).

§451-B. VARIANCES

(REPEALED)

SECTION HISTORY
1975, c. 683, (NEW). 1983, c. 743, §12 (RP).

§452. FORMS FILED; RIGHT OF ENTRY; FURNISHING INFORMATION

Persons, firms, corporations, quasi-municipal corporations, municipalities, state agencies and other legal entities shall file with the commissioner information relative to their present method of collection, disposal, composition and volume of all wastes discharged by them into any waters of the State, in a manner and on forms prescribed by the commissioner, within 30 days of receipt of those forms. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §53 (AMD).]

SECTION HISTORY
1971, c. 527, §6 (AMD). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A40,B53 (AMD).

§453. PENALTIES

(REPEALED)

SECTION HISTORY
1969, c. 422, (AMD). 1971, c. 256, §3 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 450, §§20,21 (AMD). 1977, c. 300, §27 (RP).

§454. INJUNCTIONS, CIVIL AND CRIMINAL ACTIONS

(REPEALED)

SECTION HISTORY
1971, c. 256, §4 (AMD). 1971, c. 359, §4 (RPR). 1971, c. 544, §132 (RPR). 1971, c. 618, §12 (AMD). 1973, c. 450, §22 (AMD). 1977, c. 300, §27 (RP).

§455. SARDINE PROCESSING FACILITIES

(REPEALED)

SECTION HISTORY
1981, c. 695, (NEW). 1983, c. 592, §1 (AMD). 1983, c. 646, (AMD). 1987, c. 192, §16 (RP).

Article 4: AIR POLLUTION AND ENVIRONMENTAL IMPROVEMENT

§460. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1967, c. 475, §12 (NEW). 1969, c. 431, §9 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 625, §275 (AMD). 1975, c. 595, §2 (RP).

§461. DEFINITIONS

(REPEALED)

SECTION HISTORY
1967, c. 475, §12 (NEW). 1975, c. 595, §2 (RP).

§462. COOPERATION AND PENALTIES

(REPEALED)

SECTION HISTORY
1967, c. 475, §12 (NEW). 1975, c. 595, §2 (RP).

§463. ORDINANCES

(REPEALED)

SECTION HISTORY
1969, c. 475, §12 (NEW). 1975, c. 595, §2 (RP).

Article 4-A: WATER CLASSIFICATION PROGRAM

§464. CLASSIFICATION OF MAINE WATERS

The waters of the State shall be classified in accordance with this article. [1985, c. 698, §15 (NEW).]

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; [1985, c. 698, §15 (NEW).]

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; and [1985, c. 698, §15 (NEW).]

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. [1985, c. 698, §15 (NEW).]

The Legislature intends by passage of this article to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this article to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

[1985, c. 698, §15 (NEW) .]

2. **Procedures for reclassification.** Reclassification of state waters shall be governed by the following provisions.

A. Upon petition by any person or on its own motion, the board may initiate, following public notice, and the commissioner shall conduct classification studies and investigations. Information collected during these studies and investigations must be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water classification. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §54 (AMD).]

B. The board shall hold public hearings in the affected area, or reasonably adjacent to the affected area, for the purposes of presenting to all interested persons the proposed classification for each particular water body and obtaining public input. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §54 (AMD).]

C. The board may recommend changes in classification it deems necessary to the Legislature. [1985, c. 698, §15 (NEW).]

D. The Legislature shall have sole authority to make any changes in the classification of the waters of the State. [1985, c. 698, §15 (NEW).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §54 (AMD) .]

2-A. **Removal of designated uses; creation of subcategories of designated uses.** Removal of designated uses and creation of subcategories of designated uses are governed by the provisions of this subsection and 40 Code of Federal Regulations, Part 131, as amended.

A. The board must conduct a use attainability analysis:

(1) Prior to proposing to the Legislature a designated use of a specific water body that does not include the uses specified in the Federal Water Pollution Control Act, Public Law 92-500, Section 101(a)(2), as amended; or

(2) Prior to proposing to the Legislature the removal of a designated use or the adoption of a subcategory of such a designated use that requires less stringent criteria. [1993, c. 344, §1 (NEW).]

B. The board may not recommend to the Legislature the removal of a designated use or the establishment of a subcategory of the use, if:

(1) It is an existing use as defined in section 464, subsection 4, paragraph F, subparagraph (1), unless another designated use is adopted requiring more stringent criteria;

(2) The use can be attained by implementing effluent limits required under the Federal Water Pollution Control Act, Public Law 92-500, Sections 301(b) and 306, as amended and by implementing cost-effective and reasonable best management practices for nonpoint source control;

(3) The water body in question is currently attaining the designated use; or

(4) Adoption of the recommendation allows the introduction of a new discharge or the expansion of an existing discharge into the water body in question that is not attaining the designated use. [1993, c. 344, §1 (NEW).]

C. The board may adopt any recommendation under this subsection only after holding a public hearing in the affected area or adjacent to the affected area. Conduct of the public hearing and the board's subsequent decision are governed by Title 5, chapter 375, subchapter IV. [1993, c. 344, §1 (NEW).]

D. A finding by the board that attainment of a designated use is not feasible must be supported by a demonstration that the conditions of 40 Code of Federal Regulations 131.10(g) are met. [1993, c. 344, §1 (NEW).]

E. If the board adopts a proposal to enact a designated use under paragraph A, subparagraph (1) or to remove a designated use or adopt a subcategory of a designated use under paragraph A, subparagraph (2), it shall forward that proposal to the joint standing committee of the Legislature having jurisdiction over natural resources matters at the next regular session of the Legislature. The board may not forward any other recommendation to the Legislature under this subsection. The Legislature has sole authority to make changes in the designated uses of the waters of the State, including the creation of a subcategory of a designated use. [1993, c. 344, §1 (NEW).]

F. For the purposes of this subsection, "designated use" means the use specified in water quality standards for each water body or segment under sections 465 to 465-C and sections 467 to 470 whether or not that use is being attained. A designated use includes its associated habitat characteristic under sections 465 to 465-C. [1993, c. 344, §1 (NEW).]

[1993, c. 344, §1 (NEW) .]

2-B. **Temporary removal of designated uses; use attainability analysis and creation of subcategory of uses for combined sewer overflows.** When designated uses are not being met as a result of combined sewer overflow discharges, the board may, consistent with this subsection and 40 Code of Federal Regulations, Part 131, temporarily remove designated uses that are not existing uses and create a temporary combined sewer overflow subcategory referred to as a CSO subcategory. Notwithstanding this subsection, it remains the goal of the State to fully maintain and restore water quality and eliminate or control combined sewer overflows as soon as practicable.

A. The board may create temporary CSO subcategories in classes B, C and SB and SC waters only when, due to the age, condition and design of an existing sewer system, technical or financial limitations prevent the timely attainment of all designated uses. In a CSO subcategory, uses are suspended only in the smallest area possible, for the shortest duration practicable and include only those designated uses and areas determined by the board to have the least potential for public benefit. [1995, c. 284, §1 (NEW).]

B. Notwithstanding subsections 2 and 2-A, CSO subcategories may be created by the board upon application by a municipality or quasi-municipality having licensed combined sewer overflow discharges, if the following standards are met.

(1) The applicant submits to the department for approval, with or without conditions, a study and plan, including an implementation schedule, for combined sewer overflow abatement, referred to as the CSO plan. In order for the board to create a CSO subcategory, the CSO plan must:

(a) Place high priority on abatement of combined sewer overflows that affect waters having the greatest potential for public use or benefit and plan to relocate any remaining discharges to areas where minimal impacts or losses of uses would occur; and

(b) Provide for the implementation as soon as practical of technology-based control methods to achieve best practicable treatment or ensure that cost-effective best management practices are being implemented.

(2) The board finds that attainment of a designated use is not feasible and such determination must be supported by demonstration that the conditions of 40 Code of Federal Regulations, Part 131.10(g) are met.

(3) The board finds that the uses to be affected are not existing uses as defined in subsection 4, paragraph F, subparagraph (1).

(4) The board finds that discharges from combined sewer overflows are not affecting uses that, in the board's judgment, constitute high value or important resources. In determining if a resource is high value or important the board shall consider its economic, recreational and ecological significance, the likelihood that removal of a combined sewer overflow will lead to utilization of that resource and the effects of other discharges or conditions on that resource. [1995, c. 284, §1 (NEW).]

C. Prior to creating any CSO subcategory, the board shall adopt rules regarding required studies, best practicable treatment, abatement options and related issues for combined sewer overflows. CSO subcategories may be created only after completion of the following.

(1) Either during or following development of combined sewer abatement plans, licensees shall conduct public hearings in the area that would be affected by a CSO subcategory. Notices and records of hearings must be kept and included as part of an application made to the board.

(2) Combined sewer overflow abatement plans must be submitted to the department for technical review and approval.

(3) Licensees proposing CSO subcategories shall submit formal applications to the board. Information in the application must include: description of the areas and uses to be affected, the time and duration of effects, comments received at public hearings, a description of continuing efforts to abate impacts and proposals for periodic review and update of abatement plans.

(4) The board shall provide public notice of applications for CSO subcategories and solicit public comments. The board shall also consult with agencies, public officials and other persons identified as having interest in the area to be affected. Based on the results of public hearings held by the applicant, the comments received and the nature of the application, the board may hold a public hearing.

(5) The board may approve, approve with conditions or deny applications for CSO subcategories. In cases when a water body is affected by combined sewer overflows from more than one licensee, the board shall, to the maximum extent possible, consider regional impacts and seek to establish common goals and uses for those waters.

(6) In a manner prescribed by the board, applicants receiving approval of CSO subcategories shall provide notice to the public in the area affected, describing the limitations on use of the water body. [1995, c. 284, §1 (NEW).]

D. Upon creation of a CSO subcategory and removal of a designated use, the board may temporarily suspend or modify water quality criteria associated with that use as appropriate, but only to the extent and duration that those criteria are affected by the licensee for whom the assignment is made. Action by the board under this subsection does not relieve other discharge sources from any requirement to provide necessary treatment or best management practices or to comply with water quality criteria. [1995, c. 284, §1 (NEW).]

E. Either independently or in conjunction with the requirements of subsection 3 and upon renewal of individual waste discharge licenses, the department shall periodically review all CSO subcategories. Reviews of CSO subcategories must take into consideration water quality criteria and uses, combined sewer overflow abatement technology, monitoring data, financial information and regulatory requirements affecting CSO subcategories. [1995, c. 284, §1 (NEW).]

Upon petition by the department or any person or on its own motion, the board may, at its discretion, and following notice and opportunity for hearing, revise or revoke a CSO subcategory when it finds any change in the conditions under which the existing designation was made. The failure to comply with the measures specified in an approved combined sewer overflow abatement plan is cause for revocation of a CSO subcategory.

[1995, c. 284, §1 (NEW) .]

3. Reports to the Legislature. The department shall periodically report to the Legislature as governed by the following provisions.

A. The commissioner shall submit to the first regular session of each Legislature a report on the quality of the State's waters which describes existing water quality, identifies waters that are not attaining their classification and states what measures are necessary for the attainment of the standards of their classification. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §55 (AMD).]

B. The board shall, from time to time, but at least once every 3 years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature. [2003, c. 551, §6 (AMD).]

C. The commissioner shall report annually to each regular session of the Legislature on the status of licensed discharges. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §55 (AMD).]

D. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §55 (RP).]

[2003, c. 551, §6 (AMD) .]

4. **General provisions.** The classification system for surface waters established by this article shall be subject to the following provisions.

A. Notwithstanding section 414-A, the department may not issue a water discharge license for any of the following discharges:

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that:

(a) Discharges into these waters that were licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist;

(b) Storm water discharges in compliance with state and local requirements are exempt from this subparagraph;

(c) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species are exempt from this subparagraph;

(d) Chemical discharges for the purpose of restoring water quality in GPA waters approved by the department are exempt from this subparagraph;

(e) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species are exempt from this subparagraph. When the department issues a license for the discharge of aquatic pesticides authorized under this division, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website; and

(f) Discharges of pesticides approved by the department are exempt from this subparagraph that are:

(i) Unintended and an incidental result of the spraying of pesticides;

(ii) Applied in compliance with federal labeling restrictions; and

(iii) Applied in compliance with statute, Board of Pesticides Control rules and best management practices.

(2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;

(3) Any discharge into a tributary of GPA waters that by itself or in combination with other activities causes water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters except for the following:

(a) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species in the GPA waters or a tributary to the GPA waters; or

(b) Discharges of pesticides approved by the department that are:

(i) Unintended and an incidental result of the spraying of pesticides;

(ii) Applied in compliance with federal labeling restrictions; and

(iii) Applied in compliance with statute, Board of Pesticides Control rules and best management practices.

(4) Discharge of pollutants to waters of the State that imparts color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class;

(5) Discharge of pollutants to any water of the State that violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range;

(6) New discharges of domestic pollutants to the surface waters of the State that are not conveyed and treated in municipal or quasi-municipal sewage facilities. For the purposes of this subparagraph, "new discharge" means any overboard discharge that was not licensed as of June 1, 1987, except discharges from vessels and those discharges that were in continuous existence for the 12 months preceding June 1, 1987, as demonstrated by the applicant to the department with clear and convincing evidence. The volume of the discharge from an overboard discharge facility that was licensed as of June 1, 1987 is determined by the actual or estimated volume from the facilities connected to the overboard discharge facility during the 12 months preceding June 1, 1987 or the volume allowed by the previous license, whichever is less, unless it is found by the department that an error was made during prior licensing. The months during which a discharge may occur from an overboard discharge facility that was licensed as of June 1, 1987 must be determined by the actual use of the facility at the time of the most recent license application prior to June 1, 1987 or the actual use of the facility during the 12 months prior to June 1, 1987, whichever is greater. If the overboard discharge facility was the primary residence of an owner at the time of the most recent license application prior to June 1, 1987 or during the 12 months prior to June 1, 1987, then the facility is considered a year-round residence. "Year-round residence" means a facility that is continuously used for more than 8 months of the year. For purposes of licensing, the department shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge takes place as a new discharge of domestic pollutants;

(7) After the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under the Federal Water Pollution Control Act, Section 402(c)(1), any proposed license to which the administrator has formally objected under 40 Code of Federal Regulations, Section 123.44, as amended, or any license that would not provide for compliance with applicable requirements of that Act or regulations adopted thereunder;

(8) Discharges for which the imposition of conditions can not ensure compliance with applicable water quality requirements of this State or another state;

(9) Discharges that would, in the judgment of the Secretary of the United States Army, substantially impair anchorage or navigation;

(10) Discharges that would be inconsistent with a plan or plan amendment approved under the Federal Water Pollution Control Act, Section 208(b); and

(11) Discharges that would cause unreasonable degradation of marine waters or when insufficient information exists to make a reasonable judgment whether the discharge would cause unreasonable degradation of marine waters.

Notwithstanding subparagraph (6), the department may issue a wastewater discharge license allowing for an increase in the volume or quantity of discharges of domestic pollutants from any university, college or school administrative unit sewage facility, as long as the university, college or school administrative unit has a wastewater discharge license valid on the effective date of this paragraph and the increase in discharges does not violate the conditions of subparagraphs (1) to (5) and (7) to (11) or other applicable laws. [2013, c. 193, §1 (AMD).]

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class. [1985, c. 698, §15 (NEW).]

C. Where natural conditions, including, but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A and 465-B, those waters shall not be considered to be failing to attain their classification because of those natural conditions. [1985, c. 698, §15 (NEW).]

D. Except as otherwise provided in this paragraph, for the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream must be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years. The department may use a different flow rate only for those toxic substances regulated under section 420. To use a different flow rate, the department must find that the flow rate is consistent with the risk being addressed. [1991, c. 159, (AMD).]

E. The waters contained in excavations approved by the department for wastewater treatment purposes are unclassified waters. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §57 (AMD).]

F. The antidegradation policy of the State is governed by the following provisions.

(1) Existing in-stream water uses and the level of water quality necessary to protect those existing uses must be maintained and protected. Existing in-stream water uses are those uses which have actually occurred on or after November 28, 1975, in or on a water body whether or not the uses are included in the standard for classification of the particular water body.

Determinations of what constitutes an existing in-stream water use on a particular water body must be made on a case-by-case basis by the department. In making its determination of uses to be protected and maintained, the department shall consider designated uses for that water body and:

(a) Aquatic, estuarine and marine life present in the water body;

(b) Wildlife that utilize the water body;

(c) Habitat, including significant wetlands, within a water body supporting existing populations of wildlife or aquatic, estuarine or marine life, or plant life that is maintained by the water body;

(d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use for purposes of this antidegradation policy; and

(e) Any other evidence that, for divisions (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for division (d), demonstrates its historical or social significance.

(1-A) The department may only issue a waste discharge license pursuant to section 414-A, or approve a water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, when the department finds that:

(a) The existing in-stream use involves use of the water body by a population of plant life, wildlife, or aquatic, estuarine or marine life, or as aquatic, estuarine, marine, wildlife, or plant habitat, and the applicant has demonstrated that the proposed activity would not have a significant impact on the existing use. For purpose of this division, significant impact means:

(i) Impairing the viability of the existing population, including significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population; or

(b) The existing in-stream use involves use of the water body for recreation in or on the water, fishing, water supply or commercial enterprises that depend directly on the preservation of an existing level of water quality and the applicant has demonstrated that the proposed activity would not result in significant degradation of the existing use.

The department shall determine what constitutes a population of a particular species based upon the degree of geographic and reproductive isolation from other individuals of the same species.

If the department fails to find that the conditions of this subparagraph are met, water quality certification, pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, is denied.

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality must be maintained and protected. For purposes of this paragraph, the following waters are considered outstanding national resources: those water bodies in national and state parks and wildlife refuges; public reserved lands; and those water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section 465-B, subsection 1; and listed under sections 467, 468 and 469.

(3) The department may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the Federal Water Pollution Control Act, Section 401, Public Law 92-500, as amended, if the standards of classification of the water body and the requirements of this paragraph are met. The department may issue a discharge license or approve water quality certification for a project affecting a water body in which the standards of classification are not met if the project does not cause or contribute to the failure of the water body to meet the standards of classification.

(4) When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board shall recommend to the Legislature that that water be reclassified in the next higher classification.

(5) The department may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that the action is necessary to achieve important economic or social benefits to the State and when the action is in conformance with subparagraph (3). That finding must be made following procedures established by rule of the board. [1991, c. 66, Pt. B, §1 (AMD).]

G. [1989, c. 442, §5 (RP).]

H. A hydropower project, as defined by section 632, constructed after the effective date of this paragraph may cause some change to the habitat and aquatic life of the project's impoundment and the waters immediately downstream of and measurably affected by the project, so long as the habitat and aquatic life criteria of those waters' classification under sections 465, 465-A, 467, and 468 are met. This paragraph does not constitute any change in the criteria for habitat and aquatic life under sections 465 and 465-A. [1991, c. 813, Pt. D, §1 (NEW).]

I. [1995, c. 312, §1 (NEW); T. 38, §464, sub-§4, ¶ I (RP).]

J. For the purpose of calculating waste discharge license limits for toxic substances, the department may use any unallocated assimilative capacity that the department has set aside for future growth if the use of that unallocated assimilative capacity would avoid an exceedance of applicable ambient water quality criteria or a determination by the department of a reasonable potential to exceed applicable ambient water quality criteria. [2011, c. 194, §3 (NEW).]

K. Unless otherwise required by an applicable effluent limitation guideline adopted by the department, any limitations for metals in a waste discharge license may be expressed only as mass-based limits. [2011, c. 194, §3 (NEW).]

[2013, c. 193, §1 (AMD) .]

5. **Rulemaking.** In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this article. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and as necessary thereafter, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Rules adopted pursuant to this subsection shall become effective upon adoption. Rules adopted pursuant to this subsection shall be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review during the next regular session of the Legislature following adoption. This committee may submit legislation it deems necessary to clarify legislative intent regarding rules adopted pursuant to this subsection. If the committee takes no action, the rules shall continue in effect.

[1985, c. 698, §15 (NEW) .]

6. **Implementation of biological water quality criteria.** The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid wastewater discharge license that was issued prior to the effective date of this article, the board may modify that license in accordance with section 341-D, subsection 3 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community. [1991, c. 66, Pt. A, §43 (AFF); 1991, c. 66, Pt. A, §13 (RPR).]

B. When a discharge license is issued after the effective date of this article and before the effective date of the rules adopted pursuant to subsection 5, the department shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §59 (AMD).]

C. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 5 shall comply with the water quality criteria of this article. [1985, c. 698, §15 (NEW).]

[1991, c. 66, Pt. A, §13 (AMD); 1991, c. 66, Pt. A, §43 (AFF) .]

7. **Interdepartmental coordination.** The commissioner, the Commissioner of Marine Resources and the Commissioner of Health and Human Services shall jointly:

A. Make available accurate and consistent information on the requirements of this section, section 411-A and section 414-A, subsection 1-B; and [1989, c. 442, §6 (NEW).]

B. Certify wastewater treatment and disposal technologies which can be used to replace overboard discharges. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §60 (AMD).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §60 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

8. **Development of group systems.** Subject to the provisions of section 414-A, subsection 1-B, the commissioner shall coordinate the development and implementation of wastewater treatment and disposal systems serving more than one residence or commercial establishment when individual replacement systems are not feasible.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §60 (AMD) .]

9. **Existing hydropower impoundments managed as great ponds; habitat and aquatic life criteria.**

[2005, c. 159, §1 (RP) .]

9-A. **Existing hydropower impoundments managed as great ponds; habitat and aquatic life criteria.** The following provisions govern habitat and aquatic life criteria for existing hydropower impoundments managed as great ponds.

A. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications under section 636, the hydropower project located on the water body referenced in section 467, subsection 7, paragraph C, subparagraph (1), division (b-1), is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundment if:

(1) The project is in existence on June 30, 1992;

(2) The project creates an impoundment that remains classified under section 465-A after June 30, 1992;

(3) The project creates an impoundment that is subject to water level fluctuations that have an effect on the habitat and aquatic life in the littoral zone so that the habitat and aquatic life differ significantly from that found in an unimpounded great pond; and

(4) The existing impounded waters are able to support all species of fish indigenous to those waters and the structure and function of the resident biological community in the impounded waters is maintained. [2005, c. 159, §2 (NEW).]

B. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications under section 636, Ragged Lake, located in the Penobscot River, West Branch drainage, is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundment if that habitat and aquatic life satisfy the aquatic life criteria contained in section 465, subsection 4, paragraph C, except that habitat and aquatic life in the portions of the water body affected by annual drawdowns of up to 20 feet may reflect the effects of such drawdowns, based on a use attainability analysis conducted by the board pursuant to subsection 2-A. [2005, c. 159, §2 (NEW).]

C. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications under section 636, Seboomook Lake, located in the Penobscot River, West Branch drainage, is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundment if that habitat and aquatic life satisfy the aquatic life criteria contained in section 465, subsection 4, paragraph C, except that habitat and aquatic life in the portions of the water body affected by annual drawdowns of up to 17 feet may reflect the effects of such drawdowns, based on a use attainability analysis conducted by the board pursuant to subsection 2-A. [2005, c. 159, §2 (NEW).]

D. Other than those described in paragraphs A, B and C, all hydropower projects with impoundments in existence on June 30, 1992 that remain classified under section 465-A after June 30, 1992 and that do not attain the habitat and aquatic life criteria of that section must, at a minimum, satisfy the aquatic life criteria contained in section 465, subsection 4, paragraph C. [2005, c. 159, §2 (NEW).]

E. When the actual water quality of the impounded waters attains any more stringent characteristic or criteria of those waters' classification under section 465-A, that water quality must be maintained and protected. [2005, c. 159, §2 (NEW).]

[2005, c. 159, §2 (NEW) .]

10. **Existing hydropower impoundments managed under riverine classifications; habitat and aquatic life criteria.** For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and the licensing of modifications under section 636, hydropower projects in existence on the effective date of this subsection, the impoundments of which are classified under section 465, are subject to the provisions of this subsection in recognition of some changes to aquatic life and habitat that have occurred due to the existing impoundments of these projects.

A. Except as provided in paragraphs B and D, the habitat characteristics and aquatic life criteria of Classes A and B are deemed to be met in the existing impoundments classified A or B of those projects if:

(1) The impounded waters achieve the aquatic life criteria of section 465, subsection 4, paragraph C. [1991, c. 813, Pt. B, §1 (NEW).]

B. The habitat characteristics and aquatic life criteria of Classes A and B are not deemed to be met in the existing impoundments of those projects referred to in paragraph A if:

(1) Reasonable changes can be implemented that do not significantly affect existing energy generation capability; and

(2) Those changes would result in improvement in the habitat and aquatic life of the impounded waters.

If the conditions described in subparagraphs (1) and (2) occur, those changes must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained. [1991, c. 813, Pt. B, §1 (NEW).]

C. If the conditions described in paragraph B, subparagraphs (1) and (2) occur at a project in existence on the effective date of this subsection, the impoundment of which is classified C, the changes described in paragraph B, subparagraphs (1) and (2) must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained. [1991, c. 813, Pt. B, §1 (NEW).]

D. When the actual water quality of waters affected by this subsection attains any more stringent characteristic or criteria of those waters' classification under sections 465, 467 and 468, that water quality must be maintained and protected. [1991, c. 813, Pt. B, §1 (NEW).]

[1991, c. 813, Pt. B, §1 (NEW) .]

11. **Downstream stretches affected by existing hydropower projects.** Hydropower projects in existence on the effective date of this subsection that are located on water bodies referenced in section 467, subsection 4, paragraph A, subparagraphs (1) and (7), and section 467, subsection 12, paragraph A, subparagraphs (7) and (9) are subject to the provisions of this subsection.

For the purposes of water quality certification of hydropower projects under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications to these hydropower projects under section 636, the habitat characteristics and aquatic life criteria of Class A are deemed to be met in the waters immediately downstream of and measurably affected by the projects listed in this subsection if the criteria contained in section 465, subsection 4, paragraph C are met.

[1993, c. 1, §114 (COR) .]

12. **Discharges from certain fish hatcheries.** An unlicensed discharge from a fish hatchery is considered, and continues to be considered after it is licensed pursuant to section 413, the same as a discharge licensed prior to January 1, 1986 for the purposes of subsection 4, paragraph A, subparagraph (1); section 465, subsection 2, paragraph C; and section 465-A, subsection 1, paragraph C if the following conditions are met:

A. The discharge was in existence prior to January 1, 1986; [1999, c. 720, §1 (NEW).]

B. The fish hatchery is licensed to cultivate fish by the Department of Inland Fisheries and Wildlife on the effective date of this subsection; and [1999, c. 720, §1 (NEW).]

C. An application from the hatchery for a waste discharge license is accepted as complete for processing by the Department of Environmental Protection within 90 days of notification that a waste discharge license is required pursuant to section 413. [1999, c. 720, §1 (NEW).]

The Department of Environmental Protection shall notify a fish hatchery with an unlicensed discharge that a waste discharge license is required pursuant to section 413 within 90 days of the effective date of this subsection or within 90 days of finding the unlicensed discharge.

[1999, c. 720, §1 (NEW) .]

13. **Measurement of dissolved oxygen in riverine impoundments.** Compliance with dissolved oxygen criteria in existing riverine impoundments must be measured as follows.

A. Compliance with dissolved oxygen criteria may not be measured within 0.5 meters of the bottom of existing riverine impoundments. [2003, c. 257, §1 (NEW).]

B. Where mixing is inhibited due to thermal stratification in an existing riverine impoundment, compliance with numeric dissolved oxygen criteria may not be measured below the higher of:

(1) The point of thermal stratification when such stratification occurs; or

(2) The point proposed by the department as an alternative depth for a specific riverine impoundment based on all factors included in section 466, subsection 11-A and for which a use attainability analysis is conducted if required by the United States Environmental Protection Agency.

For purposes of this paragraph, "thermal stratification" means a change of temperature of at least one degree Celsius per meter of depth, causing water below this point in an impoundment to become isolated and not mix with water above this point in the impoundment. [2003, c. 257, §1 (NEW).]

C. Where mixing is inhibited due to natural topographical features in an existing riverine impoundment, compliance with numeric dissolved oxygen criteria may not be measured within that portion of the impoundment that is topographically isolated. Such natural topographic features may include, but not be limited to, natural deep holes or river bottom sills. [2003, c. 257, §1 (NEW).]

Notwithstanding the provisions of this subsection, dissolved oxygen concentrations in existing riverine impoundments must be sufficient to support existing and designated uses of these waters. For purposes of this subsection, "existing riverine impoundments" means all impoundments of rivers and streams in existence as of January 1, 2001 and not otherwise classified as GPA.

[2003, c. 257, §1 (NEW) .]

SECTION HISTORY
. 1985, c. 698, §15 (NEW). 1987, c. 180, §§4,5 (AMD). 1987, c. 419, §10 (AMD). 1987, c. 567, (AMD). 1989, c. 309, §2 (AMD). 1989, c. 442, §§4-6 (AMD). 1989, c. 764, §1 (AMD). 1989, c. 856, §§6,7 (AMD). 1989, c. 878, §B40 (AMD). 1989, c. 890, §§A40,B54-60 (AMD). 1991, c. 66, §§A12,13,B1 (AMD). 1991, c. 66, §A43 (AFF). 1991, c. 159, (AMD). 1991, c. 813, §§A1,B1,C1, D1 (AMD). RR 1993, c. 1, §§113,114 (COR). 1993,

c. 40, §1 (AMD). 1993, c. 344, §§1,2 (AMD). 1995, c. 284, §1 (AMD). 1995, c. 312, §1 (AMD). 1997, c. 794, §A30 (AMD). 1999, c. 720, §1 (AMD). 2003, c. 245, §7 (AMD). 2003, c. 246, §14 (AMD). 2003, c. 257, §1 (AMD). 2003, c. 318, §2 (AMD). 2003, c. 551, §6 (AMD). 2003, c. 650, §3 (AMD). 2003, c. 689, §B7 (REV). 2005, c. 159, §§1,2 (AMD). 2005, c. 182, §1 (AMD). 2007, c. 291, §1 (AMD). 2011, c. 194, §3 (AMD). 2013, c. 193, §1 (AMD).

§465. STANDARDS FOR CLASSIFICATION OF FRESH SURFACE WATERS

The department shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §61 (AMD).]

1. **Class AA waters.** Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters must be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, agriculture, recreation in and on the water, navigation and as habitat for fish and other aquatic life. The habitat must be characterized as free-flowing and natural. [2003, c. 227, §1 (AMD); 2003, c. 227, §9 (AFF); 2005, c. 561, §10 (AFF).]

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs. [1985, c. 698, §15 (NEW).]

C. Except as provided in this paragraph, there may be no direct discharge of pollutants to Class AA waters.

(1) Storm water discharges that are in compliance with state and local requirements are allowed.

(2) A discharge to Class AA waters that are or once were populated by a distinct population segment of Atlantic salmon as determined pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended, is allowed if, in addition to satisfying all the requirements of this article, the applicant, prior to issuance of a discharge license, objectively demonstrates to the department's satisfaction that the discharge is necessary, that there are no other reasonable alternatives available and that the discharged effluent is for the purpose of and will assist in the restoration of Atlantic salmon and will return the waters to a state that is closer to historically natural chemical quality.

(a) The department may issue no more than a total of 3 discharge licenses pursuant to this subparagraph and subsection 2, paragraph C, subparagraph (2).

(b) A discharge license issued pursuant to this subparagraph may not be effective for more than 5 years from the date of issuance.

(3) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species are allowed.

(4) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species are allowed. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

(5) Discharges of pesticides approved by the department are allowed that are:

(a) Unintended and an incidental result of the spraying of pesticides;

(b) Applied in compliance with federal labeling restrictions; and

(c) Applied in compliance with statute, Board of Pesticides Control rules and best management practices. [2013, c. 193, §2 (AMD).]

[2013, c. 193, §2 (AMD) .]

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters must be of such quality that they are suitable for the designated uses of drinking water after disinfection; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as habitat for fish and other aquatic life. The habitat must be characterized as natural. [2003, c. 227, §2 (AMD); 2003, c. 227, §9 (AFF); 2005, c. 561, §10 (AFF).]

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs. [1985, c. 698, §15 (NEW).]

C. Except as provided in this paragraph, direct discharges to these waters licensed after January 1, 1986 are permitted only if, in addition to satisfying all the requirements of this article, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the department shall require the applicant to objectively demonstrate to the department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist.

(1) This paragraph does not apply to a discharge of storm water that is in compliance with state and local requirements.

(2) This paragraph does not apply to a discharge to Class A waters that are or once were populated by a distinct population segment of Atlantic salmon as determined pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended, if, in addition to satisfying all the requirements of this article, the applicant, prior to issuance of a discharge license, objectively demonstrates to the department's satisfaction that the discharge is necessary, that there are no other reasonable alternatives available and that the discharged effluent is for the purpose of and will assist in the restoration of Atlantic salmon and will return the waters to a state that is closer to historically natural chemical quality.

(a) The department may issue no more than a total of 3 discharge licenses pursuant to this subparagraph and subsection 1, paragraph C, subparagraph (2).

(b) A discharge license issued pursuant to this subparagraph may not be effective for more than 5 years from the date of issuance.

(3) This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.

(4) For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will be equal to or better than the existing water quality of the receiving waters as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

(5) This paragraph does not apply to discharges of pesticides approved by the department that are:

(a) Unintended and an incidental result of the spraying of pesticides;

(b) Applied in compliance with federal labeling restrictions; and

(c) Applied in compliance with statute, Board of Pesticides Control rules and best management practices. [2013, c. 193, §3 (AMD).]

D. Storm water discharges to Class A waters must be in compliance with state and local requirements. [2003, c. 318, §4 (NEW).]

E. Material may not be deposited on the banks of Class A waters in any manner that makes transfer of pollutants into the waters likely. [2003, c. 318, §4 (NEW).]

[2013, c. 193, §3 (AMD) .]

3. **Class B waters.** Class B shall be the 3rd highest classification.

A. Class B waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as habitat for fish and other aquatic life. The habitat must be characterized as unimpaired. [2003, c. 227, §3 (AMD); 2003, c. 227, §9 (AFF); 2005, c. 561, §10 (AFF).]

B. The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 64 per 100 milliliters or an instantaneous level of 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. [2005, c. 409, §1 (AMD).]

C. Discharges to Class B waters may not cause adverse impact to aquatic life in that the receiving waters must be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

(1) This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.

(2) For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to aquatic life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website. [2007, c. 291, §4 (AMD).]

[2007, c. 291, §4 (AMD) .]

4. **Class C waters.** Class C shall be the 4th highest classification.

A. Class C waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as a habitat for fish and other aquatic life. [2003, c. 227, §4 (AMD); 2003, c. 227, §9 (AFF); 2005, c. 561, §10 (AFF).]

B. The dissolved oxygen content of Class C water may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply.

(1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts per million using a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is less, if:

(a) A license or water quality certificate other than a general permit was issued prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts per million 30-day average dissolved oxygen criterion; or

(b) A discharge or a hydropower project was in existence on March 16, 2005 and required but did not have a license or water quality certificate other than a general permit for the Class C water.

This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

(2) In Class C waters not governed by subparagraph (1), dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

The department may negotiate and enter into agreements with licensees and water quality certificate holders in order to provide further protection for the growth of indigenous fish. Agreements entered into under this paragraph are enforceable as department orders according to the provisions of sections 347-A to 349.

Between May 15th and September 30th, the number of Escherichia coli bacteria of human and domestic animal origin in Class C waters may not exceed a geometric mean of 126 per 100 milliliters or an instantaneous level of 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The board shall adopt rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area. [2005, c. 409, §2 (RPR).]

C. Discharges to Class C waters may cause some changes to aquatic life, except that the receiving waters must be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community. This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species. [2005, c. 182, §5 (AMD).]

[2005, c. 182, §5 (AMD); 2005, c. 409, §2 (AMD); 2005, c. 561, §10 (AFF) .]

SECTION HISTORY

1985, c. 698, §15 (NEW). 1989, c. 890, §§A40,B61-63 (AMD). 1999, c. 243, §8 (AMD). 2003, c. 227, §§1-4 (AMD). 2003, c. 227, §9 (AFF). 2003, c. 318, §§3,4 (AMD). 2003, c. 574, §§1,2 (AMD). 2003, c. 664, §1 (AMD). 2005, c. 182, §§2-5 (AMD). 2005, c. 409, §§1,2 (AMD). 2005, c. 561, §10 (AFF). 2007, c. 291, §§2-4 (AMD). 2013, c. 193, §§2, 3 (AMD).

§465-A. STANDARDS FOR CLASSIFICATION OF LAKES AND PONDS

The department shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers that are defined as great ponds pursuant to section 480-B are classified as GPA or as specifically provided in sections 467 and 468. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §64 (AMD).]

1. **Class GPA waters.** Class GPA shall be the sole classification of great ponds and natural ponds and lakes less than 10 acres in size.

A. Class GPA waters must be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, agriculture, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other aquatic life. The habitat must be characterized as natural. [2003, c. 227, §5 (AMD); 2003, c. 227, §9 (AFF); 2005, c. 561, §10 (AFF).]

B. Class GPA waters must be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters must have a stable or decreasing trophic state, subject only to natural fluctuations and must be free of culturally induced algal blooms that impair their use and enjoyment. The number of Escherichia coli bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters. [2007, c. 292, §23 (AMD).]

C. There may be no new direct discharge of pollutants into Class GPA waters. The following are exempt from this provision:

(1) Chemical discharges for the purpose of restoring water quality approved by the department;

(2) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species;

(3) Storm water discharges that are in compliance with state and local requirements;

(4) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website; and

(5) Discharges of pesticides approved by the department that are:

(a) Unintended and an incidental result of the spraying of pesticides;

(b) Applied in compliance with federal labeling restrictions; and

(c) Applied in compliance with statute, Board of Pesticides Control rules and best management practices.

Discharges into these waters licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist. Materials may not be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage may flow or leach into those waters, except as permitted pursuant to section 480-C. A change

of land use in the watershed of a Class GPA water body may not, by itself or in combination with other activities, cause water quality degradation that impairs the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters. [2013, c. 193, §4 (AMD).]

[2013, c. 193, §4 (AMD) .]

SECTION HISTORY
1985, c. 698, §15 (NEW). 1989, c. 890, §§A40,B64,65 (AMD). 1999, c. 243, §9 (AMD). 2003, c. 227, §5 (AMD). 2003, c. 227, §9 (AFF). 2005, c. 182, §6 (AMD). 2005, c. 561, §10 (AFF). 2007, c. 291, §5 (AMD). 2007, c. 292, §23 (AMD). 2013, c. 193, §4 (AMD).

§465-B. STANDARDS FOR CLASSIFICATION OF ESTUARINE AND MARINE WATERS

The department shall have 3 standards for the classification of estuarine and marine waters. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §66 (AMD).]

1. **Class SA waters.** Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as free-flowing and natural. [2003, c. 227, §6 (AMD).]

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs. [1985, c. 698, §15 (NEW).]

C. There may be no direct discharge of pollutants to Class SA waters, except for the following:

(1) Storm water discharges that are in compliance with state and local requirements;

(2) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website;

(3) An overboard discharge licensed prior to January 1, 1986 if no practicable alternative exists; and

(4) Discharges of pesticides approved by the department that are:

(a) Unintended and an incidental result of the spraying of pesticides;

(b) Applied in compliance with federal labeling restrictions; and

(c) Applied in compliance with statute, Board of Pesticides Control rules and best management practices. [2013, c. 193, §5 (AMD).]

[2013, c. 193, §5 (AMD) .]

2. **Class SB waters.** Class SB waters shall be the 2nd highest classification.

A. Class SB waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired. [2003, c. 227, §7 (AMD).]

B. The dissolved oxygen content of Class SB waters must be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration. [2005, c. 409, §3 (AMD).]

C. Discharges to Class SB waters may not cause adverse impact to estuarine and marine life in that the receiving waters must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There may be no new discharge to Class SB waters that would cause closure of open shellfish areas by the Department of Marine Resources. For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to estuarine and marine life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this paragraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website. [2007, c. 291, §7 (AMD).]

[2007, c. 291, §7 (AMD) .]

3. **Class SC waters.** Class SC waters shall be the 3rd highest classification.

A. Class SC waters must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life. [2003, c. 227, §8 (AMD).]

B. The dissolved oxygen content of Class SC waters must be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration. [2005, c. 409, §4 (AMD).]

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community. [1985, c. 698, §15 (NEW).]

[2005, c. 409, §4 (AMD) .]

SECTION HISTORY
1985, c. 698, §15 (NEW). 1989, c. 890, §§A40,B66 (AMD). 1999, c. 243, §10 (AMD). 2003, c. 227, §§6-8 (AMD). 2005, c. 409, §§3,4 (AMD). 2007, c. 291, §§6, 7 (AMD). 2009, c. 654, §7 (AMD). 2013, c. 193, §5 (AMD).

§465-C. STANDARDS OF CLASSIFICATION OF GROUND WATER

The department shall have 2 standards for the classification of ground water. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §67 (AMD).]

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.

[1985, c. 698, §15 (NEW) .]

2. **Class GW-B.** Class GW-B, the 2nd highest classification, shall be suitable for all usages other than public water supplies.

[1985, c. 698, §15 (NEW) .]

SECTION HISTORY
1985, c. 698, §15 (NEW). 1989, c. 890, §§A40,B67 (AMD).

§466. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 698, §15 (NEW).]

1. **Aquatic life.** "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

[1985, c. 698, §15 (NEW) .]

2. **As naturally occurs.** "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measurable effects of human activity.

[1985, c. 698, §15 (NEW) .]

2-A. **Color pollution unit.** "Color pollution unit" means that measure of water color derived from comparison with a standard measure prepared according to the specifications of the current edition of "Standard Methods for Examination of Water and Wastewater," adopted by the United States Environmental Protection Agency, or an equivalent measure.

[1989, c. 864, §2 (NEW) .]

2-B. **Combined sewer overflow.** "Combined sewer overflow" means a discharge of excess wastewater from a municipal or quasi-municipal sewerage system that conveys both sanitary wastes and storm water in a single pipe system and that is in direct response to a storm event or snowmelt. Combined sewer overflow discharges do not include dry weather discharges that occur as a result of nonstorm events or are caused solely by groundwater infiltration.

[1995, c. 284, §2 (NEW) .]

3. **Community function.** "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

[1985, c. 698, §15 (NEW) .]

4. **Community structure.** "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proportion each taxonomic group represents of the total community.

[1985, c. 698, §15 (NEW) .]

5. **Direct discharge.** "Direct discharge" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

[1985, c. 698, §15 (NEW) .]

6. **Domestic pollutants.** "Domestic pollutants" means any material, including, without limitation, sanitary wastes, waste water from household activities or waste waters with similar chemical characteristics, which are generated at residential or commercial locations.

[1985, c. 698, §15 (NEW) .]

7. **Estuarine and marine life.** "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

[1985, c. 698, §15 (NEW) .]

8. **Indigenous.** "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by State and Federal agencies or published scientific literature.

[1985, c. 698, §15 (NEW) .]

8-A. **Invasive species.** "Invasive species" means an invasive animal as determined by the Department of Inland Fisheries and Wildlife or an invasive aquatic plant as listed under section 410-N or as determined by the department. A species may be determined to be invasive for all waters or for specific waters.

[2005, c. 182, §7 (NEW) .]

9. **Natural.** "Natural" means living in, or as if in, a state of nature not measurably affected by human activity.

[1985, c. 698, §15 (NEW) .]

9-A. **Overboard discharge.** "Overboard discharge" means discharge to the surface waters of the State of domestic pollutants not conveyed to and treated in municipal or quasi-municipal sewerage treatment facilities.

[1987, c. 180, §6 (NEW) .]

9-B. **Quasi-municipal.** "Quasi-municipal" means any form of ownership and management by a governmental unit embracing a portion of a municipality, a single municipality or several municipalities which is created by law to deliver public waste water treatment services, but which is not a state governmental unit.

[1987, c. 419, §11 (AMD) .]

9-C. **Pounds per ton as unit of measure.** "Pounds per ton" means the unit for measurement of color in the discharge from the production of wood pulp. The numerator of this unit is the product of the number of color pollution units multiplied by 8.34 multiplied by the volume of effluent discharged measured in millions of gallons. The denominator of this unit is measured in tons of actual production of unbleached wood pulp as measured on an air dried basis.

[1989, c. 864, §2 (NEW) .]

10. **Resident biological community.** "Resident biological community" means aquatic life expected to exist in a habitat which is free from the influence of the discharge of any pollutant. This shall be established by accepted biomonitoring techniques.

[1985, c. 698, §15 (NEW) .]

11. **Unimpaired.** "Unimpaired" means without a diminished capacity to support aquatic life.

[1985, c. 698, §15 (NEW) .]

11-A. **Use attainability analysis.** "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use in a water body. The assessment may include consideration of physical, chemical, biological and economic factors.

[1993, c. 344, §3 (NEW) .]

12. **Without detrimental changes in the resident biological community.** "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.

[1985, c. 698, §15 (NEW) .]

SECTION HISTORY
1985, c. 698, §15 (NEW). 1987, c. 180, §6 (AMD). 1987, c. 419, §11 (AMD). 1989, c. 864, §2 (AMD). 1993, c. 344, §3 (AMD). 1995, c. 284, §2 (AMD). 2005, c. 182, §7 (AMD).

§467. CLASSIFICATION OF MAJOR RIVER BASINS

All surface waters lying within the boundaries of the State that are in river basins having a drainage area greater than 100 square miles that are not classified as lakes or ponds are classified in this section. [1989, c. 764, §2 (AMD).]

1. **Androscoggin River Basin.**

A. Androscoggin River, main stem, including all impoundments.

(1) From the Maine-New Hampshire boundary to its confluence with the Ellis River - Class B.

(2) From its confluence with the Ellis River to a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction - Class C. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §68 (AMD); T. 38, §467, sub-§1, ¶ A (AMD).]

B. Little Androscoggin River Drainage.

(1) Little Androscoggin River, main stem.

(a) From the outlet of Bryant Pond to the Maine Central Railroad bridge in South Paris - Class A.

(b) From the Maine Central Railroad bridge in South Paris to its confluence with the Androscoggin River - Class C.

(2) Little Androscoggin River, tributaries - Class B unless otherwise specified.

(a) Outlet of Thompson Lake in Oxford - Class C.

(b) Andrews Brook in Woodstock - Class A.

(c) Black Brook in Woodstock - Class A.

(d) Cushman Stream in Woodstock - Class A.

(e) Meadow Brook in Woodstock - Class A.

(f) Bog Brook and tributaries in Minot, Oxford and Hebron - Class A. [2003, c. 317, §1 (AMD).]

C. Androscoggin River, Upper Drainage; that portion within the State lying above the river's most upstream crossing of the Maine-New Hampshire boundary - Class A unless otherwise specified.

(1) Cupsuptic River and its tributaries - Class AA.

(2) Kennebago River and its tributaries except for the impoundment of the dam at Kennebago Falls - Class AA.

(3) Rapid River, from a point located 1,000 feet downstream of Middle Dam to its confluence with Umbagog Lake - Class AA.

(4) Magalloway River and tributaries above Aziscohos Lake in Lynchton Township, Parmachenee Township and Bowmantown Township - Class AA.

(4-A) Abbott Brook and its tributaries in Lincoln Plantation - Class AA.

(5) Little Magalloway River and tributaries in Parmachenee Township and Bowmantown Township - Class AA.

(6) Long Pond Stream in Rangeley - Class AA.

(7) Dodge Pond Stream in Rangeley - Class AA. [2009, c. 163, §1 (AMD).]

D. Androscoggin River, minor tributaries - Class B unless otherwise specified.

(1) All tributaries of the Androscoggin River that enter between the Maine-New Hampshire boundary in Gilead and its confluence with, and including, the Ellis River and that are not otherwise classified - Class A.

(2) Bear River - Class AA.

(3) Sabattus River from Sabattus Lake to limits of the Lisbon urban area - Class C.

(4) Webb River - Class A.

(5) Swift River, and its tributaries, above the Mexico-Rumford boundary - Class A.

(6) Nezinscot River, east and west branches above their confluence in Buckfield - Class A.

(7) Wild River in Gilead, Batchelders Grant - Class AA.

(8) Aunt Hannah Brook and its tributaries in Dixfield - Class A. [2009, c. 163, §2 (AMD).]

[2009, c. 163, §§1, 2 (AMD) .]

2. Dennys River Basin.

A. Dennys River, main stem.

(1) From the outlet of Meddybemps Lake to the Bunker Hill Road bridge - Class AA.

(2) From the Bunker Hill Road bridge to tidewater - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. [2003, c. 551, §7 (AMD).]

B. Dennys River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the Bunker Hill Road bridge - Class B.

(2) Venture Brook in Edmunds Township - Class AA.

(3) Cathance Stream below the Great Works Impoundment in Edmunds Township - Class AA. [2003, c. 663, §1 (AMD).]

[2003, c. 663, §1 (AMD) .]

3. East Machias River Basin.

A. East Machias River, main stem.

(1) From the outlet of Pocomoonshine Lake to a point located 0.25 miles above the Route 1 bridge - Class AA.

(2) From a point located 0.25 miles above the Route 1 bridge to tidewater - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. [1989, c. 764, §4 (AMD).]

B. East Machias River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the Route 191 bridge in Jacksonville, except as specified in subparagraph (7) - Class B.

(2) Beaverdam Brook - Class AA.

(3) Seavey Brook in Crawford - Class AA.

(4) Harmon Brook in Crawford - Class AA.

(5) Northern Stream in Township 19 Eastern Division - Class AA.

(6) Creamer Brook in Township 19 Eastern Division - Class AA.

(7) Clifford Brook in Marion Township - Class AA. [2005, c. 330, §11 (AMD).]

[2005, c. 330, §11 (AMD) .]

4. Kennebec River Basin.

A. Kennebec River, main stem.

(1) From the east outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(2) From the west outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(3) From a point 1,000 feet below Moosehead Lake to its confluence with Indian Pond - Class AA.

(4) From Harris Dam to a point located 1,000 feet downstream from Harris Dam - Class A.

(5) From a point located 1,000 feet downstream from Harris Dam to its confluence with the Dead River - Class AA.

(6) From its confluence with the Dead River to the confluence with Wyman Lake, including all impoundments - Class A.

(7) From the Wyman Dam to its confluence with the impoundment formed by the Williams Dam - Class A.

(8) From the confluence with the Williams impoundment to the Route 201A bridge in Anson-Madison, including all impoundments - Class A.

(9) From the Route 201A bridge in Anson-Madison to the Fairfield-Skowhegan boundary, including all impoundments - Class B.

(10) From the Fairfield-Skowhegan boundary to the Shawmut Dam - Class C.

(10-A) From the Shawmut Dam to its confluence with Messalonskee Stream, excluding all impoundments - Class B.

(a) Waters impounded by the Hydro-Kennebec Dam and the Lockwood Dam in Waterville-Winslow - Class C.

(11) From its confluence with Messalonskee Stream to the Sidney-Augusta boundary, including all impoundments - Class B.

(12) From the Sidney-Augusta boundary to the Calumet Bridge at Old Fort Western in Augusta, including all impoundments - Class B.

(13) From the Calumet Bridge at Old Fort Western in Augusta to a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. Further, the license limits for total residual chlorine and bacteria for existing direct discharges of wastewater to this segment as of January 1, 2003 must remain the same as the limits in effect on that date and must remain in effect until June 30, 2009 or upon renewal of the license, whichever comes later. Thereafter, license limits for total residual chlorine and bacteria must be those established by the department in the license and may include a compliance schedule pursuant to section 414-A, subsection 2.

(14) From a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point, to a line across the southwesterly area of Merrymeeting Bay formed by an extension of the Brunswick-Bath boundary across the bay in a northwesterly direction to the westerly shore of Merrymeeting Bay and to a line drawn from Chop Point in Woolwich to West Chop Point in Bath - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. [2009, c. 1, §30 (COR).]

B. Carrabassett River Drainage.

(1) Carrabassett River, main stem.

(a) Above a point located 1.0 mile above the dam in Kingfield - Class AA.

(b) From a point located 1.0 mile above the dam in Kingfield to a point located 1.0 mile above the railroad bridge in North Anson - Class A.

(c) From a point located 1.0 mile above the railroad bridge in North Anson to its confluence with the Kennebec River - Class B.

(2) Carrabassett River, tributaries - Class A unless otherwise specified.

(a) South Branch Carrabassett River - Class AA. The Legislature finds, however, that permitted water withdrawal from this river segment provides significant social and economic benefits and that this existing use may be maintained.

(b) All tributaries entering the Carrabassett River below the Wire Bridge in New Portland - Class B.

(c) West Branch Carrabassett River above its confluence with Alder Stream - Class AA. [1999, c. 277, §5 (RPR).]

C. Cobbosseecontee Stream Drainage.

(1) Cobbosseecontee Stream, main stem - Class B.

(2) Cobbosseecontee Stream, tributaries - Class B. [1989, c. 228, §2 (RPR).]

D. Dead River Drainage.

(1) Dead River, main stem.

(a) From the Long Falls Dam to a point 5,100 feet below the dam - Class A.

(b) From a point 5,100 feet below Long Falls Dam to its confluence with the Kennebec River - Class AA.

(2) Dead River, tributaries - Class A unless otherwise specified.

(a) Black Brook below Dead River Hatchery - Class B.

(b) Stratton Brook, Eustis, from the upper Route 16/27 bridge to its confluence with Flagstaff Lake - Class B.

(c) Spencer Stream and Little Spencer Stream - Class AA.

(d) Horseshoe Stream in Chain of Ponds Township - Class AA. [2003, c. 317, §7 (AMD).]

E. Messalonskee Stream Drainage.

(1) Messalonskee Stream, main stem.

(a) From the outlet of Messalonskee Lake to its confluence with the Kennebec River, including all impoundments except Rice Rips Lake - Class C.

(2) Messalonskee Stream, tributaries - Class B unless otherwise specified.

(a) Rome Trout Brook in Rome - Class A. [2003, c. 317, §8 (AMD).]

F. Moose River Drainage.

(1) Moose River, main stem.

(a) Above its confluence with Number One Brook in Beattie Township - Class A.

(b) From its confluence with Number One Brook in Beattie Township to its confluence with Attean Pond - Class AA.

(c) From the outlet of Attean Pond to the Route 201 bridge in Jackman - Class A.

(d) From the Route 201 bridge in Jackman to its confluence with Long Pond - Class B.

(e) From the outlet of Long Pond to its confluence with Moosehead Lake - Class A.

(2) Moose River, tributaries - Class A. [1989, c. 228, §2 (RPR).]

G. Sandy River Drainage.

(1) Sandy River, main stem.

(a) From the outlet of Sandy River Ponds to the Route 142 bridge in Phillips - Class AA.

(b) From the Route 142 bridge in Phillips to its confluence with the Kennebec River - Class B.

(2) Sandy River, tributaries - Class B unless otherwise specified.

(a) All tributaries entering above the Route 142 bridge in Phillips - Class A.

(b) Wilson Stream, main stem, below the outlet of Wilson Pond - Class C. [1989, c. 228, §2 (RPR).]

H. Sebasticook River Drainage.

(1) Sebasticook River, main stem, including all impoundments.

(a) From the confluence of the East Branch and the West Branch to its confluence with the Kennebec River - Class C.

(2) Sebasticook River, tributaries - Class B unless otherwise specified.

(a) Sebasticook River, East Branch from the outlet of Corundel Lake to its confluence with the West Branch - Class C.

(b) Sebasticook River, West Branch main stem, from the outlet of Great Moose Lake to its confluence with the East Branch, including all impoundments - Class C.

(c) Johnson Brook and tributaries in Burnham - Class A.

(d) Martin Stream and tributaries upstream of the Ridge Road in Plymouth - Class A.

(e) Halfmoon Stream upstream of Route 220 in Thorndike and Knox - Class A.

(f) Crosby Brook in Unity and Thorndike - Class A.

(g) Hall Brook in Thorndike - Class A. [2003, c. 317, §9 (RPR).]

I. Kennebec River, minor tributaries - Class B unless otherwise specified.

(1) All minor tributaries entering above Wyman Dam that are not otherwise classified - Class A.

(2) All tidal portions of tributaries entering between the Sidney-Vassalboro-Augusta town line and a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class B, unless otherwise specified.

(a) Eastern River from head of tide to its confluence with the Kennebec River - Class C.

(3) Cold Stream, West Forks Plantation - Class AA.

(4) Moxie Stream, Moxie Gore, below a point located 1,000 feet downstream of the Moxie Pond dam - Class AA.

(5) Austin Stream and its tributaries above the highway bridge of Route 201 in the Town of Bingham - Class A. [2009, c. 163, §4 (AMD).]

[2009, c. 1, §30 (COR); 2009, c. 163, §4 (AMD) .]

5. Machias River Basin.

A. Machias River, main stem.

(1) From the outlet of Fifth Machias Lake to a point 100 feet upstream of the Route 1A bridge in Whitneyville - Class AA.

(2) From a point 100 feet upstream of the Route 1A bridge in Whitneyville to tidewater - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. [1989, c. 764, §4 (AMD).]

B. Machias River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below Route 1A in Whitneyville - Class B.

(2) Mopang Stream, from the outlet of Mopang Second Lake to its confluence with the Machias River - Class AA.

(3) Old Stream, from the outlet of First Lake to its confluence with the Machias River - Class AA.

(4) West Branch of the Machias River, from the outlet of Lower Sabao Lake to its confluence with the Machias River - Class AA.

(5) New Stream, in Northfield and Wesley - Class AA.

(6) Crooked Stream - Class AA.

(7) Fletcher Brook in Township 36 Middle Division - Class AA.

(8) Magazine Brook in Township 43 Middle Division - Class AA.

(9) Bowles Brook in Township 31 Middle Division - Class AA.

(10) Chain Lakes Stream in Township 31 - Class AA.

(11) Pembroke Stream in Township 31 Middle Division - Class AA.

(12) Holmes Brook in Northfield - Class AA.

(13) Bog Brook - Class AA.

(14) Pineo Brook in Wesley - Class AA.

(15) Black Brook in Township 25 Middle Division - Class AA. [2003, c. 663, §3 (AMD).]

[2003, c. 663, §3 (AMD) .]

5-A. **Medomak River Basin.**

A. Medomak River, main stem.

(1) From its source in the Town of Liberty to the Wagner Bridge Road in the Town of Waldoboro - Class A.

(2) From the Wagner Bridge Road in the Town of Waldoboro to the bridge at old Route 1 - Class B. [1993, c. 32, §1 (NEW).]

B. Medomak River, tributaries - Class A unless otherwise specified. [1993, c. 32, §1 (NEW).]

[1993, c. 32, §1 (NEW) .]

6. **Mousam River Basin.**

A. Mousam River, main stem.

(1) From the outlet of Mousam Lake to a point located 0.5 mile above Mill Street in Springvale - Class B.

(2) From a point located 0.5 mile above Mill Street in Springvale to its confluence with Estes Lake - Class C.

(3) From the outlet of Estes Lake to tidewater - Class B. [1985, c. 698, §15 (NEW).]

B. Mousam River, tributaries - Class B. [1989, c. 764, §5 (AMD).]

[1989, c. 764, §5 (AMD) .]

6-A. **Narraguagus River Basin.**

A. Narraguagus River, main stem.

(1) From the outlet of Eagle Lake to the confluence with the West Branch of the Narraguagus River in Cherryfield - Class AA.

(2) From the confluence with the West Branch of the Narraguagus River in Cherryfield to tidewater - Class B. [1989, c. 764, §6 (NEW).]

B. Narraguagus River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the river's confluence with the West Branch - Class B.

(2) West Branch of the Narraguagus River - Class AA.

(3) Baker Brook - Class AA.

(4) Pork Brook - Class AA.

(5) Schoodic Brook - Class AA.

(6) Shorey Brook - Class AA.

(7) West Branch Stream in Township 34 Middle Division - Class AA.

(8) Gould Brook in Township 28 Middle Division - Class AA.

(9) Rocky Brook in Devereaux Township - Class AA.

(10) Sinclair Brook in Devereaux Township - Class AA.

(11) Humpback Brook in Township 28 Middle Division - Class AA.

(12) Little Narraguagus River in Township 22 Middle Division - Class AA.

(13) Great Falls Branch downstream of Route 193 in Deblois, excluding any tributaries - Class AA.

(14) Lawrence Brook - Class AA. [2003, c. 317, §11 (AMD).]

[2003, c. 317, §11 (AMD) .]

7. **Penobscot River Basin.**

A. Penobscot River, main stem.

(1) From the confluence of the East Branch and the West Branch to the confluence of the Mattawamkeag River, including all impoundments - Class C.

(2) From the confluence of the Mattawamkeag River to the confluence of Cambolasse Stream - Class B.

(3) From the confluence of Cambolasse Stream to the West Enfield Dam - Class B.

(5) From the West Enfield Dam, including the Stillwater Branch, to the Veazie Dam, including all impoundments - Class B.

(6) From the Veazie Dam, but not including the Veazie Dam, to the Maine Central Railroad bridge in Bangor-Brewer - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

(7) From the Maine Central Railroad bridge in Bangor to a line extended in an east-west direction from a point 1.25 miles upstream of the confluence of Reeds Brook in Hampden - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. [2003, c. 317, §12 (AMD).]

B. Penobscot River, East Branch Drainage.

(1) East Branch of the Penobscot River, main stem.

(a) Above its confluence with Grand Lake Mattagamon - Class A.

(b) From the dam at the outlet of Grand Lake Mattagamon to a point located 1,000 feet downstream from the dam - Class A.

(c) From a point located 1,000 feet downstream from the dam at the outlet of Grand Lake Mattagamon to its confluence with the West Branch - Class AA.

(2) East Branch of the Penobscot River, tributaries - Class A unless otherwise specified.

(a) All tributaries, any portion of which is located within the boundaries of Baxter State Park - Class AA.

(b) Sawtelle Brook, from a point located 1,000 feet downstream from the dam at the outlet of Sawtelle Deadwater to its confluence with the Seboeis River - Class AA.

(c) Seboeis River, from the outlet of Snowshoe Lake to its confluence with the East Branch - Class AA.

(d) Wassataquoik Stream, from the boundary of Baxter State Park to its confluence with the East Branch - Class AA.

(e) Webster Brook, from a point located 1,000 feet downstream from the dam at the outlet of Telos Lake to its confluence with Webster Lake - Class AA. [1989, c. 764, §7 (RPR).]

C. Penobscot River, West Branch Drainage.

(1) West Branch of the Penobscot River, main stem.

(a) From the dam at the outlet of Seboomook Lake to a point located 1,000 feet downstream from the dam at the outlet of Seboomook Lake - Class B.

(b) From a point located 1,000 feet downstream from the dam at the outlet of Seboomook Lake to its confluence with Chesuncook Lake - Class A.

(b-1) From its confluence with Chesuncook Lake to Ripogenus Dam - Class GPA as modified by section 464, subsection 9-A.

(c) From Ripogenus Dam through Ripogenus Gorge to the McKay powerhouse - Class B.

(d) From the McKay powerhouse to its confluence with Ambajejus Lake - Class A.

(e) From the outlet of Elbow Lake to the outlet of Ferguson and Quakish Lakes - Class B.

(f) From the outlet of Ferguson and Quakish Lakes to its confluence with the East Branch of the Penobscot River, including all impoundments - Class C.

(2) West Branch of the Penobscot River, tributaries - Class A unless otherwise specified.

(a) Those segments of any tributary that are within the boundaries of Baxter State Park - Class AA.

(b) Those tributaries above the confluence with the Debsconeag Deadwater, any portion of which is located within the boundaries of Baxter State Park - Class AA.

(c) Millinocket Stream, from the railroad bridge near the Millinocket-T.3 Indian Purchase boundary to its confluence with the West Branch Canal - Class B.

(d) Millinocket Stream from the confluence of the West Branch Canal to its confluence with the West Branch of the Penobscot River - Class C. [2005, c. 159, §3 (AMD).]

D. Mattawamkeag River Drainage.

(1) Mattawamkeag River, main stem.

(a) From the confluence of the East Branch and the West Branch to the Kingman-Mattawamkeag boundary - Class A.

(b) From the Kingman-Mattawamkeag boundary to its confluence with the Penobscot River - Class AA.

(2) Mattawamkeag River, tributaries - Class A unless otherwise specified.

(a) East Branch Mattawamkeag River above Red Bridge - Class B.

(b) West Branch Mattawamkeag River from Interstate 95 to its confluence with Mattawamkeag Lake - Class B.

(c) Fish Stream - Class B. [1999, c. 277, §11 (AMD).]

E. Piscataquis River Drainage.

(1) Piscataquis River, main stem.

(a) From the confluence of the East Branch and the West Branch to the Route 15 bridge in Guilford - Class A.

(b) From the Route 15 bridge in Guilford to the Maine Central Railroad bridge in Dover-Foxcroft - Class B.

(c) From the Maine Central Railroad bridge in Dover-Foxcroft to its confluence with the Penobscot River - Class B.

(2) Piscataquis River, tributaries - Class B unless otherwise specified.

(a) Except as otherwise provided, East and West Branches of the Piscataquis River and their tributaries above their confluence near Blanchard - Class A.

(b) East Branch of the Piscataquis River from 1,000 feet below Shirley Pond to its confluence with the West Branch - Class AA.

(c) Pleasant River, East Branch and its tributaries - Class A.

(d) Pleasant River, West Branch, from the outlet of Fourth West Branch Pond to its confluence with the East Branch - Class AA.

(e) Pleasant River, West Branch tributaries - Class A.

(f) Sebec River and its tributaries above Route 6 in Milo - Class A.

(g) West Branch of the Piscataquis River from 1,000 feet below West Shirley Bog to its confluence with the East Branch - Class AA.

(h) Black Stream - Class A.

(i) Cold Stream - Class A.

(j) Kingsbury Stream - Class A.

(k) Schoodic Stream - Class A.

(l) Scutaze Stream - Class A.

(m) Seboeis Stream, including East and West Branches, and tributaries - Class A.

(n) Alder Stream and its tributaries - Class A. [2009, c. 163, §5 (AMD).]

F. Penobscot River, minor tributaries - Class B unless otherwise specified.

(1) Cambolasse Stream (Lincoln) below the Route 2 bridge - Class C.

(2) Great Works Stream (Bradley) and its tributaries above the Route 178 bridge - Class A.

(3) Kenduskeag Stream (Bangor) below the Bullseye Bridge - Class C.

(4) Mattanawcook Stream (Lincoln) below the outlet of Mattanawcook Pond - Class C.

(5) Olamon Stream and its tributaries above the bridge on Horseback Road - Class A.

(6) Passadumkeag River and its tributaries - Class A, unless otherwise specified.

(a) Passadumkeag River from the Pumpkinhill Dam to its confluence with the Penobscot River - Class AA.

(b) Ayers Brook - Class AA.

(7) Souadabscook Stream above head of tide - Class AA.

(7-A) Souadabscook Stream, tributaries of - Class B, unless otherwise specified.

(a) West Branch Souadabscook Stream (Hampden, Newburgh) - Class A.

(b) Brown Brook (Hampden) - Class A.

(8) Sunkhaze Stream and its tributaries - Class AA.

(9) Birch Stream - Class A.

(10) Hemlock Stream - Class A.

(11) Mattamiscontis Stream and its tributaries - Class A.

(12) Medunkeunk Stream - Class A.

(13) Rockabema Stream - Class A.

(14) Salmon Stream - Class A.

(15) Salmon Stream in Winn - Class A.

(16) Little Salmon Stream in Medway - Class A.

(17) Narrimissic River in Bucksport and Orland, including all impoundments - Class B. [2009, c. 163, §6 (AMD).]

[2009, c. 163, §§5, 6 (AMD) .]

8. Pleasant River Basin.

A. Pleasant River, main stem.

(1) From the outlet of Pleasant River Lake to the Maine Central Railroad bridge - Class AA.

(2) From the Maine Central Railroad bridge to tidewater - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. [1989, c. 764, §8 (AMD).]

B. Pleasant River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the Maine Central Railroad bridge - Class B.

(2) Bog Stream (Deblois) - Class B.

(3) Beaver Meadow Brook (Deblois) - Class B.

(4) Eastern Little River in Columbia Falls - Class AA.

(5) Western Little River from its confluence with Montegail Stream to the Pleasant River in Columbia, Township 18 Middle Division and Township 19 Middle Division - Class AA. [2003, c. 663, §4 (AMD).]

[2003, c. 663, §4 (AMD) .]

9. Presumpscot River Basin.

A. Presumpscot River, main stem.

(1) From the outlet of Sebago Lake to its confluence with Dundee Pond - Class A.

(1-A) From the outlet of Dundee Pond to its confluence with the Pleasant River - Class A.

For the purposes of water quality certification of the hydropower project at the Dundee Dam under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing modifications to this hydropower project under section 636 and any other licensing proceeding affecting this project, the habitat characteristics and aquatic life criteria of Class A are deemed to be met in the waters immediately downstream and measurably affected by that project if the criteria of section 465, subsection 3, paragraphs A and C are met.

(2) From its confluence with the Pleasant River to U.S. Route 202 - Class B. Further, there may be no new direct discharges to this segment after January 1, 1999.

(3) From U.S. Route 202 to Sacarappa Falls - Class B.

(4) From Sacarappa Falls to tidewater - Class C. [1999, c. 277, §12 (AMD).]

B. Presumpscot River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the outlet of Sebago Lake - Class B.

(2) Crooked River and its tributaries, except as otherwise provided, excluding existing impoundments - Class AA.

(3) Stevens Brook (Bridgton) - Class B.

(4) Mile Brook (Casco) - Class B. [2009, c. 163, §7 (AMD).]

[2009, c. 163, §7 (AMD) .]

10. **Narraguagus River Basin.**

[1999, c. 277, §13 (RP) .]

11. **Royal River Basin.**

A. Royal River, main stem.

(1) From the outlet of Sabbathday Pond to its confluence with Collyer Brook - Class A.

(2) From its confluence with Collyer Brook to tidewater - Class B. [1999, c. 277, §14 (AMD).]

B. Royal River, tributaries - Class B unless otherwise specified.

(1) Collyer Brook from Route 202 to the confluence with the Royal River - Class A. [2003, c. 317, §14 (AMD).]

[2003, c. 317, §14 (AMD) .]

12. **Saco River Basin.**

A. Saco River, main stem.

(1) From the Maine-New Hampshire boundary to its confluence with the impoundment of the Swan's Falls Dam - Class A.

(2) From its confluence with the impoundment of the Swan's Falls Dam to a point located 1,000 feet below the Swan's Falls Dam - Class A.

(3) From a point located 1,000 feet below the Swan's Falls Dam to its confluence with the impoundment of the Hiram Dam - Class AA.

(4) From its confluence with the impoundment of the Hiram Dam to a point located 1,000 feet below the Hiram Dam - Class A.

(5) From a point located 1,000 feet below the Hiram Dam to its confluence with the Little Ossipee River - Class AA.

(6) From its confluence with the Little Ossipee River to the West Buxton Dam, including all impoundments - Class A.

(7) From the West Buxton Dam to its confluence with the impoundment formed by the Bar Mills Dam - Class A.

(8) From its confluence with the impoundment formed by the Bar Mills Dam to the confluence with the impoundment formed by the Skelton Dam - Class A.

(9) From Skelton Dam to its confluence with the impoundment formed by the Cataract Project Dams - Class A.

(10) From the confluence with the impoundment formed by the Cataract Project Dams to the Interstate 95 bridge, including all impoundments - Class A.

(11) From the Interstate 95 bridge to tidewater - Class B. [2003, c. 317, §15 (AMD).]

B. Saco River, tributaries, those waters lying within the State - Class B unless otherwise specified.

(1) All tributaries entering above the confluence of the Ossipee River lying within the State and not otherwise classified - Class A.

(2) Wards Brook (Fryeburg) - Class C.

(3) Buff Brook (Waterboro) - Class A.

(4) Ossipee River Drainage, those waters lying within the State - Class B unless otherwise specified.

(a) Emerson Brook in Parsonsfield - Class A.

(b) South River and its tributaries (Parsonsfield), those waters lying within the State - Class A. [2009, c. 163, §8 (AMD).]

[2009, c. 163, §8 (AMD) .]

13. St. Croix River Basin.

A. St. Croix River, main stem.

(1) Except as otherwise provided, from the outlet of Chiputneticook Lakes to its confluence with the Woodland Lake impoundment, those waters lying within the State - Class A.

(2) Those waters impounded in the Grand Falls Flowage including those waters between Route 1 (Princeton and Indian Township) and Grand Falls Dam - Class GPA.

(3) Woodland Lake impoundment - Class C.

(4) From the Woodland Dam to tidewater, those waters lying within the State, including all impoundments - Class C. [2009, c. 163, §9 (AMD).]

B. St. Croix River, tributaries, those waters lying within the State - Class B unless otherwise specified.

(1) All tributaries entering upstream from the dam at Calais, the drainage areas of which are wholly within the State - Class A unless otherwise classified.

(2) Tomah Stream - Class AA.

(3) Monument Brook - Class A.

(4) Waters connecting the Chiputneticook Lakes, including The Thoroughfare, Forest City Stream and Mud Lake Stream - Class A. [2003, c. 317, §16 (AMD).]

[2009, c. 163, §9 (AMD) .]

14. St. George River Basin.

A. St. George River, main stem.

(1) From the outlet of Little Pond to a point located 2,000 feet below the pond - Class A.

(2) From a point located 2,000 feet below the outlet of Little Pond to the confluence with Stevens Pond, from the outlet of Stevens Pond to the confluence with Trues Pond and from the outlet of Trues Pond to the confluence with Sennebec Pond - Class AA.

(3) From the outlet of Sennebec Pond to Route 90, excluding segments that are great ponds - Class A.

(4) From Route 90 to tidewater - Class B. [1999, c. 277, §17 (RPR).]

B. St. George River, tributaries - Class A unless otherwise specified.

(1) Quiggle Brook (Warren, Union, Hope) - Class B.

(2) All tributaries entering downstream of Route 90 in Warren - Class B. [1989, c. 764, §15 (RPR).]

[1999, c. 277, §17 (AMD) .]

15. St. John River Basin.

A. St. John River, main stem.

(1) From the confluence of the Northwest Branch and the Southwest Branch to a point located one mile above the foot of Big Rapids in Allagash - Class AA.

(2) From a point located one mile above the foot of Big Rapids in Allagash to the international bridge in Fort Kent, those waters lying within the State, including all impoundments - Class A.

(3) From the international bridge in Fort Kent to the international bridge in Madawaska, those waters lying within the State, including all impoundments - Class B.

(4) From the international bridge in Madawaska to where the international boundary leaves the river in Hamlin, those waters lying within the State, including all impoundments - Class C. [1989, c. 764, §16 (RPR).]

B. Allagash River Drainage.

(1) Allagash River, main stem.

(a) From Churchill Dam to a point located 1,000 feet downstream from Churchill Dam - Class A.

(b) From a point located 1,000 feet downstream from Churchill Dam to its confluence with Gerald Brook in Allagash - Class AA.

(c) From its confluence with Gerald Brook in Allagash to its confluence with the St. John River - Class A.

(2) Allagash River, tributaries - Class A unless otherwise specified.

(a) Allagash Stream, from the outlet of Allagash Lake to its confluence with Chamberlain Lake - Class AA.

(b) Chemquasabamticook Stream, from the outlet of Chemquasabamticook Lake to its confluence with Long Lake - Class AA.

(c) Musquacook Stream, from the outlet of Third Musquacook Lake to its confluence with the Allagash River - Class AA. [1989, c. 764, §16 (RPR).]

C. Aroostook River Drainage.

(1) Aroostook River, main stem.

(a) From the confluence of Millinocket Stream and Munsungan Stream to the Route 11 bridge - Class AA.

(b) From the Route 11 bridge to the Sheridan Dam - Class B.

(c) From the Sheridan Dam to its confluence with Presque Isle Stream, including all impoundments - Class B.

(d) From its confluence with Presque Isle Stream to a point located 3.0 miles upstream of the intake of the Caribou water supply, including all impoundments - Class C.

(e) From a point located 3.0 miles upstream of the intake of the Caribou water supply to a point located 100 yards downstream of the intake of the Caribou water supply, including all impoundments - Class B.

(f) From a point located 100 yards downstream of the intake of the Caribou water supply to the international boundary, including all impoundments - Class C.

(2) Aroostook River, tributaries, those waters lying within the State - Class A unless otherwise specified.

(a) All tributaries of the Aroostook River entering below the confluence of the Machias River that are not otherwise classified - Class B.

(b) Little Machias River and its tributaries - Class A.

(c) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Caribou-Connor Township line - Class A.

(d) Machias River, from the outlet of Big Machias Lake to the Aroostook River - Class AA.

(e) Millinocket Stream, from the outlet of Millinocket Lake to its confluence with Munsungan Stream - Class AA.

(f) Munsungan Stream, from the outlet of Little Munsungan Lake to its confluence with Millinocket Stream - Class AA.

(g) Presque Isle Stream and its tributaries above the Mapleton-Presque Isle town line - Class A.

(h) St. Croix Stream from its confluence with Hall Brook in T.9, R.5, W.E.L.S. to its confluence with the Aroostook River - Class AA.

(j) Squa Pan Stream from the outlet of Squa Pan Lake to its confluence with the Aroostook River - Class C.

(k) Limestone Stream from the Long Road bridge to the Canadian border - Class C.

(l) Beaver Brook and its tributaries (T.14 R.6 W.E.L.S., T.14 R.5 W.E.L.S., T.13 R.5 W.E.L.S., Portage Lake, Ashland, Castle Hill) - Class A.

(m) Gardner Brook and its tributaries (T.14 R.5 W.E.L.S., T.13 R.5 W.E.L.S., Wade) - Class A. [2009, c. 163, §10 (AMD).]

D. Fish River Drainage.

(1) Fish River, main stem.

(a) From the outlet of Mud Pond to its confluence with St. Froid Lake - Class AA.

(b) From the outlet of St. Froid Lake to its confluence with Eagle Lake - Class A.

(c) From the outlet of Eagle Lake to its confluence with Perley Brook - Class A.

(d) From its confluence with Perley Brook to the St. John River - Class B.

(2) Fish River, tributaries - Class B unless otherwise specified.

(a) All tributaries entering above the Route 11 bridge - Class A. [1999, c. 277, §20 (AMD).]

E. Meduxnekeag River Drainage.

(1) Meduxnekeag River, main stem.

(a) From the outlet of Meduxnekeag Lake to the international boundary - Class B.

(2) Meduxnekeag River, tributaries - Class B unless otherwise specified.

(a) North Branch of the Meduxnekeag River and its tributaries above the Monticello - T.C, R.2, W.E.L.S. boundary - Class A.

(b) Moose Brook and its tributaries, upstream of the Ludlow Road in Ludlow - Class A.

(c) South Branch of the Meduxnekeag River and its tributaries, upstream of the Oliver Road in Cary - Class A.

(d) B Stream and tributaries upstream of the Burnt Brow Bridge in Hammond - Class A. [2003, c. 317, §18 (AMD).]

F. St. John River, minor tributaries, those waters lying within the State - Class A unless otherwise specified.

(1) Except as otherwise classified, all minor tributaries of the St. John River entering below the international bridge in Fort Kent, those waters lying within the State - Class B.

(2) Baker Branch, from the headwaters at the St. John Ponds to its confluence with the Southwest Branch - Class AA.

(3) Big Black River, from the international boundary to its confluence with the St. John River - Class AA.

(4) Northwest Branch, from the outlet of Beaver Pond in T.12, R.17, W.E.L.S. to its confluence with the St. John River - Class AA.

(5) Prestile Stream from its source to Route 1A in Mars Hill - Class A.

(6) Southwest Branch, from a point located 5 miles downstream of the international boundary to its confluence with the Baker Branch - Class AA.

(7) Violette Stream and its tributaries, from its source to the confluence with Caniba Brook - Class A. [2009, c. 163, §11 (AMD).]

[2009, c. 163, §§10, 11 (AMD) .]

16. **Salmon Falls River Basin.**

A. Salmon Falls River, main stem.

(1) From the outlet of Great East Lake to the Route 9 bridge - Class B.

(2) From the Route 9 bridge to tidewater - Class C. [1999, c. 277, §21 (AMD).]

B. Salmon Falls River, tributaries, those waters lying within the State - Class B unless otherwise specified.

(1) Chicks Brook (South Berwick, York) - Class A.

(2) Little River and its tributaries (Berwick, North Berwick, Lebanon) - Class A. [2009, c. 163, §12 (AMD).]

[2009, c. 163, §12 (AMD) .]

17. **Sheepscot River Basin.**

A. Sheepscot River, main stem.

(1) From its origin in Montville to Sheepscot Lake - Class A.

(2) From Sheepscot Lake to Route 17 - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

(3) From Route 17 to tidewater - Class AA. [2003, c. 317, §19 (RPR).]

B. Sheepscot River, tributaries - Class B unless otherwise specified.

(1) West Branch of the Sheepscot River, main stem, from the outlet of Branch Pond to its confluence with the Sheepscot River - Class AA.

(2) Trout Brook - Class A.

(3) Choate Brook - Class A.

(4) Weaver Brook - Class A.

(5) Ben Brook - Class A.

(6) Finn Brook - Class A.

(7) Hewitt Brook - Class A.

(8) Dearborn Brook - Class A.

(9) Culvert Pond Brook - Class A. [2003, c. 317, §19 (RPR).]

[2003, c. 317, §19 (AMD) .]

18. **Union River Basin.**

A. Union River, main stem.

(1) From the outlet of Graham Lake to tidewater - Class B. [1989, c. 764, §19 (RPR).]

B. Union River, tributaries - Class A unless otherwise specified.

(1) Tributaries entering below the outlet of Graham Lake - Class B.

(2) Outlet of Green Lake (Ellsworth) - Class B. [1989, c. 764, §19 (NEW).]

[1989, c. 764, §19 (RPR) .]

SECTION HISTORY
1985, c. 698, §15 (NEW). 1987, c. 189, (AMD). 1987, c. 192, §§17-22 (AMD). 1989, c. 228, §§1,2 (AMD). 1989, c. 746, (AMD). 1989, c. 764, §§2-19 (AMD). 1989, c. 890, §§A40,B68,69 (AMD). RR 1991, c. 2, §145 (COR). 1991, c. 66, §§A14,15 (AMD). 1991, c. 276, (AMD). 1991, c. 499, §§16,17 (AMD). 1991, c. 813, §§E1-5 (AMD). RR 1993, c. 1, §§115,116 (COR). 1993, c. 32, §1 (AMD). 1993, c. 344, §4 (AMD). 1993, c. 523, §1 (AMD). 1999, c. 277, §§1-22 (AMD). 2003, c. 317, §§1-19 (AMD). 2003, c. 317, §25 (AFF). 2003, c. 551, §7 (AMD). 2003, c. 663, §§1-4 (AMD). 2005, c. 159, §3 (AMD). 2005, c. 330, §11 (AMD). RR 2009, c. 1, §30 (COR). 2009, c. 163, §§1-12 (AMD). MRSA T.38 ., §467/1/A/3 (AMD).

§468. CLASSIFICATIONS OF MINOR DRAINAGES

All surface waters lying within the boundaries of the State that are in basins having a drainage area less than 100 square miles that are not classified as lakes or ponds are classified in this section. [1989, c. 764, §20 (AMD).]

1. **Cumberland County.** Those waters draining directly or indirectly into tidal waters of Cumberland County, with the exception of the Androscoggin River Basin, the Presumpscot River Basin, the Royal River Basin and tributaries of the Androscoggin River Estuary and Merrymeeting Bay, entering above the Chops - Class B unless otherwise specified.

A. Freeport.

(1) Frost Gully Brook - Class A. [1989, c. 764, §21 (RPR).]

A-1. Cape Elizabeth.

(1) Trout Brook, those waters that form the town boundary with South Portland - Class C. [2009, c. 163, §13 (NEW).]

B. Portland.

(1) All minor drainages unless otherwise specified - Class C.

(2) Stroudwater River from its origin to tidewater, including all tributaries - Class B. [2009, c. 163, §14 (AMD).]

C. Scarborough.

(1) All minor drainages - Class C unless otherwise specified.

(2) Finnard Brook - Class B.

(3) Stuart Brook - Class B.

(4) Nonesuch River from the headwaters to a point 1/2 mile downstream of Mitchell Hill Road crossing - Class B.

(5) Stroudwater River from its origin to tidewater, including all tributaries - Class B. [2009, c. 163, §15 (AMD).]

D. South Portland.

(1) All minor drainages - Class C.

(2) Trout Brook downstream of the first point where the brook becomes the town boundary between South Portland and Cape Elizabeth - Class C. [2009, c. 163, §16 (AMD).]

E. [1989, c. 764, §21 (RP).]

F. [1989, c. 764, §21 (RP).]

G. [1989, c. 764, §21 (RP).]

H. [1989, c. 764, §21 (RP).]

I. [1989, c. 764, §21 (RP).]

J. Westbrook.

(1) Long Creek, main stem - Class C. [2009, c. 163, §17 (NEW).]

[2009, c. 163, §§13-17 (AMD) .]

2. **Hancock County.** Those waters draining directly or indirectly into tidal waters of Hancock County, with the exception of the Union River Basin - Class B unless otherwise specified.

A. All brooks, streams and segments of those brooks and streams that are within the boundaries of Acadia National Park - Class AA. [1989, c. 764, §21 (RPR).]

B. Blue Hill.

(1) Carleton Stream, main stem, between First Pond and Second Pond - Class C.

(2) Carleton Stream, main stem, from the outlet of First Pond to tidewater at Salt Pond - Class C. [1989, c. 764, §21 (RPR).]

C. Orland.

(1) Alamoosook Lake, tributaries - Class A. [1989, c. 764, §21 (RPR).]

D. [1989, c. 764, §21 (RP).]

E. [1989, c. 764, §21 (RP).]

F. [1989, c. 764, §21 (RP).]

G. [1989, c. 764, §21 (RP).]

H. [1989, c. 764, §21 (RP).]

I. [1989, c. 764, §21 (RP).]

J. [1989, c. 764, §21 (RP).]

K. [1989, c. 764, §21 (RP).]

L. [1989, c. 764, §21 (RP).]

M. [1989, c. 764, §21 (RP).]

N. Township 7 Southern Division.

(1) Whitten Parritt Stream - Class A. [2003, c. 317, §20 (NEW).]

[2003, c. 317, §20 (AMD) .]

3. **Knox County.** Those waters draining directly or indirectly into tidal waters of Knox County, with the exception of the St. George River Basin - Class B unless otherwise specified.

A. [1989, c. 764, §21 (RP).]

B. [1989, c. 764, §21 (RP).]

C. [1989, c. 764, §21 (RP).]

D. [1989, c. 764, §21 (RP).]

E. [1989, c. 764, §21 (RP).]

F. [1989, c. 764, §21 (RP).]

G. [1989, c. 764, §21 (RP).]

H. [1989, c. 764, §21 (RP).]

[1989, c. 764, §21 (RPR) .]

4. **Lincoln County.** Those waters draining directly or indirectly into tidal waters of Lincoln County entering above the Chops, with the exception of the Sheepscot River Basin and tributaries of the Kennebec River Estuary and Merrymeeting Bay - Class B unless otherwise specified.

A. [1989, c. 764, §21 (RP).]

B. [1989, c. 764, §21 (RP).]

C. [1989, c. 764, §21 (RP).]

D. Bristol.

(1) Pemaquid River and its tributaries, all freshwater sections below Pemaquid Pond - Class A. [2009, c. 163, §18 (NEW).]

[2009, c. 163, §18 (AMD) .]

5. **Penobscot County.** Those waters draining directly or indirectly into tidal waters of Penobscot County, with the exception of tributaries of the Penobscot River Estuary entering north of a line extended in an east-west direction from the outlet of Reeds Brook in the village of Hampden Highlands - Class B unless otherwise specified.

A. [1989, c. 764, §21 (RP).]

B. [1989, c. 764, §21 (RP).]

C. Winterport.

(1) Cove Brook, those waters above head of tide - Class AA. [1999, c. 277, §23 (NEW).]

[1999, c. 277, §23 (AMD) .]

6. **Sagadahoc County.** Those waters draining directly or indirectly into tidal waters of Sagadahoc County entering above the Chops, with the exception of tributaries of the Androscoggin River Estuary, the Kennebec River Estuary and Merrymeeting Bay - Class B unless otherwise specified.

A. [1989, c. 764, §21 (RP).]

[1989, c. 764, §21 (RPR) .]

7. **Waldo County.** Those waters draining directly or indirectly into tidal waters of Waldo County - Class B unless otherwise specified.

A. Ducktrap River from the outlet of Tilden Pond to tidewater - Class AA. [1989, c. 764, §21 (RPR).]

B. [1989, c. 764, §21 (RP).]

C. [1989, c. 764, §21 (RP).]

D. Black Brook in Lincolnville - Class A. [2009, c. 163, §19 (NEW).]

E. Kendall Brook in Lincolnville - Class A. [2009, c. 163, §20 (NEW).]

F. Tucker Brook in Lincolnville - Class A. [2009, c. 163, §21 (NEW).]

[2009, c. 163, §§19-21 (AMD) .]

8. **Washington County.** Those waters draining directly or indirectly into tidal waters of Washington County, including impoundments of the Pennamaquan River, with the exception of the Dennys River Basin, the East Machias River Basin, the Machias River Basin, the Narraguagus River Basin and the Pleasant River Basin - Class B unless otherwise specified.

A. Jonesboro.

(1) Chandler River and its tributaries above the highway bridge on Route 1 - Class A. [1989, c. 764, §21 (RPR).]

B. Whiting.

(1) Orange River and its tributaries above the highway bridge on Route 1 - Class A. [1989, c. 764, §21 (RPR).]

C. [1989, c. 764, §21 (RP).]

D. [1989, c. 764, §21 (RP).]

E. [1989, c. 764, §21 (RP).]

F. [1989, c. 764, §21 (RP).]

G. [1989, c. 764, §21 (RP).]

H. [1989, c. 764, §21 (RP).]

I. [1989, c. 764, §21 (RP).]

J. Edmunds.

(1) Hobart Stream - Class AA. [1999, c. 277, §24 (NEW).]

K. Steuben.

(1) Whitten Parritt Stream - Class A.

(2) Tunk Stream and tributaries upstream of Route 1 - Class A. [2003, c. 663, §5 (AMD).]

L. Harrington.

(1) Harrington River and tributaries - Class A. [2003, c. 663, §6 (NEW).]

M. Columbia.

(1) Harrington River and tributaries - Class A. [2003, c. 663, §6 (NEW).]

N. Addison.

(1) Indian River - Class A. [2003, c. 663, §6 (NEW).]

O. Jonesport.

(1) Indian River - Class A. [2003, c. 663, §6 (NEW).]

[2003, c. 663, §§5, 6 (AMD) .]

9. **York County.** Those waters draining directly or indirectly into tidal waters of York County, with the exception of the Saco River Basin, the Salmon Falls River Basin and the Mousam River Basin - Class B unless otherwise specified.

A. Kennebunk.

(1) Branch Brook - Class A. [1989, c. 764, §21 (RPR).]

B. Sanford.

(1) Branch Brook - Class A.

(2) Merriland River - Class A. [1989, c. 764, §21 (RPR).]

C. Wells.

(1) Branch Brook - Class A.

(2) Merriland River - Class A.

(3) Webhannet River above Route 1 - Class A.

(4) Depot Brook - Class A.

(5) Blacksmith Brook above Route 1 - Class A.

(6) Ogunquit River and tributaries above Interstate 95 - Class A. [2003, c. 317, §22 (AMD).]

D. [1989, c. 764, §21 (RP).]

[2003, c. 317, §22 (AMD) .]

SECTION HISTORY
1985, c. 698, §15 (NEW). 1989, c. 764, §§20,21 (AMD). 1991, c. 813, §E6 (AMD). 1999, c. 277, §§23,24 (AMD). 2003, c. 317, §§20-22 (AMD). 2003, c. 663, §§5,6 (AMD). 2009, c. 163, §§13-21 (AMD).

§469. CLASSIFICATIONS OF ESTUARINE AND MARINE WATERS

1. **Cumberland County.** All estuarine and marine waters lying within the boundaries of Cumberland County and that are not otherwise classified are Class SB waters.

A. Cape Elizabeth.

(1) Tidal waters of the Spurwink River system lying north of a line at latitude 43`-33'-44" N. - Class SA. [1989, c. 764, §22 (AMD).]

B. Cumberland.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Portland boundary at approximately latitude 43`41'-18"N., longitude 70` - 05'-48"W. and running northeasterly to a point located on the Cumberland-Harpswell boundary at approximately latitude 43` - 42'-57"N., longitude 70` - 03'-50" W.; thence running southwesterly along the Cumberland-Harpswell boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running northeasterly along the Cumberland-Portland boundary to point of beginning - Class SA. [1985, c. 698, §15 (NEW).]

C. Falmouth.

(1) Tidal waters of the Town of Falmouth located westerly and northerly, to include the Presumpscot estuary, of a line running from the southernmost point of Mackworth Island; thence running northerly along the western shore of Mackworth Island and the Mackworth Island Causeway to a point located where the causeway joins Mackworth Point - Class SC. [1999, c. 277, §25 (AMD).]

D. Harpswell.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Harpswell boundary at approximately latitude 43` - 42'-57" N., longitude 70` - 03'-50" W. and running northeasterly to a point located at latitude 43` - 43'-08" N., longitude 70` - 03'-36"W.; thence running southeasterly to a point located at latitude 43` - 42'-02" N., longitude 70` - 00'-00" W.; thence running due south to the Harpswell-Portland boundary; thence running northwesterly along the Harpswell-Portland boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running northwesterly along the Cumberland-Harpswell boundary to point of beginning - Class SA. [1985, c. 698, §15 (NEW).]

E. Portland.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Portland boundary at approximately latitude 43` - 41'-18" N., longitude 70` - 05'-48" W. and running southeasterly along the Cumberland-Portland boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running southeasterly along the Harpswell-Portland boundary to longitude 70` - 00'-00" W.; thence running due south to a point located at latitude 43` - 38'-21" N., longitude 70` - 00'-00" W.; thence running due west to a point located at latitude 43` - 38'-21" N., longitude 70` - 09'-06" W.; thence running northeasterly to point of beginning - Class SA.

(2) Tidal waters of the City of Portland lying northwesterly of a line beginning at Spring Point Light in South Portland to the easternmost point of Fort Gorges Island, thence running northerly to the southernmost point of Mackworth Island - Class SC. [1999, c. 277, §26 (AMD).]

E-1. Scarborough.

(1) Tidal waters of the Scarborough River system lying north of a line running easterly from a point where the old Boston and Maine Railroad line intersects the marsh at latitude 43`-33'-06" N., longitude 70`-20'-58" W. to a point of land north of Black Rock at latitude 43`-33'-06" N., longitude 70`-19'-25" W., excluding those tidal waters of Phillips Brook lying upstream of a point 500 feet south of U.S. Route 1 - Class SA.

(2) Tidal waters of the Spurwink River system lying north of a line extending from Higgins Beach at latitude 43`-33'-44" N. to the town line - Class SA. [1989, c. 764, §23 (NEW).]

F. South Portland.

(1) Tidal waters of the City of South Portland lying westerly of a line beginning at Spring Point Light to the easternmost point of Fort Gorges Island in Portland - Class SC. [1999, c. 277, §27 (AMD).]

G. [1989, c. 764, §24 (RP).]

[2011, c. 206, §11 (AMD) .]

2. Hancock County. All estuarine and marine waters lying within the boundaries of Hancock County and that are not otherwise classified are Class SB waters.

A. Bar Harbor.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44` - 16'-36" N., southerly of latitude 44` - 20'-27" N., and westerly of longitude 68` - 09'-28" W. - Class SA. [1985, c. 698, §15 (NEW).]

A-1. Brooksville.

(1) Tidal waters of the Bagaduce River lying southerly of Young's Island - Class SA. [2003, c. 317, §23 (NEW).]

B. Bucksport.

(1) All tidal waters - Class SC. [1985, c. 698, §15 (NEW).]

C. Cranberry Isles.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying within 0.5 mile of the shore of Baker Island - Class SA. [1985, c. 698, §15 (NEW).]

D. Mount Desert.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44` - 16'-36" N. and easterly of longitude 68` - 13'-08" W. - Class SA.

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44` - 18'-18" N., longitude 68` - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44` - 18'-54" N., longitude 68` - 18'-22" W., except those waters of Broad Cove lying west of a line running from the point of land immediately south of the cove northerly to Navigation Can #7 and those waters lying within 500 feet of overboard discharges licensed as of January 1, 1999 - Class SA.

(3) Tidal waters of Somes Sound lying within 500 feet of overboard discharges licensed as of January 1, 1999 - Class SA. [1999, c. 277, §28 (AMD); 1999, c. 277, §31 (AFF).]

E. Orland.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC. [1985, c. 698, §15 (NEW).]

E-1. Penobscot.

(1) Tidal waters of the Bagaduce River lying southerly of Winslow Island and easterly of the westernmost point of Young's Island - Class SA. [2003, c. 317, §23 (NEW).]

E-2. Sedgewick.

(1) Tidal waters of the Bagaduce River - Class SA. [2003, c. 317, §23 (NEW).]

F. Southwest Harbor.

(1) Tidal waters lying northerly of latitude 44` - 12'-44` -" N., southerly of latitude 44` - 14'-13" N. and westerly of longitude 68` - 18'-27" W. - Class SA.

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44` - 18'-18" N., longitude 68` - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44` - 18'-54" N., longitude 68` - 18'-22" W. - Class SA. [1999, c. 277, §29 (AMD).]

G. Tremont.

(1) Tidal waters lying northerly of latitude 44` - 12'-44` -" N., southerly of latitude 44` - 14'-13" N. and easterly of longitude 68` - 20'-30" W. - Class SA. [1985, c. 698, §15 (NEW).]

H. Verona Island.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC. [2003, c. 534, §3 (AMD); 2003, c. 534, §5 (AFF).]

I. Winter Harbor.

(1) Tidal waters lying south of a line running west from the northernmost tip of Frazer Point to longitude 68`-05'-00" W. and east of longitude 68`-05'-00" W. - Class SA. [1989, c. 764, §25 (NEW).]

[2011, c. 206, §11 (AMD) .]

3. **Knox County.** All estuarine and marine waters lying within the boundaries of Knox County and that are not otherwise classified are Class SB waters.

A. Isle Au Haut.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44` - 00'-00" N., southerly of latitude 44` - 03'-06" N., easterly of longitude 68` - 41'-00" W. and westerly of longitude 68` - 35'-00" W. - Class SA. [1985, c. 698, §15 (NEW).]

B. Owls Head.

(1) Tidal waters lying westerly of a line running between the southernmost point of land on Jameson Point and the northernmost point of land on Battery Point - Class SC. [1985, c. 698, §15 (NEW).]

C. Rockland.

(1) Tidal waters lying westerly of a line running between the southernmost point of land on Jameson Point and the northernmost point of land on Battery Point - Class SC. [1985, c. 698, §15 (NEW).]

[2011, c. 206, §11 (AMD) .]

3-A. **Lincoln County.** All estuarine and marine waters lying within the boundaries of Lincoln County and that are not otherwise classified are Class SB waters.

A. Boothbay.

(1) Tidal waters lying south of the northernmost point of Damariscove Island and west of longitude 69`-36'-00" W. - Class SA. [1989, c. 764, §26 (NEW).]

[2011, c. 206, §11 (AMD) .]

4. **Penobscot County.** All estuarine and marine waters lying within the boundaries of Penobscot County and that are not otherwise classified are Class SB waters.

A. Hampden.

(1) Tidal waters lying southerly of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class SC. [1985, c. 698, §15 (NEW).]

B. Orrington.

(1) Tidal waters lying southerly of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class SC. [1985, c. 698, §15 (NEW).]

[2011, c. 206, §11 (AMD) .]

5. **Sagadahoc County.** All estuarine and marine waters lying within the boundaries of Sagadahoc County and that are not otherwise classified are Class SB waters.

A. Georgetown.

(1) Tidal waters located within a line beginning at a point on the shore located at latitude 43` - 47'-16" N., longitude 69` -43'-09" W. and running due east to longitude 69` -42'-00" W.; thence running due south to latitude 43` - 42'-52" N.; thence running due west to longitude 69` -44' -25" W.; thence running due north to a point on the shore located at latitude 43` - 46'-15" N., longitude 69` -44'-25" W.; thence running northerly along the shore to point of beginning - Class SA. [1985, c. 698, §15 (NEW).]

B. Phippsburg.

(1) Offshore waters east of longitude 69`-50'-05" W. and west of longitude 69`-47'-00" W., including the tidal waters of the Morse River and the Sprague River, - Class SA.

(2) Tidal waters of The Basin, including The Narrows east of a line drawn between 69`-51'-57" W. and 43`-48'-14" N. - Class SA.

(3) Tidal waters of the Kennebec River in Phippsburg within 500 feet of shore, beginning at a point of land at the head of Atkins Bay located at longitude 69°-48'-14" W. and latitude 43°-44'-40.4" N. and extending along the southeast shore of Atkins Bay to a point 500 feet off Fort Popham located at longitude 69°-47'-00" W. and latitude 43°-45'-23.89" N. - Class SA. [2011, c. 206, §11 (AMD).]

[2011, c. 206, §11 (AMD) .]

6. **Waldo County.** All estuarine and marine waters lying within the boundaries of Waldo County and that are not otherwise classified are Class SB waters.

A. Frankfort.

(1) All tidal waters - Class SC. [1985, c. 698, §15 (NEW).]

B. Prospect.

(1) All tidal waters - Class SC. [1985, c. 698, §15 (NEW).]

C. Searsport.

(1) Tidal waters located within a line beginning at the southernmost point of land on Kidder Point and running southerly along the western shore of Sears Island to the southernmost point of Sears Island; thence running due south to latitude 44`-25'-25" N.; thence running due west to latitude 44`-25'-25" N., longitude 68`-54'-30" W.; thence running due north to the shore of Mack Point at longitude 68`-54'-30" W.; thence running along the shore in an easterly direction to point of beginning - Class SC. [1989, c. 764, §28 (AMD).]

D. Stockton Springs.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC. [1985, c. 698, §15 (NEW).]

E. Winterport.

(1) All tidal waters - Class SC. [1985, c. 698, §15 (NEW).]

[2011, c. 206, §11 (AMD) .]

7. **Washington County.** All estuarine and marine waters lying within the boundaries of Washington County and that are not otherwise classified are Class SB waters.

A. Beals.

(1) Tidal waters lying east of the line extending from the westernmost point of Three Falls Point to the easternmost point of Crumple Island; thence south along longitude 67`-36'-47" W. - Class SA.

(2) Tidal waters lying south of a line extending from the easternmost point of the southern shore of the Mud Hole; thence extending along latitude 44`-29'-00" N. to the town line - Class SA. [1989, c. 764, §29 (RPR).]

B. Calais.

(1) Tidal waters of the St. Croix River and its tidal tributaries lying westerly of longitude 67`-14'-28" W. - Class SC. [1989, c. 764, §29 (RPR).]

C. Cutler.

(1) All tidal waters except those waters in Machias Bay and Little Machias Bay north of a line running from the town line due east to the southernmost point of Cross Island; thence running northeast to the southeasternmost point of Cape Wash Island; thence running northeast to the westernmost point of Deer Island; thence running due north to the mainland; and those waters lying northwest of a line running from the easternmost point of Western Head to the easternmost point of Eastern Knubble - Class SA. [1991, c. 499, §18 (AMD).]

D. Eastport.

(1) Tidal waters lying southerly of latitude 44`-54'-50" N., easterly of longitude 67`-02'-00" W. and northerly of latitude 44`-53'-15" N. - Class SC. [1989, c. 764, §29 (RPR).]

E. Edmunds.

(1) All tidal waters - Class SA. [1989, c. 764, §29 (NEW).]

F. Lubec.

(1) Tidal waters, except those lying within 500 feet of West Quoddy Head Light, south of a line beginning at a point located on the northern shore of West Quoddy Head at latitude 44`-49'-22" N., longitude 66`-59'-17" W. and running northeast to the international boundary at latitude 44`-49'-45" N., longitude 66`-57'-57" W. - Class SA.

(2) Tidal waters west of a line running from the easternmost point of Youngs Point to the easternmost point of Leighton Neck in Pembroke - Class SA. [1989, c. 764, §29 (NEW).]

G. Milbridge.

(1) Tidal waters south of a line running from the Steuben - Milbridge town line along latitude 44`-27'-39" N. to the northernmost point of Currant Island; thence running easterly to a point 1,000 feet from mean high tide on the northernmost point of Pond Island; thence along a line running 1,000 feet from mean high tide along the east side of Pond Island to the southernmost point of the island; thence running due south - Class SA. [1999, c. 277, §30 (AMD).]

H. Pembroke.

(1) Tidal waters west of a line running from the easternmost point of Leighton Neck to the easternmost point of Youngs Point in Lubec - Class SA. [1989, c. 764, §29 (NEW).]

I. Steuben.

(1) Tidal waters southeast of a line beginning at Yellow Birch Head at latitude 44`-25'-05" N.; thence running to longitude 67`-55'-00" W.; thence running due south along longitude 67`-55'-00" W. - Class SA.

(2) Tidal waters southwest of a line beginning at a point located south of Carrying Place Cove at latitude 44`-26'-18" N., longitude 67`-53'-14" W.; thence running along latitude 44`-26'-18" N. east to the town line - Class SA. [1989, c. 764, §29 (NEW).]

J. Trescott.

(1) All tidal waters - Class SA. [1989, c. 764, §29 (NEW).]

K. Whiting.

(1) Tidal waters of the Orange River - Class SA. [1989, c. 764, §29 (NEW).]

[2011, c. 206, §11 (AMD) .]

8. **York County.** All estuarine and marine waters lying within the boundaries of York County and that are not otherwise classified are Class SB waters.

A. Biddeford.

(1) Tidal waters of the Saco River and its tidal tributaries lying westerly of longitude 70`-22'-54" W. - Class SC. [1989, c. 764, §30 (RPR).]

B. Kennebunk.

(1) Tidal waters of the Little River system lying north of latitude 43`-20'-10" N. - Class SA. [1989, c. 764, §30 (RPR).]

C. Kittery.

(1) Tidal waters of the Piscataqua River and its tidal tributaries lying westerly of longitude 70`-42'-52" W., southerly of Route 103 and easterly of Interstate Route 95 - Class SC.

(2) Tidal waters lying northeast of a line from Sisters Point; thence south along longitude 70`-40'-00" W. to the Maine-New Hampshire border; thence running southeast along the Maine-New Hampshire border to Cedar Ledge beyond the Isles of Shoals, except waters within 500 feet of the Isles of Shoals Research Station - Class SA. [1989, c. 764, §30 (RPR).]

D. Old Orchard Beach.

(1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of longitude 70`-23'-08" W. - Class SC. [1989, c. 764, §30 (RPR).]

E. Saco.

(1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of longitude 70`-23'-08" W. - Class SC.

(2) Tidal waters of the Saco River and its tidal tributaries lying westerly of longitude 70`-22'-54" W. - Class SC. [1989, c. 764, §30 (RPR).]

F. Wells.

(1) Tidal waters of the Little River system lying north of latitude 43`-20'-10" N. - Class SA. [1989, c. 764, §30 (RPR).]

G. York.

(1) Tidal waters lying southwest of a line from Seal Head Point east along latitude 43`-07'-15" N. - Class SA. [1989, c. 764, §30 (NEW).]

[2011, c. 206, §11 (AMD) .]

SECTION HISTORY

1985, c. 698, §15 (NEW). 1987, c. 192, §23 (AMD). 1989, c. 764, §§22-30 (AMD). 1991, c. 499, §18 (AMD). 1999, c. 277, §§25-30 (AMD). 1999, c. 277, §31 (AFF). 2003, c. 317, §23 (AMD). 2003, c. 534, §3 (AMD). 2003, c. 534, §5 (AFF). 2009, c. 163, §22 (AMD). 2011, c. 206, §11 (AMD).

§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. [1985, c. 698, §15 (NEW).]

SECTION HISTORY
1985, c. 698, §15 (NEW).

Article 4-B: WATER WITHDRAWAL REPORTING PROGRAM HEADING: PL 2001, C. 619, §1 (NEW)

§470-A. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 619, §1 (NEW).]

1. **Nonconsumptive use.** "Nonconsumptive use" means any use of water that results in the water being discharged back into the same water source within 1/4 mile upstream or downstream from the point of withdrawal such that the difference between the volume withdrawn and the volume returned is no more than the threshold amount per day. This also includes withdrawals from groundwater that are discharged to a subsurface system or to a hydraulically connected surface water body such that no more than the threshold amount is consumed.

[2001, c. 619, §1 (NEW) .]

2. **Water source.** "Water source" means any river, stream or brook as defined in section 480-B, any lake or pond classified GPA pursuant to section 465-A or groundwater located anywhere in the State.

[2001, c. 619, §1 (NEW) .]

3. **Water withdrawal; withdrawal of water.** "Water withdrawal" or "withdrawal of water" means the removal, diversion or taking of water from a water source. All withdrawals of water from a particular water source that are made or controlled by a single person are considered to be a single withdrawal of water.

[2001, c. 619, §1 (NEW) .]

SECTION HISTORY
2001, c. 619, §1 (NEW).

§470-B. THRESHOLD VOLUMES FOR REPORTING

Except as otherwise provided in this article, a person making a water withdrawal in excess of the threshold volumes established in this section shall file a water withdrawal report in accordance with section 470-D covering the 12 months ending on the previous September 30th. The threshold volumes for reporting are as follows. [2001, c. 619, §1 (NEW).]

1. **Withdrawals from river, stream or brook.** The threshold volume for reporting on withdrawals from a river, stream or brook or groundwater within 500 feet of a river, stream or brook is 20,000 gallons on any day or, if the watershed area at the point of withdrawal exceeds 75 square miles, a volume in gallons per day for any day that is:

A. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on historical flows for rivers, streams or brooks with an adequate record of gauge data; [2001, c. 619, §1 (NEW).]

B. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on an estimated low-flow value for a river, stream or brook below a dam where flow is limited by gate settings or leakage; or [2001, c. 619, §1 (NEW).]

C. If paragraphs A and B are not applicable, then a threshold volume calculated using the formula V=168.031 times A to 1.1 power, where V is the volume in gallons per day and A is the watershed area in square miles. [2001, c. 619, §1 (NEW).]

[2001, c. 619, §1 (NEW) .]

2. **Withdrawals from GPA lake or pond or certain groundwater sources.** The threshold volume for reporting on withdrawals from a Class GPA lake or pond or groundwater within 500 feet of the lake or pond is determined from the following table:

Lake area in acres	gallons/ week
< 10	30,000
10-30	100,000
31-100	300,000
101-300	1,000,000
301-1000	3,000,000
1001-3000	10,000,000
3001-10,000	30,000,000

[2001, c. 619, §1 (NEW) .]

3. **Withdrawals from other groundwater sources.** The threshold volume for reporting on withdrawals from groundwater greater than 500 feet from a river, stream, brook or GPA classified lake or pond is 50,000 gallons on any day, unless the person making the water withdrawal demonstrates to the department's satisfaction that the withdrawal will not impact any adjacent surface water body.

[2001, c. 619, §1 (NEW) .]

SECTION HISTORY
2001, c. 619, §1 (NEW). 2001, c. 619, §1 (NEW).

§470-C. EXEMPTIONS

The following are exempt from the reporting requirements of this article: [2001, c. 619, §1 (NEW).]

1. **Nonconsumptive uses.** Nonconsumptive uses. Dams are explicitly exempt as nonconsumptive uses, including hydropower dams licensed by the Federal Energy Regulatory Commission, storage dams and dams subject to a water level setting order pursuant to sections 840 to 843;

[2001, c. 619, §1 (NEW) .]

2. **Household uses.** A water withdrawal for ordinary household uses;

[2001, c. 619, §1 (NEW) .]

3. **Public water systems.** A public water system that is regulated by the Department of Health and Human Services pursuant to Title 22, chapter 601;

[2001, c. 619, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

4. **Subject to existing reporting requirements.** Water withdrawals subject to water withdrawal reporting requirements established in any state permitting or licensing program prior to the effective date of this article, including, but not limited to, the site location of development laws, natural resources protection laws, Maine Land Use Regulation Commission laws and Maine waste discharge laws, provided that the water user files a notice of intent to be covered by this exemption on a form to be provided by the department;

[2001, c. 619, §1 (NEW) .]

5. **Public emergencies.** A water withdrawal from surface or groundwater for fire suppression or other public emergency purposes;

[2001, c. 619, §1 (NEW) .]

6. **Commercial or industrial storage ponds.** A water withdrawal from a storage pond or water supply system in existence prior to the effective date of this article provided that the withdrawal is for a commercial or industrial use, the water user has filed a water use plan as part of a state license application and the water user files a notice of intent to be covered by this exemption on a form to be provided by the department;

[2001, c. 619, §1 (NEW) .]

7. **Off-stream storage ponds.** A water withdrawal from an artificial storage pond that does not have a river, stream or brook as an inlet or outlet, constructed for the purpose of storing water for crop irrigation or other uses;

[2001, c. 619, §1 (NEW) .]

8. **In-stream storage ponds.** A water withdrawal from an artificial pond constructed in a stream channel that is subject to a minimum-flow release requirement in an existing permit if the water user files a notice of intent to be covered by this exemption on a form to be provided by the department;

[2011, c. 120, §5 (AMD) .]

9. **Duplication of reporting.** A water withdrawal that is reported to any other state agency under any program requiring substantially similar data if the other agency has entered into a memorandum of agreement with the department for the collection and sharing of that data; and

[2011, c. 120, §5 (AMD) .]

10. **Agricultural producers.** An agricultural producer that is subject to rules adopted under section 470-H and the provisions of Title 7, section 353.

[2011, c. 120, §6 (NEW) .]

SECTION HISTORY
2001, c. 619, §1 (NEW). 2003, c. 689, §B6 (REV). 2011, c. 120, §§5, 6 (AMD).

§470-D. FILING OF REPORTS BY USERS; AGGREGATION OF DATA

Unless exempted under section 470-C, a person withdrawing more than the threshold volume of water established in this article must file an annual water withdrawal report on December 1, 2003 and on every December 1st thereafter as provided in this section. [2001, c. 619, §1 (NEW).]

Water withdrawal reports must be submitted to either the Commissioner of Environmental Protection, the Commissioner of Agriculture, Conservation and Forestry or the Commissioner of Health and Human Services in a form or manner prescribed by that commissioner. No later than January 1, 2003, those commissioners shall jointly publish a list indicating which classes of users are to report to which department. The form and manner of reporting must be determined by each commissioner except that the required information must be collected from each user above the threshold and in a manner that allows that data to be combined with data collected by the other commissioners. The reports must include information on actual and anticipated water use, the identification of the water source, the location of the withdrawal including the distance of each groundwater withdrawal from the nearest surface water source, the volume of the withdrawals that might be reasonably anticipated under maximum high-demand conditions and the number of days those withdrawals may occur each month and the location and volume of each point of discharge. The reporting may allow volumes to be reported in ranges established by the commissioners and reported volumes may be calculated estimates of volumes. The board, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services may adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement the reporting provisions of this article. [2011, c. 120, §7 (AMD); 2011, c. 657, Pt. W, §5, 6 (REV).]

Individual water withdrawal reports filed under this article are confidential and are not public records as defined in Title 1, section 402, subsection 3. [2001, c. 619, §1 (NEW).]

SECTION HISTORY
2001, c. 619, §1 (NEW). 2003, c. 689, §§B6,7 (REV). 2011, c. 120, §7 (AMD). 2011, c. 657, Pt. W, §5, 6 (REV).

§470-E. WATER USE STANDARDS

(REPEALED)

SECTION HISTORY
2001, c. 619, §1 (NEW). MRSA T. 38, §470E (RP).

§470-F. LOCAL WATER USE POLICIES ENCOURAGED

The department shall encourage and cooperate with state, regional or municipal agencies, boards or organizations in the development and adoption of regional or local water use policies that protect the environment from excessive drawdown of water sources during low-flow periods. The department shall encourage those entities, in developing those policies, to review previously adopted low-flow policies. [2009, c. 369, Pt. A, §35 (AMD).]

SECTION HISTORY
2001, c. 619, §1 (NEW). 2009, c. 369, Pt. A, §35 (AMD).

§470-G. REPORTING AND USE OF COLLECTED DATA

(REPEALED)

SECTION HISTORY
2001, c. 619, §1 (NEW). 2003, c. 689, §B7 (REV). 2007, c. 619, §6 (RPR). 2011, c. 655, Pt. EE, §30 (AFF). 2011, c. 655, Pt. EE, §23 (RP).

§470-H. IN-STREAM FLOW AND WATER LEVEL REQUIREMENTS; RULES

The board shall adopt rules that establish water use requirements for maintaining in-stream flows and lake or pond water levels that are protective of aquatic life and other uses and that establish criteria for designating watersheds most at risk from cumulative water use. Requirements adopted under this section must be based on the natural variation of flows and water levels, allowing variances if use will still be protective of water quality within that classification. The board shall incorporate into the rules a mechanism to reconcile, to the extent feasible, the objective of protecting aquatic life and other uses as provided for in this section and the objective of allowing community water systems to use their existing water supplies to provide water service. Before the department issues a community water system withdrawal certificate, the certificate must be reviewed and approved by the drinking water program of the Department of Health and Human Services, with technical assistance from the Public Advocate on economic issues, to ensure that conditions contained in the certificate are economically affordable and technically feasible and will not jeopardize the safety, dependability or financial viability of the community water system. Except as necessary to meet the requirements in this section and rules adopted pursuant to this section, a community water system does not forfeit the rights, powers or responsibilities related to water use that are contained in its legislative charter or similar authority. Rules adopted under this section are state water use rules in accordance with the authority reserved to states under the federal Clean Water Act. A water user that fails to comply with the requirements of the rules adopted under this section is subject to penalties pursuant to section 349. For purposes of this section, "community water system" has the same meaning as in Title 22, section 2660-B, subsection 2. Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 235, §1 (AMD).]

SECTION HISTORY
2005, c. 330, §12 (NEW). 2007, c. 235, §1 (AMD).

Article 5: ALTERATION OF COASTAL WETLANDS HEADING: PL 1987, C. 809, §1 (RP)

§471. PROHIBITIONS

(REPEALED)

SECTION HISTORY
1975, c. 595, §3 (NEW). 1979, c. 504, §1 (AMD). 1987, c. 809, §1 (RP).

§472. DEFINITION

(REPEALED)

SECTION HISTORY
1975, c. 595, §3 (NEW). 1979, c. 504, §2 (RPR). 1987, c. 809, §1 (RP).

§473. PERMIT GRANTING AUTHORITY

(REPEALED)

SECTION HISTORY
1975, c. 595, §3 (NEW). 1987, c. 192, §24 (AMD). 1987, c. 809, §1 (RP).

§474. PERMITS; STANDARDS

(REPEALED)

SECTION HISTORY
1975, c. 595, §3 (NEW). 1979, c. 504, §3 (RPR). 1983, c. 453, §5 (AMD). 1985, c. 649, (AMD). 1987, c. 809, §1 (RP).

§475. PENALTIES

(REPEALED)

SECTION HISTORY
1975, c. 595, §3 (NEW). 1977, c. 300, §28 (AMD). 1983, c. 566, §30 (AMD). 1987, c. 809, §1 (RP).

§476. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1975, c. 595, §3 (NEW). 1981, c. 470, §A165 (AMD). 1987, c. 809, §1 (RP).

§477. INJUNCTION; RESTORATION

(REPEALED)

SECTION HISTORY
1975, c. 595, §3 (NEW). 1977, c. 300, §29 (RP).

§478. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1975, c. 595, §3 (NEW). 1987, c. 809, §1 (RP).

Article 5-A: NATURAL RESOURCES PROTECTION ACT
HEADING: PL 1987, C. 809, §2 (NEW); 2007, C. 290, §14

§480-A. FINDINGS; PURPOSE; SHORT TITLE

The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State. [1987, c. 809, §2 (NEW).]

The Legislature further finds and declares that there is a need to facilitate research, develop management programs and establish sound environmental standards that will prevent the degradation of and encourage the enhancement of these resources. It is the intention of the Legislature that existing programs related to Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and sand dunes systems continue and that the Department of Environmental Protection provide coordination and vigorous leadership to develop programs to achieve the purposes of this article. The well-being of the citizens of this State requires the development and maintenance of an efficient system of administering this article to minimize delays and difficulties in evaluating alterations of these resource areas. [1987, c. 809, §2 (NEW).]

The Legislature further finds and declares that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life. [1987, c. 809, §2 (NEW).]

This article is known and may be cited as "the Natural Resources Protection Act." [2007, c. 290, §1 (NEW).]

SECTION HISTORY
1987, c. 809, §2 (NEW). 2007, c. 290, §1 (AMD).

§480-B. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 809, §2 (NEW).]

1. **Coastal sand dune systems.** "Coastal sand dune systems" means sand and gravel deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand and gravel areas deposited by wave or wind action. Coastal sand dune systems may extend into coastal wetlands.

[1997, c. 603, §1 (AMD) .]

1-A. **Community public water system.** "Community public water system" has the same meaning as "community water system" has in Title 22, section 2660-B, subsection 2.

[2007, c. 353, §6 (NEW) .]

1-B. **Community public water system primary protection area.** "Community public water system primary protection area" means:

A. The area within 250 feet, measured horizontally, of a great pond that is a source for a community public water system; [2007, c. 353, §7 (NEW).]

B. The area within 250 feet, measured horizontally, of a river, stream or brook that is a source for a community public water system for a distance of 1/2 mile upstream from the intake of the public water supply; or [2007, c. 353, §7 (NEW).]

C. A source water protection area identified and mapped by the Department of Health and Human Services as described under Title 30-A, section 2001, subsection 20-A. [2007, c. 353, §7 (NEW).]

[2007, c. 353, §7 (NEW) .]

2. **Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

[2005, c. 330, §13 (AMD) .]

2-A. **Dredge spoils.** "Dredge spoils" means sand, silt, mud, gravel, rock or other sediment or material that is moved from coastal wetlands.

[1989, c. 656, §2 (NEW) .]

2-B. **Forest management activities.** "Forest management activities" means timber stand improvement, timber harvesting activities, forest products harvesting and regeneration of forest stands. For the purposes of this definition, "timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of

roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. For the purposes of this definition, "timber harvesting" means the cutting or removal of timber for the primary purpose of selling or processing forest products.

[2011, c. 599, §11 (AMD) .]

2-C. **Forested wetland.** "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

[1989, c. 838, §3 (NEW) .]

2-D. **Floodplain wetland.** "Floodplain wetland" means lands adjacent to a river, stream or brook that are inundated with floodwater during a 100-year flood event and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.

[1991, c. 214, §1 (NEW) .]

2-E. **Footprint.** "Footprint" means the outline of a structure on the ground, except that for a building "footprint" means the outline that would be created on the ground by extending the exterior walls of a building to the ground surface.

[2011, c. 538, §8 (AMD) .]

3. **Fragile mountain areas.** "Fragile mountain areas" means areas above 2,700 feet in elevation from mean sea level.

[1987, c. 809, §2 (NEW) .]

4. **Freshwater wetlands.** "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are:

A. [1995, c. 460, §12 (AFF); 1995, c. 460, §1 (RP).]

B. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and [1995, c. 460, §1 (AMD); 1995, c. 460, §12 (AFF).]

C. Not considered part of a great pond, coastal wetland, river, stream or brook. [1987, c. 809, §2 (NEW).]

[1995, c. 460, §1 (AMD); 1995, c. 460, §12 (AFF) .]

5. **Great ponds.** "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres.

[1987, c. 809, §2 (NEW) .]

5-A. **Mooring.** "Mooring" means equipment, such as anchors, chains and lines, for holding fast a vessel, aircraft, floating dock or buoy.

[1993, c. 187, §1 (NEW) .]

5-B. **Impervious area.** "Impervious area" means an area that is a building, parking lot, roadway or similar constructed area. "Impervious area" does not mean a deck or patio.

[2011, c. 64, §2 (NEW) .]

5-C. **Motorized recreational gold prospecting.** "Motorized recreational gold prospecting" means the operation of small-scale, motorized equipment for the removal, separation, refinement and redeposition of sediments and other substrates occurring below the normal high-water mark of a stream for the noncommercial, recreational discovery and collecting of gold specimens. "Motorized recreational gold prospecting" includes, but is not limited to, the operation of a motorized suction dredge, sluice, pump, rocker box or winch, individually or together.

[2013, c. 536, §1 (NEW) .]

6. **Normal high water line.** "Normal high water line" means that line along the shore of a great pond, river, stream, brook or other nontidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of great ponds, all land below the normal high water line shall be considered the bottom of the great pond for the purposes of this article.

[1987, c. 809, §2 (NEW) .]

6-A. **Offshore wind power project.** "Offshore wind power project" means a project that uses a windmill or wind turbine to convert wind energy to electrical energy and is located in whole or in part within coastal wetlands. "Offshore wind power project" includes both generating facilities as defined by Title 35-A, section 3451, subsection 5 and associated facilities as defined by Title 35-A, section 3451, subsection 1, without regard to whether the electrical energy is for sale or use by a person other than the generator.

[2009, c. 615, Pt. E, §6 (NEW) .]

7. **Permanent structure.** "Permanent structure" means any structure that is designed to remain at or that is constructed or erected with a fixed location or that is attached to a structure with a fixed location for a period exceeding 7 months within any 12-month period, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

[2007, c. 290, §2 (AMD) .]

8. **Protected natural resource.** "Protected natural resource" means coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks, as these terms are defined in this article.

[2007, c. 1, §20 (COR) .]

8-A. **Transportation reconstruction or replacement project.** "Transportation reconstruction or replacement project" means the improvement of an existing transportation facility to modern design standards without expanding its function or creating any additional roadways, facilities or structures. These projects are limited to:

A. Highway or bridge alignment changes not exceeding a distance of 200 feet between the old and new center lines in any protected natural resource; [1989, c. 814, §1 (NEW).]

B. Replacement or rehabilitation of the roadway base, pavement and drainage; [1989, c. 814, §1 (NEW).]

C. Replacement or rehabilitation of bridges or piers; [1989, c. 814, §1 (NEW).]

D. The addition of climbing lanes, and turning lanes of less than 1,000 feet in length in a protected natural resource; and [1989, c. 814, §1 (NEW).]

E. Rehabilitation or repair of state-owned railroads. [1989, c. 814, §1 (NEW).]

[1989, c. 814, §1 (NEW) .]

9. **River, stream or brook.** "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map. [1995, c. 92, §2 (NEW).]

B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years. [2001, c. 618, §1 (AMD).]

C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water. [1995, c. 92, §2 (NEW).]

D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed. [1995, c. 92, §2 (NEW).]

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation. [1995, c. 92, §2 (NEW).]

"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

[2001, c. 618, §1 (AMD) .]

9-A. **Significant groundwater well.** "Significant groundwater well" is defined as follows.

A. "Significant groundwater well" means any well, wellfield, excavation or other structure, device or method used to obtain groundwater that is:

(1) Withdrawing at least 75,000 gallons during any week or at least 50,000 gallons on any day and is located at a distance of 500 feet or less from a coastal or freshwater wetland, great pond, significant vernal pool habitat, water supply well not owned or controlled by the applicant or river, stream or brook; or

(2) Withdrawing at least 216,000 gallons during any week or at least 144,000 gallons on any day and is located at a distance of more than 500 feet from a coastal or freshwater wetland, great pond, significant vernal pool habitat, water supply well not owned or controlled by the applicant or river, stream or brook.

Withdrawals of water for firefighting or preoperational capacity testing are not applied toward these thresholds. [2009, c. 295, §1 (AMD).]

B. "Significant groundwater well" does not include:

(1) A public water system as defined in Title 22, section 2601, subsection 8, except that "significant groundwater well" includes:

(a) A public water system used solely to bottle water for sale; and

(b) Any portion of a public water system that is:

(i) Constructed on or after January 1, 2009;

(ii) Used solely to bottle water for sale; and

(iii) Not connected to another portion of the public water system through pipes intended to convey water.

For purposes of this paragraph, a public water system that is used solely to bottle water for sale includes a public water system that bottles water for sale and may provide a de minimus amount of water for other purposes, such as employee or other use, as determined by the department;

(2) Individual home domestic supply;

(3) Agricultural use or storage;

(3-A) Dewatering of a mining operation;

(4) A development or part of a development requiring a permit pursuant to article 6, article 7 or article 8-A; or

(5) A structure or development requiring a permit from the Maine Land Use Planning Commission. [2009, c. 295, §1 (AMD); 2011, c. 682, §38 (REV).]

[2009, c. 295, §1 (AMD); 2011, c. 682, §38 (REV) .]

10. **Significant wildlife habitat.** "Significant wildlife habitat" means:

A. The following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife or are within any other protected natural resource: habitat, as defined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal list of endangered or threatened animal species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife; and critical spawning and nursery areas for Atlantic salmon as defined by the Department of Marine Resources; and [2009, c. 561, §37 (AMD).]

B. Except for solely forest management activities, for which "significant wildlife habitat" is as defined and mapped in accordance with section 480-I by the Department of Inland Fisheries and Wildlife, the following areas that are defined by the Department of Inland Fisheries and Wildlife and are in conformance with criteria adopted by the Department of Environmental Protection or are within any other protected natural resource:

(1) Significant vernal pool habitat;

(2) High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and

(3) Shorebird nesting, feeding and staging areas. [2005, c. 116, §2 (NEW).]

[2009, c. 561, §37 (AMD) .]

11. **Working waterfront activity.** "Working waterfront activity" means an activity that qualifies a parcel of land as working waterfront land. "Working waterfront activity" includes commercial fishing activities; commercial boat building and repair; commercial hauling, launching, storage and berthing of boats; marine construction; marine freight and passenger transportation; and other similar commercial activities that are dependent on the waterfront. As used in this subsection, "commercial fishing activities" has the same meaning as in Title 36, section 1132, subsection 3.

[2013, c. 231, §3 (NEW) .]

12. **Working waterfront land.** "Working waterfront land" means a parcel of land, or a portion thereof, abutting water to the head of tide, land located in the intertidal zone or submerged land that is used primarily or predominantly to provide access to or support the conduct of a working waterfront activity.

[2013, c. 231, §3 (NEW) .]

SECTION HISTORY

1987, c. 809, §2 (NEW). 1989, c. 430, §3 (AMD). 1989, c. 656, §2 (AMD). 1989, c. 814, §1 (AMD). 1989, c. 838, §3 (AMD). 1991, c. 214, §1 (AMD). 1991, c. 693, §1 (AMD). 1993, c. 187, §1 (AMD). 1993, c. 296, §1 (AMD). 1995, c. 92, §2 (AMD). 1995, c. 406, §13 (AMD). 1995, c. 460, §§1-3 (AMD). 1995, c. 460, §12 (AFF). 1995, c. 625, §A51 (AMD). 1997, c. 603, §1 (AMD). 1999, c. 243, §11 (AMD). 1999, c. 401, §BB17 (AMD). 2001, c. 618, §1 (AMD). 2005, c. 116, §§1, 2 (AMD). 2005, c. 330, §13 (AMD). RR 2007, c. 1, §20 (COR). 2007, c. 290, §2 (AMD). 2007, c. 353, §§6-8 (AMD). 2007, c. 399, §10 (AMD). 2009, c. 295, §1 (AMD). 2009, c. 561, §37 (AMD). 2009, c. 615, Pt. E, §6 (AMD). 2011, c. 64, §§1, 2 (AMD). 2011, c. 538, §8 (AMD). 2011, c. 599, §11 (AMD). 2011, c. 682, §38 (REV). 2013, c. 231, §3 (AMD). 2013, c. 536, §1 (AMD).

§480-C. PROHIBITIONS

1. **Prohibition.** A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the department if the activity is located in, on or over any protected natural resource or is located adjacent to any of the following:

A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or [1995, c. 460, §12 (AFF); 1995, c. 460, §4 (RPR).]

B. Freshwater wetlands consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peatlands dominated by shrubs, sedges and sphagnum moss. [1995, c. 460, §12 (AFF); 1995, c. 460, §4 (RPR).]

A person may not perform or cause to be performed any activity in violation of the terms or conditions of a permit.

[2001, c. 618, §2 (AMD) .]

2. **Activities requiring a permit.** The following activities require a permit:

A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials; [1987, c. 809, §2 (NEW).]

B. Draining or otherwise dewatering; [1987, c. 809, §2 (NEW).]

C. Filling, including adding sand or other material to a sand dune; or [1987, c. 809, §2 (NEW).]

D. Any construction, repair or alteration of any permanent structure. [1987, c. 809, §2 (NEW).]

[1987, c. 809, §2 (NEW) .]

3. **Application.**

[1993, c. 721, Pt. F, §1 (RP); 1993, c. 721, Pt. H, §1 (AFF) .]

4. **Significant groundwater well.** A person may not perform or cause to be performed the establishment or operation of a significant groundwater well without first obtaining a permit from the department.

[2007, c. 399, §11 (NEW) .]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 430, §4 (AMD). 1989, c. 838, §4 (AMD). 1989, c. 890, §§A40,B70 (AMD). 1993, c. 721, §F1 (AMD). 1993, c. 721, §H1 (AFF). 1995, c. 460, §4 (AMD). 1995, c. 460, §12 (AFF). 2001, c. 618, §2 (AMD). 2007, c. 399, §11 (AMD).

§480-D. STANDARDS

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 1 to 11, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5. [2009, c. 615, Pt. E, §7 (AMD).]

1. **Existing uses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or an offshore wind power project, the department shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452. In making a decision under this subsection regarding an application for an offshore wind power project, the department may not consider whether the project meets the specific criteria designated in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the department's review of related potential impacts of the project as determined by the department.

[2009, c. 615, Pt. E, §8 (AMD) .]

2. **Soil erosion.** The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

[1989, c. 430, §5 (AMD) .]

3. **Harm to habitats; fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether mining, as defined in section 490-MM, subsection 11, will comply with this subsection, the department shall review an analysis of alternatives submitted by the applicant. For purposes of this subsection, a practicable alternative to mining, as defined in section 490-MM, subsection 11, that is less damaging to the environment is not considered to exist. The department may consider alternatives associated with the activity, including alternative design and operational measures, in its evaluation of whether the activity avoided and minimized impacts to the maximum extent practicable.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity.

For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

A. Avoiding an impact altogether by not taking a certain action or parts of an action; [1987, c. 809, §2 (NEW).]

B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity; [1987, c. 809, §2 (NEW).]

C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment; [1987, c. 809, §2 (NEW).]

D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or [1987, c. 809, §2 (NEW).]

E. Compensating for an impact by replacing the affected significant wildlife habitat. [1987, c. 809, §2 (NEW).]

[2011, c. 653, §15 (AMD); 2011, c. 653, §33 (AFF) .]

4. **Interfere with natural water flow.** The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

[1987, c. 809, §2 (NEW) .]

5. **Lower water quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.

[1987, c. 809, §2 (NEW) .]

6. **Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

[1987, c. 809, §2 (NEW) .]

7. **Sand or gravel supply.** If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

[2003, c. 551, §8 (AMD) .]

8. **Outstanding river segments.** If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

[1987, c. 809, §2 (NEW) .]

9. **Dredging.** If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable. The Commissioner of Marine Resources shall provide the department with an assessment of the impacts on the fishing industry of a proposed dredging operation in the coastal wetlands. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the municipalities in which the dredging operation would take place.

If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources will hold a hearing. If 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the department must take into consideration the assessment provided by the Commissioner of Marine Resources. The permit must require the applicant to:

A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route; [1997, c. 164, §1 (NEW); 1997, c. 164, §2 (AFF).]

B. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and [1997, c. 164, §1 (NEW); 1997, c. 164, §2 (AFF).]

C. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation. [1997, c. 164, §1 (NEW); 1997, c. 164, §2 (AFF).]

[2001, c. 248, §1 (AMD) .]

10. **Significant groundwater well.** If the proposed activity includes a significant groundwater well, the applicant must demonstrate that the activity will not have an undue unreasonable effect on waters of the State, as defined in section 361-A, subsection 7, water-related natural resources and existing uses, including, but not limited to, public or private wells within the anticipated zone of contribution to the withdrawal. In making findings under this subsection, the department shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

[2007, c. 399, §12 (NEW) .]

11. **Offshore wind power project.** This subsection applies to an offshore wind power project.

A. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate that the generating facilities:

(1) Will meet the requirements of the noise control rules adopted by the board pursuant to article 6;

(2) Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and

(3) Will be constructed with setbacks adequate to protect public safety, while maintaining existing uses to the extent practicable. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities. [2009, c. 615, Pt. E, §9 (NEW).]

B. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate adequate financial capacity to decommission the offshore wind power project. [2009, c. 615, Pt. E, §9 (NEW).]

C. An applicant for an offshore wind power project is not required to demonstrate compliance with requirements of this article that the department determines are addressed by criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6). [2009, c. 615, Pt. E, §9 (NEW).]

[2009, c. 615, Pt. E, §9 (NEW) .]

SECTION HISTORY

1987, c. 809, §2 (NEW). 1989, c. 430, §5 (AMD). 1989, c. 656, §3 (AMD). 1989, c. 890, §§A40,B71,72 (AMD). 1993, c. 296, §2 (AMD). 1997, c. 164, §1 (AMD). 1997, c. 164, §2 (AFF). 2001, c. 248, §1 (AMD). 2001, c. 618, §3 (AMD). 2003, c. 551, §8 (AMD). 2007, c. 353, §9 (AMD). 2007, c. 399, §12 (AMD). 2007, c. 661, Pt. B, §10 (AMD). 2009, c. 615, Pt. E, §§7-9 (AMD). 2011, c. 653, §15 (AMD). 2011, c. 653, §33 (AFF).

§480-E. PERMIT PROCESSING REQUIREMENTS

The department shall process all permits under this article, except as provided in section 480-E-1, in accordance with chapter 2, subchapter I, and the following requirements. [1999, c. 333, §19 (AMD).]

1. **Municipal and other notification.** The department shall provide notice according to this subsection.

A. Except as otherwise provided in paragraph B, the department may not review a permit without notifying the municipality in which the proposed activity is to occur. The municipality may provide comments within a reasonable period established by the commissioner and the commissioner shall consider any such comments. [2009, c. 615, Pt. E, §10 (NEW).]

B. The department may not review an application for an offshore wind power project without providing:

(1) Notice to the Maine Land Use Planning Commission when the proposed development is located within 3 miles of an area of land within the jurisdiction of the Maine Land Use Planning Commission; and

(2) Notice to any municipality with land located within 3 miles of the proposed development and any municipality in which development of associated facilities is proposed.

The Maine Land Use Planning Commission and any municipality notified pursuant to this paragraph may provide comments within a reasonable period established by the commissioner and the commissioner shall consider such comments. [2009, c. 615, Pt. E, §10 (NEW); 2011, c. 682, §38 (REV).]

[2009, c. 615, Pt. E, §10 (RPR); 2011, c. 682, §38 (REV) .]

2. **Water supply notification and review.** If the resource subject to alteration or the underlying ground water is utilized by a community public water system as a source of supply, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the community public water system and the drinking water program of the Department of Health and Human Services by certified mail and the department shall consider any comments concerning the application filed with the commissioner within a reasonable period, as established by the commissioner.

[2007, c. 353, §10 (AMD) .]

3. **Dredge spoils disposal.** The commissioner may not accept an application for dredge spoils disposal in a coastal wetland unless the following requirements are met.

A. The applicant has collected and tested the dredge spoils in accordance with a protocol approved by the commissioner. [1993, c. 296, §3 (AMD).]

B. The applicant has published notice of the proposed route by which the dredged materials are to be transported to the disposal site in a newspaper of general circulation in the area adjacent to the proposed route. [1989, c. 656, §4 (NEW).]

C. The application has been submitted to each municipality adjacent to any proposed marine and estuarine disposal site and route. [1989, c. 656, §4 (NEW).]

Any public hearing held pursuant to this application must be held in the municipality nearest to the proposed disposal site.

[1993, c. 296, §3 (AMD) .]

4. **Deferrals.** When winter conditions prevent the department or municipality from evaluating a permit application, the department or municipality, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. The applicant may not alter the resource area in question during the period of deferral.

[1989, c. 656, §4 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §73 (AMD) .]

5. **Permission of record owner.** The written permission of the record owner or owners of flowed land is considered sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose. The commissioner may not refuse to accept a permit application for any prohibited activity due to the lack of evidence of sufficient right, title or interest if the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of flowed land and has been unable to do so.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §73 (NEW) .]

6. **Permit display.** A person issued a permit pursuant to this article for activities in a great pond watershed shall have a copy of the permit on site while work authorized by that permit is being conducted. Activities exempt by rule from the requirements of this article are not required to be in compliance with this subsection.

[1991, c. 838, §24 (NEW) .]

7. **Individual permit; maintenance dredging.** Notwithstanding section 480-X, if an analysis of alternatives to the dredging project has been completed by the applicant within the previous 10 years pursuant to section 480-X and rules adopted to implement that section as part of an individual permit application, the applicant may update the previous analysis for purposes of obtaining an individual permit for maintenance dredging under this subsection.

[2011, c. 65, §1 (RPR) .]

8. **Permit by rule; maintenance dredging renewal.** An individual permit for maintenance dredging may be renewed with a permit by rule only if the area to be dredged is located in an area that was dredged within the last 10 years and the amount of material to be dredged does not exceed the amount approved by the individual permit.

[2011, c. 65, §2 (RPR) .]

9. **Permit; reconstruction in V-Zone.**

[2005, c. 548, §1 (RP) .]

10. **Road construction associated with forest management activities.**

[1999, c. 695, §3 (NEW); T. 38, §480-E, sub-§10 (RP) .]

11. **Road construction associated with forest management activities.** A permit by rule for road construction or maintenance associated with a forest management activity becomes effective upon receipt of notification by the department as long as:

A. The road construction or maintenance is eligible for a permit by rule; and [2003, c. 23, §1 (NEW).]

B. The notification is on a form provided by the department and is complete. [2003, c. 23, §1 (NEW).]

[2003, c. 23, §1 (NEW) .]

12. **Dam removal.** A person intending to file an application for a permit to remove an existing dam must attend a preapplication meeting with the department and must hold a public informational meeting prior to filing the application. The preapplication meeting and the public informational meeting must be held in accordance with the department's rules on the processing of applications.

[2003, c. 134, §1 (NEW) .]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 656, §4 (RPR). 1989, c. 890, §§A40,B73 (AMD). 1991, c. 838, §24 (AMD). 1993, c. 296, §3 (AMD). 1997, c. 240, §1 (AMD). 1999, c. 298, §1 (AMD). 1999, c. 333, §19 (AMD). 1999, c. 695, §3 (AMD). 2003, c. 23, §1 (AMD). 2003, c. 134, §1 (AMD). 2005, c. 548, §1 (AMD). 2007, c. 353, §10 (AMD). 2009, c. 615, Pt. E, §10 (AMD). 2011, c. 65, §§1, 2 (AMD). 2011, c. 682, §38 (REV). MRSA T.38, §480E/10 (AMD).

§480-E-1. DELEGATION OF PERMIT-GRANTING AUTHORITY TO MAINE LAND USE PLANNING COMMISSION

Except as provided in section 480-E-3, the Maine Land Use Planning Commission shall issue all permits under this article for activities that are located wholly within its jurisdiction and are not subject to review and approval by the department under any other article of this chapter, except as provided in subsection 3. [2011, c. 599, §12 (AMD); 2011, c. 682, §38 (REV).]

1. **Activity located in organized and unorganized area.** If an activity is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Planning Commission, that portion of the activity within the organized area is subject to department review under this article if that portion is an activity pursuant to this article. That portion of the activity within the jurisdiction of the Maine Land Use Planning Commission is not subject to the requirements of this article except as provided in subsection 2.

[2005, c. 330, §14 (NEW); 2011, c. 682, §38 (REV) .]

2. **Allowed use.** If an activity is located as described in subsection 1, the department may review that portion of the activity within the jurisdiction of the Maine Land Use Planning Commission if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Planning Commission is not required for those aspects of an activity approved by the department under this subsection.

[2005, c. 330, §14 (NEW); 2011, c. 682, §38 (REV) .]

3. **Offshore wind power project.** The department shall issue all permits under this article for offshore wind power projects except for community-based offshore wind energy projects as defined in Title 12, section 682, subsection 19.

[2009, c. 615, Pt. E, §12 (NEW) .]

4. **Projects reviewed under site location of development laws.** The department issues all permits required under this article for projects wholly or in part in the jurisdiction of the Maine Land Use Planning Commission that are subject to review and permitting under article 6.

[2011, c. 682, §30 (NEW); 2011, c. 682, §40 (AFF) .]

Review by the department of subsequent modifications to a development approved by the department is required, except that the Maine Land Use Planning Commission shall issue modifications to permits issued by the department pursuant to this article prior to September 18, 1999. The Maine Land Use Planning Commission shall process these permits and modifications in accordance with the provisions of Title 12, sections 681 to 689 and rules and standards adopted under those sections. [2005, c. 330, §14 (NEW); 2011, c. 682, §38 (REV).]

The Maine Land Use Planning Commission, in consultation with the department, shall annually review land use standards adopted by the commission to ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the commission's comprehensive land use plan. [2005, c. 330, §14 (RPR); 2011, c. 682, §38 (REV).]

SECTION HISTORY
1999, c. 333, §20 (NEW). 2001, c. 232, §15 (AMD). 2005, c. 330, §14 (RPR). 2009, c. 615, Pt. E, §§11, 12 (AMD). 2011, c. 599, §12 (AMD). 2011, c. 682, §30 (AMD). 2011, c. 682, §40 (AFF). 2011, c. 682, §38 (REV).

§480-E-2. DELEGATION OF REVIEW AUTHORITY TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OR TO A COMMUNITY PUBLIC WATER SYSTEM

The commissioner may delegate review authority to determine whether an activity that requires a permit because it is located within a community public water system primary protection area meets the standards in section 480-D, subsections 2 and 5 if the activity does not in whole or in part otherwise require a permit pursuant to section 480-C. The commissioner may delegate this review authority to the drinking water program of the Department of Health and Human Services or to a community public water system that demonstrates adequate technical capacity to perform the review. If review authority is delegated, the department shall issue or deny the permit and retains enforcement authority. [2007, c. 353, §11 (NEW).]

SECTION HISTORY
2007, c. 353, §11 (NEW).

§480-E-3. DELEGATION OF PERMIT-GRANTING AUTHORITY TO THE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY, BUREAU OF FORESTRY

Notwithstanding section 480-E-1, the Department of Agriculture, Conservation and Forestry, Bureau of Forestry shall issue all permits under this article for timber harvesting activities in all areas of the State that are not subject to review and approval by the department under any other article of this chapter. For the purposes of this section, "timber harvesting activities" means timber harvesting, the construction and

maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. Prior to issuing a permit under this section for the mining of gravel used for the construction or maintenance of roads used primarily for timber harvesting in an organized area of the State, the Bureau of Forestry shall consult with the department. [2013, c. 570, §1 (AMD).]

1. **Activity located in organized and unorganized area.**

[2013, c. 570, §1 (RP) .]

2. **Allowed use.**

[2013, c. 570, §1 (RP) .]

The Department of Agriculture, Conservation and Forestry, Bureau of Forestry, in consultation with the department, shall annually review standards for timber harvesting activities adopted by the Bureau of Forestry to ensure that the standards afford a level of protection consistent with the goals of this article and the goals of Title 12, chapter 805, subchapter 3-A. [2011, c. 599, §13 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV).]

SECTION HISTORY
2011, c. 599, §13 (NEW). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §23 (REV). 2013, c. 570, §1 (AMD).

§480-F. DELEGATION OF PERMIT-GRANTING AUTHORITY TO MUNICIPALITY; HOME RULE

1. **Delegation.** A municipality may apply to the board for authority to issue all permits under this article or for partial authority to process applications for permits involving activities in specified protected natural resources or for activities included in chapter 305 of the department's rules, addressing permit by rule. The board shall grant such authority if it finds that the municipality has:

A. Established a planning board and a board of appeals; [1997, c. 364, §19 (RPR).]

B. Adopted a comprehensive plan and related land use ordinances determined by the former State Planning Office or the Department of Agriculture, Conservation and Forestry to be consistent with the criteria set forth in Title 30-A, chapter 187, subchapter 2 and determined by the commissioner to be at least as stringent as criteria set forth in section 480-D; [2011, c. 655, Pt. FF, §11 (AMD); 2011, c. 655, Pt. FF, §16 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

C. The financial, technical and legal resources to adequately review and analyze permit applications and oversee and enforce permit requirements; [1997, c. 364, §19 (RPR).]

D. Made provision by ordinance or rule for:

(1) Prompt notice to the commissioner of all applications received except for those activities included in chapter 305 of the department's rules, addressing permit by rule; and

(2) Prompt notice to the public upon receipt of application and written notification to the applicant and the commissioner of the issuance or denial of a permit stating the reasons for issuance or denial, except for those applications for which no public notice or written decision is required; [1997, c. 364, §19 (RPR).]

E. Provided an application form that is substantially the same as that provided by the commissioner; and [1997, c. 364, §19 (RPR).]

F. Appointed a code enforcement officer, certified pursuant to Title 30-A, section 4451. [2011, c. 655, Pt. FF, §12 (AMD); 2011, c. 655, Pt. FF, §16 (AFF).]

[2011, c. 655, Pt. FF, §§11, 12 (AMD); 2011, c. 655, Pt. FF, §16 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

2. **Procedure.** The following procedures apply to applications under this article processed by municipalities.

A. For applications processed by municipalities except those described in chapter 305 of the department's rules, no permit issued by a municipality may become effective until 30 days subsequent to its receipt by the commissioner, but, if approved by the department in less than 30 days, the effective date is the date of approval. A copy of the application for the permit and the permit issued by the municipality must be sent to the commissioner, immediately upon its issuance, by registered mail. The department shall review that permit and either approve, deny or modify it as necessary. If the department does not act within 30 days of its receipt of the permit by the municipality, this constitutes its approval and the permit is effective as issued, except that within this 30-day period the department may extend the time for its review an additional 30 days. [1997, c. 364, §20 (NEW).]

B. For those applications for approval of activities described in chapter 305 of the department's rules, a copy of the municipality's action to approve or deny an application must be sent to the commissioner within 14 days of the municipality's decision. [1997, c. 364, §20 (NEW).]

[1997, c. 364, §20 (RPR) .]

3. **Home rule.** Nothing in this article may be understood or interpreted to limit the home rule authority of a municipality to protect the natural resources of the municipality through enactment of standards that are more stringent than those found in this article.

[1987, c. 809, §2 (NEW) .]

4. **Joint enforcement.** Any person who violates any permit issued under this section is subject to the provisions of section 349 in addition to any penalties which the municipality may impose. The provisions of this section may be enforced by the commissioner and the municipality that issued the permit.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §74 (AMD) .]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 890, Pt. A, §40 (AFF). 1989, c. 890, Pt. B, §74 (AMD). 1995, c. 267, §1 (AMD). 1997, c. 364, §§19-20 (AMD). 2003, c. 688, §A43 (AMD). 2011, c. 655, Pt. FF, §§11, 12 (AMD). 2011, c. 655, Pt. FF, §16 (AFF). 2011, c. 657, Pt. W, §5 (REV).

§480-G. PERIODIC REVIEW OF DELEGATED AUTHORITY

If the board finds that a municipality has failed to satisfy one or more of the criteria listed in section 480-F, the board shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval. [1987, c. 809, §2 (NEW).]

If, at any time, the board determines that a municipality may be failing to exercise its permit- granting authority in accordance with its approval procedures or the purposes of this article, the board shall notify the municipality of the specific alleged deficiencies and shall order a public hearing of which adequate public notice shall be given to be held in the municipality to solicit public or official comment on the

alleged deficiencies. Following the hearing, if the board finds such deficiencies, the board shall revoke the municipality's permit-granting authority. The municipality may reapply for authority at any time. [1987, c. 809, §2 (NEW).]

SECTION HISTORY
1987, c. 809, §2 (NEW).

§480-H. RULES; PERFORMANCE AND USE STANDARDS

In fulfilling its responsibilities to adopt rules pursuant to section 341-D, the board, to the extent practicable, shall adopt performance and use standards for activities regulated by this article. These standards at a minimum must include: [1995, c. 347, §3 (AMD).]

1. **Department of Transportation projects.** By February 15, 1991, requirements for projects that are under the direction and supervision of the Department of Transportation that do not affect coastal wetlands or coastal sand dune systems and that involve only maintenance or repair of public transportation facilities or structures or transportation reconstruction or replacement projects.

A. The Department of Transportation shall meet the following conditions for any project undertaken pursuant to this subsection after February 15, 1991.

(1) All projects must be performed in a manner consistent with this article and in compliance with rules adopted by the board.

(2) The project may not unreasonably harm the protected natural resources covered by this article.

(3) The Department of Transportation and its contractors shall use erosion control measures to prevent sedimentation of any surface waters.

(4) The project may not block any fish passage in any watercourse.

(5) The project may not result in any excessive intrusion of the project into the protected natural resources. [1991, c. 66, Pt. A, §16 (RPR).]

B. Those activities that are exempt from permitting requirements under section 480-Q are not subject to this subsection. [1991, c. 66, Pt. A, §16 (RPR).]

C. The Department of Transportation must notify the commissioner before construction activities begin if the provisions of this subsection are utilized. [1991, c. 66, Pt. A, §16 (RPR).]

[1991, c. 66, Pt. A, §16 (RPR) .]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 814, §2 (AMD). 1989, c. 890, §§A40,B75 (AMD). 1991, c. 66, §A16 (RPR). 1995, c. 347, §3 (AMD).

§480-I. IDENTIFICATION OF FRESHWATER WETLANDS AND FRAGILE MOUNTAIN AREAS

1. **Identification by maps.** The commissioner shall map areas meeting the definition of fragile mountain areas set forth in this article. The data developed under section 546-B may be used for mapping significant wildlife habitat. Maps of significant wildlife habitats that have been produced by the Department of Inland Fisheries and Wildlife must be adopted by rule pursuant to the Maine Administrative Procedure Act by the department if:

A. The maps are of one or more of the types of areas listed in section 480-B, subsection 10, paragraph A; or [2007, c. 290, §3 (NEW).]

B. The maps are of one or more of the types of areas listed in section 480-B, subsection 10, paragraph B and are for purposes of determining when a permit is required for forest management activities. [2007, c. 290, §3 (NEW).]

[2007, c. 290, §3 (AMD) .]

2. **Procedures.** The maps and subsequent amendments to be adopted pursuant to the Maine Administrative Procedure Act are subject to the following procedures.

A. Preliminary maps of the affected area or amendments of a map must be sent to the municipal officers or their designees. [2007, c. 290, §4 (AMD).]

B. Upon receipt of the proposed maps, the municipal officers of each municipality shall take any action they determine appropriate to increase public participation in this identification and delineation, but shall return their comments to the commissioner within a 90-day period. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §77 (AMD).]

[2007, c. 290, §4 (AMD) .]

3. **Progress report.**

[2007, c. 655, §2 (RP) .]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 890, §§A40,B76,77 (AMD). 1991, c. 693, §2 (AMD). 1997, c. 230, §1 (AMD). 2007, c. 290, §§3, 4 (AMD). 2007, c. 655, §2 (AMD).

§480-J. MAPS

Maps delineating the boundaries of freshwater wetlands, significant wildlife habitat and fragile mountain areas that meet the criteria of this article shall be available at the offices of the municipality and of the regional council in which the resources are located. [1987, c. 809, §2 (NEW).]

SECTION HISTORY
1987, c. 809, §2 (NEW).

§480-K. DATA BANK

The commissioner shall maintain, in cooperation with other state agencies, a data bank containing all the known information pertaining to all resources of state significance, as enumerated in this article, within the State. All governmental agencies, state or federal, shall make available to the commissioner information in their possession relating to these resources. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §78 (AMD).]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 890, §§A40,B78 (AMD).

§480-L. RESEARCH

The commissioner, in cooperation with other state agencies, is authorized to conduct research and studies to determine how the resource values of resources of state significance can be restored and enhanced. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §78 (AMD).]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 890, §§A40,B78 (AMD).

§480-M. FUNDS

The department is the public agency of the State authorized to accept funds, public and private, for the purposes of this article. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §78 (AMD).]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 890, §§A40,B78 (AMD).

§480-N. LAKE RESTORATION AND PROTECTION FUND

1. **Fund purposes and administration.** There is established a nonlapsing Lake Restoration and Protection Fund, from which the commissioner may pay up to 50% of the eligible costs incurred in a lake restoration or protection project, except that projects addressing technical assistance, public education or research issues may be paid up to 100%. Eligible costs include all costs except those related to land acquisition, legal fees and debt service. All money credited to that fund must be used by the commissioner for projects to improve or maintain the quality of lake waters in the State and for no other purpose. The commissioner may authorize the State Controller to draw a warrant for such funds as may be necessary to pay the lawful expenses of the lake restoration or protection project, up to the limits of the money duly authorized. Any balance remaining in the fund must continue without lapse from year to year and remain available for the purpose for which the fund is established and for no other purpose.

[1989, c. 502, Pt. A, §145 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §79 (AMD) .]

2. **Money.** Money in the Lake Restoration and Protection Fund may not be used for projects in or on lakes for which public access is not provided.

[1987, c. 809, §2 (NEW) .]

3. **Intensive staffing program.** The commissioner shall establish an intensive staffing program to provide adequate staffing at both the state and regional levels. The commissioner shall provide technical information and guidance and the regional agencies shall assist with the adoption of revised comprehensive plans, standards and local ordinances by local governments.

[1989, c. 502, Pt. A, §146 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §80 (AMD) .]

4. **Public education program.** The commissioner shall develop a coordinated public education program for school children involving extensive use of the media.

[1989, c. 502, Pt. A, §146 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §80 (AMD) .]

5. **Research.** The commissioner shall encourage internal research focused on the following statewide topics:

A. Lake vulnerability, particularly as it relates to noncultural features of the watershed; [1989, c. 502, Pt. A, §146 (NEW).]

B. The effectiveness and design of the best management practices to control phosphorous pollution; and [1989, c. 502, Pt. A, §146 (NEW).]

C. New lake and watershed diagnostic tools. [1989, c. 502, Pt. A, §146 (NEW).]

[1989, c. 502, Pt. A, §146 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §80 (AMD) .]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 502, §§A145,A146 (AMD). 1989, c. 890, §§A40,B79,80 (AMD).

§480-O. BULKHEADS AND RETAINING WALLS ON SCARBOROUGH RIVER; PERMIT REQUIREMENTS

Nothing in this article prohibits the rebuilding, replacement or new construction of a bulkhead, retaining wall or similar structure, provided that the applicant for a permit demonstrates to the department or municipality, as appropriate, that the following conditions are met. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §81 (AMD).]

1. **Location.** The bulkhead or similar structure to be constructed, rebuilt or replaced is located along some or all of the north-northeasterly property lines of land abutting the Scarborough River from the jetty to the Scarborough town landing.

[1987, c. 809, §2 (NEW) .]

2. **Termination.** The terminus of any bulkhead or similar structure, including any wing wall, unless connected to another bulkhead or similar structure, shall terminate at least 25 feet from any abutting property.

[1987, c. 809, §2 (NEW) .]

Any permit issued under this section for a bulkhead or similar structure which is not connected at both ends to another bulkhead or similar structure shall be subject to only the standard conditions applicable to all permits granted under this article as well as the following conditions. The permit applicant or applicants shall be responsible for reasonably maintaining the bulkhead or similar structure and for repairing damage to the frontal sand dune which occurs between the end of the bulkhead or similar structure and the Scarborough town landing and which is caused by the existence of the bulkhead or similar structure. The applicant or applicants shall submit a report prepared by a state-certified geologist to the commissioner every 2nd year following issuance of the permit or until such time as the commissioner deems the report need not be filed or may be filed at longer intervals. The report shall describe the status of the frontal sand dune between the end of the bulkhead or similar structure and the Scarborough town landing and contain whatever recommendations the geologist determines are reasonably required to maintain the frontal sand dune in that area. The applicant or applicants shall follow the recommendations. [1987, c. 809, §2 (NEW).]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 890, §§A40,B81 (AMD).

§480-P. SPECIAL PROTECTION FOR OUTSTANDING RIVER SEGMENTS

In accordance with Title 12, section 402, outstanding river segments shall include: [1987, c. 809, §2 (NEW).]

1. **Aroostook River.** The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S., including its tributaries the Big Machias River from the Aroostook River to the Ashland and Garfield Plantation town line and the St. Croix Stream from the Aroostook River in Masardis to the Masardis and T.9, R.5, W.E.L.S. town line;

[1987, c. 809, §2 (NEW) .]

2. **Carrabassett River.** The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;

[1987, c. 809, §2 (NEW) .]

3. **Crooked River.** The Crooked River, including the Songo River, from its inlet into Sebago Lake in Casco to the Waterford and Albany Township town lines;

[1987, c. 809, §2 (NEW) .]

4. **Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;

[1987, c. 809, §2 (NEW) .]

5. **East Machias River.** The East Machias River, including the Maine River, from the old powerhouse in East Machias to the East Machias and T.18, E.D., B.P.P. town line, from the T. 19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond;

[1987, c. 809, §2 (NEW) .]

6. **Fish River.** The Fish River from the former bridge site at the dead end of Mill Street in Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;

[2007, c. 292, §24 (AMD) .]

7. **Kennebago River.** The Kennebago River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line;

[1987, c. 809, §2 (NEW) .]

8. **Kennebec River.** The Kennebec River from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake;

[1987, c. 809, §2 (NEW) .]

9. **Machias River.** The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line, including its tributaries the Old Stream from the Machias River to the northern most crossing of the Wesley and T.31, M.D., B.P.P. town line, excluding the segments in T.25, M.D., B.P.P. and T.31, M.D., B.P.P.;

[1987, c. 809, §2 (NEW) .]

10. **Mattawamkeag River.** The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line and from the Reed Plantation and Bancroft town line to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville and T.3, R.3, W.E.L.S. town line and from its inlet into Upper Mattawamkeag Lake in Island Falls to the Hersey and Moro Plantation town line; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township town line and from the T.4, R.3, W.E.L.S. and Oakfield town line to the Smyrna and Dudley Township town line; the Fish Stream from the West Branch of the Mattawamkeag River to the Crystal and Patten town line; the Molunkus Stream from the Silver Ridge Township and Benedicta town line to the East

Branch Molunkus Stream; the Macwahoc Stream from the Silver Ridge Township and Sherman town line to the outlet of Macwahoc Lake; and the Baskehegan Stream from the Mattawamkeag River to the Danforth and Brookton Township town line, and from the Brookton Township and Topsfield town line to the Topsfield and Kossuth Township town line, excluding Baskehegan Lake and Crooked Brook Flowage;

[1987, c. 809, §2 (NEW) .]

11. **Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town line, excluding Beddington Lake;

[1987, c. 809, §2 (NEW) .]

12. **Penobscot River.** The Penobscot River from the Bangor Dam in Bangor to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line;

[1987, c. 809, §2 (NEW) .]

13. **Piscataquis River.** The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line, including its tributaries the East and West Branches of the Piscataquis River from the Blanchard Plantation and Shirley town line to the Shirley and Moosehead Junction Township town line; the Seboeis Stream from its confluence with the Piscataquis River in Howland to the Howland and Mattamiscontis Township town line and from the Mattamiscontis and Maxfield town line to the Maxfield and Seboeis Plantation town line, excluding Shirley Pond and West Shirley Bog;

[2007, c. 292, §25 (AMD) .]

14. **Pleasant River.** The Pleasant River from the dam in Columbia Falls, formerly the Hathaway Dam, to the Columbia and T.18, M.D., B.P.P. town line and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake in Beddington;

[1987, c. 809, §2 (NEW) .]

15. **Rapid River.** The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River;

[1987, c. 809, §2 (NEW) .]

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

[1987, c. 809, §2 (NEW) .]

17. **St. Croix River.** The St. Croix River from the cotton mill dam in Milltown to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage;

[1987, c. 809, §2 (NEW) .]

18. **St. George River.** The St. George River from the Route 90 bridge in Warren to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;

[1987, c. 809, §2 (NEW) .]

19. **St. John River.** The St. John River from the Hamlin Plantation and Van Buren town line to the Fort Kent and St. John Plantation town line and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line;

[1987, c. 809, §2 (NEW) .]

20. **Sandy River.** The Sandy River from the Kennebec River to the Madrid and Township E town line;

[1987, c. 809, §2 (NEW) .]

21. **Sheepscot River.** The Sheepscot River from the Head Tide Dam in Alna to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot River from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;

[1987, c. 809, §2 (NEW) .]

22. **West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township town line; and

[1987, c. 809, §2 (NEW) .]

23. **West Branch Union River.** The West Branch Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

[1987, c. 809, §2 (NEW) .]

For the purpose of receiving a permit for a transmission line or a pipeline under this article, outstanding river segments also include any other outstanding river and stream segments described in Title 12, section 403. [2003, c. 131, §1 (NEW).]

SECTION HISTORY
1987, c. 809, §2 (NEW). 2003, c. 131, §1 (AMD). 2007, c. 292, §24 (AMD). 2007, c. 292, §25 (AMD).

§480-Q. ACTIVITIES FOR WHICH A PERMIT IS NOT REQUIRED

A permit is not required for the following activities if the activity takes place solely in the area specified below: [1987, c. 809, §2 (NEW).]

1. **Water lines and utility cables.** In an area which affects a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, provided that the:

A. Excavated trench for access to the water is backfilled and riprapped to prevent erosion; [1987, c. 809, §2 (NEW).]

B. Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and [1987, c. 809, §2 (NEW).]

C. Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction; [1989, c. 878, Pt. A, §110 (AMD); 1995, c. 502, Pt. E, §30 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV).]

[1989, c. 878, Pt. A, §110 (AMD); 1995, c. 502, Pt. E, §30 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

2. **Maintenance and repair.** Maintenance and repair of a structure, other than a crossing, in, on, over or adjacent to a protected natural resource if:

A. Erosion control measures are taken to prevent sedimentation of the water; [1995, c. 27, §1 (RPR).]

B. [2011, c. 205, §1 (RP).]

C. There is no additional intrusion into the protected natural resource; and [1995, c. 27, §1 (RPR).]

D. The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair, or if the structure has been officially included in or is considered by the Maine Historical Preservation Commission eligible for listing in the National Register of Historic Places, the dimensions of the repaired structure do not exceed the dimensions of the historic structure. [1995, c. 27, §1 (RPR).]

This subsection does not apply to: the repair of more than 50% of a structure located in a coastal sand dune system; the repair of more than 50% of a dam, unless that repair has been approved by a representative of the United States Natural Resources Conservation Service; or the repair of more than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality;

[2011, c. 205, §1 (AMD) .]

2-A. **Existing road culverts.**

[2011, c. 205, §2 (RP) .]

2-B. **Floating docks.** Replacement of a floating dock with another floating dock if the dimensions of the replacement dock do not exceed those of the dock being replaced and the configuration of the replacement dock is the same as the dock being replaced. In any action brought by the department against a person claiming an exemption under this subsection, the burden is on that person to demonstrate that the replacement dock satisfies the requirements of this subsection;

[1993, c. 617, §2 (NEW) .]

2-C. **Transportation reconstruction or replacement project within a community public water system primary protection area.** A transportation reconstruction or replacement project located within a community public water system primary protection area as long as a permit is not required due to the presence of any other type of protected natural resource;

[2007, c. 353, §12 (NEW) .]

2-D. **Existing crossings.** A permit is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area, as long as:

A. Erosion control measures are taken to prevent sedimentation of the water; [2011, c. 205, §3 (NEW).]

B. The crossing does not block passage for fish in the protected natural resource area; and [2011, c. 205, §3 (NEW).]

C. For replacement crossings of a river, stream or brook:

(1) The replacement crossing is designed, installed and maintained to match the natural stream grade to avoid drops or perching; and

(2) As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom a minimum of one foot or at least 25% of the culvert or other structure's diameter, whichever is greater, except that a crossing structure does not have to be embedded more than 2 feet. [2011, c. 205, §3 (NEW).]

For purposes of this subsection, "repair and maintenance" includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than 50% of the crossing structure is being replaced.

[2011, c. 205, §3 (NEW) .]

3. **Peat mining.**

[1995, c. 700, §1 (RP) .]

4. **Interstate pipelines.** Alteration of freshwater wetlands associated with the construction, operation, maintenance or repair of an interstate pipeline, subject to article 6, where applicable;

[1987, c. 809, §2 (NEW) .]

5. **Gold panning.** Notwithstanding section 480-C, a permit shall not be required for panning gold, provided that stream banks are not disturbed and no unlicensed discharge is created;

[1987, c. 809, §2 (NEW) .]

5-A. **Motorized recreational gold prospecting.** Notwithstanding section 480-C, a permit is not required for motorized recreational gold prospecting as long as the provisions of this subsection are met.

A. A person may perform motorized recreational gold prospecting only from June 15th to September 15th and only with written permission of the relevant landowner. [2013, c. 260, §1 (NEW).]

B. A person may not perform motorized recreational gold prospecting that causes an undue adverse effect on natural resources. The area in which the motorized recreational gold prospecting is performed must be kept free of litter, trash and any other materials that may constitute a hazardous or nuisance condition. [2013, c. 260, §1 (NEW).]

C. The following provisions limit the use of equipment in motorized recreational gold prospecting.

(1) Equipment may not have any fuel, oil or hydraulic leaks or cause any unlicensed discharge.

(2) Motorized equipment may not exceed 7 horsepower.

(3) The inside diameter of a suction dredge intake nozzle and hose may not exceed 4 inches.

(4) The area of a sluice may not exceed 10 square feet.

(5) A flume may not be used to transport water outside of a stream channel. [2013, c. 260, §1 (NEW).]

D. A person may not use mercury, nitric acid or other chemicals for extraction in motorized recreational gold prospecting. [2013, c. 260, §1 (NEW).]

E. A person may not perform motorized recreational gold prospecting in a manner that:

(1) Disturbs a stream bank, including but not limited to digging into the bank or dredging or altering water flow within a stream channel in a manner that causes the bank to erode or collapse;

(2) Removes or damages vegetation or woody debris such as root wads, stumps or logs within a stream channel, on the bank or on nearby upland, including cutting or abrasion of trees;

(3) Diverts, dams or otherwise obstructs a stream;

(4) Deposits soil, rocks or any other foreign material from outside of the channel into a stream; or

(5) Deposits stream bottom sediments or rocks onto the bank or upland. [2013, c. 260, §1 (NEW).]

F. Upon completion of one or more consecutive days of motorized recreational gold prospecting, a person who performed the motorized recreational gold prospecting shall smooth out dredge spoils and refill dredge holes below the normal high-water mark of the stream in order to restore the approximate original contours of the stream bottom and not deflect the current. [2013, c. 260, §1 (NEW).]

G. Motorized recreational gold prospecting is prohibited within the following areas:

(1) Waters closed to motorized recreational gold prospecting in the unorganized territories identified in rules adopted by the Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission;

(2) Waters closed to motorized recreational gold prospecting identified in rules adopted by the Department of Environmental Protection;

(3) Waters defined as Class AA waters pursuant to section 465; and

(4) The following areas of critical or high-value brook trout or Atlantic salmon habitat:

(a) Bemis Stream and tributaries in Township D and Rangeley Plantation;

(b) Bond Brook in the City of Augusta and the Town of Manchester;

(c) Bull Branch of Sunday River and tributaries in Grafton Township and Riley Township;

(d) Carrabassett River and tributaries in the Town of Carrabassett Valley, Freeman Township, the Town of Kingfield, Mount Abram Township and Salem Township;

(e) Cold Stream tributaries, including Tomhegan Stream, in Chase Stream Township, Johnson Mountain Township and West Forks Plantation;

(f) Enchanted Stream in Upper Enchanted Township and Lower Enchanted Township;

(g) Magalloway River and tributaries, including Little Magalloway River, in Bowmantown Township, Lincoln Plantation, Lynchtown Township, Magalloway Plantation, Oxbow Township, Parkertown Township and Parmachenee Township;

(h) Rapid River in the Town of Upton and Township C;

(i) Sheepscot River and tributaries, including the West Branch, in the Town of Alna, the Town of China, the Town of Freedom, the Town of Liberty, the Town of Montville, the Town of Palermo, the Town of Somerville, the Town of Whitefield and the Town of Windsor;

(j) South Bog Stream in Rangeley Plantation;

(k) Spencer Stream and Little Spencer Stream tributaries, including Kibby Stream in Kibby Township, Skinner Township, T.3, R.5 B.K.P. W.K.R., T.4, R.5 B.K.P. W.K.R., King and Bartlett Township and T.5, R.6 B.K.P. W.K.R.; and

(l) Togus Stream in the Town of Chelsea and the Town of Randolph. [2013, c. 536, §2 (AMD).]

[2013, c. 536, §2 (AMD) .]

6. **Agricultural activities.** Subject to other provisions of this article that govern other protected natural resources, altering a freshwater wetland for the purpose of normal farming activities such as clearing of vegetation for agricultural purposes if the land topography is not altered, plowing, seeding, cultivating, minor drainage and harvesting, construction or maintenance of farm or livestock ponds or irrigation ditches, maintenance of drainage ditches and construction or maintenance of farm roads;

[1995, c. 460, §5 (AMD) .]

7. **Forestry.**

[1989, c. 838, §5 (RP) .]

7-A. **Forestry.** Forest management activities, including associated road construction or maintenance, in or adjacent to an existing forested wetland or a harvested forested wetland or adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B, as long as:

A. [2009, c. 537, §3 (RP).]

B. The activity meets permit-by-rule standards in rules adopted pursuant to this article for any road crossing of a river, stream or brook or for any soil disturbance adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B and the commissioner is notified before the forest management activity commences; [2001, c. 618, §4 (AMD).]

C. The protected natural resource is not mapped as a significant wildlife habitat under section 480-I; and [2001, c. 618, §4 (AMD).]

D. Any road construction is used primarily for forest management activities that do not constitute a change in land use under rules adopted by the Department of Agriculture, Conservation and Forestry, Bureau of Forestry concerning forest regeneration and clear-cutting and is not used primarily to access development, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads within a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State, or Title 12, section 682, subsection 2-A, including divisions of land exempted by Title 12, section 682-B, for portions of the State under the jurisdiction of the Maine Land Use Planning Commission; [2009, c. 537, §4 (AMD); 2011, c. 657, Pt. W, §5, 7 (REV); 2011, c. 682, §38 (REV); 2013, c. 405, Pt. A, §23 (REV).]

[2009, c. 537, §§3, 4 (AMD); 2011, c. 657, Pt. W, §5, 7 (REV); 2011, c. 682, §38 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

8. **Hydropower projects.** Hydropower projects are exempt from the provisions of this article to the extent provided in section 634. Alteration of a freshwater wetland associated with the operation of a hydropower project, as defined in section 632, is exempt from the provisions of this article, but is subject to chapter 5, subchapter I, article 1, subarticle 1-B, where applicable;

[1989, c. 306, §1 (AMD); 1989, c. 430, §7 (AMD) .]

9. **Public works.** A permit is not required for emergency repair or normal maintenance and repair of existing public works which affect any protected natural resource. An activity which is exempt under this subsection shall employ erosion control measures to prevent sedimentation of any surface water, shall not block fish passage in any water course and shall not result in any additional intrusion of the public works into the protected natural resource. This exemption does not apply to any activity on an outstanding river segment as listed in section 480-P;

[1989, c. 878, Pt. A, §111 (AMD) .]

9-A. **Community public water systems.** Community public water systems are exempt from the provisions of this article for activities within their community public water system primary protection areas as long as the activities are conducted in a manner that protects the quality and quantity of water available for the system;

[2007, c. 353, §13 (NEW) .]

10. **Aquaculture.** Aquaculture activities regulated by the Department of Marine Resources under Title 12, section 6072, 6072-A, 6072-B or 6072-C. Ancillary activities, including, but not limited to, building or altering docks or filling of wetlands, are not exempt from the provisions of this article;

[2007, c. 292, §26 (AMD) .]

11. **Soil evaluation.** Borings taken to evaluate soil conditions in or adjacent to a great pond, river, stream or brook, coastal wetland, freshwater wetland or sand dune are exempt from the provisions of this article provided that no area of wetland vegetation is destroyed or permanently removed;

[1993, c. 187, §2 (AMD); 1993, c. 215, §1 (AMD); 1993, c. 296, §4 (AMD) .]

12. **Existing access ways.** Normal maintenance and repair or reconstruction of existing access ways in freshwater or coastal wetlands to residential dwellings as long as:

A. The applicant shows evidence that the access way in disrepair is the existing route of access to the residential dwelling; [1991, c. 240, §3 (NEW).]

B. Erosion control measures are used; [1991, c. 240, §3 (NEW).]

C. Intrusion of the access way into the freshwater or coastal wetland is minimized and allows for proper drainage where necessary; [1991, c. 240, §3 (NEW).]

D. The access way, if in a coastal wetland, is traditionally dry at mean high tide; and [1991, c. 240, §3 (NEW).]

E. A notice of intent to maintain, repair or reconstruct the access way and the description of the work to be completed are submitted to the commissioner and to the municipal reviewing authority at least 20 days before the work is performed; and [1993, c. 187, §3 (AMD); 1993, c. 215, §2 (AMD); 1993, c. 296, §5 (AMD).]

[1993, c. 187, §3 (AMD); 1993, c. 215, §2 (AMD); 1993, c. 296, §5 (AMD) .]

13. **Moorings.** The placement of a mooring in any area regulated by this article.

[1993, c. 187, §4 (NEW) .]

14. **Lawful harvesting of marine organisms or vegetation in coastal wetlands.** A person lawfully engaged in the harvesting of marine organisms or vegetation under the provisions of Title 12, chapter 605 is not required to obtain a permit to engage in those activities in a coastal wetland or a coastal wetland containing a high or moderate value waterfowl or wading bird habitat or shorebird feeding or staging area. Within a coastal wetland or a coastal wetland containing a high or moderate value waterfowl or wading bird habitat or shorebird feeding or staging area, the removal of vegetation or displacement of soil associated with or authorized by those lawful activities is not a violation of this article; and

[2007, c. 290, §5 (AMD) .]

15. **Subsurface wastewater disposal systems.**

[1993, c. 721, Pt. F, §2 (RP); 1993, c. 721, Pt. H, §1 (AFF) .]

15-A. **Subsurface wastewater disposal systems.** Installation, removal or repair of a subsurface wastewater disposal system, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, subsection 3. This subsection takes effect on March 1, 1995.

[1993, c. 721, Pt. F, §3 (NEW); 1993, c. 721, Pt. H, §1 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

16. **Alterations in back dunes of coastal sand dune systems.**

[1993, c. 521, §1 (AMD); T. 38, §480-Q, sub-§16 (RP) .]

17. **Minor alterations in freshwater wetlands.** Activities that alter less than 4,300 square feet of freshwater wetlands, as long as:

A. The activity does not occur in, on or over another protected natural resource; [1995, c. 575, §1 (NEW).]

B. A 25-foot setback from other protected natural resources is maintained and erosion control measures are used; [1995, c. 575, §1 (NEW).]

C. The activity is not located in a shoreland zone regulated by a municipality pursuant to chapter 3, subchapter I, article 2-B or in the wetland or water body protected by the shoreland zone; [1995, c. 575, §1 (NEW).]

D. The activity does not occur in a wetland normally consisting of or containing at least 20,000 square feet of open water, aquatic vegetation or emergent marsh vegetation, except for artificial ponds or impoundments; [1995, c. 575, §1 (NEW).]

E. The activity does not take place in a wetland containing or consisting of peat land dominated by shrubs, sedges and sphagnum moss; [2005, c. 116, §3 (AMD).]

F. The entire activity constitutes a single, complete project; and [2005, c. 116, §3 (AMD).]

G. The activity does not occur in a significant wildlife habitat. [2005, c. 116, §4 (NEW).]

An activity does not qualify for exemption under this subsection if that activity is part of a larger project, including a multiphase development, that does not qualify as a whole project. Activities authorized or legally conducted prior to September 29, 1995 may not be considered in calculating the size of the alteration.

[2005, c. 116, §§3, 4 (AMD) .]

18. **Service drops for telephone or electrical service.** Vegetative clearing of a freshwater wetland for the installation of telephone or electrical service, if:

A. The line extension does not cross or run beneath a coastal wetland, river, stream or brook; [1995, c. 460, §6 (NEW); 1995, c. 460, §12 (AFF).]

B. The placement of wires or installation of utility poles is located entirely upon the premises of the customer requesting service, upon a roadway right-of-way or, in the case of telephone service, on existing utility poles; and [1995, c. 460, §6 (NEW); 1995, c. 460, §12 (AFF).]

C. The total length of the extension is less than 1,000 feet. [1995, c. 460, §6 (NEW); 1995, c. 460, §12 (AFF).]

[1995, c. 460, §6 (NEW); 1995, c. 460, §12 (AFF) .]

19. **Displacement or bulldozing of sediment within a lobster pound.** Displacement or bulldozing of sediment within a lobster pound, provided the sediment is not removed from the area inundated as a result of the impoundment.

[1995, c. 1, §31 (RNU) .]

20. **Constructed ponds.** Alteration of legally created constructed ponds that are not considered part of a great pond, coastal wetland, river, stream or brook, as long as the constructed pond is not expanded beyond its original size.

[1995, c. 575, §2 (NEW) .]

21. **Removal of beaver dams.** Removal of a beaver dam as authorized by a game warden, as long as:

A. Efforts are made to minimize erosion of soil and fill material from disturbed areas into a protected natural resource; [1999, c. 148, §1 (NEW).]

B. Efforts are made to minimize alteration of undisturbed portions of a wetland or water body; and [1999, c. 148, §1 (NEW).]

C. Wheeled or tracked equipment is operated in the water only for the purpose of crossing a water body to facilitate removal of the beaver dam. Where practicable, wheeled or tracked equipment may cross a water body only on a rock, gravel or ledge bottom. [1999, c. 148, §1 (NEW).]

This exemption includes the draining of a freshwater wetland resulting from removal of a beaver dam. It does not include removal of a beaver house.

[1999, c. 148, §1 (NEW) .]

22. **Archaeological excavation.** Archaeological excavation adjacent to a great pond, freshwater wetland, coastal wetland, sand dune system, river, stream or brook as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

[2001, c. 207, §2 (NEW) .]

23. **Cutting or clearing subject to mandatory shoreland zoning laws.** Cutting or clearing of upland vegetation adjacent to those protected natural resources listed in section 480-C, subsection 1, paragraph A or B for a purpose other than forest management as long as:

A. The cutting or clearing is subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B; or [2003, c. 637, §1 (AMD).]

B. If the cutting or clearing is not subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B, vegetation within the adjacent area is maintained as follows:

(1) There is no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a footpath may be established for the purpose of access to water if it does not exceed 6 feet in width as measured between tree trunks and has at least one bend in its path to divert channelized runoff;

(2) Any selective cutting of trees within the buffer strip leaves a well-distributed stand of trees and other natural vegetation.

(a) For the purposes of this subparagraph, a "well-distributed stand of trees" is defined as maintaining a rating score of 16 or more points in a 25-foot by 50-foot rectangular area as determined by the following rating system.

(i) A tree with a diameter at 4 1/2 feet above ground level of 2.0 to less than 4.0 inches has a point value of one.

(ii) A tree with a diameter at 4 1/2 feet above ground level of 4.0 inches to less than 8.0 inches has a point value of 2.

(iii) A tree with a diameter at 4 1/2 feet above ground level of 8.0 inches to less than 12.0 inches has a point value of 4.

(iv) A tree with a diameter at 4 1/2 feet above ground level of 12.0 or more inches has a point value of 8.

(b) In applying this point system:

(i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

(ii) Each successive plot must be adjacent to, but may not overlap, a previous plot;

(iii) Any plot not containing the required points may have no vegetation removed except as otherwise allowed by this subsection;

(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this subsection; and

(v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

(c) For the purposes of this subparagraph, "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4 1/2 feet above ground level for each 25-foot by 50-foot rectangular area. If 5 saplings do not exist, the landowner or lessee may not remove any woody stems less than 2 inches in diameter until 5 saplings have been recruited into the plot;

(3) In addition to the requirements of subparagraph (2), no more than 40% of the total volume of trees 4.5 inches or more in diameter, measured 4 1/2 feet above ground level, is selectively cut in any 10-year period;

(5) Tree branches are not pruned except on the bottom 1/3 of the tree as long as tree vitality will not be adversely affected; and

(6) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings in excess of 250 square feet, these openings are replanted with native tree species unless there is existing new tree growth. [2007, c. 292, §27 (AMD).]

Cleared openings legally in existence on September 1, 2002 may be maintained but may not be enlarged.

This subsection applies to an area with vegetation composed primarily of shrubs, trees or other woody vegetation without regard to whether the area was previously cut or cleared;

[2007, c. 292, §7 (AMD) .]

24. **Existing lawns and gardens.** Maintenance, but not enlargement, of lawns and gardens in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter 1, article 2-B;

[2005, c. 330, §15 (AMD) .]

25. **Existing agricultural fields and pastures.** Maintenance, but not enlargement, of agricultural fields and pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter 1, article 2-B;

[2009, c. 75, §1 (AMD) .]

26. **Overboard wastewater system.** Installation, maintenance or removal of a licensed overboard discharge treatment system, including the outfall pipe, if:

A. Erosion control measures are taken to prevent sedimentation of the water; [2005, c. 330, §16 (NEW).]

B. Effects of construction activity on the protected natural resource are minimized; and [2005, c. 330, §16 (NEW).]

C. The activity is approved by the department as provided in the department's rules concerning overboard discharges adopted pursuant to section 414-A; [2009, c. 75, §2 (AMD).]

[2009, c. 75, §2 (AMD) .]

27. **Fishways.** Erection, maintenance, repair or alteration of a fishway in a dam or other artificial obstruction when required by the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources pursuant to Title 12, section 12760 or by the Commissioner of Marine Resources pursuant to Title 12, section 6121;

[2011, c. 612, §3 (AMD) .]

28. **Release of water from dam after petition by owner for release from dam ownership or water level maintenance.** Activity associated with the release of water from a dam pursuant to an order issued by the department pursuant to section 905;

[2011, c. 12, §1 (AMD); 2011, c. 64, §3 (AMD) .]

29. **Dam safety order.** Activity associated with the breach or removal of a dam pursuant to an order issued by the Commissioner of Defense, Veterans and Emergency Management under Title 37-B, chapter 24;

[2011, c. 1, §59 (COR) .]

30. **Lobster trap storage.** The storage of lobster traps and related trap lines, buoys and bait bags on docks in, on, over or adjacent to a coastal wetland. For purposes of this subsection, "dock" means a dock, wharf, pier, quay or similar structure built in part on the shore and projected into a harbor and used as a landing, docking, loading or unloading area for watercraft; and

(Subsection 30 as enacted by PL 2011, c. 64, §5 is REALLOCATED TO TITLE 38, SECTION 480-Q, SUBSECTION 31)

[2011, c. 1, §60 (COR) .]

31. (REALLOCATED FROM T. 38, §480-Q, sub-§30) **Minor expansions of structures in a coastal sand dune system.** Expansion of an existing residential or commercial structure in a coastal sand dune system if:

A. The footprint of the expansion is contained within an existing impervious area; [2011, c. 1, §61 (RAL).]

B. The footprint of the expansion is no further seaward than the existing structure; [2011, c. 538, §9 (AMD).]

C. The height of the expansion is within the height restriction of any applicable law or ordinance; and [2011, c. 1, §61 (RAL).]

D. The expansion conforms to the standards for expansion of a structure contained in the municipal shoreland zoning ordinance adopted pursuant to article 2-B. [2011, c. 538, §9 (AMD).]

For purposes of this subsection, "structure" does not include a seawall, retaining wall, closed fence or other structure used to stabilize the shoreline or to prevent the movement of sand or water. For purposes of this subsection, expansion of an existing structure does not include a change from one type of structure to another.

[2011, c. 538, §9 (AMD) .]

32. **Placement of wood in streams.** The placement of wood in stream channels to enhance cold water fisheries habitat in accordance with Title 12, section 8867-C and rules adopted to implement that section.

[2011, c. 599, §14 (NEW) .]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1987, c. 890, §§1, 2 (AMD). 1989, c. 306, §§1-3 (AMD). 1989, c. 430, §§6-9 (AMD). 1989, c. 838, §§5, 6 (AMD). 1989, c. 878, Pt. A, §§110-113 (AMD). 1991, c. 46, §3 (AMD). 1991, c. 240, §§1-3 (AMD). 1991, c. 622, Pt. H, §§1-3 (AMD). 1991, c. 624, §§1, 3 (AFF). RR 1993, c. 1, §§117, 119 (COR). 1993, c. 187, §§2-4 (AMD). 1993, c. 215, §§1-3 (AMD). 1993, c. 296, §§4-6 (AMD). 1993, c. 296, §7 (AFF). 1993, c. 315, §2 (AMD). 1993, c. 410, Pt. G, §7 (AMD). 1993, c. 521, §1 (AMD). 1993, c. 617, §§1, 2 (AMD). 1993, c. 721, Pt. F, §§2, 3 (AMD). 1993, c. 721, Pt. H, §1 (AFF). RR 1995, c. 1, §31 (COR). 1995, c. 27, §1 (AMD). 1995, c. 460, §§5, 6 (AMD). 1995, c. 460, §12 (AFF). 1995, c. 493, §4 (AMD). 1995, c. 502, Pt. E, §30 (AMD). 1995, c. 575, §§1, 2 (AMD). 1995, c. 700, §1 (AMD). 1999, c. 148, §1 (AMD). 2001, c. 207, §2 (AMD). 2001, c. 431, §6 (AMD). 2001, c. 618, §§4, 5 (AMD). 2003, c. 637, §1 (AMD). 2003, c. 689, Pt. B, §6 (REV). 2005, c. 116, §§3, 4 (AMD). 2005, c. 330, §§15, 16 (AMD). 2007, c. 290, §5 (AMD). 2007, c. 292, §§26, 27 (AMD). 2007, c. 353, §§12, 13 (AMD). 2009, c. 75, §§1-5 (AMD). 2009, c. 460, §§1, 2 (AMD). 2009, c. 537, §§3, 4 (AMD). RR 2011, c. 1, §§59-61 (COR). 2011, c. 12, §§1-3 (AMD). 2011, c. 64, §§3-5 (AMD). 2011, c. 205, §§1-3 (AMD). 2011, c. 538, §9 (AMD). 2011, c. 599, §14 (AMD). 2011, c. 612, §3 (AMD). 2011, c. 657, Pt. W, §5, 7 (REV). 2011, c. 682, §38 (REV). 2013, c. 260, §1 (AMD). 2013, c. 405, Pt. A, §§23, 24 (REV). 2013, c. 536, §2 (AMD).

§480-R. VIOLATIONS; ENFORCEMENT

1. **Violations.** A violation is any activity which takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity. Each day of a violation shall be considered a separate offense. A finding that any such violation has occurred shall be prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred.

[1987, c. 809, §2 (NEW) .]

2. **Enforcement.** In addition to department staff, inland fisheries and wildlife game wardens, Department of Marine Resources marine patrol officers and all other law enforcement officers enumerated in Title 12, section 10401 shall enforce the terms of this article.

[2003, c. 414, Pt. B, §71 (AMD); 2003, c. 614, §9 (AFF) .]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 546, §7 (AMD). 1989, c. 890, §§A40,B82 (AMD). 2003, c. 414, §B71 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 614, §9 (AFF).

§480-S. FEE FOR SIGNIFICANT WILDLIFE HABITAT REVIEW

The commissioner shall establish procedures to charge applicants for costs incurred in reviewing license and permit applications regarding significant wildlife habitats in the same manner as provided for other fees in section 352. The maximum fees are $150 for processing and $50 for a license. All fees must be credited to the Maine Environmental Protection Fund established in section 351. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §83 (AMD).]

SECTION HISTORY
1987, c. 809, §2 (NEW). 1989, c. 890, §§A40,B83 (AMD).

§480-T. TRANSPORTATION IMPROVEMENTS

(REPEALED)

Prior to February 15, 1991, an individual permit is not required by this article for maintenance or repair of public transportation facilities or structures, or transportation reconstruction or replacement projects that are under the direction and supervision of the Department of Transportation that do not affect a coastal wetland or coastal sand dune system. [1989, c. 814, §3 (NEW).]

SECTION HISTORY
1989, c. 814, §3 (NEW). MRSA T. 38, §480-T, sub-§4 (RP).

§480-U. CRANBERRY CULTIVATION

1. **General permit.** An individual permit is not required for the alteration of freshwater wetlands to cultivate cranberries as long as the provisions of this section are met.

[1991, c. 214, §2 (NEW) .]

2. **Requirements.** An application must be filed with the department and must meet the following requirements.

A. The application must contain written certification by a knowledgeable professional that the cranberry cultivation project will not be located in a wetland that has one or more of the following characteristics:

(1) Is a coastal wetland or is located within 250 feet of a coastal wetland;

(2) Is a great pond;

(3) Contains endangered or threatened plant species as defined in Title 12, section 544;

(4) Contains any type of palustrine natural community of which there are 20 or fewer occurrences in the State;

(5) Contains any of the following resources:

(a) Habitat for species appearing on the official state or federal lists of endangered or threatened species when there is evidence that the species is present;

(b) As defined by rule by the Commissioner of Inland Fisheries and Wildlife, whether or not the resource has been mapped, high-value and moderate-value deer wintering areas; deer travel corridors; high-value and moderate-value waterfowl or wading bird habitats, including nesting and feeding areas; shorebird nesting, feeding or staging areas; or seabird nesting islands; or

(c) Critical spawning and nesting areas for Atlantic salmon as defined by rule by the Department of Marine Resources whether or not mapped;

(6) Is located within 250 feet of the normal high water line and within the same watershed of any lake or pond classified as GPA under section 465-A;

(7) Is a bog dominated by ericaceous shrubs, sedges and sphagnum moss and usually having a saturated water regime, except that applications proposing reclamation of previously mined peat bogs may be considered;

(8) Is land adjacent to the main stem of a major river, as classified in section 467, that is inundated with floodwater during a 100-year flood event and that under normal circumstances supports a prevalence of wetland vegetation, typically adapted for life in saturated soils; or

(9) Contains at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments, during most of the growing season in most years; except that cranberry cultivation is allowed more than 250 feet from the edge of the area of aquatic vegetation, emergent marsh vegetation or open water.

A project to cultivate indigenous cranberries may be located in wetlands described in subparagraphs (6) and (7) only if the project location is a natural cranberry bog and provisions of paragraph D are met. For purposes of this paragraph, "natural cranberry bog" means an area with indigenous large cranberries, Vaccinium macrocarpon Ait., comprising more than 50% of the cover in the herbaceous layer; and "cover in the herbaceous layer" means all herbaceous or woody vegetation less than 10 inches in height. [2009, c. 561, §38 (AMD).]

B. The application must contain a plan that includes the following elements:

(1) A top view drawing of the entire project including existing and proposed beds, dikes, ditches, roads and reservoirs; cross-sectional drawings of beds, dams, dikes and ditches; length, width and depth of beds, dikes and ditches; delineation of the wetland boundaries and calculated area of wetlands affected; description of existing vegetation; amount and type of fill material to be discharged over the beds and location of borrow area; type and size of water control structures; and placement and description of water sources;

(2) A soil erosion and sedimentation control plan that is consistent with erosion and sediment control specifications as determined by the Department of Agriculture, Conservation and Forestry and the department;

(3) A plan for a water recovery system, including either a reservoir or the cranberry beds themselves, that is designed to contain the runoff from the project area during a 10-year, 24-hour storm event;

(4) A plan to maintain a 75-foot buffer strip from any river or stream draining a watershed of 100 acres or more, except that excavated ditches and water intake and outfall pipes or control structures may be allowed in the 75-foot buffer area;

(5) Design specifications for water intake and outfall pipes and excavated ditches which must be consistent with specifications as determined by the Department of Agriculture, Conservation and Forestry and the department;

(6) A plan to maintain minimum base flows for each water supply area. Minimum base flow is the aquatic base flow for that watershed, or a flow that can be shown to protect designated uses and characteristics assigned in section 465; and

(7) Appurtenant facilities, including, but not limited to storage buildings, parking areas and processing areas, may not be located in the freshwater wetland. This limitation does not apply to pump houses, roadways, service areas and other appurtenant facilities directly related and needed to carry out the water related activities. [1991, c. 214, §2 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

C. The applicant must provide a management plan that includes a pesticide and fertilizer program approved by the Department of Agriculture, Conservation and Forestry. The plan must include the following practices:

(1) The application of nutrients and soil amendments in terms of timeliness, amounts, materials and method of application;

(2) The use of current integrated pest management practices for applying pesticides properly and in the minimum amounts necessary to control pests; and

(3) The management of water in terms of bed drainage, runoff disposal, sprinkler irrigation, control devices to separate natural water from pumping supply for irrigation purposes, back-siphoning prevention devices and flooding. [1991, c. 214, §2 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

D. A person applying for approval on the basis that the project location is a natural cranberry bog as defined in paragraph A must provide a management plan that meets all of the requirements of paragraph C and the requirements of this paragraph.

(1) The cranberries must be cultivated in accordance with organic production standards established in Title 7, section 551, subsection 2 and section 553, subsection 1, paragraph A.

(2) A person may not introduce nonindigenous cranberry plants to the project site. A person may not remove cranberry plants existing on the project site.

(3) Cultivation practices may not alter natural drainage. Filling is limited to placement each year of up to one inch of sand on bearing cranberry vines. [1991, c. 214, §2 (NEW).]

[2009, c. 561, §38 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

3. **Agriculture certification.** The Department of Agriculture, Conservation and Forestry shall review all plans submitted pursuant to subsection 2, paragraphs B, C or D and shall certify compliance of these sections to the department within 20 days of receipt of an application.

[1991, c. 214, §2 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

4. **Review period.** Work may not occur until 45 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

[1999, c. 243, §12 (AMD) .]

5. **Notification.** The department shall notify an applicant in writing within 45 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

[1991, c. 214, §2 (NEW) .]

6. **Deferrals.** The 45-day time limit for processing a completed application under subsection 5 does not apply when winter conditions prevent the department from evaluating a permit application. Under such circumstances, the department may defer action for a reasonable period. The department shall immediately notify the applicant of a deferral under this subsection.

[1991, c. 214, §2 (NEW) .]

7. **Fees.** The department shall assess a fee for review of applications filed pursuant to this section. The fee must be equivalent to the amount assessed to activities requiring an individual permit for freshwater wetland alterations.

[1991, c. 214, §2 (NEW) .]

8. **Violation.** Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 2, paragraphs B, C or D is a violation of the general permit.

§480-U. Enforcement and penalties

(As enacted by PL 1995, c. 287, §2 was REPEALED BY PL 1995, c. 625, Pt. A, §52 and T. 38, §490-V)

[1991, c. 214, §2 (NEW) .]

SECTION HISTORY
RR 1991, c. 1, §57 (COR). 1991, c. 214, §2 (NEW). 1995, c. 287, §18 (NEW). 1995, c. 406, §14 (AMD). 1995, c. 625, §A52 (RP). 1999, c. 243, §12 (AMD). 1999, c. 401, §BB18 (AMD). 2005, c. 330, §17 (AMD). 2009, c. 561, §38 (AMD). 2011, c. 657, Pt. W, §5 (REV). MRSA T.38, §490V (RP).

§480-V. APPLICABILITY

This article applies to all protected natural resources in the State. [2007, c. 290, §6 (RPR).]

SECTION HISTORY
1993, c. 721, §F4 (NEW). 1993, c. 721, §H1 (AFF). 2001, c. 232, §16 (AMD). 2007, c. 290, §6 (RPR).

§480-W. EMERGENCY ACTIONS TO PROTECT THREATENED PROPERTY

1. **Protective materials.**

[2005, c. 548, §2 (RP) .]

2. **Strengthening of structure.**

[2005, c. 548, §2 (RP) .]

3. **Emergency action exemption.** Notwithstanding section 480-C, if the local code enforcement officer, a state-licensed professional engineer or a state-certified geologist determines that the integrity of a seawall, bulkhead, retaining wall or similar structure in a coastal sand dune system is destroyed or threatened, the owner of property protected by the seawall, bulkhead, retaining wall or similar structure may perform or cause to be performed the following activities without obtaining a permit under this article:

A. Place riprap, sandbags or other heavy nonhazardous material to shore up the threatened structure and leave the material in place until a project designed to repair or replace the structure is permitted by the department. After such emergency action is taken and within 5 working days after the imminent threat, the property owner must provide written notice to the department of the date the emergency action was taken and a description of the emergency action taken. Within 6 months following placement of any material pursuant to this paragraph, the property owner must submit to the department an application to repair or replace the structure. The material placed pursuant to this paragraph must be removed within 18 months from the date a permit is issued by the department; or [2005, c. 548, §2 (NEW).]

B. Make permanent repairs, to the extent necessary to alleviate the threat, to strengthen the seawall, bulkhead, retaining wall or other structure, to widen the footings or to secure the structure to the sand with tie-back anchors. A state-certified geologist, state-licensed professional engineer or other qualified professional must make the determination that the actions taken by the property owner in accordance with this section are only those actions necessary to alleviate the imminent threat and do not include increasing the height or length of the structure. [2005, c. 548, §2 (NEW).]

If a local code enforcement officer, state-licensed professional engineer or state-certified geologist fails to determine within 6 hours of initial contact by the property owner whether the integrity of a structure is destroyed or threatened, the property owner may proceed as if the local code enforcement officer, state-licensed professional engineer or state-certified geologist had determined that the integrity of the structure was destroyed or threatened.

[2005, c. 548, §2 (NEW) .]

4. **Replacement after emergency action under permit by rule.** Notwithstanding any other provision of this chapter, the department shall approve a permit by rule to repair or replace a seawall, bulkhead, retaining wall or similar structure that has been destroyed or threatened with a structure that is identical in all dimensions and location as long as a property owner files a completed permit-by-rule notification for the repair or replacement of the structure and the following standards are met:

A. During project construction, disturbance of dune vegetation must be avoided and native vegetation must be retained on the lot to the maximum extent possible. Any areas of dune vegetation that are disturbed must be restored as quickly as possible. Dune vegetation includes, but is not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine. [2005, c. 548, §2 (NEW).]

B. Sand may not be moved seaward of the frontal dune between April 1st and September 1st unless the owner has obtained written approval from the Department of Inland Fisheries and Wildlife. [2005, c. 548, §2 (NEW).]

C. The replacement of a seawall may not increase the height, length or thickness of the seawall beyond that which legally existed within the 24 months prior to the submission of the permit-by-rule notification. The replaced seawall may not be significantly different in construction from the one that previously existed. [2005, c. 548, §2 (NEW).]

[2005, c. 548, §2 (NEW) .]

SECTION HISTORY
1995, c. 230, §1 (NEW). 2005, c. 548, §2 (AMD).

§480-X. ALTERATIONS OF FRESHWATER WETLANDS

An application for a permit to undertake activities altering freshwater wetlands must be processed by the department using the review process described in this section. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

1. **Application.** This section does not apply to activities otherwise qualifying for reduced review procedures, such as permits by rule or general permits; activities exempt from review under another section of this article; or activities involving protected natural resources other than freshwater wetlands, such as great ponds, coastal wetlands and rivers, streams or brooks.

[1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF) .]

2. **Three-tiered review process; tiers defined.** Except as provided in subsection 1, an application for a permit to undertake activities altering freshwater wetlands must be reviewed in accordance with the following.

A. A Tier 1 review process applies to any activity that involves a freshwater wetland alteration up to 15,000 square feet and does not involve the alteration of freshwater wetlands listed in subsection 4. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

B. A Tier 2 review process applies to any activity that involves a freshwater wetland alteration of 15,000 square feet up to one acre and does not involve the alteration of freshwater wetlands listed in subsection 4 or 5. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

C. A Tier 3 review process applies to any activity that involves a freshwater wetland alteration of one acre or more or an alteration of a freshwater wetland listed in subsection 4 or 5. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

If the project as a whole requires Tier 2 or Tier 3 review, then any activity that is part of the overall project and involves a regulated freshwater wetland alteration also requires the same higher level of review, unless otherwise authorized by the department.

In determining the amount of freshwater wetland to be altered, all components of a project, including all phases of a multiphased project, are treated together as constituting one single and complete project. Activity authorized or legally conducted prior to the effective date of this section is not included.

The standards of section 480-D do not apply to projects that qualify for Tier 1 review, except that habitat standards under section 480-D, subsection 3 and water quality standards under section 480-D, subsection 5 apply to those projects. Projects that meet the eligibility requirements for Tier 1 review and that satisfy the permitting requirements set forth in subsection 3 and 6, as applicable, are presumed not to have significant environmental impact.

[2005, c. 592, §1 (AMD) .]

3. **General requirements.** A person undertaking an activity for which a permit is processed pursuant to this section shall satisfy the requirements of this subsection.

A. An applicant for Tier 1, Tier 2 or Tier 3 review shall meet the following requirements.

(1) Alteration of freshwater wetland areas on the property must be avoided to the extent feasible considering cost, existing technology and logistics based on the overall purpose of the project.

(2) The area of the freshwater wetland to be altered must be limited to the minimum amount necessary to complete the project. [2003, c. 554, §1 (AMD).]

B. [2003, c. 554, §1 (RP).]

C. An applicant for Tier 1 review shall meet the following requirements.

(1) Erosion control measures must be used to prevent sedimentation of protected natural resources. A 25-foot buffer strip must be maintained between the activity and any river, stream or brook.

(2) The activity must comply with applicable water quality standards pursuant to section 480-D, subsection 5. [2003, c. 554, §1 (NEW).]

D. An applicant for Tier 2 or Tier 3 review shall comply with the standards contained in section 480-D. [2003, c. 554, §1 (NEW).]

[2003, c. 554, §1 (AMD) .]

4. **Projects not eligible for Tier 1 or Tier 2 review.** The following activities are not eligible for Tier 1 or Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present:

A. Activities located within 250 feet of:

(1) A coastal wetland; or

(2) The normal high-water line, and within the same watershed, of any lake or pond classified as GPA under section 465-A; [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

B. Activities occurring in freshwater wetlands, other than artificial ponds or impoundments, containing under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water; [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

C. Activities occurring in freshwater wetlands that are inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information; [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

D. Activities occurring in freshwater wetlands containing significant wildlife habitat that has been mapped, identified or defined, as required pursuant to section 480-B, subsection 10, at the time of the filing by the applicant; [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

E. Activities occurring in peatlands dominated by shrubs, sedges and sphagnum moss, except that applications proposing work in previously mined peatlands may be considered by the department for Tier 1 or Tier 2 review, as applicable; or [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

F. Activities occurring within 25 feet of a river, stream or brook. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

The department shall inform the applicant in writing within the review period specified in subsection 6 or 7 if the proposed project does not qualify for Tier 1 or Tier 2 review processing and shall explain permitting options if the applicant wishes to pursue the project. The department is responsible for providing information necessary to establish whether the types of wetlands described in paragraphs D and E will be affected by the proposed activity. Unless the applicant knowingly or willfully provided incomplete or false information to the department, if the department does not notify the applicant that the proposed project does not qualify for Tier 1 or Tier 2 review, the project is deemed to be qualified for Tier 1 or Tier 2 review, as applicable.

[1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF) .]

5. **Additional projects not eligible for Tier 2 review.** An activity in freshwater wetlands containing a natural community that is imperiled (S2) or critically imperiled (S1), as defined by the Natural Areas Program pursuant to Title 12, section 544 is not eligible for Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present.

[1999, c. 556, §32 (AMD) .]

6. **Application process for Tier 1 review activities.** Applications for Tier 1 review are governed by this subsection.

A. The application must be sent by certified mail or hand-delivered to the department. The application must include:

(1) The application fee;

(2) The project location on a United States Geological Survey map;

(3) A description of the project, including a drawing showing the area of freshwater wetland to be filled or otherwise altered and areas of any marsh or open water within the freshwater wetland; and

(4) A signed statement averring that all of the requirements of subsection 3 will be met, that the activity will not occur in a wetland area described in subsection 4 and that a copy of the application has been submitted by the applicant for public display to the municipal office of the municipality in which the project will be located. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

B. Work may not occur until 45 days after the department receives a complete application, unless written approval is issued sooner by the department. The department shall notify the applicant in writing no later than 45 days after the department receives a complete application if the applicable requirements of this section have not been met or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the 45-day review period, a permit is deemed to be granted. [2005, c. 592, §2 (AMD).]

C. Fees for Tier 1 review may not exceed the following:

(1) For projects up to 5,000 square feet, $35;

(2) For projects from 5,000 square feet up to 10,000 square feet, $75; and

(3) For projects from 10,000 square feet up to 15,000 square feet, $150. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

[2005, c. 592, §2 (AMD) .]

7. **Application process for Tier 2 review.** Applications for Tier 2 review are governed by this subsection.

A. An application form must be submitted, with the application fee, to the department and include the following information:

(1) Documentation that public notice has been provided of the proposed project in accordance with department rules;

(2) A United States Geological Survey map showing the project location;

(3) Written certification by a knowledgeable professional experienced in wetland science that the project will not alter, or cause to be altered, a wetland described in subsection 4 or 5;

(4) A top view drawing of the entire project, including existing and proposed fill, excavation, roads and structures; cross-sectional drawings of any fill or excavated areas; delineation of the wetland boundaries and calculated area of freshwater wetlands affected; description of existing vegetation on the project site; identification of any surface water bodies within 100 feet of the proposed alteration; and a drawing of the 25-foot buffer strip between the project and any river, stream or brook;

(5) A soil erosion and sedimentation control plan;

(6) For work in previously mined peatlands, information on the past mining activity, including the approximate dates of the mining activity, the area and depth to which peat has been excavated from the site, any restoration work on the site and the current condition of the site;

(7) A statement describing why the project can not be located completely in upland areas and any alternatives that exist for the project that would either avoid or minimize the amount of proposed freshwater wetland alteration;

(8) A plan for compensating for lost functions and values of the freshwater wetland when required by, and in accordance with, rules adopted by the department; and

(9) Any other information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department. [2003, c. 554, §2 (AMD).]

B. Work may not occur until 60 days after the department has received a complete application for processing, unless written approval is issued sooner by the department. The department shall notify the applicant in writing within 60 days of the department's receipt of a complete application whether the applicable requirements of this section have been met or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the 60-day review period, a permit is deemed to be granted. [1999, c. 243, §14 (AMD).]

C. Fees for Tier 2 review must be set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

[2003, c. 554, §2 (AMD) .]

8. **Application process for Tier 3 review.** Applications for Tier 3 review are governed by this subsection.

A. An application form must be submitted to the department that contains all the information required for Tier 2 review, in addition to any information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

B. Written approval from the department is required before work may begin. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

C. Fees for Tier 3 review are set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

[1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF) .]

SECTION HISTORY
1995, c. 460, §7 (NEW). 1995, c. 460, §12 (AFF). 1995, c. 502, §E32 (AMD). 1995, c. 575, §3 (AMD). 1999, c. 243, §§13,14 (AMD). 1999, c. 556, §32 (AMD). 2003, c. 554, §§1,2 (AMD). 2005, c. 592, §§1,2 (AMD).

§480-Y. CREATION OF AGRICULTURAL IRRIGATION PONDS

1. **General permit.** A general permit is required for the alteration of a freshwater, nontidal stream to construct an agricultural irrigation pond. If the provisions of this section are met, an individual permit is not required.

[1995, c. 659, §1 (NEW) .]

2. **Eligibility criteria.** The following eligibility criteria must be met.

A. The farm must have an irrigation management plan, referred to in this section as the "irrigation plan." The irrigation plan must identify the total number of irrigated acres on the farm or on a specified management unit, the amount of water needed, the potential sources of water for irrigating the field and the water management practices that will be used to ensure that the amount of water used for crop irrigation will be kept to a minimum. For the purposes of this subsection, "farm" has the same meaning as in Title 7, section 152, subsection 5. [2007, c. 649, §10 (AMD).]

B. The department must have assessed the affected area as having no significant habitat for fish and wildlife. For the purposes of this section, "significant habitat" means the same as "significant wildlife habitat" in section 480-B, subsection 10; a fish spawning or nursery habitat; a habitat required for

migration of fish species to or from a spawning or nursery habitat; or a habitat otherwise supporting a moderate to high population of salmonid species as determined by the Department of Inland Fisheries and Wildlife. [1995, c. 659, §1 (NEW).]

C. The pond may not be located in a wetland containing endangered or threatened plant species as determined pursuant to Title 12, section 544-B, subsection 3 or containing a natural community that is imperiled (S2) or critically imperiled (S1) as defined by the Natural Areas Program pursuant to Title 12, section 544. [1999, c. 556, §33 (AMD).]

D. A site assessment must be conducted by the department prior to the submission of an application. The department may defer a site assessment for a reasonable period when winter conditions prevent the department from properly evaluating the affected area. [1995, c. 659, §1 (NEW).]

E. The pond may not be located in a river, stream or brook if the department determines at the site assessment that there is a practicable alternative water supply that would be less damaging to the environment. For purposes of this paragraph, the term "practicable" means feasible considering cost, existing technology and logistics based on the overall purpose of the project. [1999, c. 243, §15 (NEW).]

[2007, c. 649, §10 (AMD) .]

3. **Standards.** The following standards must be met.

A. The pond, dams, inlets and outlets must be designed by a professional engineer to United States Natural Resources Conservation Service standards. [2011, c. 538, §10 (AMD).]

B. Dam fill material must be specified by the professional engineer and must be compacted to 95% of standard proctor. Compaction testing must be conducted with tests performed at a minimum of 2 per dam site or one every 100 feet of dam length, whichever is greater. [1995, c. 659, §1 (NEW).]

C. For a pond that is constructed in a river, stream or brook, the pond outlet must be designed to passively discharge a minimum flow equal to inflow or the site-specific aquatic base flow, whichever is less, at all times. For a pond that is constructed adjacent to a river, stream or brook and that uses an inlet pipe or trench from the river, stream or brook, the inlet must be constructed to maintain the site-specific aquatic base flow. The site-specific aquatic base flow must be that specified by the department following consultation with the Department of Inland Fisheries and Wildlife, the United States Natural Resources Conservation Service and other qualified advisors during the site assessment. [2011, c. 538, §10 (AMD).]

D. The pond outlet must be designed and maintained to ensure a cold water release by using a method such as a bottom draw and to induce dissolved oxygen by using a method such as a riprap slope to increase water turbulence. [1995, c. 659, §1 (NEW).]

E. An erosion control plan must ensure that siltation or sedimentation downstream of the dam site is kept to a minimum, to the fullest extent practical, during construction, operation and maintenance of the irrigation pond. [1995, c. 659, §1 (NEW).]

F. The landowner shall maintain a permanently vegetated buffer strip that consists of field grasses or woody vegetation 25 feet wide around the pond except where slopes are equal to or greater than 20%, in which case the buffer strip must be 75 feet wide. Unless recommended to be thinned or mowed on an annual basis by the department or the United States Natural Resources Conservation Service, buffer strip vegetation may not be cut. An access road and irrigation pipes may cross through the buffer strip. [1995, c. 659, §1 (NEW).]

G. All instream construction activities must be conducted between July 15th and October 1st of the same year unless the department determines in the site assessment that an earlier start date will not cause a significant adverse impact to fish and wildlife resources. [1995, c. 659, §1 (NEW).]

[2011, c. 538, §10 (AMD) .]

4. **Submissions.** The following provisions apply to the submission of applications.

A. An application must be filed with the department and must include the following:

(1) The application cover sheet, as provided by the department;

(2) The United States Geological Survey topographical map with the boundaries of the farm and the pond site clearly marked;

(3) A photograph of the stream at the proposed dam site;

(4) A copy of the irrigation plan for the farm;

(5) Site plans showing existing and proposed topography, stream channel location, existing wetland boundaries, maximum and normal pool elevations for a pond in a river, stream or brook, dam footprints, pond inlet and outlet locations, emergency spillway location, access roads, stockpile locations and buffer strips;

(6) Cross sections through the dam and outlet structure, including proposed maximum pool elevation and normal pool elevation;

(7) A plan to maintain minimum flow downstream, including any calculations used to create the plan;

(8) A complete erosion control plan using practices contained in the "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices" (1991) unless otherwise approved or required by the department. The erosion control plan must include a narrative with a sequence for implementing the plan, provisions to inspect and maintain erosion controls and a site plan showing locations of control measures. The plan must include provisions for maintaining a dry construction site. These provisions may consist of construction during a no-flow period, a temporary cofferdam or a stream diversion. The erosion control plan must also include provisions for dewatering and disposal of dredged and excavated soil material. The disposal of soil material dredged from the stream must comply with the requirements of the State's solid waste management rules;

(9) Test pit logs and test results from a minimum of 2 test pits dug in the footprint of the dam and results of tests done under the direction of a professional engineer on the dam fill material; and

(10) A copy of the property deed, lease, purchase and sale agreement or other legal document establishing that the applicant has title or right to or interest in the property proposed for pond development.

All design materials used to show that the dam design meets the standards of the general permit must be signed and stamped by a professional engineer. [2011, c. 538, §11 (AMD).]

B. Following construction and prior to operation of the irrigation pond, the permittee must submit an inspection report by a professional engineer stating that the professional engineer inspected the dam and that it was constructed in conformance with the standards established in subsection 3. The report must specifically include evidence that the proper number of compaction tests were done and proper compaction specifications have been achieved. The inspection report must include a copy of the job diary and information on when inspections were done and what was inspected. [1995, c. 659, §1 (NEW).]

[2011, c. 538, §11 (AMD) .]

5. **Review period.** Work may not commence until 30 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

[1999, c. 243, §16 (AMD) .]

6. **Notification.** The department shall notify the applicant in writing within 30 days of acceptance for processing if the department determines that the requirements of this section have not been met. This notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this section within the specified time period, a general permit is deemed to have been granted.

[1995, c. 659, §1 (NEW) .]

7. **Fees.** The department shall assess a fee for review of an application filed pursuant to this section. The fee must be equivalent to the amount assessed for activities requiring an individual permit for stream alterations.

[1995, c. 659, §1 (NEW) .]

8. **Violation.** A violation occurs when an activity takes place that is not in compliance with the provisions of this section or the plans submitted with the application. Any deviation from the approved plans must receive prior department approval.

[1995, c. 659, §1 (NEW) .]

SECTION HISTORY
1995, c. 659, §1 (NEW). 1999, c. 243, §§15,16 (AMD). 1999, c. 556, §33 (AMD). 2007, c. 649, §10 (AMD). 2011, c. 538, §§10, 11 (AMD).

§480-Z. COMPENSATION

The department may establish a program providing for compensation of unavoidable losses to an area listed in subsection 7 due to a proposed activity. Compensation must include the restoration, enhancement, creation or preservation of an area or areas that have functions or values similar to the area impacted by the activity, unless otherwise approved by the department. Preservation may include protection of uplands adjacent to an area. [2007, c. 527, §1 (AMD).]

The department may require that compensation include the design, implementation and maintenance of a compensation project or, in lieu of such a project, may allow the applicant to purchase credits from a mitigation bank or to pay a compensation fee. If compensation is required, the completion and maintenance of a project, purchase of credits or payment of a compensation fee must be a condition of the permit. [1997, c. 101, §1 (NEW); 1997, c. 101, §2 (AFF).]

The department shall identify an appropriate project, or determine the amount of credits or compensation fee, based upon the compensation that would be necessary to restore, enhance, create or preserve areas with functions or values similar to the areas impacted by the activity. However, the department may allow the applicant to conduct a project of equivalent value, or allow the purchase of credits or payment of a compensation fee of equivalent value, to be used for the purpose of restoring, enhancing, creating or preserving other functions or values of the area that are environmentally preferable to the functions and values impacted by the activity, as determined by the department. The loss of functions or values of one type of area may not be compensated for by the restoration, enhancement, creation or preservation of another type of area. For example, the loss of functions or values of a coastal wetland may not be compensated for by the restoration, enhancement, creation or preservation of freshwater wetland functions or values. [2007, c. 527, §1 (AMD).]

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a wetlands compensation project on the wetland management priorities identified by the department for the watershed or biophysical region in which the project is located. The department shall base its approval of a compensation project concerning an area listed in subsection 7, paragraph C, D or E on the management priorities identified by the department for the type of habitat. The department may not approve a compensation project for unavoidable losses to an area until the applicant has complied with

all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article. For purposes of this section, "biophysical region" means a region with shared characteristics of climate, geology, soils and natural vegetation. [2007, c. 527, §1 (AMD).]

1. **Location of project.** A compensation project must be located on or adjacent to the project site, unless otherwise approved by the department. A compensation project must be located in the same watershed as the area affected by the activity unless the department determines, based on regional hydrological or ecological priorities, that there is a scientific justification for locating the compensation project outside of the same watershed.

[2007, c. 527, §1 (AMD) .]

2. **Approval of mitigation bank.** A mitigation bank from which any credits are purchased must be approved by the department consistent with all applicable federal rules and regulations.

[1997, c. 101, §1 (NEW); 1997, c. 101, §2 (AFF) .]

3. **Compensation fee program.** The department may develop a wetlands compensation fee program for the areas listed in subsection 7, paragraphs A and B in consultation with the Department of Agriculture, Conservation and Forestry, the United States Army Corps of Engineers and state and federal resource agencies, including the United States Fish and Wildlife Service and the United States Environmental Protection Agency. The department may develop a compensation fee program for the areas listed in subsection 7, paragraphs C, D and E in consultation with the Department of Inland Fisheries and Wildlife.

A. The program may include the following:

(1) Identification of wetland management priorities on a watershed or biophysical region basis;

(1-A) Identification of management priorities for the areas listed in subsection 7, paragraphs C, D and E;

(2) Identification of the types of losses eligible for compensation under this subsection;

(3) Standards for compensation fee projects;

(4) Calculation of compensation fees based on the functions and values of the affected areas and the cost of compensation, taking into account the potential higher cost of compensation when a project is implemented at a later date; and

(5) Methods to evaluate the long-term effectiveness of compensation fee projects implemented under this subsection in meeting the management priorities identified pursuant to subparagraphs (1) and (1-A). [2007, c. 527, §1 (AMD).]

B. Any compensation fee may be paid into a compensation fund established by the department as provided in subparagraph (1) or to an organization authorized by the department as provided in subparagraph (2). A compensation project funded in whole or in part from compensation fees must be approved by the department.

(1) The department may establish compensation funds for the purpose of receiving compensation fees, grants and other related income. A compensation fund must be a fund dedicated to payment of costs and related expenses of restoration, enhancement, preservation and creation projects. The department may make payments from the fund consistent with the purpose of the fund. Income received under this subsection must be deposited with the State Treasurer to the credit of the compensation fund and may be invested as provided by law. Interest on these investments must be credited to the compensation fund.

(2) The department may enter into an enforceable, written agreement with a public, quasi-public or municipal organization or a private, nonprofit organization for the protection of natural areas. Such an organization must demonstrate the ability to receive compensation fees, administer a compensation fund and ensure that compensation projects are implemented consistent with

local, regional or state management priorities. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report as requested by the department. If the authorized agency is a state agency other than the department, the agency shall establish a fund meeting the requirements specified in subparagraph (1). If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this subsection. [2007, c. 527, §1 (AMD).]

Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

[2011, c. 655, Pt. JJ, §31 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

4. **Relationship to other provisions.** The purchase of credits from a mitigation bank or the payment of a compensation fee in no way relieves the applicant of the requirement to comply with any other provision of this article, including, but not limited to, the requirement to avoid or minimize effects on wetlands and water quality to the greatest extent practicable under section 480-X.

[1997, c. 101, §1 (NEW); 1997, c. 101, §2 (AFF) .]

5. **Report; evaluation.**

[2003, c. 245, §9 (RP) .]

6. **Repeal.**

[2003, c. 245, §9 (RP) .]

7. **Areas.** As used in this section, "area" includes:

A. Freshwater wetlands; [2007, c. 527, §1 (NEW).]

B. Coastal wetlands; [2007, c. 527, §1 (NEW).]

C. Significant vernal pool habitat; [2007, c. 527, §1 (NEW).]

D. High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and [2007, c. 527, §1 (NEW).]

E. Shorebird nesting, feeding and staging areas. [2007, c. 527, §1 (NEW).]

[2007, c. 527, §1 (NEW) .]

SECTION HISTORY
1997, c. 101, §1 (NEW). 1997, c. 101, §2 (AFF). 2001, c. 232, §17 (AMD). 2003, c. 245, §§8,9 (AMD). 2005, c. 592, §§3,4 (AMD). 2007, c. 527, §1 (AMD). 2011, c. 655, Pt. JJ, §31 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

§480-AA. COASTAL SAND DUNE RULES

Rules adopted by the board regarding development in coastal sand dune systems are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 130, §1 (NEW).]

SECTION HISTORY
2003, c. 130, §1 (NEW).

§480-BB. SIGNIFICANT WILDLIFE HABITAT; MAJOR SUBSTANTIVE RULES

The Department of Inland Fisheries and Wildlife shall adopt rules that define "significant vernal pool habitat," "high and moderate value waterfowl and wading bird habitat" and "shorebird nesting, feeding and staging areas" under section 480-B, subsection 10, paragraph B. The Department of Environmental Protection shall adopt rules regarding the criteria used to determine whether an area is significant vernal pool habitat, high and moderate value waterfowl and wading bird habitat or shorebird nesting, feeding and staging areas under section 480-B, subsection 10, paragraph B. The rules, as applicable, must: [2005, c. 116, §5 (NEW).]

1. **Definition of buffer area.** Include a definition of the buffer area to be regulated;

[2005, c. 116, §5 (NEW) .]

2. **Certain landowners not subject to regulation.** Provide the following exemptions to regulation.

A. A landowner proposing to cause an impact on the buffer area defined for a significant vernal pool habitat is not subject to regulation pursuant to the rule if the significant vernal pool habitat depression is not on property owned or controlled by that landowner. [2011, c. 362, §1 (NEW).]

B. If a vernal pool depression is bisected by a property boundary and a landowner proposing to cause an impact does not have permission to enter the abutting property, only that portion of the vernal pool depression located on property owned or controlled by that landowner may be considered in determining whether the vernal pool is significant. A written department determination that a vernal pool is not significant pursuant to this paragraph remains valid regardless of timeframe. [2013, c. 231, §4 (AMD).]

C. Rules adopted under this section may not require an applicant for a license for a working waterfront activity on working waterfront land that is part of a state or federal brownfields program or a voluntary response action program under section 343-E to compensate for lost habitat function with a function of equal or greater value or to provide a compensation fee pursuant to section 480-Z; [2013, c. 231, §5 (NEW).]

[2013, c. 231, §§4, 5 (AMD) .]

3. **Department of Environmental Protection must provide written field determination.** Require that the Department of Environmental Protection provide a written field determination upon the request of a landowner whose land may be affected by the definitions and criteria adopted in a rule;

[2005, c. 116, §5 (NEW) .]

4. **Department of Environmental Protection may not assess fine in certain cases.** Provide that the Department of Environmental Protection may not assess a fine against a landowner who acted in accordance with a written field determination if the fine would be based solely on information in the written field determination;

[2011, c. 362, §2 (AMD) .]

5. **Process for voluntary identification.** Include a process for a landowner to voluntarily identify the landowner's land as a significant vernal pool habitat and to provide the Department of Inland Fisheries and Wildlife the authority to map the significant vernal pool habitat; and

[2011, c. 362, §3 (AMD) .]

6. **Artificial vernal pool.** Explicitly provide that an artificial vernal pool is exempt from regulation as long as the vernal pool was not created in connection with a compensation project pursuant to section 480-Z.

[2011, c. 362, §4 (NEW) .]

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 116, §5 (NEW).]

SECTION HISTORY
2005, c. 116, §5 (NEW). 2011, c. 362, §§1-4 (AMD). 2013, c. 231, §§4, 5 (AMD).

§480-CC. SIGNIFICANT WILDLIFE HABITAT; SHOREBIRD FEEDING AND ROOSTING AREAS

Significant wildlife habitat as defined in section 480-B, subsection 10 includes shorebird nesting, feeding and staging areas that are in conformance with criteria adopted by the department or are contained within another protected natural resource except as provided in this section and section 480-DD. [2007, c. 290, §7 (NEW); 2007, c. 290, §15 (AFF).]

1. **Definitions.** As used in this section and section 480-DD, unless the context otherwise indicates, the following terms have the following meanings.

A. "Shorebird feeding area" means a shorebird feeding or staging area that is not a roosting area. "Shorebird feeding area" includes a 100-foot-wide surrounding buffer referred to as "the feeding buffer." [2007, c. 290, §7 (NEW); 2007, c. 290, §15 (AFF).]

B. "Shorebird roosting area" means a shorebird feeding or staging area that is also a roosting area. "Shorebird roosting area" includes a 250-foot-wide surrounding buffer referred to as "the roosting buffer." [2007, c. 290, §7 (NEW); 2007, c. 290, §15 (AFF).]

[2007, c. 290, §7 (NEW); 2007, c. 290, §15 (AFF) .]

2. **Cutting standards within roosting and feeding buffers.** The cutting standards in this subsection apply in addition to the permitting standards in section 480-D.

A. Cutting or removal of vegetation within a roosting buffer is prohibited except as approved by the department for:

(1) Removal of a safety hazard;

(2) Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet in width as measured between tree trunks and shrub stems. The footpath may not result in a cleared line of sight to the water; and

(3) Cutting or removal of vegetation determined to be necessary by the department in order to conduct other activities approved by the department pursuant to section 480-C and in accordance with the standards of this article and rules adopted pursuant to this article, including but not limited to avoidance, minimization and no unreasonable impact. The department may not approve cutting or removal of vegetation for purposes of creating a view unless the department in consultation with the Department of Inland Fisheries and Wildlife determines there will be no unreasonable impact on the protected resource.

Any cutting or removal of vegetation under this paragraph must be done in consultation with and as approved by the Department of Inland Fisheries and Wildlife. [2007, c. 290, §7 (NEW); 2007, c. 290, §15 (AFF).]

B. Cutting or removal of vegetation within a feeding buffer is prohibited except as approved by the department for:

(1) Cutting or removal of vegetation that meets the vegetative screening standards set forth in Title 38, section 439-A, subsection 6. In interpreting and enforcing these standards, the department shall rely upon the department's shoreland zoning rules regarding cutting or removal of vegetation for activities other than timber harvesting and apply the cutting standards applicable within 75 feet of a coastal wetland to the entire 100-foot feeding buffer; and

(2) Cutting or removal of vegetation determined to be necessary by the department in order to conduct other activities approved by the department pursuant to section 480-C and in accordance with the standards of this article and rules adopted pursuant to this article, including but not limited to avoidance, minimization and no unreasonable impact.

This paragraph may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this paragraph. [2007, c. 290, §7 (NEW); 2007, c. 290, §15 (AFF).]

[2007, c. 290, §7 (NEW); 2007, c. 290, §15 (AFF) .]

SECTION HISTORY
2007, c. 290, §7 (NEW). 2007, c. 290, §15 (AFF).

§480-DD. SIGNIFICANT WILDLIFE HABITAT CRITERIA; REDUCTION IN CERTAIN SIGNIFICANT WILDLIFE HABITATS DUE TO DEVELOPMENT OR TOPOGRAPHY

Although an area is otherwise in conformance with significant wildlife habitat criteria adopted by the department for shorebird nesting, feeding, roosting and staging areas, or high and moderate value inland waterfowl and wading bird habitat, the Department of Inland Fisheries and Wildlife may determine that a specific portion of the area is no longer this type of significant wildlife habitat due to the topography or impact of development in existence on June 8, 2006 and continuing in existence as of the date of the determination. [2007, c. 290, §8 (NEW); 2007, c. 290, §15 (AFF).]

1. **Factors.** When determining whether an area is no longer a significant wildlife habitat, the Department of Inland Fisheries and Wildlife may consider factors such as species present or exiting and potential use of the area by birds, levels of disturbance, screening, development density, land use, presence of cliffs or bluffs and any mitigating factors.

[2007, c. 290, §8 (NEW); 2007, c. 290, §15 (AFF) .]

2. **Exclusions.** The Department of Inland Fisheries and Wildlife may not exclude an area from a significant wildlife habitat designation if future development of the area might unreasonably degrade the remaining significant wildlife habitat, unreasonably disturb the birds or unreasonably affect the continued use of the remaining significant wildlife habitat by the birds.

[2007, c. 290, §8 (NEW); 2007, c. 290, §15 (AFF) .]

For purposes of this section, "development" means the area of property altered, including, but not limited to, buildings, roads, driveways, parking areas, wastewater disposal systems and lawns and other nonnative vegetation as determined by the department. [2007, c. 290, §8 (NEW); 2007, c. 290, §15 (AFF).]

SECTION HISTORY
2007, c. 290, §8 (NEW). 2007, c. 290, §15 (AFF).

§480-EE. SIGNIFICANT WILDLIFE HABITAT CRITERIA; INLAND OPEN WATER

Regardless of its identification on maps as a high or moderate value waterfowl and wading bird habitat, an upland area adjacent to a great pond is not considered high or moderate value waterfowl and wading bird habitat for purposes of this article unless the upland area is within 250 feet of one or more freshwater wetlands that are high or moderate value waterfowl and wading bird habitat. [2007, c. 290, §9 (NEW); 2007, c. 290, §15 (AFF).]

SECTION HISTORY
2007, c. 290, §9 (NEW). 2007, c. 290, §15 (AFF).

§480-FF. NOTIFICATION OF IDENTIFICATION; SHOREBIRD NESTING, FEEDING AND STAGING AREAS

If an area is identified by the Department of Inland Fisheries and Wildlife as the type of area listed in section 480-B, subsection 10, paragraph B, subparagraph (3) after the effective date of this section, the department shall notify each municipality in which the significant wildlife habitat is located and members of the Legislature who represent residents of the municipality in which the significant wildlife habitat is located. The department and the Department of Inland Fisheries and Wildlife shall report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and inland fisheries and wildlife matters on any action taken pursuant to this section. [2007, c. 533, §1 (AMD).]

SECTION HISTORY
2007, c. 290, §10 (NEW). 2007, c. 533, §1 (AMD).

§480-GG. HIGH AND MODERATE VALUE INLAND WATERFOWL AND WADING BIRD HABITAT AND EXCAVATIONS AND QUARRIES AUTHORIZED PURSUANT TO ARTICLE 6, 7 OR 8-A

1. **Excavation authorized before June 8, 2006.** Unless a permit is required due to the presence of a protected natural resource other than a high and moderate value inland waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8, 2006 is not required to obtain a permit pursuant to this article for excavation within the upland portion of a high and moderate value inland waterfowl and wading bird habitat.

If a permit is required pursuant to this article due to the presence of a protected natural resource other than a high and moderate value inland waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8, 2006 is not required to meet standards associated solely with the upland portion of a high and moderate value inland waterfowl and wading bird habitat.

[2007, c. 616, §1 (NEW) .]

2. **Permits not authorized.** The department may not issue a permit pursuant to this article for an excavation or quarry authorized pursuant to article 6, 7 or 8-A and located in, on or over the wetland portion of a high and moderate value inland waterfowl and wading bird habitat.

The department may not issue a permit pursuant to this article for an excavation or quarry requiring authorization pursuant to article 6, 7 or 8-A after June 8, 2006 and located in the upland portion of a high and moderate value waterfowl and wading bird habitat.

[2007, c. 616, §1 (NEW) .]

SECTION HISTORY
2007, c. 616, §1 (NEW).

§480-HH. GENERAL PERMIT FOR OFFSHORE WIND ENERGY DEMONSTRATION PROJECT

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

A. "Coastal area" has the same meaning as in section 1802, subsection 1. [2009, c. 270, Pt. A, §2 (NEW).]

B. "Generating facilities" has the same meaning as in Title 35-A, section 3451, subsection 5. [2009, c. 270, Pt. A, §2 (NEW).]

C. "Maine Offshore Wind Energy Research Center" means the offshore wind energy test area designated pursuant to Title 12, section 1868, subsection 2. [2009, c. 270, Pt. A, §2 (NEW).]

D. "Meteorological tower" means an elevated structure or other support platform with attached equipment, such as an anemometer, a wind direction vane and temperature and pressure sensors and other measurement devices, to measure and assess the wind resource in the project area. [2009, c. 270, Pt. A, §2 (NEW).]

E. "Net project removal cost" means the total cost of removal of an offshore wind energy demonstration project, estimated in accordance with the plan required under subsection 3, paragraph G, minus the net salvage value of the project equipment. [2009, c. 270, Pt. A, §2 (NEW).]

F. "Ocean energy generating unit" means a wind turbine that converts wind energy to electrical energy that may be employed pursuant to a general permit under this section, a wave energy converter that may be employed pursuant to a general permit issued under this section or a tidal energy demonstration project that may be employed pursuant to a permit issued under section 636-A. [2009, c. 270, Pt. A, §2 (NEW).]

G. "Ocean sensor package" means a floating, submerged or seabed-mounted instrument that measures currents over the full range of site depths, wave data, seawater temperature and seawater salinity and other measurement devices to assess the wave resources in the project area. [2009, c. 270, Pt. A, §2 (NEW).]

H. "Offshore wind energy demonstration project" or "project" means a wind energy development that uses a wind turbine to convert wind energy to electrical energy and that employs no more than 2 wind energy turbines, each of which may use different technology, for the primary purpose of testing and validating a turbine blade design, floating platform or other support structure, mooring or anchoring system or other offshore wind energy technology that the applicant certifies is designed for use in ocean waters and is not in use elsewhere in the Gulf of Maine for commercial production of electricity and that may also include:

(1) Up to 3 meteorological towers per wind energy turbine proposed;

(2) One submerged utility line that is sized to transmit:

(a) An amount of electricity less than or equal to that produced by the offshore wind energy demonstration project; or

(b) Up to 25 megawatts of electricity if the line is intended to serve multiple offshore wind energy demonstration projects located within the Maine Offshore Wind Energy Research Center and the department has not previously granted approval for such a submerged utility line pursuant to this section; and

(3) A wave energy test project. [2009, c. 270, Pt. A, §2 (NEW).]

I. "Offshore wind energy test area" means a specific geographic area located on state-owned submerged lands in the coastal area identified as suitable for construction and operation of an offshore wind energy demonstration project pursuant to Title 12, section 1868, including the Maine Offshore Wind Energy Research Center. [2009, c. 270, Pt. A, §2 (NEW).]

J. "Wave energy converter" means a device that uses the motion of ocean surface waves to generate electricity. [2009, c. 270, Pt. A, §2 (NEW).]

K. "Wave energy test project" means a hydropower project, as defined by section 632, subsection 3, that uses ocean wave action to produce electricity and that:

(1) Is proposed as part of an offshore wind energy demonstration project and is designed and sited to test production of electricity from wave energy in conjunction with and in a manner that complements electricity produced by an offshore wind energy turbine;

(2) Employs up to 2 wave energy converters, each of which may use different technology, that the applicant certifies are designed for use in the ocean and are not in use elsewhere in the Gulf of Maine for commercial production, for the primary purpose of testing and validating the overall design of the converter and its related systems, subsystems or components; and

(3) May include one or more of the following additional elements:

(a) A mooring or anchoring system; and

(b) An ocean sensor package. [2009, c. 270, Pt. A, §2 (NEW).]

[2009, c. 270, Pt. A, §2 (NEW) .]

2. **General permit.** A person may apply for a general permit for an offshore wind energy demonstration project in accordance with this section. If a general permit is granted pursuant to this section, a permit is not required under section 480-C for the construction and operation of an offshore wind energy demonstration project.

[2009, c. 270, Pt. A, §2 (NEW) .]

3. **Application requirements.** An applicant for a general permit must file with the department an application that contains:

A. Written certification that the offshore wind energy demonstration project, other than any submerged utility line, will be located wholly within an offshore wind energy test area; [2009, c. 270, Pt. A, §2 (NEW).]

B. A site plan that includes the following elements:

(1) A plan view drawing of the entire project area that shows, with geographic positioning system references, the proposed location of the generating facilities and all other project elements, including but not limited to any submerged utility line or meteorological tower;

(2) A narrative description of the proposed activities and methods for construction, operation and removal of the offshore wind energy demonstration project that addresses on-site management of fuels, lubricants and other materials used for project operations or maintenance;

(3) A scale drawing that shows the design and location of the proposed mooring or anchoring system;

(4) A drawing showing the location of the submerged utility line, if any, and plans for its construction in compliance with the permit by rule standards regarding construction of a submerged utility line established in rules adopted by the board; and

(5) A drawing showing the proposed location of each wind turbine in relation to any other offshore wind energy demonstration project within 10 kilometers of the proposed project and written verification that the project will not interfere with the operation of any such previously approved project. [2009, c. 270, Pt. A, §2 (NEW).]

C. A report, prepared following consultation with the Department of Marine Resources, that:

(1) Describes existing information regarding commercial fishing and other existing uses in the project area; and

(2) Describes, based on a field investigation, the marine resources, including benthic communities, in the marine waters and on the submerged lands and immediately adjacent areas in, on or over which the applicant proposes to locate any mooring, anchoring system, meteorological tower, ocean sensor package, submerged utility line or other project element that is secured to the seabed; [2009, c. 270, Pt. A, §2 (NEW).]

D. Written acknowledgement that, in accordance with this section, the department may require the applicant to take remedial action, at the applicant's expense, pursuant to subsection 13, including but not limited to removal of the generating facilities and submerged utility line and termination of the project; [2009, c. 270, Pt. A, §2 (NEW).]

E. A fish and wildlife monitoring plan that includes provisions for conducting monitoring, throughout the term of the general permit, of the behavior and interaction of species listed as threatened or endangered in Title 12, section 6975 or Title 12, section 12803, subsection 3; avian species, including seabirds, passerines, raptors, shorebirds, water birds and waterfowl; bats; and marine mammals and other marine resources with the project, including but not limited to the generating facilities and mooring or anchoring systems employed, and identifying potential adverse effects. The plan, at a minimum, must include:

(1) A detailed description of the methods and equipment that will be used for monitoring fish and wildlife behavior and activity in the vicinity of the project;

(2) A detailed description of how the fish and wildlife monitoring data will be analyzed and provided to the department in electronic format, with specific criteria by which to evaluate adverse effects;

(3) A detailed implementation schedule, including the frequency and timing of data recovery, maintenance of the monitoring equipment and quarterly reporting to the department;

(4) A detailed monitoring schedule that considers ocean conditions, seasonal variations in species' presence or absence and other pertinent biological factors;

(5) Provisions for identifying and implementing remedial measures if monitoring identifies any adverse changes in fish or wildlife behavior or use of ocean habitats;

(6) A detailed description of the methods and equipment that will be used to determine and monitor ambient noise levels, electromagnetic fields and noise associated with project construction and subsequent operations and the effectiveness of any devices that are proposed to avoid and minimize the potential for related foreseeable adverse effects, if any; and

(7) Provisions for filing an annual report with the department describing the monitoring results and any recommendations for modifying the generating facilities or other project elements, or commencing the approved project removal plan, if necessary to minimize adverse effects on natural resources identified pursuant to plans required under this section. Thirty days prior to submission of the report to the department, the applicant shall provide a draft of the report to the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry, the United States Fish and Wildlife Service and the National Marine Fisheries Service and shall include in the annual report any comments from those agencies and the applicant's responses to them; [2009, c. 270, Pt. A, §2 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

F. A navigation safety plan to protect the public and project facilities from such events as: collisions between commercial and recreational vessels and project facilities; entanglement of fishing gear, anchors, dredging equipment or other underwater devices that may damage or become entangled with project transmission, anchoring and mooring lines; release of or damage to the project's submerged utility line, anchoring system or other project elements in, on or over the seabed; and electrocution. The plan must, at a minimum, consider the need and provide for as appropriate:

(1) A boundary defining an exclusion zone around the proposed generating facilities, anchoring system, submerged utility line and other project elements, if any, in which specified types of navigation and underwater activities incompatible with project operations may not be conducted. Any such exclusion zone must be specified with global positioning system coordinates and be designed to minimize potential conflicts with other existing uses in the area and may be no larger than the applicant demonstrates is necessary to achieve the purposes of the offshore wind energy demonstration project;

(2) Marking the extreme corners of the exclusion zone, specified pursuant to subparagraph (1), with lights, buoys or other indicators sufficient to warn vessels of the above-water and underwater project elements and the boundaries of the exclusion zone during both day and night;

(3) Marking the generating facilities with fog signals, low-intensity navigation lights, hazard marking lights or other aids to navigation and painting and lighting the generating facilities in a way that considers the aesthetic resources of the project area as well as the safety of the public and project facilities and meets applicable Federal Aviation Administration guidelines and United States Coast Guard requirements;

(4) Procedures to ensure the safety of the public near the project area; and

(5) A description of monitoring for and actions the applicant will take to prevent and address an emergency that specifies: procedures the applicant will take during an emergency, including but not limited to immediate shutdown; a protocol for coordination with and reporting an emergency to local, state and federal agencies; contingency measures to modify operations to address reasonably foreseeable emergency conditions; and a schedule for annual testing of emergency equipment, including the project's emergency shutdown system; [2009, c. 270, Pt. A, §2 (NEW).]

G. A project removal plan that the applicant will, at its expense, initiate within 60 days of expiration or termination of a general permit granted pursuant to this section and that provides for:

(1) Removal of the project in its entirety from all project lands and waters, except for any part of the project regarding which the applicant provides the department substantial evidence of plans for continued beneficial use, including but not limited to an executed lease of state-owned submerged lands, as applicable, or for partial removal or other modification adequate to avoid foreseeable adverse effects on natural resources and existing uses;

(2) Minimizing seabed disturbances and suspended sediments during removal of any underwater facilities;

(3) Monitoring the effects of the removal activities on species listed as threatened or endangered species in Title 12, section 6975 or Title 12, section 12803, subsection 3 and marine resources both during and subsequent to completion of removal activities;

(4) An implementation schedule that provides for all removal and restoration activities to be completed within one year of the expiration date of the general permit pursuant to subsection 9;

(5) An estimate of the total project removal cost, without regard to salvage value of the equipment, and the net project removal cost, prepared by a licensed professional engineer; and

(6) Written evidence and certification that the applicant has posted and will maintain funds for project removal in an amount equal to the net project removal cost, except that at no point may such funds be less than 25% of the total project removal cost. The applicant shall post and maintain project removal funds with a bonding company or federal-chartered or state-chartered lending institution that is authorized to do business in the State and chosen by the applicant and considered acceptable by the department posting the financial security. Project removal funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that the department considers adequate to ensure funds posted pursuant to this

paragraph will remain inviolate and available for project removal if the applicant ceases to exist, declares bankruptcy or becomes insolvent or otherwise unable to finance the project removal plan required under this paragraph; [2009, c. 270, Pt. A, §2 (NEW).]

H. Documentation that, in developing each plan required under paragraphs E to G, the applicant consulted with: the Department of Marine Resources, the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry; the Maine Land Use Planning Commission and the Governor's Energy Office; the United States Army Corps of Engineers, the United States Coast Guard, the National Marine Fisheries Service, the National Park Service and the United States Fish and Wildlife Service; the lobster management policy council established under Title 12, section 6447 for the lobster management zone in which the offshore wind energy demonstration project is proposed; each municipality in which or adjacent to which the project is proposed; and any other local, state or federal agency the applicant considers appropriate. This documentation must include copies of these agencies' comments and recommendations on the plan, if any, and specific descriptions of how the agencies' comments are accommodated by the plan, including the applicant's reasons, based on project-specific information, for any agency recommendation not adopted. The applicant shall allow a minimum of 60 days for the agencies to review and make comments and recommendations on each draft plan before it is filed with the department. No more than 30 days prior to its initiation, the applicant shall notify each municipality within or adjacent to which it intends to site and operate an offshore wind energy demonstration project and invite its participation in the consultation required under this paragraph; [2011, c. 655, Pt. MM, §20 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV).]

I. Documentation, including certificates of insurance, that the applicant has and will maintain a current general liability policy for the project that covers bodily injury, property damages and environmental damages in an amount considered reasonable by the department in consideration of the scope, scale and location of the project; [2009, c. 270, Pt. A, §2 (NEW).]

J. Documentation that the applicant has the financial and technical capacity to construct and operate the project as proposed; [2009, c. 270, Pt. A, §2 (NEW).]

K. Certification that neither the applicant nor any corporation, partnership, person or other legal entity with an ownership, leasehold or other direct financial interest in the proposed project holds or has an application pending for approval of a general permit under this section for any other offshore wind energy demonstration project located in the offshore wind energy test area in which the project is proposed. This paragraph does not apply to an application by the University of Maine System for a project, funded in whole or part with state or federal funds and proposed for location in the Maine Offshore Wind Energy Research Center, that employs offshore wind energy technology for which the department has not previously granted a general permit under this section; and [2009, c. 270, Pt. A, §2 (NEW).]

L. For an offshore wind energy demonstration project proposed for location within the Maine Offshore Wind Energy Research Center, written evidence that the proposed development will be undertaken by or in cooperation with the University of Maine System and on terms and in a manner that the University of Maine System determines consistent with and in furtherance of its offshore wind energy research and development-related objectives, including but not limited to any such objectives to be supported with state bond revenues. [2009, c. 270, Pt. A, §2 (NEW).]

[2011, c. 655, Pt. MM, §20 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV) .]

4. **Review period.** There is a 60-day review period for applications for a general permit for an offshore wind energy demonstration project under this section. The review period begins on the date that the department has accepted an application for processing. This review period may be extended pursuant to section 344-B with the consent of the applicant.

[2009, c. 270, Pt. A, §2 (NEW) .]

5. **Notification.** Except as otherwise provided by subsection 13, the department shall notify an applicant in writing within the review period pursuant to subsection 4 if the department determines that the requirements of this section have not been met. The notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the review period, a general permit is deemed to have been granted as of the date immediately following the final day of the review period specified in subsection 4.

[2009, c. 270, Pt. A, §2 (NEW) .]

6. **Fees.** The department shall assess a fee for review of applications filed pursuant to this section, including a request for modification under subsection 13. Except as otherwise provided by section 344-A, the fee must be commensurate with the amount assessed, pursuant to section 352, to activities requiring an individual permit for coastal wetland alterations.

[2009, c. 270, Pt. A, §2 (NEW) .]

7. **Violation.** Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 3 or as subsequently modified with the approval of the department in consultation with agencies and other entities with whom the applicant consulted in accordance with subsection 3 is a violation of the general permit.

[2009, c. 270, Pt. A, §2 (NEW) .]

8. **General permit term.** Except as otherwise provided in subsections 9 to 12, a general permit granted under this section authorizes conduct of the approved offshore wind energy demonstration project in accordance with this subsection:

A. If the offshore wind energy demonstration project is not located in the Maine Offshore Wind Energy Research Center, conduct of the project is authorized for 3 years from the date that construction of a permitted structure on submerged lands is initiated or 5 years from the date on which the general permit has been granted pursuant to subsection 5, whichever first occurs; or [2009, c. 270, Pt. A, §2 (NEW).]

B. If the offshore wind energy demonstration project is located in the Maine Offshore Wind Energy Research Center, conduct of the project is authorized for 5 years from the date that construction of a permitted structure on submerged lands is initiated or 7 years from the date on which the permit has been granted pursuant to subsection 5, whichever first occurs. [2009, c. 270, Pt. A, §2 (NEW).]

The applicant must provide the department written notice of the date of initiation of construction within 7 days of its commencement. Except as otherwise provided by subsection 9, the department may not extend the term of a general permit granted under this section.

[2009, c. 270, Pt. A, §2 (NEW) .]

9. **Extensions to permit term.** The department may grant one or more extensions of the general permit term in accordance with this subsection.

A. The department may grant one or more extensions of the general permit term, each for a period of 6 months or less, if, prior to expiration of the general permit term, the applicant has filed completed applications for all requisite state license and permit approvals for a wind energy development, as defined by Title 35-A, section 3451, subsection 11, located wholly or partly where the offshore wind energy demonstration project is located. The department may not grant an extension under this paragraph for a project located in the Maine Offshore Wind Energy Research Center. [2009, c. 270, Pt. A, §2 (NEW).]

B. The department shall grant one or more extensions, each of which may not exceed 3 years, of the general permit term for an offshore wind energy demonstration project that is funded in whole or in part with state or federal funds and is located in the Maine Offshore Wind Energy Research Center if the applicant provides written evidence that the University of Maine System has determined that the extension is necessary to fulfill the research and development objectives of the project. [2009, c. 270, Pt. A, §2 (NEW).]

[2009, c. 270, Pt. A, §2 (NEW) .]

10. **Surrender; demonstrated progress required.** If the department determines that the applicant has not completed or made substantial and ongoing progress to complete construction of all project elements within one year of the date on which the general permit has been granted pursuant to subsection 5, the applicant must surrender its general permit, subject to conditions regarding project removal pursuant to subsection 11. An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 8 or 9. Subject to conditions regarding project removal under subsection 11, the general permit terminates on the date of its surrender pursuant to this subsection.

[2009, c. 270, Pt. A, §2 (NEW) .]

11. **Project removal.** Within 60 days of expiration or termination of a general permit pursuant to subsection 8, 9, 10 or 12, the applicant shall initiate implementation of the project removal plan provided for under subsection 3, paragraph G. If the applicant fails to begin implementing the plan within this 60-day period, the department may take such measures as it considers necessary to initiate and fully implement the plan by drawing on the financial surety provided pursuant to the project removal plan. The applicant's acceptance of the general permit constitutes agreement and consent by the applicant and its heirs, successors and assigns that the department may take such action as necessary to initiate and fully implement the project removal plan. The holder of the project removal funds shall release the project removal funds when the applicant has demonstrated and the department concurs that the project removal plan has been satisfactorily completed or upon written authorization by the department in the event the department implements the plan pursuant to this subsection.

[2009, c. 270, Pt. A, §2 (NEW) .]

12. **Remedial action.** If the department determines, based on information provided in annual or periodic reports provided pursuant to subsection 3 or other information, that there is substantial evidence that the project is having a significant adverse effect on a protected natural resource, wildlife, including avian wildlife, bat species, marine mammals, fish or other marine resources or public health or safety, the department shall order the applicant to take action that the department considers necessary to address that adverse effect. Remedial action required by the department may include, but is not limited to:

A. Suspension or modification of project operations; or [2009, c. 270, Pt. A, §2 (NEW).]

B. Cessation of operations and removal of some or all elements of the project, including but not limited to the generating facilities, if there is no practicable alternative to address the adverse effect. [2009, c. 270, Pt. A, §2 (NEW).]

[2009, c. 270, Pt. A, §2 (NEW) .]

13. **Permit modification; relocation.** Following the granting of a general permit under this section, the department may authorize an applicant to move the generating facilities to another location within the same offshore wind energy test area, as long as the applicant provides an amended site plan that meets the requirements of subsection 3, paragraphs B, C, E, F and H. The department shall notify the applicant in writing within 30 days of acceptance for processing if the department determines that the requirements of this

section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a permit modification is deemed to have been granted.

[2009, c. 270, Pt. A, §2 (NEW) .]

14. **Relationship to other laws.** Notwithstanding any other provision of law to the contrary, an offshore wind energy demonstration project that has been granted a general permit under this section is not subject to review by or required to obtain a development permit, rezoning authorization or other approval or authorization from the Maine Land Use Planning Commission and is not otherwise subject to review or approval by the department pursuant to this subchapter.

A municipality may not enact or enforce any land use, zoning or other standard, conditions or requirement regarding an offshore wind energy demonstration project located within the municipality that is stricter than standards, conditions or requirements of this section. The municipality has the burden of proof regarding the location of the project in relation to its boundaries. Any action by the municipality regarding its authorization to site, construct or operate an offshore wind energy demonstration project must be taken within 60 days of the grant of a general permit under this section or within 30 days of the granting of a permit modification pursuant to subsection 13.

[2009, c. 270, Pt. A, §2 (NEW); 2011, c. 682, §38 (REV) .]

15. **Number of projects in the Maine Offshore Wind Energy Research Center.** Notwithstanding any provision of law to the contrary, a general permit may not be granted under this section for an offshore wind energy demonstration project that is proposed for location within the Maine Offshore Wind Energy Research Center if grant of that general permit would authorize more than 6 ocean energy generating units to be sited and in operation at any one time within the Maine Offshore Wind Energy Research Center.

[2009, c. 270, Pt. A, §2 (NEW) .]

SECTION HISTORY
2009, c. 270, Pt. A, §2 (NEW). 2011, c. 655, Pt. MM, §20 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §38 (REV).

Article 6: SITE LOCATION OF DEVELOPMENT

§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. [1987, c. 812, §§1, 18 (AMD).]

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. [1981, c. 449, §3 (NEW).]

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the department, 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. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §84 (AMD).]

The Legislature further finds that noise generated at development sites has primarily a geographically restricted and frequently transient impact that is best regulated at the municipal level pursuant to a municipality's economic development and land use plans. It is the intent of the Legislature that regulation of noise from developments be primarily the responsibility of local municipal governments. [1993, c. 383, §2 (AMD); 1993, c. 383, §42 (AFF).]

SECTION HISTORY
1969, c. 571, §2 (NEW). 1971, c. 613, §1 (AMD). 1971, c. 618, §12 (AMD). 1979, c. 466, §11 (AMD). 1981, c. 449, §3 (AMD). 1983, c. 513, §1 (AMD). 1987, c. 346, §1 (AMD). 1987, c. 812, §§1,18 (AMD). 1989, c. 890, §§A40,B84 (AMD). 1993, c. 383, §2 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 704, §A2 (AMD). 1995, c. 704, §C2 (AFF). 1999, c. 468, §5 (AMD).

§482. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 700, §2 (AMD).]

1. **Board.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §85 (RP) .]

1-A. **Borrow pit.** "Borrow pit" means a mining operation undertaken primarily to extract and remove sand, fill or gravel. "Borrow pit" does not include any mining operation undertaken primarily to extract or remove rock or clay.

[1993, c. 350, §2 (NEW) .]

2. **Development of state or regional significance that may substantially affect the environment.** "Development of state or regional significance that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that:

A. Occupies a land or water area in excess of 20 acres; [1997, c. 502, §5 (RPR).]

B. Is an oil or gas exploration or production activity that includes drilling or excavation under water; [2011, c. 653, §16 (AMD); 2011, c. 653, §33 (AFF).]

C. Is a structure as defined in this section; [1997, c. 502, §5 (RPR).]

D. Is a subdivision as defined in this section; [2009, c. 615, Pt. E, §13 (AMD).]

E. [1999, c. 468, §7 (RP).]

F. Is an oil terminal facility as defined in this section; or [2009, c. 615, Pt. E, §14 (AMD).]

F. [1993, c. 680, Pt. C, §7 (RP).]

G. [1993, c. 680, Pt. C, §7 (RP).]

H. [1993, c. 680, Pt. C, §7 (RP).]

I. [1997, c. 502, §5 (RP).]

J. Is an offshore wind power project with an aggregate generating capacity of 3 megawatts or more. [2009, c. 615, Pt. E, §15 (NEW).]

[2009, c. 615, Pt. E, §§13-15 (AMD); 2011, c. 653, §16 (AMD); 2011, c. 653, §33 (AFF) .]

2-A. **Exploration.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §4 (RP) .]

2-B. **Metallic mineral mining or advanced exploration activity.**

[2011, c. 653, §33 (AFF); 2011, c. 653, §17 (RP) .]

2-C. **Hazardous activity.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §6 (RP) .]

2-D. **Multi-unit housing.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §7 (RP) .]

2-E. **Coastal wetlands.** "Coastal wetlands" has the same meaning as in section 480-B, subsection 2.

[1993, c. 383, §8 (AMD); 1993, c. 383, §42 (AFF) .]

2-F. **Freshwater wetlands.** "Freshwater wetlands" has the same meaning as in section 480-B, subsection 4.

A. [1993, c. 383, §42 (AFF); 1993, c. 383, §9 (RP).]

B. [1993, c. 383, §42 (AFF); 1993, c. 383, §9 (RP).]

C. [1993, c. 383, §42 (AFF); 1993, c. 383, §9 (RP).]

[1993, c. 383, §9 (AMD); 1993, c. 383, §42 (AFF) .]

3. **Natural environment of a locality.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §10 (RP) .]

3-A. **Overburden.** "Overburden" means earth and other materials naturally lying over the product to be mined.

[1979, c. 466, §13 (NEW) .]

3-B. **Normal high-water line.** "Normal high-water line" has the same meaning as in section 480-B, subsection 6.

[1993, c. 383, §11 (AMD); 1993, c. 383, §42 (AFF) .]

3-C. **Passenger car equivalents at peak hour.**

[1999, c. 468, §8 (RP) .]

3-D. **Oil terminal facility.** "Oil terminal facility" means a facility and related appurtenances located in, on, over or under the surface of any land or water that is used or capable of being used to transfer, process, refine or store oil as defined in section 542, subsection 6. "Oil terminal facility" does not include:

A. A facility used or capable of being used to store less than 1,500 barrels or 63,000 gallons of oil; [1997, c. 502, §6 (NEW).]

B. A facility not engaged in the transfer of oil to or from the waters of the State; or [1997, c. 502, §6 (NEW).]

C. A facility consisting only of a vessel or vessels as defined in section 542, subsection 11. [1997, c. 502, §6 (NEW).]

[1997, c. 502, §6 (NEW) .]

4. **Person.** "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, federal agency, educational or charitable organization or institution or other legal entity.

[1993, c. 383, §12 (AMD); 1993, c. 383, §42 (AFF) .]

4-A. **Product.**

[1995, c. 700, §5 (RP) .]

4-B. **Reclamation.** "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the department, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits and the filling or sealing of shafts and underground workings with solid materials unless necessary for protection of ground water or safety.

[1993, c. 383, §13 (AMD); 1993, c. 383, §42 (AFF) .]

4-C. **Primary sand and gravel recharge areas.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §14 (RP) .]

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.

[1987, c. 812, §§5, 18 (AMD) .]

4-E. **River, stream or brook.** "River, stream or brook" has the same meaning as in section 480-B, subsection 9.

[1993, c. 383, §15 (AMD); 1993, c. 383, §42 (AFF) .]

4-F. **Shoreland zone.** "Shoreland zone" has the same meaning as "shoreland areas" in section 435. Terms used within this definition have the same meanings as in section 436-A.

[1993, c. 383, §16 (AMD); 1993, c. 383, §42 (AFF) .]

5. **Subdivision.** A "subdivision" is the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; except that when all lots are for single-family, detached, residential housing, common areas or open

space a "subdivision" is the division of a parcel of land into 15 or more lots to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered. This definition of "subdivision" is subject to the following exceptions:

A. [1989, c. 769, §2 (RP).]

B. [1989, c. 769, §3 (RP).]

C. Lots of 40 or more acres but not more than 500 acres may not be counted as lots except where:

(1) The proposed subdivision is located wholly or partly within the shoreland zone; [1993, c. 680, Pt. A, §35 (RPR).]

C-1. Lots of more than 500 acres in size may not be counted as lots; [1993, c. 680, Pt. A, §35 (RPR).]

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a parcel and actually uses all or part of the parcel for that purpose during that period, a lot containing that residence may not be counted as a lot; [1993, c. 680, Pt. A, §35 (RPR).]

E. Unless intended to circumvent this article, the following transactions may not be considered lots offered for sale or lease to the general public:

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer if those lots are not further divided or transferred to a person not so related to the developer within a 5-year period, except as provided in this subsection;

(2) Personal, nonprofit transactions, such as the transfer of lots by gift, if those lots are not further divided or transferred within a 5-year period or the transfer of lots by devise or inheritance; or

(3) Grant of a bona fide security interest in the whole lot or subsequent transfer of the whole lot by the original holder of the bona fide security interest or that person's successor in interest; [1995, c. 493, §5 (AMD).]

F. In those subdivisions that would otherwise not require site location approval, unless intended to circumvent this article, the following transactions may not, except as provided, be considered lots offered for sale or lease to the general public:

(1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, provided that the department is made a party; and [1993, c. 680, Pt. A, §35 (RPR).]

G. [1987, c. 864, §1 (RP).]

G-1. [1987, c. 864, §2 (RP).]

H. The transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision is exempt from review under this article, provided that the land was not owned by the permit holder at the time the department approved the subdivision. Further division of the transferred land must be reviewed under this article. [1993, c. 680, Pt. A, §35 (RPR).]

The exception described in paragraph F does not apply, and the subdivision requires site location approval, whenever the use of a lot described in paragraph F changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph F. For the purposes of this subsection only, a parcel of land is defined as all contiguous land in the same ownership provided that lands located on opposite sides of a public or private road are considered each a separate parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970. A lot to be offered for sale or lease to

the general public is counted, for purposes of determining jurisdiction, from the time a municipal subdivision plan showing that lot is recorded or the lot is sold or leased, whichever occurs first, until 5 years after that recording, sale or lease.

[1997, c. 603, §2 (AMD) .]

6. **Structure.** A "structure" means:

A. [1993, c. 383, §42 (AFF); 1993, c. 383, §18 (RP).]

B. Buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of 3 acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-acre threshold. [1993, c. 383, §18 (AMD); 1993, c. 383, §42 (AFF).]

[1993, c. 383, §18 (AMD); 1993, c. 383, §42 (AFF) .]

7. **Storage facility.**

[1995, c. 704, Pt. A, §6 (RP); 1995, c. 704, Pt. C, §2 (AFF) .]

8. **Offshore wind power project.** "Offshore wind power project" means a project that uses a windmill or wind turbine to convert wind energy to electrical energy and is located in whole or in part within coastal wetlands as defined in section 480-B, subsection 2. "Offshore wind power project" includes both generating facilities as defined by Title 35-A, section 3451, subsection 5 and associated facilities as defined by Title 35-A, section 3451, subsection 1, without regard to whether the electrical energy is for sale or use by a person other than the generator.

[2009, c. 615, Pt. E, §16 (NEW) .]

SECTION HISTORY
1969, c. 571, §2 (NEW). 1971, c. 593, §22 (AMD). 1971, c. 613, §§2,3 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 625, §276 (AMD). 1975, c. 214, (AMD). 1975, c. 297, (AMD). 1975, c. 712, (AMD). 1979, c. 466, §§12,13 (AMD). 1979, c. 541, §A263 (AMD). 1981, c. 227, §§1,2 (AMD). 1981, c. 449, §§4-6,9 (AMD). 1981, c. 698, §190 (AMD). 1983, c. 500, §2 (AMD). 1983, c. 513, §2 (AMD). 1983, c. 743, §13 (AMD). 1983, c. 788, §§1-3 (AMD). 1983, c. 819, §A63 (AMD). 1985, c. 162, §7 (AMD). 1985, c. 479, §5 (AMD). 1985, c. 654, (AMD). 1987, c. 130, (AMD). 1987, c. 737, §§C90,106 (AMD). 1987, c. 810, §§9-11 (AMD). 1987, c. 812, §§2-8,18 (AMD). 1987, c. 864, §§1,2 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 497, §12 (AMD). 1989, c. 600, §A19 (AMD). 1989, c. 769, §§2-4 (AMD). 1989, c. 890, §§A40,B85,86 (AMD). RR 1991, c. 2, §146 (COR). 1991, c. 160, §1 (AMD). 1991, c. 500, §3 (AMD). 1993, c. 350, §§1-3 (AMD). 1993, c. 366, §§1-3 (AMD). 1993, c. 366, §4 (AFF). 1993, c. 383, §§3-18 (AMD). 1993, c. 383, §42 (AFF). 1993, c. 680, §§A35,C7 (AMD). 1995, c. 493, §5 (AMD). 1995, c. 700, §§2-5 (AMD). 1995, c. 704, §§A3-6 (AMD). 1995, c. 704, §C2 (AFF). 1997, c. 502, §§5,6 (AMD). 1997, c. 603, §2 (AMD). 1999, c. 468, §§6-8 (AMD). 2005, c. 330, §18 (AMD). 2009, c. 615, Pt. E, §§13-16 (AMD). 2011, c. 653, §§16, 17 (AMD). 2011, c. 653, §33 (AFF).

§482-A. NOISE EFFECT

(REPEALED)

SECTION HISTORY
1987, c. 346, §2 (NEW). 1989, c. 680, (AMD). 1989, c. 890, §§A40,B87,88 (AMD). 1991, c. 66, §A17 (AMD). 1993, c. 383, §42 (AFF). 1993, c. 383, §19 (RP).

§483. NOTIFICATION REQUIRED; BOARD ACTION; ADMINISTRATIVE APPEALS

(REPEALED)

SECTION HISTORY
1969, c. 571, §2 (NEW). 1971, c. 613, §4 (AMD). 1971, c. 618, §12 (AMD). 1981, c. 449, §§7,9 (RPR). 1983, c. 453, §6 (AMD). 1989, c. 546, §8 (RP).

§483-A. PROHIBITION

1. **Approval required.** A person may not 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 of state or regional significance that may substantially affect the environment without first having obtained approval for this construction, operation, lease or sale from the department.

[2003, c. 452, Pt. W, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Compliance with order or permit required.** A person having an interest in, or undertaking an activity on, a parcel of land affected by an order or permit issued by the department may not act contrary to that order or permit.

[2003, c. 452, Pt. W, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1987, c. 812, §§9,18 (NEW). 1991, c. 499, §19 (AMD). 1993, c. 383, §20 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 704, §A7 (AMD). 1995, c. 704, §C2 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 452, §W7 (RPR).

§484. STANDARDS FOR DEVELOPMENT

The department shall approve a development proposal whenever it finds the following. [1995, c. 704, Pt. A, §8 (AMD); 1995, c. 704, Pt. C, §2 (AFF).]

1. **Financial capacity and technical ability.** The developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this article. The commissioner may issue a permit under this article that conditions any site alterations upon a developer providing the commissioner with evidence that the developer has been granted a line of credit or a loan by a financial institution authorized to do business in the State as defined in Title 9-B, section 131, subsection 17-A or with evidence of any other form of financial assurance the board determines by rule to be adequate.

[2009, c. 293, §1 (AMD) .]

2. **Traffic movement.**

[1999, c. 468, §9 (RP) .]

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.

A. In making a determination under this subsection, the department may consider the effect of noise from a commercial or industrial development. Noise from a residential development approved under this article may not be regulated under this subsection, and noise generated between the hours of 7 a.m. and 7 p.m. or during daylight hours, whichever is longer, by construction of a development approved under this article may not be regulated under this subsection. [1993, c. 383, §21 (NEW); 1993, c. 383, §42 (AFF).]

B. In determining whether a developer has made adequate provision for the control of noise generated by a commercial or industrial development, the department shall consider board rules relating to noise and the quantifiable noise standards of the municipality in which the development is located and of any municipality that may be affected by the noise. [1993, c. 383, §21 (NEW); 1993, c. 383, §42 (AFF).]

C. Nothing in this subsection may be construed to prohibit a municipality from adopting noise regulations stricter than those adopted by the board. [1993, c. 383, §21 (NEW); 1993, c. 383, §42 (AFF).]

D. [1995, c. 700, §6 (RP).]

E. [1995, c. 700, §6 (RP).]

F. In making a determination under this subsection regarding a structure to facilitate withdrawal of groundwater, the department shall consider the effects of the proposed withdrawal on waters of the State, as defined by section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the department shall consider both the direct effects of the proposed water withdrawal and its effects in combination with existing water withdrawals. [2005, c. 452, Pt. A, §3 (NEW).]

G. In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more, the department shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452. [2009, c. 615, Pt. E, §17 (AMD).]

H. In making a determination under this subsection regarding a development's effects on significant vernal pool habitat, the department shall apply the same standards applied to significant vernal pool habitat under rules adopted pursuant to the Natural Resources Protection Act. The department may not require a buffer strip adjacent to significant vernal pool habitat unless the buffer strip is established for another protected natural resource as defined in section 480-B, subsection 8. [2011, c. 359, §3 (NEW).]

[2011, c. 359, §3 (AMD) .]

4. **Soil types.** The proposed development will be built on soil types that are suitable to the nature of the undertaking.

[1995, c. 704, Pt. A, §10 (AMD); 1997, c. 603, §§8, 9 (AFF) .]

4-A. **Storm water management and erosion and sedimentation control.** The proposed development meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. If exempt under section 420-D, subsection 7, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm

water quality standards adopted pursuant to section 420-D. For redevelopment projects only, the standards for storm water management in section 420-D are met if the proposed development is located in a designated area served by a department-approved management system for storm water as described in section 420-D, subsection 2, as long as the owner or operator of the parcel upon which the proposed development will be located enters into or obtains and remains in compliance with all agreements, permits and approvals necessary for the proposed development to be served by such management system for storm water.

[2011, c. 653, §18 (AMD); 2011, c. 653, §33 (AFF) .]

5. **Ground water.** The proposed development will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur.

[1987, c. 812, §§10, 18 (RPR) .]

6. **Infrastructure.** The developer has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal, required for the development, and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

[1999, c. 468, §10 (AMD) .]

7. **Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

[1987, c. 812, §§10, 18 (NEW) .]

8. **Sand supply.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §23 (RP) .]

9. **Blasting.** Blasting will be conducted in accordance with the standards in section 490-Z, subsection 14 unless otherwise approved by the department.

[2007, c. 297, §2 (NEW) .]

10. **Special provisions; wind energy development or offshore wind power project.** In the case of a grid-scale wind energy development, or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects; [2007, c. 661, Pt. B, §12 (NEW).]

B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and [2007, c. 661, Pt. B, §12 (NEW).]

C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development. [2007, c. 661, Pt. B, §12 (NEW).]

The Department of Labor, the Governor's Office of Policy and Management, the Governor's Energy Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

For purposes of this subsection, "grid-scale wind energy development," "primary siting authority," "significant tangible benefits" and "expedited wind energy development" have the same meanings as in Title 35-A, section 3451.

[2011, c. 655, Pt. DD, §18 (AMD); 2011, c. 655, Pt. DD, §24 (AFF) .]

SECTION HISTORY
1969, c. 571, §2 (NEW). 1971, c. 256, §5 (AMD). 1971, c. 476, §2 (AMD). 1971, c. 613, §§5-8 (AMD). 1971, c. 618, §12 (AMD). 1975, c. 240, (AMD). 1977, c. 300, §30 (AMD). 1977, c. 374, §3 (AMD). 1977, c. 623, (AMD). 1977, c. 696, §343 (AMD). 1981, c. 194, §3 (AMD). 1981, c. 449, §§8, 9 (AMD). 1983, c. 500, §3 (AMD). 1983, c. 513, §3 (AMD). 1985, c. 746, §21 (AMD). 1987, c. 141, §B36 (AMD). 1987, c. 760, §1 (AMD). 1987, c. 812, §§10, 18 (RPR). 1989, c. 502, §B50 (AMD). 1989, c. 610, (AMD). 1989, c. 890, §§A40, B89-91 (AMD). 1993, c. 383, §§21-23 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 287, §§1, 2 (AMD). 1995, c. 700, §6 (AMD). 1995, c. 704, §§A8-11 (AMD). 1995, c. 704, §C2 (AFF). 1997, c. 502, §§7, 8 (AMD). 1997, c. 603, §§8, 9 (AFF). 1999, c. 468, §§9, 10 (AMD). 2005, c. 452, §A3 (AMD). 2007, c. 297, §2 (AMD). 2007, c. 661, Pt. B, §§11, 12 (AMD). 2009, c. 293, §1 (AMD). 2009, c. 506, §1 (AMD). 2009, c. 506, §3 (AFF). 2009, c. 615, Pt. E, §§17, 18 (AMD). 2011, c. 359, §3 (AMD). 2011, c. 653, §18 (AMD). 2011, c. 653, §33 (AFF). 2011, c. 655, Pt. DD, §18 (AMD). 2011, c. 655, Pt. DD, §24 (AFF).

§484-A. UNLICENSED PITS; TEMPORARY LICENSING EXEMPTION

If a borrow pit was between 5 and 30 acres on October 1, 1993 and was not licensed as required under this article, its owner or operator is not required to obtain a license under this article if: [1995, c. 700, §7 (AMD).]

1. **Notice of intent to comply.** Pursuant to section 490-C, the owner or operator of the pit files a notice of intent to comply no later than:

A. April 1, 1995, for pits having reclaimed or unreclaimed areas that drain externally or having reclaimed or unreclaimed areas where internal drainage is achieved with berms or other structures; or [1995, c. 287, §3 (AMD).]

B. October 1, 1995, for pits where all reclaimed and unreclaimed lands are naturally internally drained; and [1995, c. 287, §3 (AMD).]

[1995, c. 287, §3 (AMD) .]

2. **Adherence to compliance schedule.** By October 1, 1996:

A. All reclaimed and unreclaimed areas that were not naturally internally drained on October 1, 1993 are stabilized or reclaimed; [1993, c. 350, §4 (NEW).]

B. All other conditions existing on October 1, 1993 comply with the performance standards under article 7; and [1993, c. 350, §4 (NEW).]

C. All activities conducted after filing a notice of intent to comply are conducted in compliance with article 7. [1993, c. 350, §4 (NEW).]

[1995, c. 287, §4 (AMD) .]

An unlicensed borrow pit of 5 or more acres is in violation of this article if the owner or operator of that pit does not file a notice of intent to comply under subsection 1. The written enforcement policy for responding to violations referred to in section 343-C, subsection 1 does not apply to the owner or operator of an excavation regulated under article 7. [1995, c. 700, §7 (AMD).]

SECTION HISTORY
1993, c. 350, §4 (NEW). 1995, c. 287, §§3,4 (AMD). 1995, c. 700, §7 (AMD).

§484-B. ADDITIONAL STANDARDS FOR QUARRIES AND EXCAVATIONS

In addition to other standards required by or pursuant to this article, a quarry or an excavation for borrow, clay, topsoil or silt that is licensed pursuant to this article, regardless of the date of licensing, must meet the following minimum standards concerning dust control and spill prevention. [2005, c. 158, §1 (NEW).]

1. **Spill prevention.** Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids and other on-site activity involving the storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site.

[2005, c. 158, §1 (NEW) .]

2. **Dust control.** Dust generated by activities at an excavation site, including dust associated with traffic to and from the excavation site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include the application of calcium chloride, as long as the manufacturer's guidelines are followed. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

[2005, c. 158, §1 (NEW) .]

The department may require that a quarry or excavation take additional measures or provide additional information when necessary to meet the standards for development set forth in section 484. [2005, c. 158, §1 (NEW).]

SECTION HISTORY
2005, c. 158, §1 (NEW).

§485. FAILURE TO NOTIFY BOARD; HEARING; INJUNCTIONS; ORDERS

(REPEALED)

SECTION HISTORY
1969, c. 571, §2 (NEW). 1971, c. 618, §12 (AMD). 1977, c. 300, §§31,32 (AMD). 1989, c. 878, §A114 (RP).

§485-A. NOTIFICATION REQUIRED; BOARD ACTION; ADMINISTRATIVE APPEALS

1. **Application.** Any person intending to construct or operate a development shall, before commencing construction or operation, notify the commissioner in writing of the intent, nature and location of the development, together with such other information as the board may by rule require. The department shall

approve the proposed development, setting forth such terms and conditions as are appropriate and reasonable, disapprove the proposed development, setting forth the reasons for the disapproval, or schedule a hearing in the manner described in section 486-A.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §92 (AMD) .]

1-A. **Wood supply.** For a new or expanded development requiring an annual supply of wood or wood-derived materials in excess of 150,000 tons green weight, the applicant shall submit a wood supply plan for informational purposes to the Maine Forest Service concurrent with the application required in subsection 1. The wood supply plan must include, but is not limited to, the following information:

A. The expected operational life of the development; [1989, c. 681, §2 (NEW).]

B. The projected annual wood consumption of wood mill residue, wood fiber and recycled materials from forest products during the entire operational life of the development; [1989, c. 681, §2 (NEW).]

C. The expected market area for wood supply necessary to supply the development; and [1989, c. 681, §2 (NEW).]

D. Other relevant wood supply information. [1989, c. 681, §2 (NEW).]

[1989, c. 681, §2 (NEW) .]

1-B. **Advance ruling.**

[1999, c. 468, §11 (RP) .]

1-C. **Long-term construction projects.** The department shall adopt rules identifying requirements for a long-term construction project that allow approval of development within a specified area and within specified parameters such as maximum area and groundwater usage, although the specific nature and extent of the development or timing of construction may not be known at the time a permit for the long-term construction project is issued. The location and parameters of the development must meet the standards of this article.

[2011, c. 653, §19 (AMD); 2011, c. 653, §33 (AFF) .]

2. **Hearing request.** If the department has issued an order without a hearing regarding any person's development, that person may request, in writing, a hearing before the board within 30 days after notice of the department's decision. This request must set forth, in detail, the findings and conclusions of the department to which that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the board shall schedule and hold a hearing limited to the matters set forth in the request. Hearings must be scheduled in accordance with section 486-A.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §92 (AMD) .]

3. **Failure to notify commissioner.** The commissioner may, at any time with respect to any person who has commenced construction or operation of any development without having first notified the commissioner pursuant to this section, schedule and conduct a public hearing with respect to that development.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §92 (AMD) .]

4. **Permit display.** A person issued a permit pursuant to this article for activities in a great pond watershed shall have a copy of the permit on site while work authorized by that permit is being conducted.

[1991, c. 838, §25 (NEW) .]

SECTION HISTORY
1987, c. 812, §§11,18 (NEW). 1989, c. 681, §2 (AMD). 1989, c. 890, §§A40,B92 (AMD). 1991, c. 838, §25 (AMD). 1995, c. 704, §A12 (AMD). 1995, c. 704, §C2 (AFF). 1999, c. 468, §11 (AMD). 2005, c. 602, §5 (AMD). 2009, c. 293, §2 (AMD). 2009, c. 602, §2 (AMD). 2011, c. 653, §19 (AMD). 2011, c. 653, §33 (AFF).

§486. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1969, c. 571, §2 (NEW). 1971, c. 618, §12 (AMD). 1977, c. 300, §33 (RP).

§486-A. HEARINGS; ORDERS; CONSTRUCTION SUSPENDED

1. **Hearings.** If the department determines to hold a hearing on a notification submitted pursuant to section 485-A, the department shall solicit and receive testimony to determine whether that development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare. The department shall permit the applicant to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §93 (RPR) .]

2. **Developer; burden of proof.** At the hearings held under this section, the burden is upon the person proposing the development to demonstrate affirmatively to the department that each of the criteria for approval listed in this article has been met, and that the public's health, safety and general welfare will be adequately protected.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §94 (AMD) .]

3. **Findings of fact; order.** After the department adjourns any hearing held under this section, the department shall make findings of fact and issue an order granting or denying permission to the person proposing the development to construct or operate the development, as proposed, or granting that permission upon such terms and conditions as the department considers advisable to protect and preserve the environment and the public's health, safety and general welfare.

[1995, c. 642, §6 (AMD) .]

4. **No construction pending order.** Any person who has notified the commissioner, pursuant to section 485-A, of intent to construct or operate a development shall immediately defer or suspend construction or operation of that development until the department has issued an order.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §94 (AMD) .]

5. **Continuing compliance; air and water pollution.** Any person securing approval of the department, pursuant to this article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until that person has complied with those standards.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §94 (AMD) .]

6. **Transcripts.** A complete verbatim transcript shall be made of all hearings held pursuant to this section.

[1987, c. 812, §§12, 18 (NEW) .]

7. **Minor revisions.** An application for an order addressing a minor revision must be processed within a period specified by the department if the applicant meets requirements adopted by the department.

[1993, c. 383, §24 (NEW); 1993, c. 383, §42 (AFF) .]

SECTION HISTORY
1987, c. 812, §§12,18 (NEW). 1989, c. 890, §§A40,B93,94 (AMD). 1993, c. 383, §24 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 642, §6 (AMD).

§486-B. GENERAL PERMIT AUTHORITY; DEPARTMENT OF TRANSPORTATION AND MAINE TURNPIKE AUTHORITY DEVELOPMENTS

1. **Authorization.** The department may issue a general permit for all or a subclass of developments constructed or caused to be constructed or operated or caused to be operated by the Department of Transportation or the Maine Turnpike Authority that require approval pursuant to this article.

[2009, c. 293, §3 (NEW) .]

2. **Standards.** A development authorized by a general permit is required to meet all applicable requirements under and rules adopted pursuant to this article. In a general permit the department may:

A. Rely upon the Department of Transportation’s or the Maine Turnpike Authority's environmental procedures and standard practices for purposes of approving a development if the department determines that such practices meet or exceed the requirements of and rules adopted pursuant to this article. This reliance may occur although the Department of Transportation’s or the Maine Turnpike Authority's environmental procedures and standard practices have not been adopted through rulemaking and minor changes to such procedures and practices occur without prior review by the department; [2009, c. 293, §3 (NEW).]

B. Provide for reduced submissions or less review than would otherwise be required for an individual permit; and [2009, c. 293, §3 (NEW).]

C. Set forth specific requirements, terms and conditions. [2009, c. 293, §3 (NEW).]

For purposes of any enforcement under this subsection, the department may rely upon the standards of and rules adopted pursuant to this article, although the department may have relied upon the Department of Transportation’s or the Maine Turnpike Authority's environmental procedures and standard practices for purposes of approval.

[2009, c. 293, §3 (NEW) .]

3. **Review.** The department may approve:

A. A specific development upon receipt and review of a notice of intent under subsection 4, paragraph A to comply with standards in the general permit for the specific development from the Department of Transportation or the Maine Turnpike Authority; or [2009, c. 293, §3 (NEW).]

B. A notice of intent under subsection 4 prior to receipt of a final design for a development, as long as any requirements in a general permit for the approval are met. [2009, c. 293, §3 (NEW).]

[2009, c. 293, §3 (NEW) .]

4. **Procedure.** Procedures for a general permit under this section include:

A. A notice of intent must be submitted on a form provided by the department and contain information required by the department that is necessary to determine whether standards will be met; and [2009, c. 293, §3 (NEW).]

B. If a general permit provides for approval of a notice of intent under paragraph A prior to submission of final designs to the department, then following submission of the designs the department may require that changes in design be made where necessary to conform with applicable standards. [2009, c. 293, §3 (NEW).]

The Department of Transportation or the Maine Turnpike Authority may choose to apply for an individual permit for a development rather than file a notice of intent under paragraph A.

The department may require the Department of Transportation or the Maine Turnpike Authority to file for an individual permit for a development that would otherwise be authorized to file a notice of intent under paragraph A as provided for in the general permit.

[2009, c. 293, §3 (NEW) .]

5. **Approval.** A development authorized under a general permit is considered to be approved by the department upon approval by the department of a notice of intent under subsection 4, paragraph A. The permit must include the text of the general permit and the department's approval of the notice of intent under subsection 4. The department may condition its approval of the notice of intent as necessary to ensure compliance with standards under a general permit.

[2009, c. 293, §3 (NEW) .]

6. **Fee.** The department may not charge a fee for processing and approval of a notice of intent under subsection 4, paragraph A.

[2009, c. 293, §3 (NEW) .]

7. **Modification of general permit.** Notwithstanding section 341-D, the department may modify a general permit through notification of the Department of Transportation or the Maine Turnpike Authority. The department shall modify a general permit whenever rules adopted pursuant to this article are enacted or modified and may modify a general permit as otherwise necessary to provide for efficient administration and conformance with department standards.

[2009, c. 293, §3 (NEW) .]

8. **Modification of notice of intent.** The department shall provide for application and approval of modification of the notice of intent in any general permit.

[2009, c. 293, §3 (NEW) .]

SECTION HISTORY
2009, c. 293, §3 (NEW).

§487. JUDICIAL REVIEW

(REPEALED)

SECTION HISTORY
1969, c. 571, §2 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 423, §9 (RPR). 1977, c. 300, §34 (RP).

§487-A. HAZARDOUS ACTIVITIES; TRANSMISSION LINES

1. **Preliminary notice required for hazardous activities.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §25 (RP) .]

2. **Power generating facilities.** In case of a permanently installed transmission line carrying 100 kilovolts, or more, proposed to be erected within this State by a transmission and distribution utility or utilities, the proposed development, in addition to meeting the requirements of section 484, must also have been approved by the Public Utilities Commission under Title 35-A, section 3132.

In the event that a transmission and distribution utility or utilities file a notification pursuant to section 485-A before they are issued a certificate of public convenience and necessity by the Public Utilities Commission, they shall file a bond or, in lieu of that bond, satisfactory evidence of financial capacity to make that reimbursement with the department, payable to the department, in a sum satisfactory to the commissioner and in an amount not to exceed $50,000. This bond or evidence of financial capacity must be conditioned to require the applicant to reimburse the department for its cost incurred in processing any application in the event that the applicant does not receive a certificate of public convenience and necessity.

[1999, c. 657, §23 (AMD) .]

3. **Easement required; transmission line or gas pipeline.** In the case of a gas pipeline or a transmission line carrying 100 kilovolts or more, a permit under this chapter may be obtained prior to any acquisition of lands or easements to be acquired by purchase. The permit must be obtained prior to any acquisition of land by eminent domain.

[1997, c. 72, §2 (AMD) .]

4. **Notice to landowners; transmission line or gas pipeline.** Any person making application under this article, for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to this article, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or transmission line. Notice must be sent by certified mail, postage prepaid, to the landowner's last known address contained in the applicable tax assessor's records. The applicant shall file a map with the town clerk of each municipality through which the pipeline or transmission line is proposed to be located, indicating the intended approximate location of the pipeline or transmission line within the municipality. The applicant is not required to provide notice of intent to construct a gas pipeline or transmission line other than as set forth in this subsection. The department shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of section 484 have been met, the department, in the case of the transmission line or pipeline, shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The department may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §96 (AMD) .]

SECTION HISTORY

1987, c. 812, §§13,18 (NEW). 1989, c. 890, §§A40,B95,96 (AMD). 1993, c. 383, §25 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 704, §§A13,14 (AMD). 1995, c. 704, §C2 (AFF). 1997, c. 72, §§1,2 (AMD). 1999, c. 657, §23 (AMD).

§488. APPLICABILITY

This article does not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying 100 kilovolts or more, nor does it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way. For purposes of this paragraph, development that reuses a building and associated facilities in existence on January 1, 1970 is exempt from review under this article. When determining if development meets the definition of "development of state or regional significance that may substantially affect the environment" and therefore is subject to review under this article, the department may not consider development in existence on January 1, 1970 that is exempt from review pursuant to this paragraph. When reviewing a proposal for development of state or regional significance that may substantially affect the environment under this article, the department may not consider in the review any development in existence on January 1, 1970 that is exempt from review pursuant to this paragraph. [2011, c. 551, §1 (AMD).]

1. **Unorganized areas.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §26 (RP) .]

2. **Organized areas.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §26 (RP) .]

3. **Standards, guidelines, definitions and revisions.**

[1995, c. 704, Pt. A, §16 (RP); 1995, c. 704, Pt. C, §§2, 3 (AFF) .]

4. **Exemption.**

[1989, c. 769, §5 (RP) .]

5. **Subdivision exemptions.** The following development is exempt from this article:

A. [1993, c. 383, §42 (AFF); 1993, c. 383, §26 (RP).]

B. A development that consists only of a subdivision if:

(1) The average density of the subdivision is not higher than one lot for every 5 acres of developable land in the parcel;

(2) At least 50% of the developable land in the parcel is preserved in perpetuity through conservation easements pursuant to Title 33, chapter 7, subchapter VIII-A, in common areas no smaller than 10 acres in size and of dimensions that accommodate within each common area boundary a rectangle measuring 250 feet by 500 feet;

(3) The conservation easements preserve the land in an essentially undeveloped natural state including the preservation of farmland having a history of agricultural use and the preservation of forest land for harvesting by uneven-aged selection methods designed to retain the natural character of the area, except that other methods of harvesting are permissible following a natural disaster;

(4) The conservation easements grant a 3rd-party right of enforcement, as defined in Title 33, section 476, to the department. The conservation easements granting a 3rd-party right of enforcement must be submitted to and accepted by the commissioner;

(5) All significant wildlife habitat that is mapped or that qualifies for mapping under section 480-B, subsection 10 is included in the preserved land area under subparagraph (3);

(6) No clearing, grading, filling or other development activity occurs on sustained slopes in excess of 30%;

(7) If the developable land in the parcel not subject to the requirements of subparagraphs (3) and (5) is located wholly or in part in the watershed of any lake or pond classified GPA under section 465-A, long-term measures to control phosphorus transport are taken in accordance with a phosphorus control plan that is consistent with standards for phosphorus control adopted by the board;

(8) Soil erosion and sedimentation during development of the subdivision are controlled in accordance with a plan approved by the municipality in which the subdivision is located or by the soil and water conservation district for the county in which the subdivision is located;

(9) The nonpreserved, developable land in the parcel is not located wholly or partly within the shoreland zone of a lake or pond classified GPA under section 465-A; and

(10) At the time all necessary conservation easements are filed with the department and at least 30 days prior to the commencement of clearing and construction activity, the person creating the subdivision notifies the commissioner in writing on a form supplied by the commissioner that the exemption afforded by this paragraph is being used. The person creating the subdivision shall file with that form a set of site plans, including the plans required under subparagraphs (7) and (8), and other evidence sufficient to demonstrate that the requirements of this paragraph have been met. The commissioner shall forward a copy of the form to the municipality in which the subdivision is located.

For purposes of this paragraph, "developable land in the parcel" means all contiguous land in the same ownership except for coastal wetlands, freshwater wetlands, rivers, streams and brooks as defined in section 480-B and except for any surface water classified GPA under section 465-A. [1995, c. 704, Pt. A, §17 (AMD); 1995, c. 704, Pt. C, §2 (AFF).]

C. [1995, c. 704, Pt. A, §17 (RP); 1995, c. 704, Pt. C, §2 (AFF).]

D. [1995, c. 704, Pt. A, §17 (RP); 1995, c. 704, Pt. C, §2 (AFF).]

[1995, c. 704, Pt. A, §17 (AMD); 1995, c. 704, Pt. C, §2 (AFF) .]

6. **Multi-unit housing exemption.**

[1993, c. 383, §42 (AFF); 1993, c. 383, §26 (RP) .]

7. **Exemption for expansion at existing manufacturing facility.** New construction at a licensed manufacturing facility is exempt from review under this article provided that the additional disturbed area not to be revegetated does not exceed 30,000 square feet ground area in any calendar year and does not exceed 60,000 square feet ground area in total. When review under this article is required at a licensed manufacturing facility, the applicant shall provide plans for the new development, as well as for those activities that have been undertaken pursuant to this subsection. The permittee shall annually notify the department of new construction conducted during the previous 12 months pursuant to this exemption. The notice must identify the type, location and ground area of the new construction.

[1993, c. 383, §26 (AMD); 1993, c. 383, §42 (AFF) .]

8. **Exemption for storage facility.**

[1995, c. 704, Pt. A, §18 (RP); 1995, c. 704, Pt. C, §2 (AFF) .]

9. **Development within unorganized areas.**

[2013, c. 405, Pt. B, §5 (RP) .]

9-A. **Development within unorganized areas.** Except for development described in paragraphs A, B and C, development located within the unorganized and deorganized areas, as defined in Title 12, section 682, subsection 1, is subject to review by the department for compliance with this article. The department shall review development within the unorganized and deorganized areas in accordance with section 489-A-1.

A. A community-based offshore wind energy project, as defined in Title 12, section 682, subsection 19, is reviewed under Title 12, section 685-B, subsection 2-C and is exempt from the requirements of this article. [2011, c. 682, §32 (NEW); 2011, c. 682, §40 (AFF).]

B. Except for grid-scale wind energy development, development within a planned subdistrict as defined in Title 12, section 682, subsection 20 and approved or accepted for processing prior to September 1, 2012 is reviewed by the commission and is exempt from the requirements of this article. [2011, c. 682, §32 (NEW); 2011, c. 682, §40 (AFF).]

C. An amendment or revision to a development approved by the Maine Land Use Regulation Commission prior to September 1, 2012 is exempt from review under this article unless the proposed revision by itself is a development of state or regional significance that may substantially affect the environment. [2011, c. 682, §32 (NEW); 2011, c. 682, §40 (AFF).]

Subdivision plans approved and orders issued by the department under this article must be recorded in the registry of deeds in the county in which the development is located within 90 days.

Violation and enforcement provisions in chapter 2, subchapter 1 apply to development reviewed by the department under this subsection.

[2011, c. 682, §32 (NEW); 2011, c. 682, §40 (AFF) .]

10. **Roads and railroad tracks.** A structure consisting only of a road or a road together with the structure area within a residential lot, as described in subsection 17 is exempt from the requirements of this article. Railroad tracks other than tracks within yards or stations are exempt from review under this article.

[1995, c. 493, §6 (AMD); 1995, c. 493, §21 (AFF) .]

11. **Farm and fire ponds.** A pond that is used for irrigation of field crops, water storage for cranberry operations or fire protection determined to be necessary in that location by the municipal fire department is exempt from review under this article. This provision does not provide an exemption for excavation for borrow, clay, topsoil or silt.

[2011, c. 653, §21 (AMD); 2011, c. 653, §33 (AFF) .]

12. **Structures within permitted commercial and industrial subdivisions.** A person may construct or cause to be constructed, or operate or cause to be operated, a structure on a lot in a commercial or industrial subdivision approved pursuant to this article without obtaining approval under this article for that structure, as long as all terms and conditions of the subdivision permit are met. This subsection applies to commercial or industrial subdivisions approved pursuant to this article on or after the effective date of this subsection.

[1993, c. 383, §26 (NEW); 1993, c. 383, §42 (AFF) .]

13. **Research and aquaculture leases.** Activities regulated by the Department of Marine Resources under Title 12, section 6072, 6072-A, 6072-B or 6072-C are exempt from the requirements of this article.

[2007, c. 292, §28 (AMD) .]

14. **Developments within designated growth areas.** The following provisions apply to developments within a designated growth area.

A. A development is exempt from review under flood plain, noise and infrastructure standards under section 484 if that development is located entirely within:

(1) A municipality that has adopted a local growth management program that has been certified under Title 30-A, section 4347-A; and

(2) An area designated in that municipality's local growth management program as a growth area.

An applicant claiming an exemption under this paragraph shall include with the application a statement from the Department of Agriculture, Conservation and Forestry affirming that the location of the proposed development meets the provisions of subparagraphs (1) and (2).

An applicant claiming an exemption under this paragraph shall publish a notice of that application in a newspaper of general circulation in the region that includes the municipality in which the development is proposed to occur. That notice must include a statement indicating the standard or standards for which the applicant is claiming an exemption. [2011, c. 655, Pt. JJ, §32 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

B. The commissioner may require application of the noise, flood plain or infrastructure standards to a proposed development if the commissioner determines, after receipt of a petition under subparagraph (1) or on the commissioner's own initiative under subparagraph (2), that a reasonable likelihood exists that the development will have a significant and unreasonable impact on flood plains, infrastructure or noise beyond the boundaries of the municipality within which the development is to be located.

(1) Within 15 working days after the publication of the notice required under paragraph A, municipal officers or residents of the municipality in which the development is proposed to occur or municipal officers or residents of an abutting municipality may petition the commissioner to apply one or more of the standards for which an exemption is claimed under this subsection. A petition must be signed either by the municipal officers of the petitioning municipality or by 10% of that number of registered voters of the petitioning municipality casting ballots in the most recent gubernatorial election or 150 registered voters of the petitioning municipality, whichever is less. The petition must include the name and legal address of each signatory and must designate one signatory as the contact person. The commissioner shall notify the contact person and the applicant of the commissioner's decision within 10 working days after receipt of a petition meeting the requirements of this subsection. A decision by the commissioner under this subparagraph is appealable to the board.

(2) A decision to require the application of one or more standards made on the commissioner's own initiative must be made within 15 working days after the application is filed with the department. [1999, c. 468, §13 (AMD).]

Nothing in this subsection may be construed to exempt a proposed development from review for flooding potential due to increases in storm water runoff caused by the development.

[2011, c. 655, Pt. JJ, §32 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

15. **Exemption for former military bases.** Development on a military base at the time ownership of the military base is acquired by a state or local development authority is exempt from review under this article. Subsequent transfer of ownership or lease of a former military base or any portion of a former military base by a state or local development authority to another entity does not affect the exemption granted under this subsection. Development proposed or occurring on a former military base after ownership of the military base is acquired by a state or local development authority is subject to review under this article, except to the extent that the development reuses a building and associated facilities in existence on September 29, 1995.

For purposes of this subsection, "military base" means all property under the ownership or control of a federal military authority prior to the acquisition of ownership by a state or local development authority, the ownership of which is subsequently acquired by a state or local development authority. For purposes of this subsection, "ownership" means a fee interest or leasehold interest in property.

A. Development that is not exempt under this subsection is subject to review under this article if it meets the definition of "development of state or regional significance that may substantially affect the environment." [2011, c. 551, §2 (NEW).]

B. When reviewing a proposal for development of state or regional significance that may substantially affect the environment, the department may not consider in the review any development that is exempt from review pursuant to this subsection. [2011, c. 551, §2 (NEW).]

[2011, c. 551, §2 (AMD) .]

16. **Small road quarry.**

[1997, c. 502, §18 (AFF); 1997, c. 502, §11 (RP) .]

17. **Structure area within residential lots.** Buildings, roads, paved areas or areas to be stripped or graded and not revegetated that are located within lots used solely for single-family residential housing are not counted toward the 3-acre threshold described in section 482, subsection 6, paragraph B for purposes of determining jurisdiction. A road associated only with such lots is also not counted toward the 3-acre threshold. For purposes of this subsection, "single-family residential housing" does not include multi-unit housing such as condominiums and apartment buildings.

[1997, c. 393, Pt. A, §45 (AMD) .]

18. **Roundwood and lumber storage yards.** A roundwood or lumber storage yard and any road associated with the yard is exempt from review under this article, as provided in this subsection.

A. A roundwood or lumber storage yard and any road associated solely with the yard, constructed on or after the effective date of this subsection, is exempt from review under this article provided it is constructed and operated in accordance with the erosion and sedimentation control standards and storm water management standards contained in board rules. The person conducting these activities shall file a notice of intent to comply with the department prior to clearing and construction. [1995, c. 493, §7 (NEW).]

B. A roundwood or lumber storage yard and any road associated solely with the yard, constructed prior to the effective date of this subsection, is exempt from review under this article provided the following requirements are met.

(1) Within one year after the effective date of this subsection, a notice of intent to comply must be provided to the department.

(2) Within 2 years of the effective date of this subsection, construction and operation of the yards and roads must be in compliance with the erosion and sedimentation control standards and storm water standards contained in board rules and adopted pursuant to section 484.

(3) Any expansion or alteration of such facilities must meet the requirements of paragraph A. [2001, c. 232, §18 (AMD).]

C. Notice of intent filed under this subsection must be complete, submitted on forms approved by the department and mailed by certified mail, return receipt requested. The notice must include a fee of $250. The fee for transfer or minor revision of the notice of intent is $105. [2001, c. 232, §18 (AMD).]

D. [2001, c. 232, §19 (RP).]

E. For purposes of this subsection only, "roundwood" means logs, bolts and other round sections of wood as they are cut from the tree and split firewood. [1997, c. 603, §3 (AMD).]

[2001, c. 232, §§18, 19 (AMD) .]

19. **Municipal capacity.** A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt from review under this article if it is located wholly within a municipality or municipalities meeting the criteria in paragraphs A to D as determined by the department and it is located wholly within a designated growth area as identified in a comprehensive plan adopted pursuant to Title 30-A, chapter 187, subchapter 2. The planning board of the municipality in which the development is located or an adjacent municipality may petition the commissioner to review such a structure or subdivision if it has regional environmental impacts. This petition must be filed within 20 days of the receipt of the application by the municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality. Review by the department is limited to the identified regional environmental impacts. The criteria are as follows:

A. A municipal planning board or reviewing authority is established and the municipality has adequate resources to administer and enforce the provisions of its ordinances. In determining whether this criterion is met, the commissioner may consider any specific and adequate technical assistance that is provided by a regional council; [1995, c. 704, Pt. A, §20 (NEW); 1995, c. 704, Pt. C, §2 (AFF).]

B. The municipality has adopted a site plan review ordinance. In determining the adequacy of the ordinance, the commissioner may consider model site plan review ordinances commonly used by municipalities in this State that address the issues reviewed under applicable provisions of this article prior to July 1, 1997; [1997, c. 485, §1 (AMD).]

C. The municipality has adopted subdivision regulations. In determining the adequacy of these regulations, the commissioner may consider model subdivision regulations commonly used by municipalities in this State; and [1997, c. 485, §1 (AMD).]

D. The former State Planning Office or the Department of Agriculture, Conservation and Forestry has determined that the municipality has a comprehensive land use plan and land use ordinances or zoning ordinances that are consistent with Title 30-A, chapter 187 in providing for the protection of wildlife habitat, fisheries, unusual natural areas and archaeological and historic sites. [2011, c. 655, Pt. FF, §13 (AMD); 2011, c. 655, Pt. FF, §16 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

The department, in consultation with the Department of Agriculture, Conservation and Forestry, shall publish a list of those municipalities determined to have capacity pursuant to this subsection. This list need not be established by rule and must be published by January 1st of each year. The list must specify whether a municipality has capacity to review structures or subdivisions of lots for single-family, detached, residential housing, common areas or open space or both types of development. The department may recognize joint arrangements among municipalities and regional organizations in determining whether the requirements of this subsection are met. The department may review municipalities that are determined to have capacity pursuant to this subsection for compliance with the criteria in paragraphs A to D, and if the department determines that a municipality does not meet the criteria, the department may modify or remove the determination of capacity.

A modification to a development that was reviewed by a municipality and exempted pursuant to this subsection is exempt as long as the modification will not cause the total area of the development to exceed the maximum acreage specified in this subsection for that type of development or, based upon information submitted by the municipality concerning the development and modification, the department determines that the modification may be adequately reviewed by the municipality.

(Subsection 19 as enacted by PL 1995, c. 625, Pt. A, §54 is REALLOCATED TO TITLE 38, SECTION 488, SUBSECTION 21)

[2011, c. 655, Pt. FF, §13 (AMD); 2011, c. 655, Pt. FF, §16 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

20. **Modifications in permitted subdivisions.** Review is not required under this article in the following instances:

A. When the owner of a single lot in a subdivision with a permit under this article conveys a right of access to adjacent land that was not part of the permitted subdivision, if the right-of-way is not contrary to the terms of the subdivision permit and the right-of-way is not more than 50 feet long; or [2001, c. 232, §20 (AMD).]

B. When 2 lot owners in a subdivision with a permit under this article convey reciprocal easements for the purpose of constructing a common driveway in place of 2 separate driveways, if the single driveway reduces the total amount of impervious area in the affected subwatershed and the single driveway is not contrary to the terms of the subdivision permit. [2001, c. 232, §20 (AMD).]

C. [2001, c. 232, §20 (RP).]

[2001, c. 232, §20 (AMD) .]

21. (REALLOCATED FROM T. 38, §488, sub-§19) **Waste facilities.** Waste facilities regulated by the department under section 1310-N, 1319-R or 1319-X are exempt from review under this article. This exemption applies to new facilities, modifications of facilities, transfers of facilities and relicensing of facilities.

[1995, c. 2, §98 (RAL) .]

22. **Unauthorized subdivision lots in existence for at least 20 years.** A lot that when sold or leased created a subdivision requiring a permit under this article is not considered a subdivision lot and is exempt from the permit requirement for a subdivision if a permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot is considered a subdivision lot and is not exempt under this subsection if:

A. Approval of the subdivision under this article was denied by the department and the department's decision was recorded in the appropriate registry of deeds; [2003, c. 226, §1 (NEW).]

B. The department has issued a notice of violation of this article with respect to the subdivision; or [2003, c. 226, §1 (NEW).]

C. The lot has been the subject of an enforcement action or order. [2003, c. 226, §1 (NEW).]

[2003, c. 226, §1 (NEW) .]

23. **Agricultural fair property.** Development on property that is used for one or more agricultural fairs licensed by the Commissioner of Agriculture, Conservation and Forestry under Title 7, chapter 4 is exempt from review under this article if:

A. The property is not used for motorized vehicle racing for more than 14 days beyond those days authorized for the operation of the agricultural fair; [2005, c. 217, §1 (NEW).]

B. Motorized vehicle racing on the property is licensed by the Department of Public Safety; [2005, c. 217, §1 (NEW).]

C. Use of the property beyond those days authorized for the operation of the agricultural fair meets a noise standard pursuant to section 484, subsection 3. The department shall enforce the noise standard under this paragraph; and [2005, c. 217, §1 (NEW).]

D. The property has been identified as the location of an agricultural fair in an agricultural fair license issued by the Department of Agriculture, Food and Rural Resources prior to September 15, 2006. [2005, c. 217, §1 (NEW).]

[2005, c. 563, §17 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

24. **Nonmetallic mining accessory uses and facilities.** Accessory uses and facilities within an excavation or quarry operating under the performance standards in article 7 or 8-A are exempt from this article if the performance standards in article 7 or 8-A or the rules implementing those articles are at a minimum as restrictive as the standards imposed under this article. For the purposes of this subsection, "accessory uses and facilities" means uses and facilities associated with the processing of material pursuant to article 7 or 8-A such as screening and the crushing, loading and manufacture of ready-mix concrete and bituminous concrete and associated products and weight scales, scale shacks and maintenance garages. This subsection does not apply to a development constructed during or after reclamation.

[2007, c. 616, §2 (NEW) .]

25. **Offshore wind power project and certain standards.** An offshore wind power project with an aggregate generation capacity of 3 megawatts or more is exempt from review under the existing use standard in section 484, subsection 3, insofar as the department determines that review is required under criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6).

[2009, c. 615, Pt. E, §20 (NEW) .]

26. **Exemption for existing ski area facilities.** New construction at or a modification of a ski area facility permitted pursuant to this article is exempt from review under this article as provided in this subsection.

A. New construction at or a modification of a ski area facility permitted pursuant to this article is exempt from review under this article if:

(1) The additional disturbed area not to be revegetated does not exceed 30,000 square feet ground area in any calendar year and does not exceed 60,000 square feet ground area in total;

(2) The construction or modification does not involve a division of the parcel of land;

(3) The construction or modification is not of a building having an area in excess of 3,500 square feet; and

(4) It is construction or modification of equipment or facilities that are ancillary to and necessary for the operation of the ski area facility permitted pursuant to this article, including, but not limited to, snowmaking equipment, lift towers, lights, signs, fences, water or air pumps, pump houses and storage buildings. [2011, c. 551, §3 (NEW).]

B. The permittee shall annually notify the department of any new construction or modifications conducted during the previous 12 months that fall under this exemption. The notice must identify the type, location and ground area of the new construction or modification. With the annual notification, the permittee shall provide to the department development plans certified by a professional engineer for the new construction or modification undertaken pursuant to this subsection. [2011, c. 551, §3 (NEW).]

C. When review under this article is required for new construction at or a modification of a permitted ski area facility, the permittee shall provide plans for the new development, as well as for those activities that have been undertaken pursuant to this subsection. [2011, c. 551, §3 (NEW).]

[2011, c. 551, §3 (NEW) .]

27. **Exemption for educational institutions.** New construction at or a modification of a campus of an educational institution permitted pursuant to this article is exempt from review under this article as provided in this subsection. For purposes of this subsection, "educational institution" means any private or public school or postsecondary institution.

A. New construction at or a modification of a campus of an educational institution permitted pursuant to this article is exempt from review under this article if the additional disturbed area not to be revegetated does not exceed 30,000 square feet ground area in any calendar year and does not exceed 60,000 square feet ground area in total. [2011, c. 551, §3 (NEW).]

B. The permittee shall annually notify the department of any new construction or modifications conducted during the previous 12 months that fall under this exemption. The notice must identify the type, location and ground area of the new construction or modification. With the annual notification, the permittee shall provide to the department development plans certified by a professional engineer for the new construction or modification undertaken pursuant to this subsection. [2011, c. 551, §3 (NEW).]

C. When review under this article is required at an educational institution permitted pursuant to this article, the permittee shall provide plans for the new development, as well as for those activities that have been undertaken pursuant to this subsection. [2011, c. 551, §3 (NEW).]

D. Nothing in this subsection authorizes a person to undertake an activity on a parcel of land affected by an order or permit issued by the department that is contrary to that order or permit. [2011, c. 551, §3 (NEW).]

[2011, c. 551, §3 (NEW) .]

28. **Applicability of exemptions.** Unless otherwise specifically provided, nothing in this section exempts any activity from any requirements under this Title, rules adopted pursuant to this Title or the terms or conditions of a license, permit or order issued by the board or the commissioner.

[2011, c. 551, §3 (NEW) .]

29. **Exemption for new construction at or modification of existing development.** New construction at or modification of an existing licensed development that is permitted pursuant to this article is exempt from review under this article if:

A. The additional disturbed area not to be revegetated does not exceed 10,000 square feet ground area in any calendar year and does not exceed 20,000 square feet ground area in total; and [2013, c. 183, §1 (NEW).]

B. The construction or modification does not involve a division of the parcel of land. [2013, c. 183, §1 (NEW).]

The permittee shall annually notify the department of any new construction or modification undertaken during the previous 12 months that is governed by this subsection. The notice must identify the type, location and ground area of the new construction or modification. At the time of the annual notification, the permittee shall provide to the department development plans, certified by a professional engineer, for new construction or modification governed by this subsection.

[2013, c. 183, §1 (NEW) .]

SECTION HISTORY
1969, c. 571, §2 (NEW). 1971, c. 476, §3 (AMD). 1971, c. 613, §9 (AMD). 1971, c. 622, §139 (AMD). 1973, c. 423, §10 (AMD). 1977, c. 374, §4 (AMD). 1979, c. 714, (AMD). 1983, c. 369, (AMD). 1983, c. 819, §A64 (AMD). 1985, c. 70, §2 (AMD). 1987, c. 287, §1 (AMD). 1987, c. 812, §§14,18 (AMD). 1989, c. 769, §§5,6 (AMD). 1991, c. 160, §2 (AMD).

1993, c. 383, §26 (AMD). 1993, c. 383, §42 (AFF). 1993, c. 721, §C2 (AMD). 1993, c. 721, §H1 (AFF). RR 1995, c. 2, §§97,98 (COR). 1995, c. 90, §1 (AMD). 1995, c. 287, §5 (AMD). 1995, c. 462, §A75 (AMD). 1995, c. 493, §§6,7 (AMD). 1995, c. 493, §21 (AFF). 1995, c. 625, §§A53,54 (AMD). 1995, c. 659, §2 (AMD). 1995, c. 700, §§8,9 (AMD). 1995, c. 704, §§A15-20 (AMD). 1995, c. 704, §§C2,3 (AFF). 1997, c. 72, §3 (AMD). 1997, c. 393, §A45 (AMD). 1997, c. 485, §1 (AMD). 1997, c. 502, §§9-11 (AMD). 1997, c. 502, §18 (AFF). 1997, c. 603, §§3,4 (AMD). 1997, c. 748, §4 (AMD). 1999, c. 468, §§12,13 (AMD). 1999, c. 776, §15 (AMD). 2001, c. 232, §§18-20 (AMD). 2001, c. 406, §17 (AMD). 2001, c. 626, §11 (AMD). 2003, c. 226, §1 (AMD). 2005, c. 217, §1 (AMD). 2005, c. 330, §19 (AMD). 2005, c. 563, §17 (AMD). 2007, c. 292, §28 (AMD). 2007, c. 616, §2 (AMD). 2009, c. 615, Pt. E, §§19, 20 (AMD). 2011, c. 551, §§1-3 (AMD). 2011, c. 653, §§20, 21 (AMD). 2011, c. 653, §33 (AFF). 2011, c. 655, Pt. FF, §13 (AMD). 2011, c. 655, Pt. FF, §16 (AFF). 2011, c. 655, Pt. JJ, §32 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5, 6 (REV). 2011, c. 682, §§31, 32 (AMD). 2011, c. 682, §40 (AFF). 2013, c. 183, §1 (AMD). 2013, c. 405, Pt. B, §5 (AMD).

§489. MUNICIPAL REVIEW OF SUBDIVISIONS

(REPEALED)

SECTION HISTORY
1975, c. 447, (NEW). 1987, c. 737, §§C91,C106 (AMD). 1987, c. 812, §§15-18 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 207, §1 (RP).

§489-A. MUNICIPAL REVIEW OF DEVELOPMENT

The commissioner may register municipalities for authority to substitute permits issued pursuant to Title 30-A, chapter 141 or 187, for permits required by section 485-A under the following conditions. [1995, c. 493, §8 (AMD).]

1. **Kinds of projects.** The following kinds of projects may be reviewed by registered municipalities pursuant to this section:

A. Subdivisions as described in section 482, subsection 5 of more than 20 acres but less than 100 acres; or [1999, c. 790, Pt. A, §51 (RPR).]

B. [1993, c. 383, §42 (AFF); 1993, c. 383, §27 (RP).]

C. [1993, c. 383, §42 (AFF); 1993, c. 383, §27 (RP).]

D. [1997, c. 393, Pt. A, §46 (RP).]

E. [1993, c. 383, §42 (AFF); 1993, c. 383, §27 (RP).]

F. [1997, c. 393, Pt. A, §46 (RP).]

G. [1999, c. 790, Pt. A, §52 (RP).]

H. Structures as described in section 482, subsection 6 in excess of 3 acres but less than 7 acres. [1999, c. 243, §17 (NEW).]

[1999, c. 790, Pt. A, §§51, 52 (AMD) .]

1-A. **Modification.** An application for a modification to a development reviewed by a municipality pursuant to subsection 1 may be reviewed by the municipality as long as:

A. The modification will not cause the total area of the development to exceed an upper area threshold specified in subsection 1; or [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

B. Based upon information submitted by the municipality concerning the development and modification, the department determines that the modification may be adequately reviewed by the municipality. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

In addition, a municipality may modify a permit for a subdivision or structure issued by the department prior to registration of the municipality pursuant to this section if the total area of the modification and any prior modifications reviewed pursuant to this section does not exceed the upper area threshold provided in subsection 1 except as allowed in paragraph B.

[1999, c. 243, §18 (AMD) .]

2. **Registration.** The commissioner shall register municipalities to grant permits for projects under subsection 1 if the commissioner finds that the municipality meets all of the following criteria:

A. A municipal planning board or reviewing authority is established; [1989, c. 207, §2 (NEW).]

B. A comprehensive plan consistent with Title 30-A, chapter 187 has been adopted with standards and objectives determined by the department to be at least as stringent as this article; [1989, c. 207, §2 (NEW).]

C. Subdivision regulations have been adopted that are consistent with Title 30-A, chapter 187, and determined by the commissioner to be at least as stringent as criteria set forth in section 484; [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

D. Site plan review regulations have been adopted with criteria determined by the commissioner to be at least as stringent as section 484; [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

D-1. [1999, c. 243, §19 (RP).]

E. The municipality has adequate resources to administer and enforce the provisions of its ordinances; [1991, c. 761, §4 (AMD).]

F. Procedures for public hearing and notification have been established including:

(1) Notice to the commissioner upon receipt of an application, including a description of the project;

(2) Notice of issuance and denial to the applicant and commissioner, including the reason for denial;

(3) Public notification of the application and any hearings; and

(4) Satisfactory hearing procedures; [1989, c. 207, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §98 (AMD).]

G. Procedures for appeal by aggrieved parties of local decisions are defined; and [1989, c. 207, §2 (NEW).]

H. A registration form, provided by the commissioner, has been completed and submitted by the municipality, demonstrating compliance with the criteria under this subsection. [1989, c. 207, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §98 (AMD).]

[2009, c. 293, §4 (AMD) .]

2-A. **Current requirements.** Municipalities registered under this section shall ensure that municipal regulations continue to meet the criteria listed in section 489-A, subsection 2.

A. The commissioner shall immediately notify registered municipalities of new or amended regulations adopted by the department pursuant to this article. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

B. Amendments to municipal regulations must be adopted by the municipality within one calendar year of the effective date of new or amended department regulations and submitted to the commissioner for approval within 45 calendar days of adoption by the municipality. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

[1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF) .]

3. **Certification.** A municipality certified by the Department of Economic and Community Development under Title 30-A, chapter 191 may be registered if the commissioner finds the municipality has fulfilled the requirements of subsection 2 and applies to be registered.

[1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

3-A. **Record of review and basis for decision.** The municipality shall submit one copy of the record of review and basis of decision for each development or modification of a development approved pursuant to this section within 40 working days of final action by the reviewing authority, unless otherwise approved by the commissioner.

[1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF) .]

4. **Suspension of registration.** If the commissioner finds that a municipality no longer meets the criteria set forth under subsection 2 or 2-A, or is not adequately implementing those requirements, the commissioner may suspend the registration and shall notify the municipality accordingly. The notice must contain findings of fact and conclusions of law. If registration is suspended, the commissioner shall recommend actions for the municipality to come into compliance with this section. The commissioner may waive the suspension for new projects that have received at least one substantive municipal review prior to the suspension of registration. If the department determines that a municipality meets the criteria specified in section 488, subsection 19, the department shall suspend the registration for the type of development exempt from review in that municipality pursuant to section 488, subsection 19.

[1997, c. 603, §5 (AMD) .]

5. **Transition.** Municipalities registered under former section 489 as it existed on October 1, 1975, must be certified under this section for one year from the effective date of this section. Thereafter, the municipality must comply with the requirements under subsection 2.

[1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

6. **Central list of pending projects.** The commissioner shall maintain and make available a list of projects pending municipal review under this section.

[1989, c. 207, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §98 (AMD) .]

7. **Technical assistance.** The commissioner and other state review agencies may provide technical assistance to municipalities upon request for projects reviewed under this section.

[1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

8. **Application review process.** Upon the determination by the municipal reviewing authority that an application for a permit or permit amendment under this section is complete for processing:

A. The municipality shall submit to the commissioner within 14 days of that determination by the municipal reviewing authority, one copy of the project application and one copy of the notification form provided by the commissioner; [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

B. The commissioner shall review the application and, within 30 days of its receipt, or within 30 days of receipt of any subsequent amendment to the application, notify the municipality if the department intends to exercise jurisdiction as provided in subsection 9; and [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

C. If the department does not act within the 30-day period following receipt of the application or within 30 days of receipt of any amendment to the application, this inaction constitutes a decision not to exercise jurisdiction as provided in subsection 9. [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

[1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

9. **State jurisdiction.** The department shall review projects for registered municipalities if:

A. The commissioner finds that the project:

(1) Meets one or more of the criteria set forth in section 341-D, subsection 2, paragraph A, B or C;

(2) Will have a potentially significant environmental effect; or

(3) Could affect more than one municipality.

In making these findings, the commissioner shall consider all public comments submitted to the department; [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

B. The local reviewing authority for the municipality in which the project is located petitions the commissioner in writing; or [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

C. [1993, c. 383, §42 (AFF); 1993, c. 383, §27 (RP).]

D. The proposed project is located in more than one municipality. [1989, c. 207, §2 (NEW).]

State jurisdiction must be exerted if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality.

[1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

10. **Appeal of decision by commissioner to review.** An aggrieved party may appeal the decision by the commissioner to exert or not exert state jurisdiction over the proposed project to the board. Review and actions taken by the department are subject to appeal procedures governing the department under section 341-D, subsection 4.

[2011, c. 304, Pt. H, §23 (AMD) .]

10-A. **Appeal of decision by commissioner to grant, withhold or suspend registration.** An appeal of the decision by the commissioner to grant, withhold or suspend registration is as follows.

A. The decision of the commissioner to grant, withhold or suspend the registration may be appealed to the board by a person aggrieved by the decision. The board shall review, may hold a hearing on and may affirm, amend or reverse the decision of the commissioner when the decision is appealed within 30 days of issuance of notification of the decision. The board shall give written notice to persons that have asked to be notified of the commissioner's decision. The board may allow the record to be supplemented if it

finds that the evidence offered is relevant and material in determining whether the municipality no longer meets the criteria set forth in subsections 2 and 2-A. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

B. The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

[1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF) .]

11. **Joint enforcement.** Any person who violates any permit issued under this section is subject to the provisions of section 349, in addition to any penalties which the municipality may impose. Any permits issued or conditions imposed by a local authority must be enforced by the commissioner and the municipality that issued the permit.

[1989, c. 207, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §102 (AMD) .]

SECTION HISTORY
1989, c. 207, §2 (NEW). 1989, c. 497, §§13-15 (AMD). 1989, c. 890, §§A40,B97- 102 (AMD). 1991, c. 761, §§1-4 (AMD). 1993, c. 383, §27 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 493, §8 (AMD). 1995, c. 700, §10 (AMD). 1995, c. 704, §A21 (AMD). 1995, c. 704, §C2 (AFF). 1997, c. 393, §A46 (AMD). 1997, c. 603, §5 (AMD). 1999, c. 243, §§17-19 (AMD). 1999, c. 468, §§14,15 (AMD). 1999, c. 790, §§A51,52 (AMD). 2009, c. 293, §4 (AMD). 2011, c. 304, Pt. H, §23 (AMD).

§489-A-1. DEPARTMENT REVIEW OF DEVELOPMENT WITHIN THE UNORGANIZED AND DEORGANIZED AREAS

1. **Review.** Except as provided in section 488, subsection 9-A, paragraphs A, B and C, the department shall review development within the unorganized and deorganized areas as defined in Title 12, section 682, subsection 1.

[2011, c. 682, §33 (NEW); 2011, c. 682, §40 (AFF) .]

2. **Criteria for approval.** The department shall approve a development proposal under this section if:

A. The proposed development is an allowed use within the subdistrict or subdistricts in which it is to be located. Subdistricts and allowed uses are established in rule by the Maine Land Use Planning Commission in accordance with Title 12, section 685-A; [2011, c. 682, §33 (NEW); 2011, c. 682, §40 (AFF).]

B. The standards established under section 484 are met; [2011, c. 682, §33 (NEW); 2011, c. 682, §40 (AFF).]

C. The standards established in rules adopted under section 489-E to implement this section are met; and [2011, c. 682, §33 (NEW); 2011, c. 682, §40 (AFF).]

D. The Maine Land Use Planning Commission has certified that the proposed development meets any land use standard established by the commission and applicable to the project that is not considered in the department's review under subsection 1. [2011, c. 682, §33 (NEW); 2011, c. 682, §40 (AFF).]

For a development or part of a development within the unorganized or deorganized areas as defined in Title 12, section 682, subsection 1, the department may request and obtain technical assistance and recommendations from the Maine Land Use Planning Commission. The commission shall respond to the requests within 90 days. The department shall consider the recommendations of the commission in acting upon a development application.

[2011, c. 682, §33 (NEW); 2011, c. 682, §40 (AFF) .]

Violation and enforcement provisions in chapter 2, subchapter 1 apply to development reviewed by the department under this section. [2011, c. 682, §33 (NEW); 2011, c. 682, §40 (AFF).]

SECTION HISTORY
2011, c. 682, §33 (NEW). 2011, c. 682, §40 (AFF).

§489-B. URANIUM AND THORIUM MINING

Mining for uranium or thorium is prohibited within the State. [1989, c. 874, §7 (NEW).]

SECTION HISTORY
1989, c. 874, §7 (NEW).

§489-C. RESCISSION

The commissioner shall rescind a permit upon request and application of the permittee if no outstanding permit violation exists, the development is not continued or completed and the following requirements are met: [1995, c. 493, §9 (AMD).]

1. **Development other than a subdivision.** The permittee has not constructed or caused to be constructed, or operated or caused to be operated, a development other than a subdivision as defined at the time of permit issuance;

[1995, c. 493, §9 (AMD) .]

2. **Subdivision.** If the development is a subdivision, the permittee has not sold or leased or caused to be sold or leased more than 4 lots; or

[1995, c. 493, §9 (AMD) .]

3. **Reclamation following borrow, clay or topsoil mining.** If the permittee has constructed or caused to be constructed, or operated or caused to be operated a development consisting of an excavation of more than 5 acres of land for borrow, topsoil, clay or silt, whether alone or in combination, and the department determines that:

A. The affected area has been successfully reclaimed; [1995, c. 493, §9 (NEW).]

B. There are not continuing requirements; and [1995, c. 493, §9 (NEW).]

C. There will be no additional mining for borrow, clay or topsoil by the permittee or any transferee at any time as provided by deed covenants enforceable by the department. [1995, c. 2, §99 (COR).]

[1995, c. 2, §99 (COR) .]

A rescission is considered a minor revision. [1993, c. 383, §29 (NEW).]

SECTION HISTORY

RR 1993, c. 1, §122 (RNU). 1993, c. 383, §29 (NEW). RR 1995, c. 2, §99 (COR). 1995, c. 493, §9 (AMD).

§489-D. TECHNICAL ASSISTANCE TO MUNICIPALITIES

A state department or agency shall provide technical assistance to a municipality in the form of a peer review of development studies when the state capacity and resources exist. [1995, c. 704, Pt. A, §22 (NEW); 1995, c. 704, Pt. C, §2 (AFF).]

1. **Costs.** A state department or agency may charge a municipality for this assistance under this section. A municipality may recover these costs from the developer.

[1995, c. 704, Pt. A, §22 (NEW); 1995, c. 704, Pt. C, §2 (AFF) .]

2. **Type of development.** The following provisions apply to assistance under this section.

A. Assistance is available for the review of site location issues arising from a proposal for a subdivision of at least 5 lots and 20 acres and for a proposal for a development that has at least 3 acres of buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not revegetated and not subject to review by the department under this article. [1995, c. 704, Pt. A, §22 (NEW); 1995, c. 704, Pt. C, §2 (AFF).]

B. A municipality may also obtain technical assistance in the form of a peer review from a private consultant or regional council and may recover costs from the developer for a project of any size. The Department of Agriculture, Conservation and Forestry has the authority to establish rules as necessary for this purpose. [2011, c. 655, Pt. JJ, §33 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

[2011, c. 655, Pt. JJ, §33 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY
1995, c. 704, §A22 (NEW). 1995, c. 704, §C2 (AFF). 2011, c. 655, Pt. JJ, §33 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

§489-E. RULEMAKING

Rules adopted by the department pursuant to this article are routine technical rules except that rules adopted by the department after January 1, 2010 pursuant to section 484, subsections 1, 3, 4, 4-A, 5, 6 and 7 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 359, §4 (RPR).]

SECTION HISTORY
2009, c. 602, §3 (NEW). 2011, c. 359, §4 (RPR).

§490. RECLAMATION

(REPEALED)

SECTION HISTORY
1979, c. 466, §14 (NEW). 1981, c. 711, §§11-16 (AMD). 1983, c. 574, §3 (AMD). 1989, c. 890, §§A40, B103 (AMD). RR 1993, c. 1, §121 (COR). 1993, c. 383, §28 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 700, §11 (AMD). 2011, c. 653, §33 (AFF). 2011, c. 653, §22 (RP).

Article 7: PERFORMANCE STANDARDS FOR EXCAVATIONS FOR BORROW, CLAY, TOPSOIL OR SILT HEADING: PL 1995, C. 350, §5 (NEW); 1995, C. 700, §12 (RPR)

§490-A. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 350, §5 (NEW).]

1. **Affected land.** "Affected land" means reclaimed and unreclaimed land, land that has or will have the overburden removed, land on which stumps, spoil or other solid waste has or will be deposited and storage areas or other land, except natural buffer strips, that will be or has been used in connection with the excavation.

[1995, c. 700, §13 (AMD) .]

1-A. **Excavation.** "Excavation" means an excavation for borrow, topsoil, clay or silt, whether alone or in combination.

[1995, c. 700, §14 (NEW) .]

2. **Medium borrow pit.** "Medium borrow pit" means a borrow pit that has a total reclaimed and unreclaimed area from 5 to 30 acres and that has:

A. Except as otherwise provided, a working pit not larger than 10 acres; and [1993, c. 350, §5 (NEW).]

B. Natural internal drainage in all reclaimed and unreclaimed areas. [1993, c. 350, §5 (NEW).]

[1993, c. 350, §5 (NEW) .]

2-A. **Natural buffer strip.** "Natural buffer strip" means an undisturbed area or belt of land that is covered with trees or other vegetation.

[1993, c. 1, §124 (RNU) .]

2-B. **Naturally internally drained.** "Naturally internally drained" means areas of a site that, as a result of the predevelopment topography and interim and final topography produced during development of the site, are and will remain at all times over the course of the development graded so that neither eroded materials nor runoff either crosses the property boundary or enters a protected natural resource, natural buffer strip or other protected area. Areas that rely on man-made structures, including but not limited to berms, dikes, basins or undersized culverts, in order to maintain internal drainage are not considered naturally internally drained.

[1995, c. 700, §15 (NEW) .]

2-C. **Overburden.** "Overburden" means earth and other materials naturally lying over the product to be removed.

[1995, c. 700, §15 (NEW) .]

2-D. **Owner or operator.** "Owner" or "operator" means the owner or operator of an excavation.

[1995, c. 700, §15 (NEW) .]

2-E. **Passenger car equivalents at peak hour.** "Passenger car equivalents at peak hour" means the number of passenger cars, or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles, that pass through an intersection or on a roadway under prevailing roadway and traffic conditions at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. For purposes of this article, one tractor-trailer combination is the equivalent of 2 passenger cars.

[1995, c. 700, §15 (NEW) .]

2-F. **Primary sand and gravel recharge area.** "Primary sand and gravel recharge area" means the surface directly overlying sand and gravel formations that provides direct replenishment of groundwater in sand and gravel fractured bedrock aquifers. The term does not include areas overlying formations that have been identified as unsaturated and are not contiguous with saturated formations.

[1995, c. 700, §15 (NEW) .]

3. **Private drinking water supply.** "Private drinking water supply" means a surface water supply, a dug well, a spring or a hole drilled, driven or bored into the earth that is used to extract drinking water for human consumption and that is not part of a public drinking water supply.

[1995, c. 700, §16 (AMD) .]

4. **Protected natural resource.** "Protected natural resource" has the same meaning as in section 480-B, subsection 8.

[1993, c. 350, §5 (NEW) .]

5. **Public drinking water source.** "Public drinking water source" means any groundwater well or any surface water source that directly or indirectly serves a water distribution system that has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days of the year.

[1995, c. 700, §17 (AMD) .]

5-A. **Reclamation.** "Reclamation" means the rehabilitation of the area of land affected by mining, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest, the enhancement of wildlife and aquatic habitat and aquatic resources and the development of the site for residential, commercial, recreational or industrial use.

[2005, c. 158, §2 (AMD) .]

6. **Regulator.** "Regulator" means:

A. For an excavation located wholly within a municipality that is registered under section 490-I to enforce this article, the municipality; and [1995, c. 700, §19 (AMD).]

B. For all other excavations, the Department of Environmental Protection. [1995, c. 700, §19 (AMD).]

[1995, c. 700, §19 (AMD) .]

6-A. **Significant sand and gravel aquifer.** "Significant sand and gravel aquifer" means a deposit of ice-contact and glacial outwash sediment that stores and transmits significant quantities of recoverable water. Significant sand and gravel aquifers are typically located in stratified drift deposits such as eskers, glaciomarine deltas, kames, kame terraces and outwash plains.

[1995, c. 700, §20 (NEW) .]

6-B. **Silt or clay.** "Silt" or "clay" means a material that consists of particles of such a size that 45% or more of the fraction of those particles able to pass through a 3-inch sieve pass through the United States Standard Number 200 sieve, or a material that exhibits similar erosion potential, difficulty of stabilization or runoff based upon its gradation, plasticity, permeability or other relevant criteria.

[1995, c. 700, §20 (NEW) .]

6-C. **Topsoil.** "Topsoil" means the top layer of soil that is predominantly fertile and ordinarily moved in tillage or the equivalent of such a layer in uncultivated soils.

[1995, c. 700, §20 (NEW) .]

7. **Working pit.** "Working pit" means the extraction area, including side slopes, of an excavation for borrow, clay, silt or topsoil. "Working pit" does not include a stockpile area or an area that has a permanent fixed structure such as an office building, permanent processing facility or fixed fuel storage structure.

[1995, c. 700, §21 (RPR) .]

SECTION HISTORY
RR 1993, c. 1, §124 (COR). RR 1993, c. 1, §122 (COR). 1993, c. 350, §5 (NEW). 1993, c. 383, §29 (NEW). 1995, c. 287, §6 (AMD). 1995, c. 700, §§13-21 (AMD). 2005, c. 158, §2 (AMD).

§490-B. APPLICABILITY

Sections 490-A to 490-K apply to any excavation for borrow, clay, topsoil or silt, whether alone or in combination, including reclaimed and unreclaimed areas, if the total excavated area on a parcel is 5 or more acres or the total excavated area on adjacent parcels under a common owner or operator is 5 or more acres. Section 490-M applies to a total excavated area of less than 5 acres. This article applies if the excavation is located in whole or in part within an organized area of this State. [2007, c. 297, §3 (AMD).]

A person in possession of a valid site location of development permit for a borrow pit or topsoil, clay or silt mining operation shall operate that pit or operation in compliance with the terms and conditions of the permit. Any modification of the permit must be in conformance with section 484. A person with a permit under article 6 may file a notice of intent to comply under this article. The permit issued under article 6 lapses as of the date a complete notice of intent is filed with the department. If the permittee chooses to substitute a notification pursuant to this article, all terms and conditions that applied to the permit issued pursuant to article 6 are incorporated into the notification approved pursuant to this article. [1995, c. 700, §22 (NEW).]

This article does not apply to: [1995, c. 700, §22 (RPR).]

1. **Site law pits.**

[1995, c. 700, §22 (RP) .]

2. **Maine Land Use Planning Commission pits.** An excavation wholly within the jurisdiction of the Maine Land Use Planning Commission;

[1995, c. 700, §22 (RPR); 2011, c. 682, §38 (REV) .]

3. **Other mining operations.**

[1995, c. 700, §22 (RP) .]

4. **Excavations reviewed under laws regarding the protection of natural resources.** An excavation to the extent that it is located in a protected natural resource and requires a permit under the laws regarding the protection of natural resources in article 5-A; or

[1995, c. 700, §22 (NEW) .]

5. **Grading preliminary to construction.** An excavation or grading preliminary to a construction project unless it is intended to circumvent this article.

[1995, c. 700, §22 (NEW) .]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 700, §22 (RPR). 2007, c. 297, §3 (AMD). 2011, c. 682, §38 (REV).

§490-C. NOTICE OF INTENT TO COMPLY

Except as provided in section 484-A, a person intending to create or operate an excavation under this article must file a notice of intent to comply before the total area of excavation on the parcel equals 5 or more acres excavated since January 1, 1970. Both reclaimed and unreclaimed areas are added together in determining whether this 5-acre threshold is met. A notice filed under this section must be complete, submitted on forms approved by the department and mailed to the municipality, the department, the Maine Historic Preservation Commission and each abutting property owner. The notice that is mailed to the municipality and each abutting property owner must be sent by certified mail at least 7 days prior to filing the notice of intent to comply with the regulator. The notice that is mailed to the regulator must be sent by certified mail, return receipt requested. Upon receiving the postal receipt, the owner or operator may commence operation. The municipality where the proposed excavation is located may submit comments to the department if the proposed excavation may pose an unreasonable adverse impact under the standards in section 490-D. Within 30 days of receipt of the notice of intent to comply, the department must respond to the comments made by the municipality. Abutting property owners, the Maine Historic Preservation Commission or other interested persons may submit comments directly to the department. [2007, c. 297, §4 (AMD).]

A notice of intent to comply is not complete unless it includes all the following information: [1993, c. 350, §5 (NEW).]

1. **Name, address and telephone number.** The name, mailing address and telephone number of the owner and, if different from the owner, the operator;

[1995, c. 700, §23 (AMD) .]

2. **Map and site plan.** A location map and site plan drawn to scale showing property boundaries, stockpile areas, existing reclaimed and unreclaimed lands, proposed maximum acreage of all affected lands, all applicable private drinking water supplies or public drinking water sources and all existing or proposed solid waste disposal areas;

[1995, c. 700, §23 (AMD) .]

3. **Parcel description.** A parcel description and size, by tax map or deed description;

[1993, c. 350, §5 (NEW) .]

4. **Information on abutters.** The names and addresses of abutting property owners;

[1995, c. 700, §23 (AMD) .]

5. **Signed statement.** A statement, signed and dated by the owner or operator, certifying that the excavation will be operated in compliance with this article; and

[1995, c. 700, §23 (AMD) .]

6. **Fees.** Any fee required by section 490-J.

[1993, c. 350, §5 (NEW) .]

If the department determines that a notice filed under this section is not complete, the department must notify the owner or operator no later than 45 days after receiving the notice. [1995, c. 700, §23 (AMD).]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 287, §7 (AMD). 1995, c. 700, §23 (AMD). 2005, c. 158, §3 (AMD). 2007, c. 297, §4 (AMD).

§490-D. PERFORMANCE STANDARDS

1. **Significant wildlife habitat and other protected areas.** Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur under this section as long as a permit is obtained pursuant to article 5-A. Permit requirements for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

[2009, c. 293, §5 (AMD) .]

2. **Solid waste.** Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be disposed of in accordance with chapter 13, including any rules adopted to implement those laws. The department may not grant a variance from the provisions of this subsection.

[1995, c. 287, §8 (AMD) .]

3. **Groundwater protection.** Excavation may not occur within 5 feet of the seasonal high water table. A benchmark sufficient to verify the location of the seasonal high water table must be established and at least one test pit or monitoring well must be established on each 5 acres of unreclaimed land.

A. A 200-foot separation must be maintained between any excavation and any private drinking water supply that is a point-driven or dug well and was in existence prior to that excavation. [1995, c. 700, §24 (AMD).]

B. A 100-foot separation must be maintained between any excavation and any private drinking water supply that is drilled into saturated bedrock and was in existence prior to that excavation. [1995, c. 700, §24 (AMD).]

C. Separation must be maintained between any affected land and any public drinking water source existing prior to the filing of a notice of intent to comply under section 490-C as follows:

(1) For systems serving a population of 500 persons or less, the minimum separation must be 300 feet;

(2) For systems serving a population of 501 persons up to 1,000 persons, the separation must be 500 feet;

(3) For systems serving a population of more than 1,000 persons, the separation must be 1,000 feet; and

(4) For any system that holds a valid filtration waiver in accordance with the federal Safe Drinking Water Act, the separation must be 1,000 feet.

The department may grant a variance from the provisions of this paragraph upon consultation with the public water supply affected by the excavation. The department may not grant a waiver from the provisions of paragraph A, B or D. [2007, c. 297, §5 (AMD).]

D. Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids, and other on-site activity involving the storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site. [1995, c. 287, §8 (AMD).]

E. Excavation below the seasonal high water table of an area previously designated for potential use as a public drinking water source by a municipality or private water company is prohibited. If the yield of groundwater flow to protected waters or wetlands is not adversely affected, the department may grant a variance allowing excavation below the seasonal high water table of a mapped significant sand and gravel aquifer, or primary sand and gravel recharge area, or an unconsolidated deposit in other locations. [1995, c. 700, §24 (NEW).]

F. In the event of excavation below the seasonal high water table, the operator of a mining activity that affects a public drinking water source or private drinking water supply by excavation activities causing contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This paragraph is not intended to replace any independent action that a person whose water supply is affected by a mining activity may have. [1995, c. 700, §24 (NEW).]

G. In the event of excavation below the seasonal high water table, a 300-foot separation must be maintained between the permitted limit of excavation and any predevelopment private drinking water supply, and a 1,000-foot separation must be maintained between the permitted limit of excavation and any predevelopment public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company. [2007, c. 297, §6 (AMD).]

The department may grant a variance allowing excavation between 2 and 5 feet of the seasonal high water table. The separation distance requirements described in paragraphs A, B and C do not apply when the private water supply or public drinking water source is owned by the owner of the excavation site.

[2007, c. 297, §§5, 6 (AMD) .]

3-A. **Medium borrow pits unlicensed on October 1, 1993.** Notwithstanding subsection 3, the following provisions apply to a medium borrow pit that on October 1, 1993 was not licensed under article 6 and on which gravel had been extracted to a level less than 5 feet above, at or below the seasonal high water table.

The medium borrow pit owner or operator may not further excavate in areas where gravel had been extracted to a level less than 5 feet above, at or below the seasonal high water table unless a variance is granted by the department.

A. The department may not require the medium borrow pit owner or operator to elevate the medium borrow pit floor to 5 feet or more above the seasonal high water table as a condition of operation. [1995, c. 287, §9 (NEW).]

B. [1995, c. 700, §24 (RP).]

C. The medium borrow pit owner or operator may reclaim as a pond that area of the medium borrow pit on which gravel had been extracted to a level at or below the seasonal high water table. [1997, c. 603, §6 (AMD).]

[1997, c. 603, §6 (AMD) .]

4. **Natural buffer strip.** Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to the excavation before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply. The department may not grant a variance from the provisions of this subsection.

[1995, c. 700, §24 (AMD) .]

5. **Protected natural resources.**

[1995, c. 287, §10 (RP) .]

5-A. **Protected natural resource buffers.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and having the characteristics listed in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirement under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal high-water line of a great pond classified as GPA, a river flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, section 403, subsection 7. [2007, c. 616, §4 (AMD).]

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, river, stream, brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland or a freshwater wetland consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peat lands dominated by shrubs, sedges and sphagnum moss. [1995, c. 700, §24 (AMD).]

C. [1995, c. 460, §12 (AFF); 1995, c. 460, §8 (RP).]

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of floodplain wetlands; if no floodplain wetlands are present, the width of the natural buffer strip is measured from the normal high-water mark of a great pond, river, stream or brook or the upland edge of a freshwater or coastal wetland. The department may allow excavation to occur under this subsection as long as a permit is obtained pursuant to article 5-A. An excavation is not eligible for a permit by rule under department rules regarding activities adjacent to a protected natural resource.

[2007, c. 616, §4 (AMD) .]

6. **Roads.**

[1995, c. 287, §12 (RP) .]

6-A. **Public and private roads.** A natural buffer strip must be maintained between the working edge of an excavation and a road or right-of-way as follows.

A. A natural buffer strip at least 150 feet wide must be maintained between the working edge of an excavation and a road designated as a scenic highway by the Department of Transportation. [1995, c. 287, §13 (NEW).]

B. A natural buffer strip at least 100 feet wide must be maintained between the working edge of an excavation and any public road not designated as a scenic highway by the Department of Transportation. A natural buffer strip at least 25 feet wide must be maintained between the working edge of a topsoil excavation and any public road not designated as a scenic highway by the Department of Transportation. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any public right-of-way that does not contain a road. The width of a natural buffer strip adjacent to a public road or right-of-way may be reduced if there is a public entity or entities with authority to grant permission and the applicant receives permission from each authority in writing. [2005, c. 158, §4 (AMD).]

C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any private road or right-of-way. If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way. The width of the natural buffer strip adjacent to a private road may be reduced if the applicant receives written permission from the person or persons having a right-of-way over the private road. [1995, c. 700, §24 (AMD).]

Except for paragraph B, the department may not grant a variance from the provisions of this subsection. The department may grant a variance from paragraph B if the variance will not result in the natural buffer strip being reduced to less than 50 feet between the working edge of the excavation and any road or right-of-way, whichever is farther from the excavation, and if the owner or operator installs visual screening and safety measures as required by the department.

A distance specified in this subsection is measured from the outside edge of the shoulder of the road or edge of the right-of-way unless otherwise specifically provided.

[2005, c. 158, §4 (AMD) .]

6-B. **Medium borrow pits unlicensed on October 1, 1993.** Notwithstanding subsection 6-A, the following provisions apply to a medium borrow pit that on October 1, 1993 was not licensed under article 6 and on which gravel had been extracted closer than 50 feet to a public or private road.

A. The department may not require the owner or operator of a medium borrow pit to reestablish the required natural buffer strip as a condition of operation. [1997, c. 364, §21 (NEW).]

B. The owner or operator of a medium borrow pit shall regrade and seed the sideslopes to a slope no steeper than 2 horizontal feet for each vertical foot unless otherwise approved by the department.

The owner or operator of a medium borrow pit shall install visual screening and safety measures as required by the department. [1997, c. 364, §21 (NEW).]

[1997, c. 364, §21 (NEW) .]

7. **Property boundary.** A natural buffer strip at least 50 feet wide must be maintained between any excavation and any property boundary. A natural buffer strip at least 25 feet wide must be maintained between any topsoil excavation and a property boundary. These distances may be reduced to not less than 10 feet with the written permission of the affected property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission, provided

the elimination of this buffer strip does not increase the runoff from either excavation across the property boundary. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded in the registry of deeds. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. The department may not grant a variance from the provisions of this subsection.

[2005, c. 158, §4 (AMD) .]

8. **Erosion and sedimentation control.** A working pit must be naturally internally drained at all times unless a variance is obtained from the department.

A. The area of a working pit may not exceed 10 acres. [1993, c. 350, §5 (NEW).]

B. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized. [1993, c. 350, §5 (NEW).]

C. Sediment may not leave the parcel or enter a protected natural resource. [1995, c. 700, §24 (NEW).]

D. Grubbed areas not internally drained must be stabilized. [1995, c. 700, §24 (NEW).]

E. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control. [2005, c. 561, §2 (AMD).]

F. All areas other than a working pit area that are not naturally internally drained must meet the erosion and sedimentation control standards of section 420-C. [2005, c. 561, §2 (NEW).]

The department may grant a variance from this subsection, except for paragraphs C, D, E and F. Areas are not considered "naturally internally drained" if surface discharge is impeded through the use of structures such as detention ponds, retention ponds and undersized culverts.

[2005, c. 561, §2 (AMD) .]

9. **Water quality protection and storm water management.** Standards of the laws governing storm water management and waste discharge must be met as provided in this subsection.

A. A variance must be obtained and storm water standards adopted pursuant to section 420-D must be met for any part of a project, other than the working pit area, that is not naturally internally drained if that part of the project would require a storm water management permit pursuant to section 420-D but for the exception for certain excavations in section 420-D, subsection 5. A storm water management permit pursuant to section 420-D is not required. [2005, c. 158, §5 (NEW).]

B. A waste discharge must meet standards and obtain authorization if required pursuant to section 413. [2005, c. 158, §5 (NEW).]

C. If a reclaimed slope or working pit is adjacent to steep slopes and a protected natural resource, measures must be taken to prevent storm water from ponding at the base of the reclaimed slope or working pit. [2007, c. 507, §1 (NEW).]

[2007, c. 507, §1 (AMD) .]

10. **Stockpiles.**

[1995, c. 700, §24 (RP) .]

11. **Traffic.** The following provisions govern traffic.

A. [T. 38, §490-D, sub-§11, ¶ A (RP).]

B. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under Title 23, section 704-A. [1999, c. 468, §16 (AMD).]

[1999, c. 468, §16 (AMD) .]

12. **Noise.** Noise levels may not exceed applicable noise limits in rules adopted by the board.

[1995, c. 700, §24 (AMD) .]

13. **Dust.** Dust generated by activities at the excavation site, including dust associated with traffic to and from the excavation site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include the application of calcium chloride, providing the manufacturer's labeling guidelines are followed. The department may not grant a variance from the provisions of this subsection. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

[2005, c. 158, §6 (AMD) .]

14. **Reclamation.** Except as provided in subsection 15, the affected land must be restored to a condition that is similar to or compatible with the conditions that existed before excavation. Reclamation should be conducted in accordance with the department's best management practices for erosion and sediment control, and must include:

A. Regrading side slopes to a slope no steeper than 2 1/2 horizontal feet for each vertical foot; [1993, c. 350, §5 (NEW).]

B. Establishing a vegetative cover by seeding within one year of the completion of excavation. Vegetative cover is acceptable if, within one year of seeding:

(1) The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession, sufficient to ensure a 75% survival rate; and

(2) The planting of all materials results in permanent 90% ground coverage; [1993, c. 350, §5 (NEW).]

C. Removing all structures and, once no longer in use, reclaiming all access roads, haul roads and other support roads; [1995, c. 700, §24 (AMD).]

D. Reclaiming all affected lands within 2 years after final grading; and [1995, c. 700, §24 (AMD).]

E. Stockpiling soil that is stripped or removed for use in reclaiming disturbed land areas. [1995, c. 700, §24 (NEW).]

The department may require a bond payable to the State with sureties satisfactory to the department or such other security as the department may determine adequately secures compliance with this article, conditioned upon the faithful performance of the requirements set forth in this article. Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the department for the reclamation of the area for which the bond was posted and any remainder returned to the operator.

The board may adopt or amend rules to carry out this subsection, including rules relating to operation or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance; estimation of reclamation costs;

reports on reclamation activities; or the manner of determining when the bond or other security may be discharged. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

The department may grant a variance from paragraph A, provided that the slopes exhibit substantial vegetation and are stable. The department may not assess a fee for a request for a variance from paragraph A. The department may grant a variance from paragraph E if the applicant demonstrates that the soil is not needed for reclamation purposes. The department may not grant a variance from the other provisions of this subsection.

[2001, c. 466, §9 (AMD) .]

15. **Recreational management areas.** An owner or operator may request a variance to develop a recreational management area on the affected land as an alternative to reclamation in accordance with subsection 14. The department may grant a variance under section 490-E if the Off-road Recreational Vehicle Office determines the site is suitable under Title 12, section 1893-A.

[2013, c. 405, Pt. D, §17 (AMD) .]

16. **Blasting.** Blasting must be conducted in accordance with the standards in section 490-Z, subsection 14 unless otherwise approved by the department.

[2007, c. 297, §7 (NEW) .]

17. **Lighting.** Lighting must be shielded from adjacent highways and residential areas.

[2007, c. 616, §5 (NEW) .]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 287, §§8-15 (AMD). 1995, c. 460, §8 (AMD). 1995, c. 460, §12 (AFF). 1995, c. 700, §24 (AMD). 1997, c. 364, §21 (AMD). 1997, c. 603, §6 (AMD). 1999, c. 468, §16 (AMD). 1999, c. 556, §34 (AMD). 2001, c. 466, §§9,10 (AMD). 2005, c. 158, §§4-6 (AMD). 2005, c. 561, §2 (AMD). 2007, c. 290, §11 (AMD). 2007, c. 297, §§5-7 (AMD). 2007, c. 364, §2 (AMD). 2007, c. 507, §1 (AMD). 2007, c. 616, §§3-5 (AMD). 2009, c. 293, §5 (AMD). 2013, c. 405, Pt. D, §17 (AMD).

§490-E. VARIANCES

The owner or operator must comply with the performance standards in section 490-D unless a variance from those performance standards is approved by the department. Except where prohibited by section 490-D, the department may grant a variance from the performance standards in this article if the owner or operator affirmatively demonstrates to the department that the variance does not adversely affect natural resources or existing uses and does not adversely affect the health, safety and general welfare of the public. A variance application must include any fee applicable under section 490-J. The department shall process the variance application according to chapter 2 and the rules adopted by the department for processing an application. An applicant for a variance under this article shall hold a public informational meeting as described in those rules. [1995, c. 700, §25 (AMD).]

The department shall adopt rules that set forth the standards for granting a variance from the performance standards in this article. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 602, §6 (AMD).]

When an owner applies for a variance to allow an excavation to be reclaimed as a pond of at least 10 acres but less than 30 acres in size, the department may require public access as a condition for granting the variance. When an owner applies for a variance to allow an excavation to be reclaimed as a pond of 30 acres

or greater in size, the department may grant the variance only if the owner demonstrates that public access to the pond is ensured. The requirement for public access may be met by existing public rights or by granting an easement or other right including a right to travel a reasonable distance by foot to a designated area of the shoreline. [2001, c. 466, §11 (NEW).]

A variance from performance standards may not be granted prior to March 1, 1997 unless the owner or operator requesting the variance had filed a notice of intent to comply under section 490-C prior to the effective date of this paragraph. [1995, c. 700, §25 (NEW).]

The department shall publish a timetable for responding to variance applications in the same manner prescribed in section 344-B. A variance is not valid unless approved by the department and, if a municipality is the regulator, the municipality. In making its decision on variance applications, the department shall consider comments or information received and the compliance record of the owner or operator. The department shall inform the owner or operator of any significant concerns or issues raised. [1995, c. 700, §25 (AMD).]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 700, §25 (AMD). 2001, c. 466, §11 (AMD). 2005, c. 602, §6 (AMD).

§490-F. REVIEW BEFORE EXPANSION

Before expanding an excavation beyond an area that exceeds a total of 10 acres of reclaimed and unreclaimed land and before each additional 10-acre expansion, the owner or operator shall notify the regulator of an intent to expand and must request an inspection. In the same manner as prescribed in section 344-B, the department shall publish a timetable for responding to inspection requests and shall inspect the site within that time period to determine the excavation's compliance with this article and other applicable laws administered by the department. The department may defer an inspection for a reasonable period when winter conditions at the site prevent the department from evaluating an expansion request. The department shall notify the owner or operator of a deferral under this section. Excavation activities may continue after the filing of a notice of an intent to expand. The failure of a regulator to conduct a site visit within a published time period is not sufficient basis for a stop-work order under section 490-H, subsection 1. [1995, c. 700, §26 (AMD).]

At the time of filing a notification of intent to expand, the owner or operator shall pay any fee required by section 490-J. [1993, c. 350, §5 (NEW).]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 287, §16 (AMD). 1995, c. 700, §26 (AMD).

§490-G. INSPECTIONS

The regulator may periodically inspect a site, may examine relevant records of the owner or operator and may take samples and perform tests necessary to determine compliance with the provisions of this article. [1995, c. 700, §27 (AMD).]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 700, §27 (AMD).

§490-H. ENFORCEMENT AND PENALTIES

Except as provided in section 490-I, the department shall administer and enforce the provisions of this article. [1993, c. 350, §5 (NEW).]

1. **Stop-work order.** The regulator may order the owner or operator that is not operating in compliance with this article to cease operations until the noncompliance is corrected.

[1995, c. 700, §28 (AMD) .]

2. **Penalty.** A person who violates the provisions of this article commits a civil violation and is subject to the penalties established under section 349. Penalties assessed for enforcement actions taken by the State are payable to the State and penalties assessed for enforcement actions taken by a municipality registered under section 490-I are payable to that municipality. For any action brought by a municipality under this article in which the municipality prevails, the court may require the owner or operator to reimburse the municipality for costs associated with that enforcement action.

[1993, c. 350, §5 (NEW) .]

3. **Reclamation.** If, after an opportunity for a hearing, the commissioner determines that the owner of an excavation site or the person who was engaged in the excavation activity at the excavation site has violated this article, the commissioner shall direct the department staff or contractors under the supervision of the commissioner to enter on the property and carry out the necessary reclamation. The person engaged in mining or any affiliated person who guarantees performance at the excavation site is liable for the reasonable expenses of the necessary reclamation. The commissioner may use the bond or other security to meet the reasonable expenses of reclamation.

[1995, c. 700, §29 (NEW) .]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 700, §§28,29 (AMD).

§490-I. MUNICIPAL ENFORCEMENT; REGISTRATION

This section allows a municipality to register for authority to enforce this article by adopting and submitting to the commissioner an ordinance that meets or exceeds the provisions of this article. The commissioner shall review that ordinance to determine if that ordinance meets the provisions of this article and if the municipality has adequate resources to enforce the provisions of this article. If the commissioner determines that the ordinance meets the provisions of this article and that the municipality has the resources to enforce this article, the commissioner shall register that municipality for authority to enforce this article. Immediately upon approval by the commissioner, primary enforcement authority for this article vests in that municipality. The commissioner may not approve an ordinance under this section unless the ordinance requires that any request for a variance from the standards in the article be approved by the commissioner before that variance is valid. [1993, c. 350, §5 (NEW).]

1. **Relation to home rule.** Nothing in this section may be construed to limit a municipality's authority under home rule to adopt ordinances regulating borrow, topsoil, clay or silt excavations.

[1995, c. 700, §30 (AMD) .]

2. **Optional participation.** Nothing in this article may be construed to require a municipality to adopt any ordinance.

[1993, c. 350, §5 (NEW) .]

3. **Suspension of approval.** The commissioner may act to enforce any provision of this article or suspend the registration of a municipality if the commissioner determines that a municipal ordinance no longer conforms to the provisions of this article or that the municipality is not adequately enforcing this

article. The commissioner shall notify a municipality of any such determination in writing. Suspension of municipal registration by the commissioner does not void or in any way affect a municipal ordinance or in any way limit the municipality's authority to enforce the provisions of its ordinance.

[1993, c. 350, §5 (NEW) .]

4. **Appeal.** A municipality may appeal to the board any decision of the commissioner under this section. Any decision by the board on appeal by a municipality constitutes final agency action.

[1993, c. 350, §5 (NEW) .]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 700, §30 (AMD).

§490-J. FEES

The owner or operator of an excavation being operated under this article must pay the regulator: [1995, c. 700, §31 (AMD).]

1. **Initial fee.** A fee of $250 upon filing a notice of intent to comply under section 484-A or 490-C;

[1993, c. 350, §5 (NEW) .]

2. **Annual fee.** By March 1st of each year, an annual fee of:

A. Four hundred dollars for an excavation from which 2,500 cubic yards or more of material will be extracted during that year; and [2005, c. 158, §7 (AMD).]

B. One hundred dollars, for all other excavations. To be eligible for the annual fee under this paragraph, the owner or operator must include with the payment of this fee a signed statement certifying that less than 2,500 cubic yards of material will be extracted during that year; [2005, c. 158, §7 (AMD).]

[2005, c. 158, §7 (AMD) .]

3. **Variance fee.** A fee of $250 for each variance requested under section 490-E, except for the following:

A. A fee of $500 for a variance to excavate below the seasonal high water table; [1995, c. 700, §31 (NEW).]

B. A fee of $500 for a variance to create an externally drained pit; and [1995, c. 700, §31 (NEW).]

C. A fee of $125 for a variance to waive the topsoil salvage requirement; and [1995, c. 700, §31 (NEW).]

[1995, c. 700, §31 (AMD) .]

4. **Notice of intent to expand.** A fee of $250 upon filing a notice of intent to expand under section 490-F.

[1993, c. 350, §5 (NEW) .]

Notwithstanding any other provision of this section, the total for all fees paid under subsections 1 and 2 for one borrow, clay, topsoil or silt excavation in one calendar year may not exceed $350. [1995, c. 700, §31 (AMD).]

Payment of the annual fee under subsection 2 is no longer required after reclamation is complete as determined by the department. The department shall inspect the site before making this determination. [1995, c. 700, §31 (NEW).]

All fees received under this article must be deposited in the Maine Environmental Protection Fund consistent with section 353-C. [2003, c. 673, Pt. GG, §2 (NEW).]

SECTION HISTORY
1993, c. 350, §5 (NEW). 1995, c. 700, §31 (AMD). 2003, c. 673, §GG2 (AMD). 2005, c. 158, §7 (AMD).

§490-K. TRANSFER OF OWNERSHIP OR OPERATION

A person who purchases an excavation that is operated under a notice of intent to comply or who obtains operating authority of an excavation that operates under a notice of intent to comply must file within 2 weeks after the purchase or the obtaining of operating authority a notice of intent to comply on a form developed by the department. The new owner or operator may operate the excavation during this 2-week period without having filed a notice of intent to comply, providing the new owner or operator complies with all standards under this article. [1995, c. 700, §32 (AMD).]

SECTION HISTORY
1995, c. 287, §17 (NEW). 1995, c. 700, §32 (AMD).

§490-L. EXEMPTION FROM COMMON SCHEME OF DEVELOPMENT

(REPEALED)

SECTION HISTORY
1995, c. 287, §17 (NEW). 1995, c. 700, §33 (RP).

§490-M. EROSION CONTROL REQUIREMENTS FOR CLAY, TOPSOIL, OR SILT EXCAVATIONS OF LESS THAN 5 ACRES

An excavation of less than 5 acres of land for clay, topsoil or silt must be conducted and reclaimed in accordance with the following standards. [1995, c. 700, §34 (NEW).]

1. **Stabilization and control.** Sediment may not leave the parcel or enter a protected natural resource as defined in section 480-B. Properly installed erosion control measures must be in place before the excavation begins. Vegetative cover must be established on all affected land. Topsoil must be placed, seeded and mulched within 7 days of final grading. Permanent vegetative cover is acceptable for purposes of erosion control if, within one growing season of seeding, the planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession sufficient to ensure a 75% survival rate and the planting of all materials in permanent 90% ground coverage.

[1995, c. 700, §34 (NEW) .]

2. **Phases.** The excavation must be reclaimed in phases so that the working pit does not exceed 2 acres at any one time.

[1995, c. 700, §34 (NEW) .]

SECTION HISTORY
1995, c. 700, §34 (NEW).

§490-N. RELEASE

The department may grant a release from the requirements of this article to the owner or operator or a transferee after reclamation of the affected area as determined by the department. The department shall inspect the site before making this determination. The release will terminate if any further excavation on the parcel for borrow, clay, topsoil or silt is proposed by the owner or operator or a transferee. A person proposing further excavation on the parcel must file a notice of intent to comply pursuant to section 490-C and comply with all requirements of this article. Payment of the annual fee under section 490-J will resume in the year when the further excavation begins. [2005, c. 158, §8 (NEW).]

SECTION HISTORY
2005, c. 158, §8 (NEW).

Article 8: PERFORMANCE STANDARDS FOR SMALL ROAD QUARRIES HEADING: PL 1995, C. 287, §18 (NEW)

§490-P. DEFINITIONS

(REPEALED)

SECTION HISTORY
1995, c. 287, §18 (NEW). MRSA T.38 ., §490V (RP).

§490-Q. APPLICABILITY

(REPEALED)

SECTION HISTORY
1995, c. 287, §18 (NEW). MRSA T.38 ., §490V (RP).

§490-R. NOTICE OF INTENT TO COMPLY

(REPEALED)

SECTION HISTORY
1995, c. 287, §18 (NEW). MRSA T.38 ., §490V (RP).

§490-S. PERFORMANCE STANDARDS FOR QUARRIES

(REPEALED)

SECTION HISTORY
1995, c. 287, §18 (NEW). MRSA T.38 ., §490V (RP).

§490-T. INSPECTIONS

(REPEALED)

SECTION HISTORY
1995, c. 287, §18 (NEW). MRSA T.38 ., §490V (RP).

§490-V. REPEAL

(REPEALED)

SECTION HISTORY
1995, c. 287, §18 (NEW). MRSA T.38 ., §490V (RP).

Article 8-A: PERFORMANCE STANDARDS FOR QUARRIES HEADING: PL 1995, C. 700, §35 (NEW)

§490-W. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 700, §35 (NEW).]

1. **Affected land.** "Affected land" means all reclaimed and unreclaimed land, land that has or will have the overburden removed, land on which stumps, spoil or other solid waste has or will be deposited and storage areas or other land, except natural buffer strips, that will be or has been used in connection with a quarry.

[1995, c. 700, §35 (NEW) .]

2. **Airblast.** "Airblast" means an atmospheric compression wave resulting from the detonation of explosives, whether resulting from the motion of blasted materials or the expansion of gases from the explosion.

[1995, c. 700, §35 (NEW) .]

3. **Blaster.** "Blaster" means a person qualified to be in charge of or responsible for the loading and firing of a blast.

[1995, c. 700, §35 (NEW) .]

4. **Blasting.** "Blasting" means the use of explosives to break up or otherwise aid in the extraction or removal of a rock or other consolidated natural formation.

[1995, c. 700, §35 (NEW) .]

5. **Blast site.** "Blast site" means the area where explosive material is handled during the loading of drilled blastholes, including the perimeter formed by the loaded blastholes and 50 feet in all directions from loaded blastholes.

[1995, c. 700, §35 (NEW) .]

6. **Detonating cord.** "Detonating cord" means a flexible cord containing a center core of high explosives that may be used to initiate other explosives.

[1995, c. 700, §35 (NEW) .]

7. **Explosive.** "Explosive" means any chemical compound or other chemical substance that contains oxidizing or combustible materials used for the purpose of producing an explosion intended to break or move rock, earth or other materials.

[1995, c. 700, §35 (NEW) .]

8. **Flyrock.** "Flyrock" means rock that is propelled through the air or across the ground as a result of blasting and that leaves the blast area.

[1995, c. 700, §35 (NEW) .]

9. **Matting.** "Matting" means a covering placed over load holes and adjacent areas in order to minimize generation of flyrock and limit airblast effects.

[1995, c. 700, §35 (NEW) .]

10. **Natural buffer strip.** "Natural buffer strip" means an undisturbed area or belt of land that is covered with trees or other vegetation.

[1995, c. 700, §35 (NEW) .]

11. **Passenger car equivalents at peak hour.** "Passenger car equivalents at peak hour" means the number of passenger cars, or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles, that pass through an intersection or on a roadway under prevailing roadway and traffic conditions at that hour of the day during which traffic volume generated by the development is higher than the volume during any other hour of the day. For purposes of this article, one tractor-trailer combination is the equivalent of 2 passenger cars.

[1995, c. 700, §35 (NEW) .]

12. **Peak particle velocity.** "Peak particle velocity" means the maximum rate of ground movement measured by any of the 3 mutually perpendicular components of ground motion.

[1995, c. 700, §35 (NEW) .]

13. **Preblast survey.** "Preblast survey" means documentation, prior to the initiation of blasting, of the condition of buildings, structures, wells or other infrastructures; protected natural resources; historic sites; and unusual natural areas.

[1995, c. 700, §35 (NEW) .]

14. **Private drinking water supply.** "Private drinking water supply" means a surface water supply, a dug well, a spring or a hole drilled, driven or bored into the earth that is used to extract drinking water for human consumption and that is not part of a public drinking water supply.

[1995, c. 700, §35 (NEW) .]

15. **Production blasting.** "Production blasting" means blasting conducted for the purpose of extracting or removing natural materials for commercial sale or beneficiation.

[1995, c. 700, §35 (NEW) .]

16. **Public drinking water source.** "Public drinking water source" means a groundwater well or a surface water source that directly or indirectly serves a water distribution system that has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days of the year.

[1995, c. 700, §35 (NEW) .]

17. **Quarry.** "Quarry" means a place where rock is excavated.

[1995, c. 700, §35 (NEW) .]

18. **Reclamation.** "Reclamation" means the rehabilitation of the area of land affected by mining, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest, the enhancement of wildlife and aquatic habitat and aquatic resources and the development of the site for residential, commercial, recreational or industrial use. "Reclamation" does not include the filling in of pits and the filling or sealing of shafts and underground workings with solid materials unless necessary for the protection of groundwater or for reasons of safety.

[2005, c. 158, §9 (AMD) .]

19. **Regulator.** "Regulator" means:

A. For a quarry located wholly within a municipality that is registered under section 490-DD to enforce this article, the municipality; and [1995, c. 700, §35 (NEW).]

B. For all other quarries, the Department of Environmental Protection. [1995, c. 700, §35 (NEW).]

[1995, c. 700, §35 (NEW) .]

20. **Rock.** "Rock" means a hard, nonmetallic material that requires cutting, blasting or similar methods of forced extraction.

[1995, c. 700, §35 (NEW) .]

21. **Stemming.** "Stemming" means inert material used in a blasthole to confine the gaseous products of detonation.

[1995, c. 700, §35 (NEW) .]

22. **Surface blasting.** "Surface blasting" means any blasting for which the blast area lies at the surface of the ground.

[1995, c. 700, §35 (NEW) .]

23. **Underground production blasting.** "Underground production blasting" means a blasting operation carried out beneath the surface of the ground by means of shafts, declines, adits or other openings leading to the natural material being mined or extracted.

[1995, c. 700, §35 (NEW) .]

24. **Working pit.** "Working pit" means the extraction area, including overburden, of an excavation for rock. "Working pit" does not include a stockpile area or an area that has a permanent fixed structure such as an office building, permanent processing facility or fixed fuel storage structure.

[2005, c. 561, §3 (NEW) .]

SECTION HISTORY
1995, c. 700, §35 (NEW). 2005, c. 158, §9 (AMD). 2005, c. 561, §3 (AMD).

§490-X. APPLICABILITY

This article applies to any quarry, including reclaimed and unreclaimed areas, if the quarry is more than one acre in size, the total excavated area including adjacent parcels under a common owner or operator is more than one acre in size or underground production blasting is proposed. [2007, c. 297, §8 (AMD).]

This article does not apply to a quarry located wholly within the jurisdiction of the Maine Land Use Planning Commission. [1995, c. 700, §35 (NEW); 2011, c. 682, §38 (REV).]

This article does not apply to an excavation or grading preliminary to a construction project, unless intended to circumvent this article. [1995, c. 700, §35 (NEW).]

A person with a valid permit for a quarry under article 6 must operate that quarry in compliance with the terms and conditions of that permit. Any modification of the permit must be in conformance with section 484. A person with a permit under article 6 may file a notice of intent to comply with this article. The permit issued under article 6 lapses as of the date a complete notice of intent is filed with the department. If the

permittee chooses to substitute a notification pursuant to this article, all terms and conditions that applied to the permit issued pursuant to article 6 are incorporated into the notification approved pursuant to this article. [1995, c. 700, §35 (NEW).]

SECTION HISTORY
1995, c. 700, §35 (NEW). 2007, c. 297, §8 (AMD). 2011, c. 682, §38 (REV).

§490-Y. NOTICE OF INTENT TO COMPLY

Except as provided in section 484-A, a person intending to create or operate a quarry under this article must file a notice of intent to comply before the total area of excavation of rock or overburden on the parcel exceeds one acre. Both reclaimed and unreclaimed areas are added together in determining whether this one-acre threshold is exceeded. A notice filed under this section must be complete, submitted on forms approved by the department and mailed to the municipality where the quarry is located, the department, the Maine Historic Preservation Commission and each abutting property owner. The notice that is mailed to the municipality and each abutting property owner must be sent by certified mail at least 7 days before the notice of intent to comply is filed with the regulator. The notice that is mailed to the department must be sent by certified mail, return receipt requested. Upon receiving the postal receipt, the owner or operator may commence operation of the quarry. The municipality where the proposed quarry is located may submit comments to the department if the proposed quarry may pose an unreasonable adverse impact under the standards in section 490-Z. Within 30 days of receipt of the notice of intent to comply, the department shall respond to the comments made by the municipality. Abutting property owners, the Maine Historic Preservation Commission or other interested persons may submit comments directly to the department. [2007, c. 297, §9 (AMD).]

A notice of intent to comply is not complete unless it includes the following: [1995, c. 700, §35 (NEW).]

1. **Name, address and telephone number.** The name, mailing address and telephone number of the owner of the quarry and, if different from the owner, the operator of the quarry;

[1995, c. 700, §35 (NEW) .]

2. **Map and site plan.** A location map and site plan drawn to scale showing property boundaries, stockpile areas, existing reclaimed and unreclaimed lands, proposed maximum acreage of all affected lands, all applicable private drinking water supplies or public drinking water sources and all existing or proposed solid waste disposal areas;

[1995, c. 700, §35 (NEW) .]

3. **Parcel description.** A description of the parcel including size and deed description;

[1995, c. 700, §35 (NEW) .]

4. **Legal interest.** A copy of the lease or other document showing that an operator who is not the owner has a legal right to excavate on the property. Stumpage information does not have to be shown;

[1995, c. 700, §35 (NEW) .]

5. **Information on abutters.** The names and addresses of abutting property owners;

[1995, c. 700, §35 (NEW) .]

6. **Signed statement.** A statement signed and dated by the owner or operator certifying that the quarry will be operated in compliance with this article; and

[1995, c. 700, §35 (NEW) .]

7. **Fees.** A fee paid to the department as provided by section 490-EE.

[1995, c. 700, §35 (NEW) .]

If the department determines that a notice filed under this section is not complete, the department must notify the owner or operator no later than 45 days after receiving the notice. [1995, c. 700, §35 (NEW).]

SECTION HISTORY
1995, c. 700, §35 (NEW). 1997, c. 364, §22 (AMD). 2005, c. 158, §10 (AMD). 2007, c. 297, §9 (AMD).

§490-Z. PERFORMANCE STANDARDS FOR QUARRIES

1. **Significant wildlife habitat and other protected areas.** Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur under this section as long as a permit is obtained pursuant to article 5-A. Permit requirements for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

[2009, c. 293, §6 (AMD) .]

2. **Solid waste.** Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be disposed of in accordance with chapter 13, including any rules adopted to implement those laws. The department may not grant a variance from the provisions of this subsection.

[1995, c. 700, §35 (NEW) .]

3. **Groundwater protection.** To ensure adequate groundwater protection, the following setback requirements must be met.

A. A 200-foot separation must be maintained between an excavation and a private drinking water supply that is point driven or dug and was in existence prior to the excavation. [1995, c. 700, §35 (NEW).]

B. A 100-foot separation must be maintained between an excavation and a private drinking water supply that is drilled into saturated bedrock and was in existence prior to the excavation. [1995, c. 700, §35 (NEW).]

C. Separation must be maintained between an excavation and a public drinking water source as follows:

(1) For systems serving a population of 500 persons or less, the minimum separation must be 300 feet;

(2) For systems serving a population of 501 persons up to 1,000 persons, the separation must be 500 feet;

(3) For systems serving a population of more than 1,000 persons, the separation must be 1,000 feet; and

(4) For any system that holds a valid filtration waiver in accordance with the federal Safe Drinking Water Act, 42 United States Code, Sections 300f to 300j-26 (1988), the separation must be 1,000 feet. [1995, c. 700, §35 (NEW).]

D. Refueling operations, oil changes, other maintenance activities requiring the handling of fuels, petroleum products and hydraulic fluids and other on-site activity involving storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site. [1995, c. 700, §35 (NEW).]

E. In the event of excavation below the seasonal high water table, a 300-foot separation must be maintained between the limit of excavation and any predevelopment private drinking water supply and a 1000-foot separation must be maintained between the limit of excavation and any public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company. [1995, c. 700, §35 (NEW).]

The department may grant a variance from the provisions of paragraph C upon consultation with the person or entity that controls the public drinking water supply affected by the excavation. The department may not grant a waiver from the provisions of paragraph A, B or D.

Excavation below the seasonal high water table is prohibited. The department may grant a variance allowing excavation below the seasonal high water table if the applicant demonstrates that the yield of groundwater flow to protected waters or wetlands or public drinking water sources or private drinking water supplies will not be adversely affected by the excavation.

In the event of excavation below the seasonal high water table, the operator of a mining activity that affects by excavation activities a public drinking water source or private drinking water supply by contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This provision is not intended to replace any independent action that a person may have whose water supply is affected by a mining activity.

[2005, c. 158, §11 (AMD) .]

4. **Natural buffer strip.** Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to operation of a quarry before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply. The department may not grant a variance from the provisions of this subsection.

[1995, c. 700, §35 (NEW) .]

5. **Protected natural resource buffers.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and have the characteristics listed in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirements under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal high-water line of a great pond classified as GPA, a river flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, section 403, subsection 7. [2007, c. 616, §7 (AMD).]

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and a body of water other than as described in paragraph A, a river, stream or brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peat lands dominated by shrubs, sedges and sphagnum moss. [1995, c. 700, §35 (NEW).]

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of a floodplain wetland. If no floodplain wetlands are present, the width is measured from the normal high-water mark of the river, stream or brook. The width is measured from the normal high-water mark of a great pond and upland edge of a freshwater or coastal wetland.

The department may allow excavation to occur under this subsection as long as a permit is obtained pursuant to article 5-A. A quarry is not eligible for a permit by rule under department rules regarding activities adjacent to a protected natural resource.

[2007, c. 616, §7 (AMD) .]

6. **Roads.** A natural buffer strip must be maintained between the working edge of an excavation and a road or right-of-way as follows.

A. A natural buffer strip at least 150 feet wide must be maintained between the working edge of an excavation and a road designated as a scenic highway by the Department of Transportation. [1995, c. 700, §35 (NEW).]

B. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and any other public road. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any public right-of-way that does not contain a road. The width of a natural buffer strip adjacent to a public road or right-of-way may be reduced if there is a public entity or entities with authority to grant permission and the applicant receives permission from each authority in writing. [2005, c. 158, §12 (AMD).]

C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and a private road or a right-of-way. If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way. The width of the natural buffer strip adjacent to a private road may be reduced if the applicant receives written permission from the persons having a right-of-way over the private road. [1995, c. 700, §35 (NEW).]

The department may not grant a variance from the provisions of paragraph A or C. The department may grant a variance from paragraph B if the variance does not result in the natural buffer strip being reduced to less than 50 feet between the working edge of the excavation and any road or right-of-way, whichever is farther from the excavation, and if the owner or operator installs visual screening and safety measures as required by the department.

A distance specified in this subsection is measured from the outside edge of the shoulder of the road or edge of the right-of-way unless otherwise specifically provided.

[2005, c. 158, §12 (AMD) .]

7. **Property boundary.** A natural buffer strip at least 100 feet wide must be maintained between an excavation and any property boundary. This distance may be reduced to 10 feet with the written permission of the affected abutting property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The natural buffer strip between quarries owned by abutting owners may be eliminated with the abutter's written permission if the elimination of this natural buffer strip does not increase the runoff from either excavation across the property boundary. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded

in the registry of deeds. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. The department may not grant a variance from the provisions of this subsection.

[2005, c. 158, §12 (AMD) .]

8. **Erosion and sedimentation control.** A working pit must be naturally internally drained at all times unless a variance is obtained from the department. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.

A. Sediment may not leave the parcel or enter a protected natural resource. [1995, c. 700, §35 (NEW).]

B. Grubbed areas not internally drained must be stabilized. [1995, c. 700, §35 (NEW).]

C. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control. [2005, c. 561, §4 (AMD).]

D. All areas other than a working pit area that are not naturally internally drained must meet the erosion and sedimentation control standards of section 420-C. [2005, c. 561, §4 (NEW).]

The department may not grant a variance from the provisions of paragraph A, B, C or D. Areas are not considered "naturally internally drained" if surface discharge is impeded through the use of structures such as detention ponds, retention ponds and undersized culverts.

[2005, c. 561, §4 (AMD) .]

9. **Water quality protection and storm water management.** Standards of the laws governing storm water management and waste discharge must be met as provided in this subsection.

A. A variance must be obtained and storm water standards adopted pursuant to section 420-D must be met for any part of a project, other than the working pit area, that is not naturally internally drained if that part of the project would require a storm water management permit pursuant to section 420-D but for the exception for certain excavations in section 420-D, subsection 5. A storm water management permit pursuant to section 420-D is not required. [2005, c. 158, §13 (NEW).]

B. A waste discharge must meet standards and obtain authorization if required pursuant to section 413. [2005, c. 158, §13 (NEW).]

[2005, c. 158, §13 (RPR) .]

10. **Traffic.** The following provisions govern traffic.

B. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under Title 23, section 704-A. [1999, c. 468, §17 (AMD).]

[1999, c. 468, §17 (AMD) .]

11. **Noise.** Noise levels may not exceed applicable noise limits in rules adopted by the board.

[1995, c. 700, §35 (NEW) .]

12. **Dust.** Dust generated by activities at a quarry, including dust associated with traffic to and from a quarry, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include calcium chloride as long as the manufacturer's labeling

guidelines are followed. The department may not grant a variance from the provisions of this subsection. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

[2005, c. 158, §14 (AMD) .]

13. **Reclamation.** The affected land must be restored to a condition that is similar to or compatible with the conditions that existed before excavation. Reclamation may be conducted in accordance with the department's best management practices for erosion and sedimentation control and must include the following.

A. Highwalls, or quarry faces, must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face. [1995, c. 700, §35 (NEW).]

B. A vegetative cover must be established by seeding or planting within one year of the completion of excavation. Vegetative cover must be established on all affected land except for quarry walls and flooded areas. A vegetative cover must be established on safety benches, unless otherwise approved by the department. Topsoil must be placed, seeded and mulched within 30 days of final grading. Vegetative cover is acceptable if within one year of seeding:

(1) The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession sufficient to ensure a 75% survival rate; and

(2) The planting of all material results in permanent 90% ground cover.

Vegetative cover used in reclamation must consist of grasses, legumes, herbaceous or woody plants, shrubs, trees or a mixture of these. [1997, c. 364, §23 (AMD).]

C. All structures, once no longer in use, and all access roads, haul roads and other support roads must be reclaimed. [1995, c. 700, §35 (NEW).]

D. All affected lands must be reclaimed within 2 years after final grading. [1995, c. 700, §35 (NEW).]

E. Topsoil that is stripped or removed must be stockpiled for use in reclaiming disturbed land areas. The department may grant a variance from this paragraph if the applicant demonstrates that the soil is not needed for reclamation purposes. [1995, c. 700, §35 (NEW).]

F. The department may require a bond payable to the State with sureties satisfactory to the department or such other security as the department determines adequately secures compliance with this article, conditioned upon the faithful performance of the requirements set forth in this article. Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the department for the reclamation of the area for which the bond was posted and any remainder returned to the operator. [1995, c. 700, §35 (NEW).]

G. The board may adopt or amend rules to carry out this subsection, including rules relating to operational or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance; estimation of reclamation costs; reports on reclamation activities; and the manner of determining when the bond or other security may be discharged. [1995, c. 700, §35 (NEW).]

[1997, c. 364, §23 (AMD) .]

14. **Blasting.** The applicant must ensure that the blasting is conducted in accordance with Title 25, chapter 318.

A. The owner or operator shall use sufficient stemming, matting or natural protective cover to prevent flyrock from leaving property owned or under control of the owner or operator or from entering protected natural resources or natural buffer strips. Crushed rock or other suitable material must be used for stemming when available; native gravel, drill cuttings or other material may be used for stemming only if no other suitable material is available. [1995, c. 700, §35 (NEW).]

B. The maximum allowable airblast at any inhabited building not owned or controlled by the developer may not exceed 129 decibels peak when measured by an instrument having a flat response (+ or - 3 decibels) over the range of 5 to 200 hertz. [1995, c. 700, §35 (NEW).]

C. The maximum allowable airblast at an uninhabited building not owned or controlled by the developer may not exceed 140 decibels peak when measured by an instrument having a flat response (+ or - 3 decibels) over the range of 5 to 200 hertz. [1995, c. 700, §35 (NEW).]

D. Monitoring of airblast levels is required in all cases for which a preblast survey is required by paragraph F. The department may waive the monitoring requirement if the owner or operator secures the permission of affected property owners to increase allowable airblast levels on their property and the department determines that no protected natural resource will be adversely affected by the increased airblast levels. [1995, c. 700, §35 (NEW).]

E. If a blast is to be initiated by detonating cord, the detonating cord must be covered by crushed rock or other suitable cover to reduce noise and concussion effects. [1995, c. 700, §35 (NEW).]

F. A preblast survey is required for all production blasting and must extend a minimum radius of 1/2 mile from the blast site. The preblast survey must document any preexisting damage to structures and buildings and any other physical features within the survey radius that could reasonably be affected by blasting. Assessment of features such as pipes, cables, transmission lines and wells and other water supply systems must be limited to surface conditions and other readily available data, such as well yield and water quality. The preblast survey must be conducted prior to the initiation of blasting at the operation. The owner or operator shall retain a copy of all preblast surveys for at least one year from the date of the last blast on the development site.

(1) The owner or operator is not required to conduct a preblast survey if the department determines that no protected natural resource within the limits of the otherwise required survey is likely to be affected by blasting and production blasting will not occur within 2000 feet of any building not owned or under the control of the developer.

(2) The owner or operator is not required to conduct a preblast survey on properties for which the owner or operator documents the rejection of an offer by registered letter, return receipt requested, to conduct a preblast survey. Any person owning a building within a preblast survey radius may voluntarily waive the right to a survey.

(3) The owner or operator is not required to conduct a preblast survey if the owner or operator agrees to design all blasts so that the weight of explosives per 8 millisecond or greater delay does not exceed that determined by the equation W=(D/Ds)2, where W is the maximum allowable weight of explosives per delay of 8 milliseconds or greater, D is the shortest distance between any area to be blasted and any inhabitable structure not owned or controlled by the developer and Ds equals 70 ft./(lb.) 1/2. [2005, c. 158, §15 (AMD).]

G. Blasting may not occur in the period between sundown and sunrise the following day or in the period between 7:00 p.m. and 7:00 a.m., whichever is greater. Routine production blasting is not allowed in the daytime on Sunday. Detonation of misfires may occur outside of these times but must be reported to the department within 5 business days of the misfire detonation. Blasting may not occur more frequently than 4 times per day. Underground production blasting may be exempted from these requirements provided that a waiver is granted by the department. [1995, c. 700, §35 (NEW).]

H. Sound from blasting may not exceed the following limits at any protected location:

Number of Blasts Per Day	Sound Level Limit
1	129 decibels
2	126 decibels
3	124 decibels
4	123 decibels

[1995, c. 700, §35 (NEW).]

I. The maximum peak particle velocity at inhabitable structures not owned or controlled by the developer may not exceed the levels established in Table 1 in paragraph K and the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1. The department may grant a variance to allow ground vibration levels greater than 2 inches per second on undeveloped property not owned or controlled by the applicant if the department determines that no protected natural resource, unusual natural area or historic site will be adversely affected by the increased ground vibration levels. If inhabitable structures are constructed on the property after approval of the development and prior to completion of blasting, the developer immediately must notify the department and modify blasting procedures to remain in compliance with the standards of this subsection. [1995, c. 700, §35 (NEW).]

J. Based upon an approved engineering study, the department may grant a variance to allow higher vibration levels for certain buildings and infrastructures. In reviewing a variance application, the department shall take into account that the standards in this paragraph and paragraph I are designed to protect conventional low-rise structures such as churches, homes and schools. In cases of practical difficulty, the department may grant a variance from paragraph I if it can be demonstrated that no adverse impacts on existing infrastructures or protected natural resources, unusual natural areas or historic sites will result. [1995, c. 700, §35 (NEW).]

K. Table 1 of this paragraph or the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1 must be used to evaluate ground vibration effects for those blasts for which a preblast survey is required.

(1) Either Table 1 of this paragraph or the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1 may be used to evaluate ground vibration effects when blasting is to be monitored by seismic instrumentation.

(2) Blasting measured in accordance with Table 1 of this paragraph must be conducted so that the peak particle velocity of any one of the 3 mutually perpendicular components of motion does not exceed the ground vibration limits at the distances specified in Table 1 of this paragraph.

(3) Seismic instruments that monitor blasting in accordance with Table 1 of this paragraph must have the instrument's transducer firmly coupled to the ground.

(4) An owner or operator using Table 1 of this paragraph must use the scaled-distance equation, W=(D/Ds)2, to determine the allowable charge weight of explosives to be detonated in any 8 millisecond or greater delay period without seismic monitoring, where W is equal to the maximum weight of explosives, in pounds, and D and Ds are defined as in Table 1 of this paragraph. The department may authorize use of a modified scaled-distance factor for production blasting if the owner or operator can demonstrate to a 95% confidence level, based upon records of seismographic monitoring at the specific site of the mining activity covered by the permit, that use of the modified scaled-distance factor will not cause the ground vibration to exceed the maximum allowable peak particle velocities of Table 1 of this paragraph.

(5) Blasting monitored in accordance with the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1 must be conducted so that the continuously variable particle velocity criteria are not exceeded.

The owner or operator may apply for a variance of the ground vibration monitoring requirement prior to conducting blasting at the development site if the owner or operator agrees to design all blasts so that the weight of explosives per 8 millisecond or greater delay does not exceed that determined by the equation W=(D/Ds)2, where W is the maximum allowable weight of explosives per delay of 8 milliseconds or

greater, D is the shortest distance between any area to be blasted and any inhabitable structure not owned or controlled by the developer and Ds equals 70 ft./lb.1/2. As a condition of the variance, the department may require submission of records certified as accurate by the blaster and may require the owner or operator to document compliance with the conditions of this paragraph.

The following is Table 1.

Distance versus Peak Particle Velocity Method

Distance (D) from the blast area (feet)	Maximum allowable peak particle velocity (Vmax) for ground vibration (in./sec.)	Scaled-distance factor (Ds) to be applied without seismic monitoring
0 to 300	1.25	50
301-5000	1.00	55
Greater than 5000	0.75	65

[1995, c. 700, §35 (NEW).]

L. A record of each blast, including seismographic data, must be kept for at least one year from the date of the last blast, must be available for inspection at the development or at the offices of the owner or operator if the development has been closed, completed or abandoned before the one-year limit has passed and must contain at a minimum the following data:

(1) Name of blasting company or blasting contractor;

(2) Location, date and time of blast;

(3) Name, signature and social security number of blaster;

(4) Type of material blasted;

(5) Number and spacing of holes and depth of burden or stemming;

(6) Diameter and depth of holes;

(7) Type of explosives used;

(8) Total amount of explosives used;

(9) Maximum amount of explosives used per delay period of 8 milliseconds or greater;

(10) Maximum number of holes per delay period of 8 milliseconds or greater;

(11) Method of firing and type of circuit;

(12) Direction and distance in feet to the nearest dwelling, public building, school, church or commercial or institutional building neither owned nor controlled by the developer;

(13) Weather conditions, including factors such as wind direction and cloud cover;

(14) Height or length of stemming;

(15) Amount of mats or other protection used;

(16) Type of detonators used and delay periods used;

(17) The exact location of each seismograph and the distance of each seismograph from the blast;

(18) Seismographic readings;

(19) Name and signature of the person operating each seismograph; and

(20) Names of the person and the firm analyzing the seismographic data. [1995, c. 700, §35 (NEW).]

M. All field seismographs must record the full analog wave form of each of the 3 mutually perpendicular components of motion in terms of particle velocity. All seismographs must be capable of sensor check and must be calibrated according to the manufacturer's recommendations. [1995, c. 700, §35 (NEW).]

N. If any blasting activity exceeds the standards in this subsection, the department must be notified within 48 hours of the blast event. Notification must include the name of the blasting operator, the location, date and time of the blasting event and a description of the specific occurrence that is in noncompliance with this subsection. Use of explosives at the quarry may be suspended by the department until the cause of the noncompliance is identified and appropriate steps are implemented to reduce, prevent or eliminate reoccurrence. [2007, c. 297, §10 (NEW).]

O. Prior to blasting, the owner or operator shall develop and implement a plan that provides an opportunity for prior notification of a planned blast for all persons located within 1,000 feet of the blast site. Notification may be by telephone, in writing, by public notice in a newspaper of general circulation in the area affected or by other means identified in the plan. The plan must be in writing and available for inspection by the department. [2007, c. 297, §11 (NEW).]

[2007, c. 297, §§10, 11 (AMD) .]

15. **Lighting.** Lighting must be shielded from adjacent highways and residential areas.

[2007, c. 616, §8 (NEW) .]

SECTION HISTORY
1995, c. 700, §35 (NEW). 1997, c. 364, §23 (AMD). 1999, c. 468, §17 (AMD). 1999, c. 556, §35 (AMD). 1999, c. 652, §10 (AMD). 2005, c. 158, §§11-15 (AMD). 2005, c. 561, §4 (AMD). 2007, c. 290, §12 (AMD). 2007, c. 297, §§10, 11 (AMD). 2007, c. 364, §3 (AMD). 2007, c. 616, §§6-8 (AMD). 2009, c. 293, §6 (AMD).

§490-AA. INSPECTIONS

The department may periodically inspect a site, examine relevant records of the owner or operator of a quarry, take samples and perform tests necessary to determine compliance with the provisions of this article. [1995, c. 700, §35 (NEW).]

SECTION HISTORY
1995, c. 700, §35 (NEW).

§490-BB. ENFORCEMENT AND PENALTIES

The department shall administer and enforce the provisions of this article. [1995, c. 700, §35 (NEW).]

1. **Stop-work order.** The department may order the owner or operator of a quarry that is not operating in compliance with this article to cease operations until the noncompliance is corrected.

[1995, c. 700, §35 (NEW) .]

2. **Penalty.** A person who violates a provision of this article commits a civil violation and is subject to the penalties established under section 349. Penalties assessed for enforcement actions taken by the State are payable to the State.

[1995, c. 700, §35 (NEW) .]

3. **Reclamation.** If, after an opportunity for a hearing, the commissioner determines that the owner of an excavation site or the person who was engaged in the excavation activity at the excavation site has violated this article, the commissioner shall direct the department staff or contractors under the supervision of the commissioner to enter on the property and carry out the necessary reclamation. The person engaged in

mining or any affiliated person who guarantees performance at the excavation site is liable for the reasonable expenses of this necessary reclamation. The commissioner may use the bond or other security paid under section 490-Z, subsection 13, paragraph F to meet the reasonable expenses of reclamation.

[1995, c. 700, §35 (NEW) .]

SECTION HISTORY
1995, c. 700, §35 (NEW).

§490-CC. VARIANCES

An owner or operator must comply with the performance standards in section 490-Z unless a variance from those performance standards is approved by the department. Except when prohibited by section 490-Z, the department may grant a variance from the performance standards in this article if the owner or operator affirmatively demonstrates to the department that the variance does not adversely affect natural resources or existing uses and does not adversely affect the health, safety and general welfare of the public. The department may adopt rules that set forth the standards for granting a variance from the performance standards in this article. Such rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. A variance application must include any fee applicable under section 490-EE. The department shall process the variance application according to chapter 2 and the rules adopted by the department for processing an application. An applicant for a variance under this article shall hold a public informational meeting as described in those rules. [2005, c. 602, §7 (AMD).]

The department shall publish a timetable for responding to variance applications in the same manner prescribed in section 344-B. A variance is not valid unless approved by the department and, if a municipality is the regulator, the municipality. In making its decision on a variance application, the department shall consider comments or information received and the compliance record of the owner or operator. The department shall inform the owner or operator of any significant concerns or issues raised. [1995, c. 700, §35 (NEW).]

SECTION HISTORY
1995, c. 700, §35 (NEW). 2005, c. 602, §7 (AMD).

§490-DD. MUNICIPAL ENFORCEMENT; REGISTRATION

A municipality may register for authority to enforce this article by adopting and submitting to the commissioner an ordinance that meets or exceeds the provisions of this article. The commissioner shall review that ordinance to determine whether that ordinance meets the provisions of this article and if the municipality has adequate resources to enforce the provisions of this article. If the commissioner determines that the ordinance meets the provisions of this article and that the municipality has the resources to enforce this article, the commissioner shall register that municipality for authority to enforce this article. Immediately upon approval by the commissioner, primary enforcement authority for this article vests in that municipality. The commissioner may not approve an ordinance under this section unless the ordinance requires that any request for a variance from the standards in the article be approved by the commissioner before the variance is valid. [1995, c. 700, §35 (NEW).]

1. **Relation to home rule.** This section may not be construed to limit a municipality's authority under home rule to adopt ordinances regulating quarries.

[1995, c. 700, §35 (NEW) .]

2. **Optional participation.** This article may not be construed to require a municipality to adopt any ordinance.

[1995, c. 700, §35 (NEW) .]

3. **Suspension of approval.** The commissioner may act to enforce any provision of this article or suspend the registration of a municipality if the commissioner determines that a municipal ordinance no longer conforms to the provisions of this article or that the municipality is not adequately enforcing this article. The commissioner shall notify a municipality of any such determination in writing. Suspension of municipal registration by the commissioner does not void or in any way affect a municipal ordinance or in any way limit the municipality's authority to enforce the provisions of its ordinance.

[1995, c. 700, §35 (NEW) .]

4. **Appeal.** A municipality may appeal to the board any decision of the commissioner under this section. Any decision by the board on appeal by a municipality constitutes final agency action.

[1995, c. 700, §35 (NEW) .]

SECTION HISTORY
1995, c. 700, §35 (NEW).

§490-EE. TRANSFER OF OWNERSHIP OR OPERATION; REVIEW BEFORE EXPANSION; FEES

1. **Review before expansion.** Before expanding a quarry beyond an area that exceeds a total of 10 acres of reclaimed and unreclaimed land and before each additional 10-acre expansion, the owner or operator shall notify the regulator of the owner's or operator's intent to expand and must request an inspection. In the same manner as prescribed in section 344-B, the department shall publish a timetable for responding to inspection requests and shall inspect the site within that time period to determine the quarry's compliance with this article and other applicable laws administered by the department. The department may defer an inspection for a reasonable period when winter conditions at the site prevent the department from evaluating an expansion request. The department shall notify the owner or operator of a deferral under this section. Excavation activities may continue after the filing of a notice of an intent to expand. The failure of a regulator to conduct a site visit within a published time period is not a sufficient basis for a stop-work order under section 490-BB, subsection 1.

At the time of filing a notification of intent to expand, the owner or operator shall pay any fee required by this section.

[1995, c. 700, §35 (NEW) .]

2. **Transfer of ownership or operation.** A person who purchases a quarry that is operated under a notice of intent to comply, as established under section 490-Y, or who obtains operating authority of a quarry that operates under a notice of intent to comply must file within 2 weeks after the purchase or the obtaining of operating authority a notice of intent to comply on a form developed by the department. The new owner or operator may operate the quarry during this 2-week period without having filed a notice of intent to comply if the new owner or operator complies with all standards of this article.

[1995, c. 700, §35 (NEW) .]

3. **Fees.** The owner or operator of a quarry shall pay the regulator:

A. An initial fee of $250 upon filing a notice of intent to comply under section 490-Y; [1995, c. 700, §35 (NEW).]

B. By March 1st of each year, an annual fee of:

(1) Four hundred dollars for an excavation from which 2,500 cubic yards or more of material will be extracted during that year; and

(2) One hundred dollars for all other excavations. To be eligible for the annual fee under this paragraph, the owner or operator must include with the payment of this fee a signed statement certifying that less than 2,500 cubic yards of material will be extracted during that year; [2005, c. 158, §16 (AMD).]

C. A fee of $250 for each variance requested under section 490-CC, except for the following:

(1) A fee of $500 for a variance to excavate below the seasonal high water table;

(2) A fee of $500 for a variance to create an externally drained quarry;

(3) A fee of $125 for a variance to waive the topsoil salvage requirement; and

(4) A fee of $125 for a variance to waive the monitoring requirements for airblasts and ground vibration; and [1997, c. 364, §24 (AMD).]

D. A fee of $250 upon filing a notice of intent to expand under this section. [1995, c. 700, §35 (NEW).]

Notwithstanding any other provision of this subsection, the total for all fees paid under paragraphs A and B for one quarry in one calendar year may not exceed $350.

[2005, c. 158, §16 (AMD) .]

All fees received under this article must be deposited in the Maine Environmental Protection Fund consistent with section 353-C. [2003, c. 673, Pt. GG, §3 (NEW).]

SECTION HISTORY
1995, c. 700, §35 (NEW). 1997, c. 364, §24 (AMD). 2003, c. 673, §GG3 (AMD). 2005, c. 158, §16 (AMD).

§490-FF. RELEASE

The department may grant a release from the requirements of this article to the owner or operator or a transferee after reclamation of the affected area as determined by the department. The department shall inspect the site before making this determination. The release will terminate if any further excavation on the parcel is proposed by the owner or operator or a transferee. A person proposing further excavation on the parcel must file a notice of intent to comply pursuant to section 490-Y and comply with all requirements of this article. Payment of the annual fee under section 490-EE will resume in the year when the further excavation begins. [2005, c. 158, §17 (NEW).]

SECTION HISTORY
2005, c. 158, §17 (NEW).

Article 9: MAINE METALLIC MINERAL MINING ACT

§490-LL. SHORT TITLE

This article may be known and cited as "the Maine Metallic Mineral Mining Act." [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

SECTION HISTORY
2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF).

§490-MM. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

1. **Advanced exploration.** "Advanced exploration" means any metallic mineral bulk sampling or exploratory activity that exceeds those activities that are exploration activities and are specified in rules adopted by the department. Samples taken as part of exploration are not considered bulk sampling.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

2. **Affected area.** "Affected area" means an area outside of a mining area where the land surface, surface water, groundwater, air resources, soils or existing uses are potentially affected by mining operations as determined through an environmental impact assessment.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

3. **Beneficiation.** "Beneficiation" means the treatment of ore to liberate or concentrate its valuable constituents. "Beneficiation" includes, but is not limited to, crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching to produce a final or intermediate product that does not undergo further beneficiation or processing, gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation and dump, vat, tank and in situ leaching.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

4. **Closure.** "Closure" means activities undertaken to manage a mining area and, if necessary, an affected area, pursuant to an environmental protection, reclamation and closure plan approved by the department. "Closure" includes, but is not limited to, actions taken to contain metallic mineral wastes on site and to ensure the integrity of waste management structures and the permanent securement of pits, shafts and underground workings.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

5. **Contamination.** As applied to groundwater, "contamination" means nonattainment of water quality standards, the cause of which is attributable to a mining operation, as:

A. Specified in rules relating to primary drinking water standards adopted pursuant to Title 22, section 2611; or [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. Demonstrated by a statistically significant change in measured parameters that indicates deterioration of water quality determined through assessment monitoring. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

As applied to surface water, "contamination" means a condition created by any direct or indirect discharge that causes or contributes to nonattainment of applicable water quality or licensing standards under section 414-A or 420. The nonattainment may be attributable to the mining operation either by itself or in combination with other discharges.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

6. **Exploration.** "Exploration" or "exploration activity" means the following activities when conducted in accordance with rules adopted by the department for the purpose of determining the location, extent and composition of metallic mineral deposits: test boring, test drilling, hand sampling, the digging of test pits, trenching or outcrop stripping for the removal of overburden having a maximum surface opening of 300 square feet per test pit or trench or other test sampling methods determined by the department to cause minimal disturbance of soil and vegetative cover.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

7. **Heap or percolation leaching.** "Heap or percolation leaching" means a process for the primary purpose of recovering metallic minerals in an outdoor environment from a stockpile of crushed or excavated ore by percolating water or a solution through the ore and collecting the leachate.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

8. **Metallic mineral.** "Metallic mineral" means any ore or material to be excavated from the natural deposits on or in the earth for its metallic mineral content to be used for commercial or industrial purposes. "Metallic mineral" does not include thorium or uranium.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

9. **Metallic mineral operator.** "Metallic mineral operator" means a permittee or other person who is engaged in, or who is preparing to engage in, mining operations for metallic minerals, whether individually or jointly or through agents, employees or contractors.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

10. **Metallic product.** "Metallic product" means a commercially salable mineral or metal produced primarily for its metallic mineral content in its final marketable form or state.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

11. **Mining.** "Mining," "mining operation" or "mining activity" means activities, facilities or processes necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals and includes the bulk sampling, advanced exploration, extraction or beneficiation of metallic minerals as well as waste storage and other stockpiles and reclamation activities, but does not include exploration.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

12. **Mining area.** "Mining area" means an area of land described in a permit application and approved by the department, including but not limited to land from which earth material is removed in connection with mining, the lands on which material from that mining is stored or deposited, the lands on which beneficiating or treatment facilities, including groundwater and surface water management treatment systems, are located or the lands on which water reservoirs used in a mining operation are located.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

13. **Mining permit.** "Mining permit" means a permit issued under this article for conducting mining and reclamation operations.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

14. **Permittee.** "Permittee" means a person who is issued a mining permit.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

15. **Post-closure monitoring period.** "Post-closure monitoring period" means a period following closure during which a permittee is required to conduct monitoring of groundwater and surface water and other environmental parameters as specified in a mining permit.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

16. **Reclamation.** "Reclamation" or "reclamation operation" means the rehabilitation of the mining area, affected area and any other area of land or water body affected by mining under an environmental protection, reclamation and closure plan approved by the department. "Reclamation" includes, but is not limited to, stabilization of slopes, creation of safety benches, planting of forests, seeding of grasses and legumes for grazing purposes, planting of crops for harvest and enhancement of wildlife and aquatic resources.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

17. **Tailings impoundment.** "Tailings impoundment" means land on which is deposited, by hydraulic or other means, material that is separated from the metallic product in the beneficiation or treatment of minerals, including any surrounding dikes constructed to contain the material.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

SECTION HISTORY
2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF).

§490-NN. ADMINISTRATION AND ENFORCEMENT; RULES; REGULATION BY LOCAL UNITS OF GOVERNMENT

1. **Administration; jurisdiction; rules.** The department shall administer and enforce this article in all areas of the State, including the unorganized territory, in order to regulate mining.

A. The provisions of articles 6, 7 and 8-A, chapter 13 and section 420-D do not apply to projects reviewed under this article. Projects reviewed under this article do not require any other permits from the department except for permits required under section 490-OO; permits required under article 5-A; waste discharge licenses required under section 413 for discharges of pollutants to groundwater via an underground injection well or discharges of pollutants to surface waters of the State, including permits for construction and industrial discharge issued by the department pursuant to 40 Code of Federal Regulations, Section 122.26; licenses required under chapter 4; and other permits or licenses issued pursuant to any United States Environmental Protection Agency federally delegated program. This article does not prohibit the department from adopting rules to implement standards for mining that are necessary to protect human health and the environment. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. In addition to other powers granted to it, the department shall adopt rules to carry out its duties under this article, including, but not limited to, standards for exploration, advanced exploration, construction, operation, closure, post-closure monitoring, reclamation and remediation. Except as otherwise provided, rules adopted under this article are major substantive rules for purposes of Title 5, chapter 375, subchapter 2-A and are subject to section 341-H. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

2. **Maine Land Use Planning Commission.** The department may not approve a permit under this article in an unorganized territory unless the Maine Land Use Planning Commission certifies to the department that:

A. The proposed mining is an allowed use within the subdistrict or subdistricts in which it is to be located; and [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. The proposed mining meets any land use standard established by the Maine Land Use Planning Commission and applicable to the project that is not considered in the department's review. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF); 2011, c. 682, §38 (REV).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF); 2011, c. 682, §38 (REV) .]

3. **Municipal authority.** This article does not prevent a municipality from regulating or controlling mining or reclamation activities that are subject to this article, including, but not limited to, construction, operation, closure, post-closure monitoring, reclamation and remediation activities.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

SECTION HISTORY
2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF). 2011, c. 682, §38 (REV).

§490-OO. MINING PERMIT; APPLICATION PROCEDURE

1. **Permit required.** A person may not engage in mining without a permit issued by the department under this article.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

2. **Application procedure.** An application for a mining permit must be submitted to the department in a format to be developed by the department. The application must include the following:

A. The fees established in section 352. All costs incurred by the department in processing an application must be paid for by the applicant; [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. An environmental impact assessment for the proposed mining operation that describes the natural and artificial features, including, but not limited to, groundwater and surface water quality, flora, fauna, hydrology, geology and geochemistry and baseline conditions for those features in the proposed mining area and affected area that may be affected by the mining operation and the potential impacts on those features from the proposed mining operation. The environmental impact assessment must define the mining area and the affected area and address practicable alternatives to address impacts to the mining area and potential impacts to the affected area. The department shall review the environmental impact assessment and may approve, reject or require modifications to the assessment; [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

C. An environmental protection, reclamation and closure plan for the proposed mining operation, including beneficiation operations, that will reasonably avoid, minimize and mitigate the actual and potential adverse impacts on natural resources, the environment and public health and safety within the mining area and the affected area. The plan must address unique issues associated with mining and must include, but not be limited to, the following:

(1) A description of materials, methods and techniques that will be used;

(2) Information that demonstrates that the methods, materials and techniques proposed to be used are capable of accomplishing their stated objectives in protecting the environment and public health. The required information may consist of results of actual testing, modeling, documentation by credible independent testing and certification organizations or documented applications in similar uses and settings;

(3) Plans and schedules for interim and final reclamation of the mining area and the affected area following cessation of mining operations and plans and schedules for measures taken during suspension of operations, including contemporaneous reclamation, to the extent practicable;

(4) A description of the geochemistry of the ore, waste rock, overburden, peripheral rock, spent leach material and tailings, including characterization of leachability, reactivity and acid-forming characteristics;

(5) A mining operations closure plan;

(6) Provisions for the prevention, control and monitoring of acid-forming waste products and other waste products from the mining process in accordance with standards in subsection 4, paragraphs D and E;

(7) Storm water and surface water management provisions;

(8) A water quality monitoring plan;

(9) A description of the wastewater discharge management plan;

(10) A description of any tailings impoundment and the methods, materials and techniques to be used;

(11) A plan for the storage of hazardous materials; and

(12) An estimate of costs for reclamation, closure and environmental protection. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

D. A contingency plan that includes an assessment of the risk to the environment and public health and safety associated with potential significant incidents or failures related to the mining operation and describes the metallic mineral operator's notification and response plans. When the application is accepted as complete for processing by the department, the applicant shall provide a copy of the contingency plan to each municipality in which the mining area and affected area may be located or, in the unorganized territory, to the county commissioners for each county in which the mining area or affected area may be located. The department may require amendments to the contingency plan; [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

E. Financial assurance as described in section 490-RR; and [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

F. A list of other state and federal permits or approvals anticipated by the applicant to be required. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

3. **Permit issuance if violation exists.** A mining permit may not be issued or transferred to a person if the department has determined that person to be in violation of this article, rules adopted under this article, a mining permit, an order of the department issued pursuant to this article or any other state law, rule, permit or order that the department determines through rulemaking is relevant to the issuance or transfer of a mining permit unless the person has corrected the violation or the person has agreed in a judicially enforceable document to correct the violation pursuant to a compliance schedule approved by the department.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

4. **Criteria for approval.** Except as provided for in subsection 3, the department shall approve a mining permit whenever it finds the following.

A. The applicant has the financial capacity and technical ability to develop the project in a manner consistent with applicable state environmental standards and with the provisions of this article. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. The applicant has made adequate provision for fitting the mining operation harmoniously into the existing natural environment and the development will not unreasonably adversely affect existing uses, scenic character, air quality, water quality or other natural resources.

(1) In making a determination under this paragraph regarding a mining operation's effects on natural resources regulated by the Natural Resources Protection Act, the department shall apply the same standards applied under the Natural Resources Protection Act.

(2) The applicant must demonstrate that there is reasonable assurance that public and private water supplies will not be affected by the mining operations.

(3) The applicant must demonstrate that rules to protect human health and the environment adopted by the department pursuant to this article will be met. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

C. The mining operation will be located on soil types that are suitable to the nature of the mining operation. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

D. There is reasonable assurance that discharges of pollutants from the mining operation will not violate applicable water quality standards. Notwithstanding sections 465-C and 470, discharges to groundwater from activities permitted under this article may occur within a mining area, but such discharges may not result in contamination of groundwater beyond each mining area. In determining compliance with this standard, the department shall require groundwater monitoring consistent with the standards established pursuant to section 490-QQ, subsection 3. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

E. The mining operation will not cause a direct or indirect discharge of pollutants into surface waters or discharge groundwater containing pollutants into surface waters that results in a condition that is in nonattainment of or noncompliance with the standards in article 4-A or section 414-A or 420. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

F. Withdrawals of groundwater and surface water related to the mining operation will comply with article 4-B. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

G. The applicant has made adequate provision of utilities, including water supplies, wastewater facilities and solid waste disposal, required for the mining operation, and the mining operation will not have an unreasonable adverse effect on the existing or proposed utilities in a municipality or area served by those services. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

H. The mining operation will not unreasonably cause or increase the flooding of the area that is altered by the mining operation or adjacent properties or create an unreasonable flood hazard to any structure. Mining operations may be placed in flood plains or flood hazard areas as long as they are designed, constructed, operated and reclaimed in a manner that complies with the approval criteria in this subsection and the Natural Resources Protection Act. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

I. The applicant has made adequate provision for protection of public safety. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

J. The mining operation will not use heap or percolation leaching. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

5. **Permit coordination.** If a person submits an application for a mining permit under this article and an application to the department for any other permit required pursuant to section 490-NN, subsection 1, the department shall process the applications in a coordinated fashion and issue a joint decision. The coordinated permit process must include consolidation of public hearings.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

6. **Public and local participation.** In addition to provisions for public participation pursuant to Title 5, chapter 375 and department rules relating to public participation in the processing of applications, the following provisions apply to an application for a mining permit.

A. At least 60 days prior to submitting an application to the department, the applicant shall notify by certified mail the municipal officers of each municipality in which the mining area or affected area may be located or, in the unorganized territory, the county commissioners for each county in which the mining area or affected area may be located. The applicant at the same time shall provide a copy of the notice to the department and the Director of the Division of Geology, Natural Areas and Coastal Resources within the Department of Agriculture, Conservation and Forestry. [2013, c. 405, Pt. C, §22 (AMD).]

B. At the time an application is submitted to the department, the applicant shall provide written notice to the municipal officers of each municipality in which the mining area and affected area may be located or, in the unorganized territory, to the county commissioners for each county in which the mining area or affected area may be located and shall publish notice of the application in a newspaper of general circulation in the area. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

C. The department shall hold an adjudicatory public hearing within the municipality in which the mining operation may be located or, in the unorganized territory, in a convenient location in the vicinity of the proposed mining operation. Administrative expenses of a hearing held pursuant to this paragraph must be paid for by the applicant. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

D. The municipal officers, or their designees, from each municipality in which the mining area or affected area may be located or, in the unorganized territory, the county commissioners, or their designees, for each county in which the mining area or affected area may be located have intervenor status if they request it within 60 days after notification under paragraph B. The intervenor status granted under this paragraph applies in any proceeding for a permit under this article. Immediately upon the commissioner's receipt of a request for intervenor status under this paragraph, the intervenors have all rights and responsibilities commensurate with this status. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

E. The commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under paragraph D, not to exceed $50,000. The department shall adopt rules governing payment by an applicant to the department of fees necessary for the department to award intervenor assistance grants and governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the department. Allowable expenses include, without limitation, hydrogeological studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses not used in support of direct, substantive participation in the proceedings before the department, including attorney's fees related to court appeals, are not eligible for reimbursement under this subsection. Expenses otherwise eligible under this subsection that are incurred by the municipality or county commissioners after notification pursuant to paragraph B are eligible for reimbursement under this paragraph only if a completed application is accepted by the department. The department shall also establish rules governing the process by which an intervenor under paragraph D may gain entry to the proposed mining site for purposes of reasonable inspection and site investigations under the auspices of the department. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2013, c. 405, Pt. C, §22 (AMD) .]

SECTION HISTORY
2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF). 2013, c. 405, Pt. C, §22 (AMD).

§490-PP. MINING PERMIT; DURATION; TERMINATION; REVOCATION; TRANSFER; AMENDMENT

1. **Duration of permit.** A mining permit issued by the department remains in effect until terminated or revoked by the department. The duration of other permits issued for the mining operation must be provided for in those permits. The department shall conduct annual reviews of the mining operations and assess compliance with the permit terms.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

2. **Termination of permit.** After public notice, the department may terminate or request surrender of a mining permit if:

A. The permittee has not commenced construction of mining facilities or conducted mining activities covered by the mining permit within 4 years after the effective date of the mining permit; or [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. The permittee has satisfied the requirements of the environmental protection, reclamation and closure plan and completed final reclamation of the mining area and, if necessary, the affected area and requests the termination of the mining permit and the department determines all of the following:

(1) The air, water or other natural resources are not polluted or impaired from the mining operation;

(2) The permittee has otherwise fulfilled all conditions determined to be necessary by the department to protect the public health, safety and welfare and the environment; and

(3) The requirements for the post-closure monitoring period have been satisfied. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

3. **Revocation of permit.** The department may revoke a mining permit after public notice pursuant to section 490-TT.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

4. **Transfer of permit.** After public notice and unless otherwise provided in this article, a mining permit may be transferred with prior written approval of the department in accordance with the provisions of this subsection.

A. The person acquiring the mining permit shall submit to the department on forms provided by the department a request for transfer of the mining permit and shall provide the financial assurance required under section 490-RR. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. A person acquiring a mining permit must accept the conditions of the existing mining permit and adhere to the requirements set forth in this article. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

C. If a permittee is determined by the department to be in violation of this article or the rules adopted under this article at the mining site that is the subject of the transfer, the mining permit may not be transferred until the permittee has completed the necessary corrective actions or the person acquiring the mining permit has entered into a written consent agreement to correct all of the violations. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

D. A transferee shall demonstrate to the department's satisfaction the technical and financial capacity and intent to:

(1) Comply with all terms and conditions of the mining permit; and

(2) Satisfy all applicable statutory and regulatory criteria, including, but not limited to, providing adequate evidence of the financial assurance required by section 490-RR. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

5. **Amendment of permit.** After public notice, a mining permit may be amended in accordance with this subsection.

A. A permittee may submit to the department a request to amend a mining permit to address anticipated changes in the mining operation, including, if applicable, amendments to the environmental impact assessment and to the environmental protection, reclamation and closure plan. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. The department may require a mining permit to be amended if the department determines that the terms and conditions of the mining permit are not providing reasonable protection of the environment, natural resources or public health and safety. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

SECTION HISTORY
2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF).

§490-QQ. PERFORMANCE, OPERATION AND RECLAMATION STANDARDS

1. **Performance standards.** Standards adopted by the department through rulemaking must be performance-based to the extent feasible, and the department may require that the applicant implement control devices or measures necessary to achieve the performance standards. If the rules include standards that are not performance-based, the rules may allow a permittee to propose an alternative means of compliance that achieves equivalent environmental performance. The department is not required to approve the proposed alternative means of compliance. If the applicant proposes a control device or measure, it must demonstrate that there is reasonable assurance that the device or measure will achieve the performance standard.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

2. **Suspension of mining operations.** If mining operations are suspended for a continuous period exceeding 90 days, the permittee shall provide notice to the department and take actions, consistent with its environmental protection, reclamation and closure plan, to maintain, monitor and secure the mining area and shall conduct any interim sloping or stabilizing of surfaces necessary to protect the environment, natural resources and public health and safety in accordance with the mining permit. If mining operations are suspended for a continuous period exceeding 365 days, the permittee is considered to have ceased mining operations and all requirements applicable to closure take effect unless the department agrees in writing to delay the implementation of the closure plan based on a written submission by the permittee that demonstrates that the mining operations are expected to recommence within a reasonable period of time as determined by the department. The department may require partial closure of mining operations.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

3. **Water quality monitoring.** Through rulemaking the department shall establish standards for monitoring groundwater as close as practicable to any mining area that may pose a threat to groundwater. A permittee shall conduct groundwater and surface water monitoring in accordance with the provisions of a mining permit during mining operations, during suspension of mining operations, during closure and during the post-closure monitoring period. The post-closure monitoring period must be at least 30 years following cessation of mining, subject to the following conditions.

A. The permittee shall provide to the department a written request to terminate post-closure monitoring not less than 18 months before the proposed termination date and shall provide the department with technical data and information demonstrating the basis for the termination of the post-closure monitoring. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. The department may shorten the post-closure monitoring period at any time upon determining that there is no significant potential for water contamination resulting from the mining operation. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

C. The department shall extend the post-closure monitoring period in increments of up to 20 years unless the department determines, approximately one year before the end of a post-closure monitoring period or post-closure incremental monitoring period, that there is no significant potential for surface water or groundwater contamination resulting from the mining operation. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

4. **Reclamation.** The following reclamation requirements apply.

A. Except as provided in paragraph B, a permittee shall commence and complete final reclamation of a mining area and, if necessary, any affected area consistent with mining permit conditions and the environmental protection, reclamation and closure plan approved by the department. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. Upon written request of a permittee, the department may approve an extension of time to begin or complete final reclamation. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

C. Both the mining area and the affected area must be reclaimed with the goal that the affected area be returned to the ecological conditions that approximate pre-mining conditions to the extent feasible and practicable and considering any changes caused by non-mining activities or other natural events. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

D. Following closure and reclamation, the landowner or lessee of a mining area in an unorganized territory shall petition the Maine Land Use Planning Commission for rezoning to an appropriate subdistrict designation. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF); 2011, c. 682, §38 (REV).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF); 2011, c. 682, §38 (REV) .]

5. **Inspection and maintenance.** A permittee shall fully comply with all inspection, maintenance and monitoring requirements contained in a mining permit. After closure, mining areas and affected areas must be inspected at least twice per year. All waste piles and impoundments or any other pile or storage facility must be inspected by a licensed civil engineer with expertise in structural stability of waste piles and impoundments. The engineer shall either certify that the mining area and affected area are in good condition and not susceptible to failure due to significant weather, seismic or other events or identify the corrective measures that must be undertaken by the permittee. The inspections must document that all permit requirements, including storm water control, sediment and erosion control, dust migration, access controls, land use restrictions, waste pile or impoundment stabilization measures and treatment systems are fully compliant with the mining permit conditions and that there are no known conditions that could present an unreasonable threat to public health and safety or the environment. A permittee shall notify the department of any recommended corrective measures as soon as practicable after the inspection. A permittee shall submit an inspection report to the department within 21 days after the inspection.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

SECTION HISTORY

2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF). 2011, c. 682, §38 (REV).

§490-RR. FINANCIAL ASSURANCE

1. **Duration of financial assurance.** A permittee shall maintain financial assurance during mining operations until the department determines that all reclamation has been completed and during the post-closure monitoring period except that financial assurance must be reduced or released immediately upon termination of a mining permit under section 490-PP, subsection 2, paragraph A. The department may require financial assurance to remain in effect for as long as the mining operation and any associated waste material could create an unreasonable threat to public health and safety or the environment.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

2. **Coverage of financial assurance.** The financial assurance required under subsection 1 applies to all mining and reclamation operations that are subject to a mining permit and must be sufficient to cover the cost for the department to administer, and hire a 3rd party to implement, activities necessary for the investigation, monitoring, closure, treatment, remediation, reclamation, operation and maintenance under the environmental protection, reclamation and closure plan as well as other necessary environmental protection measures, including remediation of any contamination of the air, surface water or groundwater.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

3. **Form of financial assurance.** The financial assurance may consist of a surety bond, escrow, cash, certificate of deposit, trust, irrevocable letter of credit issued by a financial institution acceptable to the department, or other equivalent security, or combination thereof, as long as the department approves the financial assurance as proposed by the applicant. When determining the appropriate security to require, the department shall take into consideration the type and location of the mining operation and the type of security that is adequate to protect the State's financial interest. The financial assurance must be in a form that cannot be cancelled, withdrawn, revoked or otherwise reduced without the express written consent of the commissioner after a finding that the reduced amount is appropriate given the conditions related to the mining operation, including, but not limited to, the potential cost of long-term maintenance and monitoring, closure and any necessary response to episodic maintenance.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

4. **Updates to financial assurance.** A permittee shall provide to the department an annual statement of financial responsibility, and the department may require that the financial assurance be adjusted to ensure that the financial assurance is sufficient for the purposes of subsection 2.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

5. **Failure to provide financial assurance.** Failure to provide financial assurance under this section constitutes grounds for the department to order immediate suspension of mining activities pursuant to section 490-TT, including, but not limited to, the removal of metallic product from the mining area.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

SECTION HISTORY
2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF).

§490-SS. MINING AND RECLAMATION REPORT

1. **Filing requirement.** A permittee shall file with the department a mining and reclamation report on or before March 15th of each year, during the period the mine is operating, during suspension of mining operations and during the post-closure monitoring period. The mining and reclamation report must contain the following:

A. A description of the status of mining and reclamation operations; [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. An update of the contingency plan. The permittee shall provide a copy of the update to the municipality or county commissioners, as applicable; [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

C. A report of monitoring results for the preceding calendar year; [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

D. A report of the total tons of material mined from the mining area and the amount of metallic product by weight produced from the mine for the preceding calendar year; and [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

E. A list of the notifications required under subsection 2 for the preceding calendar year. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

2. **Notification requirement.** A permittee shall promptly notify the department and each municipality in which the mining area and the affected area are located, or, in the unorganized territory, the county commissioners for each county in which the mining area and the affected area are located, of any incident, act of nature or exceedance of a permit standard or condition related to the mining operation that has created, or may create, a threat to the environment, natural resources or public health and safety.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

3. **Records.** Records must be retained as follows.

A. Records upon which mining and reclamation reports are based must be preserved by the permittee for 6 years. The permittee shall make the records available to the department upon request. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. Records upon which incident reports under subsection 2 are based must be preserved by the permittee for 6 years or until the end of the post-closure monitoring period, whichever is later. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

SECTION HISTORY
2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF).

§490-TT. VIOLATIONS

1. **Permittee required to correct violations.** If the department determines that a permittee has violated this chapter, a rule adopted under this article, an order of the department or a mining permit issued under this article, the department shall require the permittee to correct the violation and the department may pursue enforcement action pursuant to sections 347-A, 348 and 349.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

2. **Imminent endangerment.** If the department determines that a violation under subsection 1 is causing or resulting in an imminent and substantial endangerment to the public health or safety, environment or natural resources, the department shall take action necessary to abate or eliminate the endangerment. Such action may include one or more of the following:

A. Revoking the mining permit as authorized by section 342, subsection 11-B; [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

B. Issuing an order to the permittee requiring immediate suspension of mining activities, including, but not limited to, the removal of metallic product from the site; [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

C. Issuing an order to the permittee to undertake such other response actions as may be necessary to abate or eliminate the endangerment; and [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

D. Issuance of an emergency order as authorized by section 347-A, subsection 3. [2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF).]

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

3. **Effect of revocation or suspension.** The revocation of a mining permit or suspension of mining activities under subsection 2 does not relieve a permittee of the responsibility to complete closure, reclamation, operation and maintenance and monitoring, to maintain financial assurance required under section 490-RR and to undertake all appropriate measures to protect the environment, natural resources and public health and safety.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

4. **Compliance with Maine Administrative Procedure Act.** The department shall comply with the Maine Administrative Procedure Act in its actions under this section.

[2011, c. 653, §23 (NEW); 2011, c. 653, §33 (AFF) .]

SECTION HISTORY
2011, c. 653, §23 (NEW). 2011, c. 653, §33 (AFF).

Subchapter 2: INTERSTATE WATER POLLUTION CONTROL

Article 1: COMPACT

§491. APPLICABILITY OF PROVISIONS -- ARTICLE I

It is agreed between the signatory states that this compact shall apply to streams, ponds and lakes which are contiguous to 2 or more signatory states or which flow through 2 or more signatory states or which have a tributary contiguous to 2 or more signatory states or flowing through 2 or more signatory states, and shall apply to tidal waters ebbing and flowing past the boundaries of 2 states.

§491-A. REAFFIRMATION OF SUPPORT -- ARTICLE I-A

The State reaffirms its support of the cooperative approach to the abatement and control of water pollution as embodied in the New England Interstate Water Pollution Control Compact. In view of the increases in population concentrations, the growing need of industry and agriculture for water of reasonable quality and the quality requirements of water based recreation and other uses, the New England Interstate

Water Pollution Control Commission shall develop and maintain its programs, including research on water quality problems, at such levels, including, to the extent necessary, levels above those originally provided when this State first enacted the compact, as may be appropriate. [1969, c. 166, §1 (NEW).]

SECTION HISTORY
1969, c. 166, §1 (NEW).

§492. CREATION OF COMMISSION -- ARTICLE II

The New England Interstate Water Pollution Control Commission, as heretofore created and in this subchapter referred to as the commission, shall be a body corporate and politic, having the powers, duties and jurisdiction herein enumerated and such other and additional powers as shall be conferred upon it by the act or acts of a signatory state concurred in by the others.

This State concurs in the conferring of any powers or duties on the New England Interstate Water Pollution Control Commission by other states in addition to those conferred by provision of this compact. [1969, c. 166, §2 (NEW).]

The concurrence is subject to the following limitations: [1969, c. 166, §2 (NEW).]

1. **Limitations.** Unless this State specifically confers a power or duty on the commission, other than one conferred by the compact itself, no financial or other burden or duties shall be placed upon this State, or any agency, officer or subdivision thereof by reason of the conferring or exercise of the powers or duty. At any time, the Governor, Attorney General or the Treasurer of State shall have the power to make inquiry of the commission and to examine its books and records in order to ascertain the state of compliance with this compact.

[1969, c. 166, §2 (NEW) .]

2. **Rights.** The rights, privileges and responsibilities of this State with respect to the New England Interstate Water Pollution Control Compact and the commission established thereby shall not be limited or impaired.

[1969, c. 166, §2 (NEW) .]

3. **Account.** The commission shall include in its annual report to the Governor and the Legislature of this State a full account of any additional powers or duties administered by it.

[1969, c. 166, §2 (NEW) .]

SECTION HISTORY
1969, c. 166, §2 (AMD).

§493. MEMBERSHIP OF COMMISSION -- ARTICLE III

The commission shall consist of 5 commissioners from each signatory state, each of whom shall be a resident voter of the state from which he is appointed. The commissioners shall be chosen in the manner and for the terms provided by law of the state from which they shall be appointed. For each state there shall be on the commission a member representing the state health department, a member representing the state water pollution control board, if such exists, and, except where a state in its enabling legislation decides that the best interests of the state will be otherwise served, a member representing municipal interests, a member representing industrial interests and a member representing an agency acting for fisheries or conservation.

§494. ORGANIZATION AND OPERATION -- ARTICLE IV

The commission shall annually elect from its members a chairman and vice-chairman and shall appoint and at its pleasure remove or discharge such officers. It may appoint and employ a secretary who shall be a professional engineer versed in water pollution and may employ such stenographic or clerical employees as shall be necessary, and at its pleasure remove or discharge such employees. It shall adopt a seal and suitable bylaws and shall promulgate rules and regulations for its management and control. It may maintain an office for the transaction of its business and may meet at any time or place within the signatory states. Meetings shall be held at least twice each year. A majority of the members shall constitute a quorum for the transaction of business, but no action of the commission imposing any obligation on any signatory state or on any municipal agency or subdivision thereof or on any person, firm or corporation therein shall be binding unless a majority of the members from such signatory state shall have voted in favor thereof. Where meetings are planned to discuss matters relevant to problems of water pollution control affecting only certain of the signatory states, the commission may vote to authorize special meetings of the commissioners of the states especially concerned. The commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report to the governor and the legislature of each signatory state setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the signatory states which may be necessary to carry out the intent and purpose of this compact. The commission shall not incur any obligations for salaries, office, administrative, traveling or other expenses prior to the allotment of funds by the signatory states adequate to meet the same; nor shall the commission pledge the credit of any of the signatory states. Each signatory state reserves the right to provide hereafter by law for the examination and audit of the accounts of the commission. The commission shall appoint a treasurer who may be a member of the commission, and disbursements by the commission shall be valid only when authorized by the commission and when vouchers therefor have been signed by the secretary and countersigned by the treasurer. The secretary shall be custodian of the records of the commission with authority to attest to and certify such records or copies thereof.

In addition to the minimal personnel authorization contained in this Article, the commission may employ such engineering, technical and other professional, secretarial and clerical personnel as the proper administration and functioning of the commission may require. [1969, c. 166, §3 (NEW).]

SECTION HISTORY
1969, c. 166, §3 (AMD).

§495. STANDARDS AND CLASSIFICATIONS -- ARTICLE V

It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, industrial and agricultural uses, bathing and other recreational purposes, maintenance and propagation of fish life, shellfish culture, navigation and disposal of wastes.

The commission shall establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory states through appropriate agencies will prepare a classification of its interstate waters in entirety or by portions according to present and proposed highest use and for this purpose technical experts employed by state departments of health and state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting 2 or more states. Each signatory state agrees to submit its classification of its interstate waters to the commission for approval. It is agreed that after such approval, all signatory states through their appropriate state health departments and water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet standards

established by the commission for classified waters. The commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity.

§496. ABATEMENT AND CONTROL OF POLLUTION -- ARTICLE VI

Each of the signatory states pledges to provide for the abatement of existing pollution and for the control of future pollution of interstate inland and tidal waters as described in Article I, and to put and maintain the waters thereof in a satisfactory condition consistent with the highest classified use of each body of water.

§496-A. PERSONNEL AND PROGRAMS -- ARTICLE VI-A

The commission may develop standards for the training, educational and experience requirements for operating personnel necessary to the proper operation of sewage and other waste treatment plants. [1969, c. 166, §4 (NEW).]

The commission may administer programs of training and certification for such personnel, and may make classifications thereof. Any certificate issued by the commission shall be accepted by this State and all agencies and subdivisions thereof as conclusive evidence that the holder has the training, education and experience necessary for certification for the class of position or responsibility described therein. The Board of Environmental Protection may impose and the Commissioner of Environmental Protection may administer any other requirements for certification within any applicable provisions of law, but the commissioner shall not reexamine or reinvestigate the applicant for a certificate with respect to the applicant's training, education or experience qualifications. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §104 (AMD).]

The commission shall keep a record of all certificates issued by it, and in response to any inquiry concerning such a certificate, the commission shall inform the inquirer concerning its issuance and validity. The commission shall annul any certificate issued by it, if the commission finds that the certificate was obtained by misrepresentation of any material fact relating to the education, training or experience of the applicant. Such annulment shall be pursuant to rules and regulations of the commission which shall afford due notice to the certificate holder and an opportunity to present relevant evidence for consideration by the commission. [1969, c. 166, §4 (NEW).]

Nothing contained in this section shall limit or abridge the authority of the commission to revise its standards and to issue new or additional certificates. In any such case, the Commissioner of Environmental Protection may require an applicant for a certificate to present a certificate or certificates which evidence training, education and experience meeting the current standards of the commission. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §104 (AMD).]

Certificates issued by the commission shall be recognized and given in connection with personnel employed in or having responsibilities for plants discharging into any waters of this State. [1969, c. 166, §4 (NEW).]

Nothing in this section shall be construed to require any person to have a certificate in order to be employed in the operation of a sewage or other waste treatment plant. Such requirements, if any, shall be as set forth in or pursuant to other laws of this State: Provided that in any case where a certificate is required, an appropriate certificate issued by the commission shall be accepted in lieu of any certificate otherwise required. [1969, c. 166, §4 (NEW).]

To the extent that the authority conferred upon the commission by this section is not otherwise exercisable by the commission under the compact, the commission shall not require the financial or other support of the program or programs authorized hereby by any state not having enacted legislation substantially similar to this section. [1969, c. 166, §4 (NEW).]

SECTION HISTORY
1969, c. 166, §4 (NEW). 1969, c. 431, §9 (AMD). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A40,B104 (AMD).

§496-B. WATER QUALITY NETWORK -- ARTICLE VI-B

The commission, in cooperation with this State and such other states signatory to the New England Interstate Water Pollution Control Compact as may participate, shall establish and maintain a water quality sampling and testing network. The network shall, to the fullest extent practicable, rely upon the sampling and testing programs of this State, such other participating states, and upon information available from agencies of the Federal Government, and shall not duplicate any of their activities. However, if the sampling and testing programs of this State and other states, and the information available from agencies of the Federal Government are insufficient to provide the commission with records of water quality adequate for its needs, the commission may supplement the sampling and testing otherwise available to it. [1969, c. 166, §4 (NEW).]

Sampling pursuant to this section shall be at points at or near the places where waters cross a boundary of this State, and the samples shall be tested in order to determine their quality. The sampling and testing provided for herein shall be scheduled by the commission or in accordance with its requests, and shall include such factors or elements as the commission shall request. Any sampling and testing done by the Commissioner of Environmental Protection of this State as part of the activities of the commission's network shall be reported fully and promptly by such agency to the commission, together with the results thereof. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §105 (AMD).]

SECTION HISTORY
1969, c. 166, §4 (NEW). 1969, c. 431, §9 (AMD). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A40,B105 (AMD).

§496-C. LIMITATIONS -- ARTICLE VI-C

Unless otherwise conferred by law, the commission shall not have power to issue permits or licenses in connection with the discharge or treatment of wastes, or pass upon plans or specifications for particular waste treatment or collection equipment or facilities. [1969, c. 166, §4 (NEW).]

SECTION HISTORY
1969, c. 166, §4 (NEW).

§497. ADDITIONAL CONTROLS; PENDING ACTIONS -- ARTICLE VII

Nothing in this compact shall be construed to repeal or prevent the enactment of any legislation or prevent the enforcement of any requirement by any signatory state imposing any additional condition or restriction to further lessen the pollution of waters within its jurisdiction. Nothing herein contained shall affect or abate any action now pending brought by any governmental board or body created by or existing under any of the signatory states.

§498. APPROPRIATIONS -- ARTICLE VIII

The signatory states agree to appropriate for the salaries, office, administrative, travel and other expenses such sum or sums as shall be recommended by the commission. The Commonwealth of Massachusetts obligates itself only to the extent of $6,500 in any one year, the State of Connecticut only to the extent of $3,000 in any one year, the State of Rhode Island only to the extent of $1,500 in any one year, and the States of New Hampshire, Maine and Vermont each only to the extent of $1,000 in any one year.

§499. SEPARABILITY OF PROVISIONS -- ARTICLE IX

Should any part of this compact be held to be contrary to the constitution of any signatory state or of the United States, all other parts thereof shall continue to be in full force and effect.

§500. NEGOTIATION WITH NEW YORK STATE -- ARTICLE X

The commission is authorized to discuss with appropriate state agencies in New York state questions of pollution of waters which flow into the New England area from New York state or vice versa and to further the establishment of agreements on pollution abatement to promote the interests of the New York and New England areas.

Whenever the commission by majority vote of the members of each signatory state shall have given its approval and the state of New York shall have taken the necessary action to do so, the state of New York shall be a party to this compact for the purpose of controlling and abating the pollution of waterways common to New York and the New England states signatory to this compact but excluding the waters under the jurisdiction of the Interstate Sanitation Commission (New York, New Jersey and Connecticut).

§501. EFFECTIVE DATE -- ARTICLE XI

This compact shall become effective immediately upon the adoption of the compact by any 2 contiguous states of New England but only insofar as applies to those states and upon approval by federal law. Thereafter upon ratification by other contiguous states, it shall become effective as to those states.

Article 2: ADMINISTRATIVE PROVISIONS

§531. EXECUTION BY GOVERNOR; FORM OF EXECUTION

The Governor of this State is authorized and directed to execute a compact, on behalf of the State of Maine, with any one or more of the states of New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island and New York, to be known as the New England Interstate Water Pollution Control Compact, heretofore adopted by the states of Massachusetts, Connecticut, Rhode Island, New York, Vermont and New Hampshire and approved by Act of the Congress of the United States, and to execute any supplementary agreements with the states now parties to such compact and the operation thereof.

When the Governor, on behalf of the State, executes such compact or any agreement supplementary thereto, he shall affix his signature thereto under a recital that the compact or agreement is executed pursuant to the provisions thereof, subject to the limitations and qualifications contained in this subchapter.

§532. COMMISSIONERS; APPOINTMENT

There shall be 5 members, hereinafter in this subchapter called Commissioners of the New England Interstate Water Pollution Control Commission from the State of Maine, as authorized by Title 5, section 12004-K, subsection 3. One commissioner shall be the Commissioner of Health and Human Services and one the Commissioner of Environmental Protection or a designee. The term of any such commissioner shall terminate at the time that commissioner ceases to hold said state office and a successor in that office shall be the successor as commissioner on this commission. The Governor shall appoint 3 more commissioners who shall be citizens of the State, one to represent municipal interests, one to represent industrial interests and one to represent the public generally. The term of the last 3 said commissioners shall be for a period of 3 years and shall hold office until a successor shall be appointed and qualified. The terms of each of the initial 5 members shall begin at the date of the appointment, provided the said compact shall then have been executed by the Governor of this State as prescribed in section 531; otherwise they shall begin upon the effective date of the compact in accordance with section 537. [1989, c. 503, Pt. B, §176 (AMD); 2003, c. 689, Pt. B, §7 (REV).]

Any commissioner may be removed from office by the Governor upon charges and after a hearing.

SECTION HISTORY
1969, c. 431, §9 (AMD). 1969, c. 504, §51 (AMD). 1971, c. 618, §12 (AMD). 1975, c. 293, §4 (AMD). 1975, c. 771, §421 (AMD). 1983, c. 812, §292 (AMD). 1985, c. 162, §8 (AMD). 1989, c. 503, §B176 (AMD). 2003, c. 689, §B7 (REV).

§533. -- COMPENSATION

The commissioners shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties.

§534. RESERVATIONS AND LIMITATIONS

Notwithstanding any contrary provisions hereinbefore contained, it is hereby specifically provided that

1. **Classification.** The members representing the State of Maine on the New England Interstate Water Pollution Control Commission shall have no authority to vote in favor of or to commit said State of Maine or any administrative agency thereof or any municipal corporation or administrative agency thereof, or any person, firm or corporation therein,

A. To any classification of the interstate waters of the State of Maine or to any standards of water quality appertaining to any such classification, which in any aspect shall impose a higher classification or higher water quality than are established by the laws of the State of Maine for such waters, or

B. To any classification and pertinent standards of water quality in respect to such interstate waters of the State of Maine as have not been assigned a classification under the laws of the State of Maine.

2. **Prior classifications and standards.** No classification of waters or standards of water quality thereto appertaining which shall have been approved by the New England Water Pollution Control Commission prior to August 20, 1955, as established in section 537, shall be binding upon the State of Maine or any administrative agency thereof or any municipal corporation or administrative agency thereof, or any person, firm or corporation therein, with relation to any interstate waters of the State of Maine.

§535. APPROPRIATIONS

The State agrees to appropriate from the General Fund and contribute to the commission such annual amount as may be required for its several purposes under the terms of such compact, not in excess of $1,000, which limitation is imposed by the State as a condition under which it shall become a party thereto. The State, as a further condition under which it shall become a party to the compact, reserves the right to withdraw therefrom at any time upon 60 days' notice to the chairman of the commission.

The Governor shall determine if and when it shall be for the best interests of the State to withdraw from such compact. In the event the Governor shall determine that the State should withdraw from such compact, he shall have full power and authority to give the notice as required herein and to take any and all steps necessary and proper to effect the withdrawal of the State from the compact.

§536. INTERPRETATION AND PURPOSE

The form and contents of such compact are as set forth in this subchapter and the effect of its provisions shall be interpreted and administered in conformity with this subchapter.

New England Interstate Water Pollution Control Compact

Whereas, the growth of population and the development of the territory of the New England states has resulted in serious pollution of certain interstate streams, ponds and lakes, and of tidal waters ebbing and flowing past the boundaries of 2 or more states; and

Whereas, such pollution constitutes a menace to the health, welfare and economic prosperity of the people living in such area; and

Whereas, the abatement of existing pollution and the control of future pollution in the interstate waters of the New England area are of prime importance to the people and can best be accomplished through the cooperation of the New England states in the establishment of an interstate agency to work with the states in the field of pollution abatement; now, therefore, the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont do agree and are bound as provided in this subchapter.

§537. EFFECTIVE DATE

This compact, when executed by the Governor as prescribed in section 531, shall be deemed to be fully adopted and shall thereupon become binding upon the State of Maine as between it and the several other signatory states agreeably to the true tenor and extent thereof. Such compact, supplementary agreements and notices of withdrawal shall be filed in the office of the Secretary of State of the State of Maine.

Subchapter 2-A: OIL DISCHARGE PREVENTION AND POLLUTION CONTROL

§541. FINDINGS; PURPOSE

The Legislature finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities. [1969, c. 572, §1 (NEW).]

The Legislature further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses. [1969, c. 572, §1 (NEW).]

The Legislature further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters and the transportation and other handling of oil in inland areas of the State are hazardous undertakings; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer, storage and other handling of such products pose threats of great danger and damage to the marine, estuarine, inland surface water and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine and inland surface water related activities; and to the beauty of the Maine coast and inland waters; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as set forth in this subchapter and that such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring and other handling of oil, petroleum products and their by-products and related activities. [1985, c. 496, Pt. A, §5 (AMD).]

The Legislature intends by the enactment of this legislation to exercise the police power of the State through the Department of Environmental Protection by conferring upon the department the power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from those occurrences may be promptly made whole; and to establish a fund to provide for the inspection and supervision of those activities and guarantee the prompt payment of reasonable damage claims resulting therefrom. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §106 (AMD).]

The Legislature further finds and declares that the preservation of the public uses referred to in this subchapter is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety, and that the state's interest in such preservation outweighs any burdens of absolute liability imposed by the Legislature upon those engaged in transferring or other handling of oil, petroleum products and their by-products and related activities. [1985, c. 496, Pt. A, §5 (AMD).]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1979, c. 541, §§A264,A265 (AMD). 1983, c. 483, §8 (AMD). 1983, c. 785, §9 (AMD). 1985, c. 496, §A5 (AMD). 1989, c. 890, §§A40,B106 (AMD).

§542. DEFINITIONS

The following words and phrases as used in this subchapter shall, unless a different meaning is plainly required by the context, have the following meaning: [1969, c. 572, §1 (NEW).]

1. **Barrel.** "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.

[1969, c. 572, §1 (NEW) .]

2. **Board.**

[1973, c. 625, §277 (RP) .]

3. **Board.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §107 (RP) .]

3-A. **Coastal waters.** "Coastal waters" means all waters of the State within the rise and fall of the tide and to a distance of 12 miles from the coastline of the State but does not include areas above any fishway or dam when the fishway or dam is the dividing line between tidewater and fresh water.

[1993, c. 355, §6 (AMD) .]

4. **Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

[1969, c. 572, §1 (NEW) .]

4-A. **Federal contingency plan.** "Federal contingency plan" means an area, regional or local contingency plan for oil spill response, prepared and published by the President of the United States under the Federal Water Pollution Control Act, 33 United States Code, Section 1321, as amended.

[1991, c. 380, §1 (NEW) .]

5. **Fund.** "Fund" means the Maine Coastal and Inland Surface Oil Clean-up Fund.

[1985, c. 496, Pt. A, §6 (AMD) .]

5-A. **National contingency plan.** "National contingency plan" means the national contingency plan for oil spill response prepared and published by the President of the United States under the Federal Water Pollution Control Act, 33 United States Code, Section 1321, as amended.

[1991, c. 380, §1 (NEW) .]

6. **Oil.** "Oil" means oil, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

[2011, c. 206, §12 (AMD) .]

6-A. **Oil spill response activity.** "Oil spill response activity" means assistance in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil prohibited by section 543. The term includes lightering oil from a disabled or threatened vessel and other actions to prevent, contain, clean up, remove or dispose of prohibited oil discharges.

[1991, c. 698, §3 (NEW) .]

7. **Oil terminal facility.** "Oil terminal facility" means any facility of any kind and related appurtenances, located in, on or under the surface of any land or water, including submerged lands, which is used or capable of being used for the purpose of transferring, processing or refining oil, or for the purpose of storing the same, but does not include any facility used or capable of being used to store no more than 1500 barrels or 63,000 gallons, nor any facility not engaged in the transfer of oil to or from waters of the State. A vessel is considered an oil terminal facility only in the event of a ship-to-ship transfer of oil, but only that vessel going to or coming from the place of ship-to-ship transfer and a permanent or fixed oil terminal facility. The term does not include vessels engaged in oil spill response activities.

[1993, c. 355, §7 (AMD) .]

8. **Operate or operator.** "Operate or operator" shall mean any person owning or operating an oil terminal facility whether by lease, contract or any other form of agreement.

[1969, c. 572, §1 (NEW) .]

9. **Person.** "Person" shall mean any natural person, firm, association, partnership, corporation, trust, the State of Maine and any agency thereof, governmental entity, quasi-governmental entity, the United States of America and any agency thereof and any other legal entity.

[1977, c. 375, §4 (RPR) .]

9-A. **Responder.** "Responder" means any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil prohibited by section 543, or in preventing, containing, cleaning up, removing or disposing of, or in attempting to prevent, contain, clean up, remove or dispose of, any discharge of oil prohibited by section 543, except for any person who caused or is otherwise responsible for the actual or threatened discharge in the first instance.

[1991, c. 380, §1 (NEW) .]

9-B. **State Marine Oil Spill Contingency Plan.** "State Marine Oil Spill Contingency Plan" means a contingency plan for oil spill response prepared by the commissioner in accordance with this subchapter.

[1991, c. 380, §1 (NEW) .]

9-C. **Responsible party.** "Responsible party" means any person who could be held liable under section 552.

[1997, c. 364, §25 (NEW) .]

10. **Transferred.** "Transferred" shall include both onloading and offloading between terminal and vessel and vessel to vessel.

[1969, c. 572, §1 (NEW) .]

10-A. **Underground oil storage facility.**

[1985, c. 496, Pt. A, §7 (RP) .]

11. **Vessel.** "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise and shall include barges and tugs.

[1969, c. 572, §1 (NEW) .]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 625, §277 (AMD). 1977, c. 375, §§2-4 (AMD). 1983, c. 785, §10 (AMD). 1985, c. 496, §§A6,7 (AMD). 1989, c. 890, §§A40,B107 (AMD). 1991, c. 380, §1 (AMD). 1991, c. 698, §§3,4 (AMD). 1991, c. 817, §9 (AMD). 1993, c. 355, §§6,7 (AMD). 1997, c. 364, §25 (AMD). 2011, c. 206, §12 (AMD).

§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. [1985, c. 496, Pt. A, §8 (AMD).]

Notwithstanding the prohibition of this section, the department may license the discharge of waste, refuse or effluent, including natural drainage contaminated by oil into or upon any coastal waters if, and only if, it finds that the discharge will be receiving the best available treatment and that the discharge will not degrade existing water quality, perceptibly violate the classification of the receiving waters or create any visible sheen upon the receiving waters. A license is not required and a person may not be considered in violation of this section for the discharge of oil to surface waters of the State if the discharge occurs in the process of recovering, containing, cleaning up or removing an oil spill to surface waters and is undertaken in compliance with the instructions of the commissioner or the commissioner's designee. [1993, c. 333, §2 (AMD).]

In acting upon an application for any such license, the department shall follow the provisions of subchapter I insofar as they are applicable. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §108 (AMD).]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1973, c. 423, §11 (AMD). 1977, c. 375, §5 (AMD). 1983, c. 785, §11 (AMD). 1985, c. 496, §A8 (AMD). 1989, c. 890, §§A40,B108 (AMD). 1993, c. 333, §2 (AMD).

§544. POWERS AND DUTIES OF THE BOARD

The powers and duties conferred by this subchapter shall be exercised by the department and shall be deemed to be an essential governmental function in the exercise of the police power of the State. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §109 (AMD).]

1. **Jurisdiction.** The rights, powers and duties conferred on the department and other persons under this subchapter extend to a distance of 12 miles from the coastline of the State.

[1993, c. 355, §8 (AMD) .]

2. **Licenses.** Licenses required under this subchapter shall be secured from the department subject to such terms and conditions as are set forth in this subchapter.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §109 (AMD) .]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A40,B109 (AMD). 1993, c. 355, §8 (AMD).

§545. OPERATION WITHOUT LICENSE PROHIBITED

No person shall operate or cause to be operated an oil terminal facility as defined in this subchapter without a license. [1969, c. 572, §1 (NEW).]

1. **Expiration of license.** Licenses are issued upon application and are for a period of not less than 12 months to expire no later than 60 months after the date of issuance. The department may issue a temporary license for a shorter period of time if it finds that the applicant has substantially complied but has failed to comply with one or more provisions of existing rules. Licenses are issued subject to such terms and conditions determined by the department as necessary to carry out the purposes of this subchapter.

[1993, c. 355, §9 (AMD) .]

2. **Renewal of licenses.** As a condition precedent to the issuance or renewal of a license the department shall require satisfactory evidence that the applicant has or is in the process of implementing state and federal plans and rules and regulations for control of pollution related to oil and the abatement thereof when a discharge occurs.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §111 (AMD) .]

3. **Exemptions.** The Legislature finds and declares that the likelihood of significant damage to marine, estuarine and terrestrial environment, due to spills of oil, petroleum products and their by-products by the following classes of persons, is remote due to the limited nature of their operations and the small quantities stored, and accordingly exempts the same from the licensing requirements imposed by this section:

A. Persons engaged in the business of servicing the fuel requirements of pleasure craft, fishing boats and other commercial vessels, where the purchaser and the consumer are the same entity and the serviced vessel is 200 feet or less in overall length. [1993, c. 355, §10 (AMD).]

[1993, c. 355, §10 (AMD) .]

4. **Certain vessels included.** Licenses issued to any fixed or permanent oil terminal facility must include vessels under the direction or control of such facility and used to transport oil, between such fixed or permanent facility and vessels within state waters. Any person operating or causing to be operated a vessel used to transport oil between a permanent or fixed oil terminal facility and vessels within state waters, which vessel is not subject to the direction or control of that permanent oil terminal facility, shall obtain a license as required by this section. This subsection does not apply to vessels engaged in oil spill response activities.

[1991, c. 698, §5 (AMD) .]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1977, c. 375, §§6,7 (AMD). 1989, c. 890, §§A40,B110, 111 (AMD). 1991, c. 698, §5 (AMD). 1993, c. 355, §§9,10 (AMD).

§545-A. UNDERGROUND OIL STORAGE FACILITIES

(REPEALED)

SECTION HISTORY
1983, c. 785, §12 (NEW). 1985, c. 496, §A9 (RP).

§545-B. REGISTRATION OF TRANSPORTATION OF OIL IN INLAND AREAS

Effective October 1, 1988, any person who transports by rail or highway more than 25 barrels of oil into Maine at any one time must register annually with the commissioner. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §112 (AMD).]

SECTION HISTORY
1987, c. 750, §2 (NEW). 1989, c. 890, §§A40,B112 (AMD).

§546. REGULATORY POWERS OF BOARD

1. **Procedure for adopting rules and regulations.**

[1977, c. 300, §36 (RP) .]

2. **Emergency rules and regulations without hearing.**

[1977, c. 300, §36 (RP) .]

3. **Enforcement of rules and regulations.**

[1977, c. 300, §36 (RP) .]

4. **Extent of regulatory powers.** The board shall have the power to adopt rules and regulations including but not limited to the following matters:

A. Operating and inspection requirements for facilities, vessels, personnel and other matters relating to licensee operations under this subchapter, including annual inspections of oil terminal facilities; [1991, c. 454, §2 (AMD).]

B. Procedures and methods of reporting discharges and other occurrences prohibited by this subchapter; [1989, c. 546, §9 (AMD).]

C. Procedures, methods, means and equipment to be used by persons subject to regulations by this subchapter; [1989, c. 546, §9 (AMD).]

D. Procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants; [1989, c. 546, §9 (AMD).]

E. Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds, including the state marine oil spill contingency plan required under section 546-A. Those plans must include provision for annual drills, sometimes unannounced, to determine the adequacy of response plans and the preparedness of the response teams; [1991, c. 454, §3 (AMD).]

F. The establishment from time to time of control districts comprising sections of the Maine coast and the establishment of rules and regulations to meet the particular requirements of each such district; [1989, c. 546, §9 (AMD).]

G. Requirements for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment and other equipment relating to the use and operation of terminals, facilities and refineries and the approach and departure from terminals, facilities and refineries; [1989, c. 546, §9 (AMD).]

H. Such other rules and regulations as the exigencies of any condition may require or such as may reasonably be necessary to carry out the intent of this subchapter; and [1989, c. 546, §9 (AMD).]

I. [1985, c. 496, Pt. A, §10 (RP).]

J. [1985, c. 496, Pt. A, §10 (RP).]

K. Operation and inspection requirements for interstate and intrastate oil pipelines excluding natural gas and artificial gas pipelines. [1989, c. 546, §9 (NEW).]

[1991, c. 454, §§2, 3 (AMD) .]

5. **Facility response plans.** Every facility subject to licensing under this section shall file with the department a copy of any oil discharge response plan submitted to the President of the United States under the federal Oil Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484, or a statement that a plan is not required under federal law.

[1991, c. 454, §4 (NEW) .]

6. **Vessel response plans.** Every tank vessel, as defined under 56 United States Code, Section 2101, entering state waters shall have available for inspection by the commissioner or an agent of the commissioner a copy of any oil discharge response plan required to be submitted to the President of the United States under the federal Oil Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484.

[1991, c. 698, §6 (AMD) .]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1977, c. 300, §§35,36 (AMD). 1977, c. 375, §8 (AMD). 1983, c. 785, §13 (AMD). 1985, c. 496, §A10 (AMD). 1989, c. 546, §9 (AMD). 1989, c. 868, §1 (AMD). 1991, c. 454, §§2-4 (AMD). 1991, c. 698, §6 (AMD).

§546-A. STATE MARINE OIL SPILL CONTINGENCY PLAN

1. **Plan.** The commissioner shall develop by December 31, 1991 a preliminary state marine oil spill contingency plan. The commissioner shall hold a public hearing in the process of developing the plan. The commissioner shall consult and coordinate with other agencies and organizations developing information for oil spill response planning to prevent a duplication of effort and the creation of incompatible data and data bases.

[1991, c. 454, §5 (NEW) .]

2. **Worst-case scenarios.** The marine oil spill contingency plan must address a range of scenarios, including spills of 100,000 gallons, 1,000,000 gallons and 6,000,000 gallons and the worst-case scenario in each major port area in both favorable and adverse conditions. The worst-case scenario in each major port area is the loss of an entire vessel of the following capacities:

A. Portland: 30,000,000 gallons; [1991, c. 454, §5 (NEW).]

B. Penobscot Bay and Penobscot River: 11,000,000 gallons; [1991, c. 454, §5 (NEW).]

C. Portsmouth, New Hampshire: 13,000,000 gallons; [1991, c. 454, §5 (NEW).]

D. St. John, New Brunswick: 90,000,000 gallons; [1991, c. 454, §5 (NEW).]

E. Eastport: 100,000 gallons; and [1991, c. 454, §5 (NEW).]

F. Elsewhere on the coast: 30,000 gallons. [1991, c. 454, §5 (NEW).]

[1991, c. 454, §5 (NEW) .]

3. **Contents of plan.** The marine oil spill contingency plan must include:

A. The designation of a state oil spill coordinator; [1991, c. 454, §5 (NEW).]

B. A clear definition of the roles of the department, the oil industry, oil spill response organizations and the United States Coast Guard in various circumstances, as well as the roles of other state agencies including the Maine Emergency Management Agency; [1991, c. 698, §7 (AMD).]

C. A clear definition of the State's role under the joint agreement between the United States and Canada known as CANUSLANT; [1991, c. 454, §5 (NEW).]

D. An inventory of oil spill response equipment available within the State; [1991, c. 454, §5 (NEW).]

E. A listing of sources for qualified, trained spill responders within the State; [1991, c. 454, §5 (NEW).]

F. Preapproved criteria for use of dispersants, bioremediation and in situ burning, developed in consultation with the United States Coast Guard and other responsible agencies, and the names of the individuals authorized to make the final decision for the State on their use; [1991, c. 454, §5 (NEW).]

G. Identification of sensitive areas and resources, and management strategies to protect them; [1991, c. 454, §5 (NEW).]

H. Identification of resources for wildlife rehabilitation; and [1991, c. 454, §5 (NEW).]

I. Identification of facilities for disposal of oily debris and for separation, transport and storage of recovered oil. [1991, c. 454, §5 (NEW).]

[1991, c. 698, §7 (AMD) .]

4. **Considerations.** In preparing the plan, the need for pre-positioned response teams and additional equipment must be considered.

[1991, c. 454, §5 (NEW) .]

5. **Revision.** The commissioner shall at least annually review and make recommendations to revise the plan and shall notify all licensees and interested parties requesting to be notified of any substantial changes to the plan. Licensees and interested parties may request a public hearing on changes to the plan by submitting a written request to the commissioner signed by at least 5 persons.

[1991, c. 698, §8 (AMD) .]

SECTION HISTORY
1989, c. 868, §2 (NEW). 1991, c. 454, §5 (RPR). 1991, c. 698, §§7,8 (AMD).

§546-B. SENSITIVE AREA IDENTIFICATION AND PROTECTION

1. **Sensitive area identification and data management.** The commissioner, in consultation with the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry, the United States Fish and Wildlife Service and other appropriate agencies and organizations, both public and private, shall assess the nature and extent of sensitive areas and resources in the marine environment that may be threatened by oil spills and develop a system to collect and maintain the necessary data. The commissioner shall ensure that the duplication of effort among agencies and creation of incompatible data and databases are minimized.

[2011, c. 655, Pt. KK, §28 (AMD); 2011, c. 655, Pt. KK, §34 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

2. **Protection priorities.**

[1991, c. 698, §9 (RP) .]

3. **Use of state geographic information system.** The system developed pursuant to subsection 1 must be based on the state geographic information system to the maximum extent practicable. The commissioner is responsible for the design, implementation and execution of the marine oil spill prevention, planning and response system. The commissioner shall specify the format and types of data to be compiled by other agencies with money supplied by the fund. The format and digital conversion of the data must comply with standards developed by the state geographic information system and data must be added to that system's data base. The state geographic information system must provide technical assistance and serve as the final repository for final geographic information system data. Any persons employed for sensitive area mapping and supported by money from the fund must be involved in the digitization, quality assurance and control and training for sensitive area mapping. Development must proceed in 3 phases as follows:

A. A pilot project for Casco Bay to be completed by December 31, 1991; [1991, c. 454, §6 (NEW).]

B. The Penobscot River and Penobscot Bay area to be completed in 1992; and [1991, c. 454, §6 (NEW).]

C. The remainder of the coastline to be completed in 1993. [1991, c. 454, §6 (NEW).]

[1991, c. 454, §6 (NEW) .]

SECTION HISTORY
1991, c. 454, §6 (NEW). 1991, c. 698, §9 (AMD). 2011, c. 655, Pt. KK, §28 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 657, Pt. W, §5 (REV).

§546-C. WILDLIFE REHABILITATION PLAN

1. **Wildlife rehabilitation plan.** The Department of Inland Fisheries and Wildlife, in consultation with the Department of Environmental Protection, the Department of Marine Resources, the Department of Agriculture, Conservation and Forestry, the United States Fish and Wildlife Service and other appropriate agencies and organizations, shall develop a plan for rehabilitation of oil spill damaged wildlife resources. This plan must include:

A. Policies, priorities and guidelines to address rehabilitation activities; [1991, c. 454, §6 (NEW).]

B. An analysis of the cost-effectiveness of wildlife rehabilitation efforts; [1991, c. 454, §6 (NEW).]

C. A mechanism for the use of volunteers, with due regard for their safety; [1991, c. 454, §6 (NEW).]

D. Identification of needed resources and facilities for rehabilitation efforts and an inventory of those available; [1991, c. 454, §6 (NEW).]

E. Preliminary agreements with treatment centers or facilities; and [1991, c. 454, §6 (NEW).]

F. Recommendations on implementation of the plan and any required training efforts. [1991, c. 454, §6 (NEW).]

[1991, c. 454, §6 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY
1991, c. 454, §6 (NEW). 2011, c. 657, Pt. W, §5 (REV).

§547. EMERGENCY PROCLAMATION; GOVERNOR'S POWERS

Whenever any disaster or catastrophe exists or appears imminent arising from the discharge of oil, the Governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the State. If the Governor is temporarily absent from the State or is otherwise unavailable, the next person in the State who would act as Governor if the office of Governor were vacant shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the State. A copy of the proclamation must be filed with the Secretary of State. The Governor shall have general direction and control of the department and shall be responsible for carrying out the purposes of this subchapter. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §113 (AMD).]

In the event of an oil spill emergency, the commissioner shall represent the Governor in all direct abatement, clean-up and resource protection activities in coordination with federal, industry and other states' response teams in accordance with Title 37-B, section 742, subsection 3. [1991, c. 454, §7 (NEW).]

In performing his duties under this subchapter, the Governor is authorized and directed to cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries, and the political subdivisions thereof, and with private agencies in all matters pertaining to a disaster or catastrophe. [1969, c. 572, §1 (NEW).]

In performing his duties under this subchapter, the Governor is further authorized and empowered: [1969, c. 572, §1 (NEW).]

1. **Orders, rules and regulations.** To make, amend and rescind the necessary orders, rules and regulations to carry out this subchapter within the limits of the authority conferred upon him and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

[1969, c. 572, §1 (NEW) .]

2. **Delegation of authority.** To delegate any authority vested in him under this subchapter, and to provide for the subdelegation of any such authority.

Whenever the Governor is satisfied that an emergency no longer exists, he shall terminate the proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. Said proclamation shall be published in such newspapers of the State and posted in such places as the Governor, or the person acting in that capacity, deems appropriate.

[1969, c. 572, §1 (NEW) .]

3. **Emergency management.** The provisions of Title 37-B, chapter 13, as they apply to eminent domain and compensation, mutual aid, immunity, aid in emergency, right of way, enforcement and compensation, apply to disasters or catastrophes proclaimed by the Governor under this subchapter.

[2013, c. 462, §13 (AMD) .]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 788, §212 (AMD). 1989, c. 890, §§A40, B113 (AMD). 1991, c. 454, §7 (AMD). 2013, c. 462, §13 (AMD).

§548. REMOVAL OF PROHIBITED DISCHARGES

Any person discharging or suffering the discharge of oil in the manner prohibited by section 543 shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding the above requirement, the commissioner may undertake the removal or cleanup of that discharge and may retain agents and contractors for those purposes who shall operate under the direction of the commissioner. The commissioner may implement remedies to restore or replace water supplies contaminated by a discharge of oil prohibited by section 543, including all discharges from interstate pipelines, using the most cost-effective alternative that is technologically feasible and reliable and that effectively mitigates or minimizes damages to, and provides adequate protection of, the public health, welfare and the environment. 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, the commissioner may issue a clean-up order in accordance with section 568, subsection 3. [2009, c. 501, §4 (AMD).]

Any unexplained discharge of oil within state jurisdiction or discharge of oil occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal or cleanup of discharges, including the restoration of water supplies contaminated by discharges from interstate pipelines and other discharges prohibited by section 543, whether by the person reporting the discharge, the commissioner or the commissioner's agents or contractors, must be paid in the first instance from the Maine Coastal and Inland Surface Oil Clean-up Fund and any reimbursements due that fund must be collected in accordance with section 551. [1991, c. 817, §10 (AMD).]

If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil: [1993, c. 621, §1 (NEW).]

1. **Delineated contaminated area.** The commissioner or any person responsible for the discharge of the oil is not obligated by this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as a result of the proximity of the area to:

A. A hazardous waste storage, treatment or disposal facility licensed by the department; [1993, c. 621, §1 (NEW).]

B. An uncontrolled hazardous substance site as defined in section 1362, subsection 3 and listed by the department; [1993, c. 621, §1 (NEW).]

C. An oil terminal facility as defined in section 542, subsection 7 licensed by the department; [1993, c. 621, §1 (NEW).]

D. A solid waste disposal facility as defined in section 1303-C, subsection 30 and licensed by the department; or [1993, c. 621, §1 (NEW).]

E. A closed or abandoned municipal solid waste landfill listed by the department; and [1993, c. 621, §1 (NEW).]

[1993, c. 621, §1 (NEW) .]

2. **Areas not delineated.** If the well is installed in an area other than one described in subsection 1, the obligation under this subchapter of the commissioner or any person responsible for the discharge of oil with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

[1993, c. 621, §1 (NEW) .]

For purposes of this section, "viable community public water system" means a community water system as defined in Title 22, section 2660-B that has not indicated an intent to imminently cease providing water to that location. [1993, c. 621, §1 (NEW).]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1979, c. 541, §A266 (AMD). 1983, c. 483, §9 (AMD). 1985, c. 496, §A11 (AMD). 1989, c. 890, §§A40,B114 (AMD). 1991, c. 817, §10 (AMD). 1993, c. 621, §1 (AMD). 2009, c. 501, §4 (AMD).

§549. PERSONNEL AND EQUIPMENT

The commissioner shall establish and maintain at such ports within the State, and other places as the commissioner determines, employees and equipment necessary to carry out this subchapter. The commissioner, subject to the Civil Service Law, may employ personnel necessary to carry out the purposes of this subchapter, and shall prescribe the duties of those employees. The salaries of those employees and the cost of that equipment must be paid from the Maine Coastal and Inland Surface Oil Clean-up Fund established by this subchapter. The commissioner and the Director of the Division of Geology, Natural Areas and Coastal Resources shall periodically consult with each other relative to procedures for the prevention of oil discharges into the coastal waters of the State from offshore drilling production facilities. Inspection and enforcement employees of the department in their line of duty under this subchapter have the powers of a constable. [2013, c. 405, Pt. C, §23 (AMD).]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 544, §134 (AMD). 1971, c. 618, §12 (AMD). 1979, c. 541, §A267 (AMD). 1983, c. 483, §10 (AMD). 1985, c. 496, §A12 (AMD). 1985, c. 785, §B178 (AMD). 1989, c. 890, §§A40,B115 (AMD). 1995, c. 502, §E32 (AMD). 1999, c. 556, §36 (AMD). 2011, c. 655, Pt. KK, §29 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2013, c. 405, Pt. C, §23 (AMD).

§550. ENFORCEMENT; PENALTIES

Any person who causes or is responsible for a discharge in violation of section 543 is not subject to any fines or civil penalties if that person: [1991, c. 66, Pt. A, §18 (RPR).]

1. **Report and remove.** Reports within 2 hours and promptly removes the discharge in accordance with the rules and orders of the board or commissioner; and

[1991, c. 66, Pt. A, §18 (RPR) .]

2. **Reimburse.** Reimburses the department for any disbursement made from the fund in connection with the discharge pursuant to section 551, subsection 5, paragraph B within 30 days of demand.

[1991, c. 66, Pt. A, §18 (RPR) .]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1977, c. 375, §9 (RPR). 1989, c. 868, §3 (AMD). 1989, c. 890, §§A40,B116 (AMD). 1991, c. 66, §A18 (RPR).

§551. MAINE COASTAL AND INLAND SURFACE OIL CLEAN-UP FUND

The Maine Coastal and Inland Surface 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. The fund is limited to $6,000,000, the sum of which includes all funds credited under this section. The Department of Environmental Protection shall collect fees in accordance with subsection 4. To this fund are credited all license fees, penalties, reimbursements and other fees and charges related to this subchapter, and to this fund are charged any and all expenses of the department related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, restoration of water supplies and 3rd-party damages covered by this subchapter. [1995, c. 399, §2 (AMD); 1995, c. 399, §21 (AFF).]

Money in the fund, not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter must be deposited with the Treasurer of State to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on that investment must be credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. [1995, c. 399, §3 (AMD); 1995, c. 399, §21 (AFF).]

1. **Research and development.**

[1993, c. 720, §2 (AMD); T. 38, §551, sub-§1 (RP) .]

1-A. **Sensitive area data management and mapping.** The Legislature may allocate no more than $350,000 per year of the amount then currently in the fund until fiscal year 1994-95 to mapping, data management and computerization related to the protection of sensitive areas and similar activities required under section 546-B. This limitation does not include personnel costs. The allocations must be made in accordance with section 555. After fiscal year 1993-94, the Legislature must review the need for these activities before allocating additional funds.

[1991, c. 454, §8 (NEW) .]

1-B. **Research and development.** The Legislature may allocate not more than $250,000 per annum of the amount currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products. Researchers receiving funds under this subsection shall use vessels based in this State as platforms when practicable. Such allocations must be made in accordance with section 555.

[2005, c. 561, §5 (AMD) .]

2. **Third-party damages.** Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses arising from physical bodily injury, directly or indirectly as a result of a discharge of oil prohibited by section 543 including all discharges of oil from interstate pipelines, in this subsection called the claimant, may apply within 12 months after the occurrence of a discharge to coastal waters and for other surface discharges within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall

prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner may, upon petition and for good cause shown, waive the time limitation for filing damage claims. All 3rd-party damage claims for which no determination of award has been made must be processed in accordance with the substantive and procedural provisions of this section.

A. When a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the 3rd-party damage claim process as an interested party. A responsible party shall provide written notification to the department of the responsible party's intent to join within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, the determination of the amount of the claim and award is binding in any subsequent action for reimbursement to the fund. If a claimant has not been compensated for 3rd-party damages by the responsible party and the claimant, the responsible party and the commissioner agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the Maine Coastal and Inland Surface Oil Clean-up Fund. [1991, c. 817, §11 (AMD).]

B. If the claimant, the responsible party and the commissioner are not able to agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 3-A. [1991, c. 817, §11 (AMD).]

C. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are waived unless the damage or injury was not known at the time of the claim. [1991, c. 817, §11 (AMD).]

D. Damage claims arising under this subchapter that are a result of a prohibited discharge to coastal waters are recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter for discharges to coastal waters are exclusive. [1991, c. 817, §11 (AMD).]

E. Awards from the fund on damage claims may not include any amount the claimant has recovered, on account of the same damage, by way of settlement with the responsible party or the responsible party's representatives or judgment of a court of competent jurisdiction against the responsible party to the extent these amounts are duplicative. [1991, c. 817, §11 (AMD).]

F. A claimant shall take all reasonable measures to prevent and minimize damages suffered by the claimant as a result of a discharge of oil. Reasonable measures include title searches and site assessments for the acquisition of commercial or industrial properties. [1991, c. 817, §11 (NEW).]

G. The remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive for damages that are not a result of prohibited discharges to coastal waters. A court awarding damages to a claimant as a result of a discharge of oil to surface waters prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative. [1991, c. 817, §11 (NEW).]

H. Payments from the fund for 3rd-party damage claims may not exceed $200,000 per claimant except when the damages are a result of a discharge to coastal waters. [1991, c. 817, §11 (NEW).]

I. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 548 that a public or private water supply is available and if that water supply best meets the criteria of that section and the

property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for expenses incurred in treating or replacing the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548. [1993, c. 621, §2 (AMD).]

J. A claimant is not eligible for compensation under this subsection for costs, expenses or damages related to a discharge if the commissioner determines that the claimant is a responsible party as defined under section 542, subsection 9-C. [2003, c. 551, §9 (AMD).]

K. Prior to forwarding a claim to the hearing examiner under subsection 3-A, the commissioner may require that the amount of the claim be finalized. [1991, c. 817, §11 (NEW).]

L. Third-party damage claims may not include expenditures for the preparation and prosecution of the damage claim, such as legal fees or real estate appraisal fees. [1991, c. 817, §11 (NEW).]

M. The commissioner may dismiss a 3rd-party damage claim for untimely filing, for failure by the claimant to provide the information necessary to process the claim within 60 days after the claimant receives written notice that the claim is insufficient for processing or for ineligibility as determined by the commissioner under paragraph J. A dismissal may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2003, c. 551, §10 (NEW).]

[2005, c. 330, §20 (AMD) .]

2-A. **Exceptions; 3rd party damage claims.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §118 (RP) .]

2-B. **Claimant contact.** When the commissioner becomes aware of a claimant under subsection 2, the commissioner shall send a letter by certified mail to inform that person of the 3rd-party damage claims process under subsection 2. The letter must contain the name and telephone number of a contact person available to explain the claims procedure.

[1991, c. 817, §12 (NEW) .]

3. **Board of Arbitration.**

[1991, c. 817, §13 (RP) .]

3-A. **Determination of disputed 3rd-party damage claims.** The commissioner shall establish a disputed claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner and any responsible party who has joined as an interested party.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. The parties to the hearing are the commissioner and the claimant. [1991, c. 817, §14 (NEW).]

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner. [1991, c. 817, §14 (NEW).]

C. Hearings before the hearing examiner are informal and the rules of evidence applicable to judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination. [1991, c. 817, §14 (NEW).]

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. The party seeking review of a hearing examiner's determination must file an appeal in the Superior Court within 30 days of the determination. Determinations made by the hearing examiner must be accorded a presumption of regularity and validity in a subsequent reimbursement action, but this presumption may be rebutted by responsible parties. [1993, c. 355, §12 (AMD).]

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State. [1991, c. 817, §14 (NEW).]

[1993, c. 355, §12 (AMD) .]

4. **Funding.** The Maine Coastal and Inland Surface Oil Clean-up Fund is funded pursuant to this subsection.

A. License fees are 3¢ per barrel of unrefined crude oil and all other refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel and diesel fuel, transferred by the licensee during the licensing period and must be paid monthly by the licensee on the basis of records certified to the commissioner. License fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. [1997, c. 364, §26 (AMD).]

B. [1991, c. 817, §15 (RP).]

C. [1985, c. 496, Pt. A, §13 (RP).]

D. Any person required to register under section 545-B and who first transports oil in Maine shall pay 3¢ per barrel for all crude and refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel, diesel fuel and liquid asphalt transported by the registrant during the period of registration. Fees must be paid monthly by the registrant on the basis of records certified to the commissioner. Fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. The registrant shall make available to the commissioner and the commissioner's authorized representatives all documents relating to the oil transported by the registrant during the period of registration. This paragraph does not apply to waste oil transported into Maine in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I. [2013, c. 349, §1 (AMD).]

E. When the commissioner projects that the fund balance will reach $6,000,000, the commissioner shall provide a 15-day notice that the per barrel fees assessed under this subsection will be suspended. The $6,000,000 fund limit may be exceeded to accept transfer fees assessed or received after the 15-day notice has been issued. Following any suspension of fees assessed under this subsection, the commissioner shall provide a 15-day advance notice to licensees before fees are reimposed. [1991, c. 817, §16 (NEW).]

[2013, c. 349, §1 (AMD) .]

4-A. **Penalty for late payment of fees.** Fees assessed under subsection 4 are due to the department on or before the last day of the month immediately following the month in which the oil was transferred or first transported in this State. Licensees or registrants who fail to pay the fee by that date shall pay an additional

amount equal to 10% of the amount assessed under subsection 4. The department may waive the penalty for good cause shown by the licensee or registrant. Good cause may include, without limitation, events that may not be reasonably anticipated or events that were not under the control of the licensee or registrant.

[1999, c. 334, §1 (NEW) .]

5. **Disbursements from fund.** Money in the Maine Coastal and Inland Surface Oil Clean-up Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the commissioner related to the enforcement of this subchapter; [1995, c. 399, §4 (AMD); 1995, c. 399, §21 (AFF).]

B. All costs, including without limitation personnel undertaking oil spill response activities and equipment expenses, involved in the removal of oil, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products covered by this subchapter, including all discharges from interstate pipelines and other discharges prohibited by section 543; [1991, c. 698, §10 (AMD).]

C. Sums allocated to research and development in accordance with this section; [1985, c. 496, Pt. A, §13 (AMD).]

D. Payment of 3rd party claims awarded in accordance with this section; [1985, c. 496, Pt. A, §13 (AMD).]

E. Payment of costs of hearings, independent hearing examiners and independent claims adjusters for 3rd-party damage claims; [2009, c. 501, §5 (AMD).]

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund; [1985, c. 496, Pt. A, §13 (AMD).]

G. [1991, c. 817, §18 (RP).]

H. Sums, up to $50,000 each year, that have been allocated by the Legislature on a contingency basis in accordance with section 555 for payment of costs for damage assessment for specific spills and site-specific studies of the environmental impacts of a particular discharge prohibited by section 543 that may have adverse economic effects and occur subsequent to such an allocation, when those studies are determined necessary by the commissioner; and [1991, c. 698, §11 (AMD).]

I. Payment of costs for the collection of overdue reimbursements. [1989, c. 868, §8 (NEW).]

[2009, c. 501, §5 (AMD) .]

6. **Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund.** For the use of the fund, the commissioner shall seek recovery of all disbursements from the fund for the following purposes, including overdrafts and interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small, the likelihood of success too uncertain or that recovery of costs is unlikely due to the inability of the responsible party to pay those costs, provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 must be apportioned between the Maine Coastal and Inland Surface Oil Clean-up Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D, E, H and I in connection with a prohibited discharge; and [1991, c. 454, §12 (RPR).]

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd-party claims in excess of $15,000, except to the extent that the costs are covered by payments received under any federal program. [1991, c. 454, §12 (RPR).]

C. [1989, c. 868, §9 (RP); 1991, c. 66, Pt. A, §21 (RP).]

D. [1989, c. 868, §9 (RP); 1991, c. 66, Pt. A, §21 (RP).]

Requests for reimbursement to the fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191, or the department may file suit in District Court. The commissioner may file claims with appropriate federal agencies to recover for the use of the fund all disbursements from the fund in connection with a prohibited discharge.

Requests for reimbursement to the fund for disbursements pursuant to subsection 5, paragraph B, if not paid within 60 days of demand, are subject to a penalty not to exceed twice the total amount of reimbursement requested. This penalty is in addition to the reimbursement requested and any other fines or civil penalties authorized by this Title.

[2007, c. 292, §29 (AMD) .]

6-A. **Lien.** All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil and interest are a lien against the real estate of the responsible party. The lien does not apply to the real estate of a licensee if the discharge was caused or suffered by a carrier destined for the licensee's facilities.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

[2009, c. 501, §6 (AMD) .]

7. **Waiver of reimbursement.** Upon petition of any licensee, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

A. An act of war; [1985, c. 496, Pt. A, §13 (AMD).]

B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 548; or [1991, c. 2, §147 (COR).]

C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency. [1993, c. 1, §125 (COR).]

Upon such finding by the board, immediate credit therefor must be entered for the party involved. The findings of the board are conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred, not a right granted.

[1993, c. 1, §125 (COR) .]

8. **Disbursements to state agencies.** A state agency that seeks reimbursement from the Maine Coastal and Inland Surface Oil Clean-up Fund for costs incurred in undertaking oil spill response activities shall keep time records demonstrating the amount of spill response activities performed for which reimbursement

is sought. A state agency may establish a dedicated account for receipt of disbursements from the fund. Disbursements from the fund to a state agency pursuant to subsection 5, paragraph B must be deposited in that account, if it has been established, and may be used by the agency to support its activities.

[1997, c. 188, §1 (NEW) .]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 625, §§278,279 (AMD). 1975, c. 379, §§1-3 (AMD). 1977, c. 375, §§10-16 (AMD). 1979, c. 541, §A268 (AMD). 1979, c. 708, (AMD). 1981, c. 356, §§1,2 (AMD). 1983, c. 273, §§1,2 (AMD). 1983, c. 483, §§11-15 (AMD). 1985, c. 496, §A13 (AMD). 1985, c. 746, §22 (AMD). 1987, c. 750, §3 (AMD). 1989, c. 500, §§1-3 (AMD). 1989, c. 502, §A147 (AMD). 1989, c. 868, §§4-9,19 (AMD). 1989, c. 890, §§A40,B117- 123 (AMD). RR 1991, c. 2, §147 (COR). 1991, c. 66, §§A19-21 (AMD). 1991, c. 66, §A42 (AFF). 1991, c. 454, §§8-12 (AMD). 1991, c. 454, §14 (AFF). 1991, c. 698, §§10,11 (AMD). 1991, c. 817, §§11-19 (AMD). RR 1993, c. 1, §125 (COR). 1993, c. 355, §§11-13 (AMD). 1993, c. 621, §2 (AMD). 1993, c. 720, §§2,3 (AMD). 1995, c. 399, §§2-4 (AMD). 1995, c. 399, §21 (AFF). 1997, c. 188, §1 (AMD). 1997, c. 364, §§26-29 (AMD). 1999, c. 334, §1 (AMD). 2003, c. 137, §1 (AMD). 2003, c. 551, §§9,10 (AMD). 2005, c. 330, §20 (AMD). 2005, c. 561, §5 (AMD). 2007, c. 292, §29 (AMD). 2009, c. 501, §§5, 6 (AMD). 2013, c. 349, §1 (AMD).

§551-A. OIL SPILL ADVISORY COMMITTEE

The Oil Spill Advisory Committee, as established in Title 5, section 12004-I, subsection 24-B, shall advise the department in carrying out the policies and purposes of this subchapter. [1991, c. 698, §12 (NEW).]

1. **Membership.** The Governor shall appoint the chair of the committee. The committee consists of the following 9 members:

A. Two members representing the marine fisheries interest one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives; [2007, c. 292, §30 (AMD).]

B. Two members representing the general public, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives; [2007, c. 292, §30 (AMD).]

C. Two members representing the petroleum industry appointed by the Governor; [1991, c. 698, §12 (NEW).]

D. One member familiar with oil spill technology appointed by the Governor; [1991, c. 698, §12 (NEW).]

E. [2007, c. 292, §30 (RP).]

F. [2007, c. 292, §30 (RP).]

G. [2007, c. 292, §30 (RP).]

H. One member with expertise in coastal geology, fisheries biology or coastal wildlife habitat appointed by the Governor; and [2007, c. 292, §30 (AMD).]

I. One member who is a licensed state pilot or a licensed merchant marine officer appointed by the Governor. [1991, c. 698, §12 (NEW).]

[2007, c. 292, §30 (AMD) .]

2. **Terms.** All members are appointed for staggered terms of 3 years except that a member may be appointed for an initial term of one or 2 years as necessary to ensure that the terms of the committee members are staggered. A vacancy must be filled by the same appointing authority that made the original appointment. A member may not serve more than 2 consecutive 3-year terms.

[2007, c. 292, §31 (AMD) .]

3. **Compensation.** Members are entitled to compensation as specified in Title 5, section 12004-I, subsection 24-B.

[1991, c. 698, §12 (NEW) .]

4. **Quorum.** A quorum is 5 members of the committee. An affirmative vote of the majority of the members present is required for any action. Action may not be considered unless a quorum is present.

[2007, c. 292, §32 (AMD) .]

5. **Chair.** The Governor shall appoint a person to serve as chair of the committee.

[1991, c. 698, §12 (NEW) .]

6. **Meetings.** The committee meets at least 4 times per year unless the committee decides not to hold a meeting. The committee shall meet at any time at the call of the chair.

[1991, c. 698, §12 (NEW) .]

7. **Staff support.** The commissioner shall provide the committee with staff support.

[1991, c. 698, §12 (NEW) .]

8. **Duties.** The committee shall:

A. Track implementation of and regulations related to the Federal Oil Pollution Act of 1990 and recommend to the Legislature any statutory changes or to the board any regulatory changes that are appropriate. The committee shall review contingency plan requirements, opportunities and constraints of the federal Oil Spill Liability Trust Fund and oil spill prevention measures; [1991, c. 698, §12 (NEW).]

B. Monitor the adequacy of the federal Oil Spill Liability Trust Fund in light of information on the potential risks and costs of an oil spill and the State's exposure and liability under the fund; [1991, c. 698, §12 (NEW).]

C. Monitor the effects of the State's oil spill liability laws on oil spill prevention; [1991, c. 698, §12 (NEW).]

D. Review expenditures and the priority for expenditures of the Maine Coastal and Inland Surface Oil Clean-up Fund and make recommendations to the commissioner on how the fund should be allocated; [1991, c. 698, §12 (NEW).]

E. Review the commissioner's program for identifying areas sensitive to oil spills in the marine environment and the development of resource protection priorities; [1991, c. 698, §12 (NEW).]

F. Review and comment on the State's marine oil spill contingency plan; [1991, c. 698, §12 (NEW).]

G. Monitor oil spill planning and prevention activities by industry, oil spill response organizations and the United States Coast Guard; [1991, c. 698, §12 (NEW).]

H. Monitor the commissioner's assessment of adequate oil spill response equipment and vessels for the State; [1991, c. 698, §12 (NEW).]

I. Review the implementation of a plan for rehabilitation of wildlife resources including:

(1) Training programs and opportunities for volunteers and state and federal personnel; and

(2) Preliminary agreements or identification of treatment centers or facilities; [1991, c. 698, §12 (NEW).]

J. Monitor scientific, engineering and technical advances in oil spill response and prevention techniques and make recommendations on their use; and [1991, c. 698, §12 (NEW).]

K. Review and monitor issues for oil spill prevention and response and recommend to the Legislature any statutory changes or to the board any regulatory changes that are appropriate. [1991, c. 698, §12 (NEW).]

[1991, c. 698, §12 (NEW) .]

SECTION HISTORY
1991, c. 698, §12 (NEW). 2007, c. 292, §§30-32 (AMD).

§552. LIABILITY

1. **Licensee shall be liable.** A licensee shall be liable for all acts and omissions of its servants and agents, and carriers destined for the licensee's facilities from the time such carrier shall enter state waters until such time as the carrier shall leave state waters.

[1969, c. 572, §1 (NEW) .]

2. **State need not plead or prove negligence.** The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, any person, vessel, licensee, agent or servant, including a carrier destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place is liable to the State for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D, E, H and I, or other damage incurred by the State, including damage for injury to, destruction of, loss of, or loss of use of natural resources, the reasonable costs of assessing natural resources damage and the costs of preparing and implementing a natural resources restoration plan. In any suit to enforce claims of the State under this section, to establish liability, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter or occurred at or involved any real property, structure, equipment or conveyance under the custody or control of the person causing or suffering the discharge.

[2009, c. 121, §8 (AMD) .]

3. **Right of recovery by licensee.** Any licensee that is held liable for the acts or omissions of any carrier destined for the licensee's facilities pursuant to subsection 1 may recover in a civil action from the carrier, or any person responsible for the acts or omissions of the carrier, all loss, expense, damage or other liability incurred by the licensee for the acts and omissions of the carrier.

[1991, c. 380, §2 (NEW) .]

4. **Limited liability for responders.** Notwithstanding any other provision of law, the liability of a responder to a discharge or a substantial threat of a discharge of oil into or upon any coastal waters, estuaries, tidal flats, tidal waters, beaches and lands adjoining the seacoast of the State is governed by this section.

A. A responder is not liable for removal costs, damages, civil liabilities or penalties that result from actions taken or omitted in the course of rendering care, assistance or advice consistent with the National Contingency Plan, a federal contingency plan, the State Marine Oil Spill Contingency Plan or as otherwise directed by the federal on-scene coordinator or the commissioner. [1991, c. 380, §2 (NEW).]

B. Paragraph A does not apply:

(1) To personal injury or wrongful death;

(2) If the responder is grossly negligent or engages in willful misconduct; or

(3) To a responsible party. [1997, c. 364, §31 (AMD).]

C. A responsible party is liable for any removal costs, damages, civil liabilities and penalties that a responder is relieved of under paragraph A. [1991, c. 380, §2 (NEW).]

[1997, c. 364, §31 (AMD) .]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1977, c. 375, §17 (AMD). 1985, c. 746, §23 (AMD). 1991, c. 380, §2 (AMD). 1991, c. 698, §13 (AMD). 1997, c. 364, §§30,31 (AMD). 2009, c. 121, §8 (AMD).

§552-A. DETENTION OF VESSELS

Whenever there is probable cause to believe that a vessel has violated or been the means of a violation of this subchapter or any other law which the Department of Environmental Protection is responsible for administering or any rule or order of the board, commissioner or any official of the department made thereunder, the vessel must be detained in any port of the State until payment of any fine or penalty assessable under the law has been paid or secured to the satisfaction of the Attorney General. Any justice or judge of the Superior Court or the District Court may issue such orders as are necessary to carry out the purposes of this section. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §124 (AMD).]

SECTION HISTORY
1977, c. 375, §18 (NEW). 1989, c. 890, §§A40,B124 (AMD).

§553. INTERSTATE COMPACT, AUTHORITY

In accordance with subchapter II the Governor of this State is authorized and directed to execute supplementary agreements with any one or more of the states comprising the New England Interstate Water Pollution Control Commission and the United States for the purpose of implementing and carrying out the provisions, limitations, qualifications and intent of this subchapter. [1969, c. 572, §1 (NEW).]

SECTION HISTORY
1969, c. 572, §1 (NEW).

§554. REPORTS TO THE LEGISLATURE

(REPEALED)

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A37,40 (RP).

§555. BUDGET APPROVAL

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 551, subsection 5, paragraphs A, C, F and H for each biennium. The budget must be submitted as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures therefrom as approved by the commissioner. Expenditures pursuant to section 551, subsection 5, paragraphs B, D, E and G may be made as authorized by the State Controller following approval by the commissioner. [1997, c. 424, Pt. B, §8 (AMD).]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1979, c. 541, §A269 (AMD). 1981, c. 356, §3 (AMD). 1983, c. 483, §16 (AMD). 1989, c. 890, §§A40,B125 (AMD). 1997, c. 424, §B8 (AMD).

§556. MUNICIPAL ORDINANCES; POWERS LIMITED

Nothing in this subchapter may be construed to deny any municipality, by ordinance or by law, from exercising police powers under any general or special Act; provided that ordinances and bylaws in furtherance of the intent of this subchapter and promoting the general welfare, public health and public safety are valid unless in direct conflict with this subchapter or any rule or order of the board or commissioner adopted under authority of this subchapter. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, § §126 (AMD).]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1979, c. 541, §A270 (AMD). 1989, c. 890, §§A40,B126 (AMD).

§557. CONSTRUCTION

This subchapter, being necessary for the general welfare, the public health and the public safety of the State and its inhabitants, shall be liberally construed to effect the purposes set forth under this subchapter. No rule or order of the board or commissioner may be stayed pending appeal under the provisions of this subchapter. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §127 (AMD).]

SECTION HISTORY
1969, c. 572, §1 (NEW). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A40,B127 (AMD).

§560. VESSELS AT ANCHORAGE

1. **Purpose.** The Legislature intends by the enactment of this section to exercise the police power of the State through the department by conferring upon the department the exclusive power to deal with the hazards and threats of danger and damage posed by the anchorage of oil-carrying vessels in the waters of the State. The purpose of rules adopted by the board is to protect the coastal waters, tidal flats, beaches and lands adjoining the waters of the State from damage by the intentional or accidental discharge of oil, other pollutants as defined in section 361-A or air contaminants as defined in section 582 or explosion from the accumulation of gases aboard vessels and to prohibit interference with the harvesting of marine resources and aesthetic and recreational uses of coastal waters.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

2. **Definitions.**

A. As used in this section, the word "anchorage" means the mooring for a period of definite or indefinite duration of a vessel designed or used to carry oil, which is not waiting for a scheduled loading or unloading of cargo in Maine waters, but does not include the mooring of a vessel for bunkering, maintenance, repair or overhaul, or in connection with or as a part of sea trials. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

3. **Board to adopt rules.** The board shall adopt rules limiting or, to the extent the board determines necessary, prohibiting the anchorage in Maine coastal waters, estuaries or rivers under the jurisdiction of the State of vessels designed or used to carry oil as cargo. All rules adopted by the board under this section do not apply to vessels at anchorage prior to July 1, 1975.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

4. **Scope of rules.** In adopting these rules, in addition to other provisions of this subchapter, the board's consideration must include, but is not limited to:

A. The location, duration and type of anchorage; [1975, c. 578, (NEW).]

B. The type and capacity of vessels permitted anchorage; [1975, c. 578, (NEW).]

C. The systems and precautions necessary for safety on each vessel; [1975, c. 578, (NEW).]

D. The training, number and availability of crew members aboard each vessel; [1975, c. 578, (NEW).]

E. A requirement for contingency plans in the event of accident, fire, storm or other unforeseen acts; [1975, c. 578, (NEW).]

F. The protection of the natural environment, aesthetic and recreational uses of State waters; and [1975, c. 578, (NEW).]

G. The protection of the fisheries or fishing industry of the State. [1975, c. 578, (NEW).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

5. **Exemption.** The board may by rule exempt certain activities not inconsistent with the purposes of this section. An unpowered vessel of less than 500 barrels total oil storage capacity is exempt from the provisions of this section, provided that the vessel is subject to any applicable rules administered by the United States Coast Guard and the owner notifies the commissioner of the location and contents of the vessel within 7 days of establishing the anchorage.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

6. **Prohibition.** No person may have a vessel at anchorage in Maine waters for more than 7 days without a current license from the department.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

7. **Licenses and fees.** A license is required for anchorage of a vessel in Maine waters and a fee of 1/2¢ per deadweight ton is due for each 30 days of anchorage or part thereof. The department may license properly treated effluents and emissions regulated by this section consistent with the other environmental laws of the State .

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

8. **Application for a license.** Any person desiring to have a vessel at anchorage in Maine waters shall apply in writing to the commissioner and, shall publish public notice of the application and a brief summary in a paper of general circulation in the vicinity of the proposed activity and provide information as required by rule of the board. After receipt of the application, the department shall issue a license or deny a license giving the reasons therefor or order a hearing thereon. Any person denied a license without a hearing may request, in writing, within 30 days after notice of denial, a hearing before the department. The request must set forth in detail the findings to which that person objects, the basis of such objection and the nature of the relief requested.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

9. **Penalty.**

[1977, c. 564, §139-A (RP) .]

10. **Board to solicit advice.** The Board of Environmental Protection shall solicit the advice of the Commissioner of Marine Resources and the Commander of the United States Coast Guard prior to adopting any rules under this section.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §128 (AMD) .]

SECTION HISTORY
1975, c. 578, (NEW). 1977, c. 78, §§203-206 (AMD). 1977, c. 300, §§37,38 (AMD). 1977, c. 564, §§139-A (AMD). 1983, c. 566, §31 (AMD). 1987, c. 419, §12 (AMD). 1989, c. 890, §§A40,B128 (AMD).

Subchapter 2-B: OIL STORAGE FACILITIES AND GROUND WATER PROTECTION

§561. FINDINGS; PURPOSE

The Legislature finds that significant quantities of oil are being stored in aboveground and 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 and aboveground oil storage facilities, as well as monitoring, maintenance and operating procedures for existing, new and replacement facilities. [2009, c. 121, §9 (AMD).]

The Legislature intends by the enactment of this subchapter to exercise the police power of the State through the department by conferring upon the department the power to deal with the hazards and threats of danger and damage posed by the storage and handling of oil 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 storage facilities, including the restoration of contaminated water supplies; and to guarantee the prompt payment of reasonable damage claims resulting therefrom. [2009, c. 121, §9 (AMD).]

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. [2009, c. 121, §9 (AMD).]

SECTION HISTORY

1985, c. 496, §A14 (NEW). 1989, c. 890, §§A40,B129 (AMD). 1995, c. 399, §5 (AMD). 1995, c. 399, §21 (AFF). 2009, c. 121, §9 (AMD).

§562. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1987, c. 491, §5 (AMD). 1987, c. 735, §70 (AMD). 1987, c. 787, §13 (AMD). 1989, c. 312, §16 (AMD). 1989, c. 546, §10 (AMD). 1989, c. 865, §1 (RP). 1989, c. 890, §§A40,B130 (AMD).

§562-A. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 865, §2 (NEW).]

1. **Ancillary equipment.** "Ancillary equipment" means devices including, but not limited to, piping, fittings, flanges, valves and pumps used to distribute, meter or control the flow of oil to an underground storage tank.

[1989, c. 865, §2 (NEW) .]

1-A. **Aboveground oil storage facility.** "Aboveground oil storage facility" means any aboveground oil storage tank or tanks, together with associated piping, transfer and dispensing facilities located over land or water of the State at a single location for more than 4 months per year and used or intended to be used for the storage or supply of oil. Oil terminal facilities, as defined in section 542, subsection 7 and propane facilities are not included in this definition and are not eligible for coverage by the fund.

[2009, c. 319, §1 (AMD) .]

1-B. **Aboveground oil storage tank.** "Aboveground oil storage tank" also referred to as a "tank" means any aboveground container, less than 10% of the capacity of which is beneath the surface of the ground, that is used or intended to be used for the storage or supply of oil. Included in this definition are any tanks situated upon or above the surface of a floor and in such a manner that they may be readily inspected. Drums or other storage containers that have a capacity of 60 gallons or less and oil-containing electrical equipment are not included in this definition.

[2007, c. 569, §2 (AMD) .]

2. **Applicant.** "Applicant" means the owner or operator of an underground oil storage facility or an aboveground oil storage facility that has suffered a discharge of oil and who is seeking coverage of eligible clean-up costs and 3rd-party damage claims from the fund.

[1995, c. 361, §1 (AMD) .]

3. **Barrel.** "Barrel" means 42 United States gallons at 60° Fahrenheit.

[1989, c. 865, §2 (NEW) .]

4. **Cathodic protection tester.** "Cathodic protection tester" means an underground storage tank installer certified by the Maine Board of Underground Storage Tank Installers or a person certified by the commissioner pursuant to section 567-A.

[1989, c. 865, §2 (NEW) .]

5. **Corrosion expert.** "Corrosion expert" means a person who is certified by the commissioner pursuant to section 567-A, as qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks.

[1989, c. 865, §2 (NEW) .]

6. **Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emitting, escaping, emptying or dumping.

[1989, c. 865, §2 (NEW) .]

7. **Double-walled tank.** "Double-walled tank" means an underground oil storage tank providing no less than 300` secondary containment, interstitial space monitoring and secondary containment for pressurized product delivery pipe connections.

[1989, c. 865, §2 (NEW) .]

7-A. **Eligible clean-up costs.** "Eligible clean-up costs" means those direct expenses including expenses for site investigation that:

A. Are necessary to clean up discharges of oil to the satisfaction of the commissioner; [1995, c. 361, §2 (NEW).]

B. Are cost-effective and technologically feasible and reliable; [1995, c. 361, §2 (NEW).]

C. Effectively mitigate or minimize damages; and [1995, c. 361, §2 (NEW).]

D. Provide adequate protection of the public health and welfare and the environment. [1995, c. 361, §2 (NEW).]

"Eligible clean-up costs" does not include expenses for legal advice or services.

[1995, c. 361, §2 (NEW) .]

8. **Existing underground oil storage facility or existing underground oil storage tank.** "Existing underground oil storage facility" or "existing underground oil storage tank" means any facility or tank, as defined in subsections 21 and 22, fully installed as of April 19, 1990, the location of which has not changed.

[1991, c. 494, §1 (AMD) .]

9. **Fund.** "Fund" means the Ground Water Oil Clean-up Fund.

[1989, c. 865, §2 (NEW) .]

9-A. **Fund Insurance Review Board.** "Fund Insurance Review Board" or "review board" means the board created in section 568-B.

[1993, c. 363, §4 (NEW); 1993, c. 363, §21 (AFF) .]

10. **Gasoline.** "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.

[1989, c. 865, §2 (NEW) .]

11. **Heavy oil.** "Heavy oil" means forms of oil that must be heated during storage, including, but not limited to, #5 and #6 oils.

[1989, c. 865, §2 (NEW) .]

12. **Leak.** "Leak" means a loss or gain of 0.1 gallons or more per hour at a pressure of 4 pounds per square inch gauge, as determined by a precision test or other tank and piping tightness test of similar precision approved by the department.

[1989, c. 865, §2 (NEW) .]

13. **Motor fuel.** "Motor fuel" means oil that is motor gasoline, aviation gasoline, #1 or #2 diesel fuel or any grade of gasohol typically used in the operation of a vehicle or motor engine.

[1989, c. 865, §2 (NEW) .]

14. **Occurrence.** "Occurrence" means a contamination incident or prohibited discharge associated with one or more tanks or piping at an underground oil storage facility or an aboveground oil storage facility within one year.

[1993, c. 363, §5 (AMD); 1993, c. 363, §21 (AFF) .]

15. **Oil.** "Oil" means oil, oil additives, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other nonhazardous waste, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

[2011, c. 206, §13 (AMD) .]

15-A. **Oil storage facility or facility.** "Oil storage facility" or "facility" means an aboveground oil storage facility or an underground oil storage facility.

[2009, c. 319, §2 (NEW) .]

15-B. **Operator.** "Operator" means a person in control of, or having responsibility for, the daily operation of an oil storage facility.

[2009, c. 319, §3 (NEW) .]

16. **Person.** "Person" means any natural person, firm, association, partnership, corporation, trust, the State and any agency of the State, governmental entity, quasi-governmental entity, the United States and any agency of the United States and any other legal entity.

[1989, c. 865, §2 (NEW) .]

16-A. **Public drinking water supply.** "Public drinking water supply" has the same meaning as "public water system" in Title 22, section 2601, subsection 8. For purposes of defining a sensitive geologic area in this subchapter, an underground oil storage facility's water supply that meets the criteria of Title 22, section 2601, subsection 8 solely because beverages for public sale or consumption are made at that facility is not considered a public drinking water supply.

[1991, c. 763, §1 (NEW) .]

16-B. **Primary sand and gravel recharge area.** "Primary sand and gravel recharge area" means the surface area directly overlying sand and gravel formations that provides 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.

[1993, c. 383, §30 (NEW) .]

17. **Responsible party.** "Responsible party" means any one or more of the following persons:

A. The owner or operator of the underground oil storage facility where a prohibited discharge has occurred; [1989, c. 865, §2 (NEW).]

B. The person to whom the underground oil storage facility is registered where a prohibited discharge has occurred; [1989, c. 865, §2 (NEW).]

C. Any person other than those identified in paragraph A or B who caused the prohibited discharge of oil or who had custody or control of the oil at the time of the prohibited discharge; [1993, c. 363, §6 (AMD); 1993, c. 363, §21 (AFF).]

D. Any person who owned or operated the underground oil storage facility from the time any oil arrived at that facility; or [1993, c. 363, §6 (AMD); 1993, c. 363, §21 (AFF).]

E. With regard to sections 568, 568-A, 569-A and 570, persons described in paragraphs A to D with regard to aboveground oil storage facilities. [2007, c. 655, §3 (AMD).]

[2007, c. 655, §3 (AMD) .]

18. **Secondary containment.** "Secondary containment" means a system installed so that any material that is discharged or has leaked from the primary containment is prevented from reaching the soil or ground water outside the system for the anticipated period of time necessary to detect and recover the discharged material. That system may include, but is not limited to, impervious liners compatible to the products stored, double-walled tanks or any other method approved by the department that is technically feasible and effective.

[1989, c. 865, §2 (NEW) .]

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

[1993, c. 383, §31 (AMD) .]

19-A. **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 likely to provide drinking water supplies.

[1993, c. 383, §32 (NEW) .]

20. **Underground gasoline storage tank.** "Underground gasoline storage tank" means a single tank or container, 10% or more of which is underground, together with associated piping and dispensing facilities and that is used, or intended to be used, for the storage or supply of gasoline. The term does not include multiple tanks or containers that are situated on or above the surface of a floor and in such a manner that they may be readily inspected. An underground gasoline storage tank is a type of underground oil storage facility.

[1989, c. 865, §2 (NEW) .]

21. **Underground oil storage facility.** "Underground oil storage facility" means any underground oil storage tank or tanks, as defined in subsection 22, together with associated piping and dispensing facilities located under any land at a single location and used, or intended to be used, for the storage or supply of oil, as defined in this subchapter. Underground oil storage facility also includes piping located under any land at a single location associated with above ground storage tanks and containing 10% or more of the facility's overall volume capacity.

[2009, c. 319, §4 (AMD) .]

22. **Underground oil storage tank.** "Underground oil storage tank," also referred to as "tank," means any container, 10% or more of which is beneath the surface of the ground and that is used, or intended to be used, for the storage, use, treatment, collection, capture or supply of oil as defined in this subchapter, but does not include any tanks situated in an underground area if these tanks or containers are situated on or above the surface of a floor and in such a manner that they may be readily inspected.

[1989, c. 865, §2 (NEW) .]

SECTION HISTORY
1989, c. 865, §2 (NEW). 1991, c. 494, §1 (AMD). 1991, c. 763, §1 (AMD). 1993, c. 363, §§2-7 (AMD). 1993, c. 363, §21 (AFF). 1993, c. 383, §§30-32 (AMD). 1995, c. 361, §§1-3 (AMD). 2007, c. 569, §2 (AMD). 2007, c. 655, §3 (AMD). 2009, c. 319, §§1-4 (AMD). 2011, c. 206, §13 (AMD).

§563. REGISTRATION AND INSPECTION OF UNDERGROUND OIL STORAGE TANKS AND PIPING

1. **Prohibition on unregistered tanks.** The following prohibition on unregistered tanks applies.

A. A person may not install, or cause to be installed, a new or replacement underground oil storage facility unless the facility is registered in accordance with subsection 2 at least 10 business days but no more than 2 years prior to installation and the registration fee is paid in accordance with subsection 4. 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 commissioner as soon as the emergency becomes known.

The owner or operator shall make available a copy of the facility's registration at that facility for inspection by the commissioner and authorized municipal officials. [2011, c. 206, §14 (AMD).]

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 commissioner. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §132 (AMD).]

[2011, c. 206, §14 (AMD) .]

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 municipality 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; [1991, c. 66, Pt. A, §22 (RPR).]

B. The name, address and telephone number of the person having responsibility for the operation of the tank to be registered; [1991, c. 66, Pt. A, §22 (RPR).]

C. The location of the facility; [2005, c. 491, §1 (AMD).]

D. [2001, c. 626, §13 (RP).]

E. The size of the tank to be registered; [1991, c. 66, Pt. A, §22 (RPR).]

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; [1991, c. 66, Pt. A, §22 (RPR).]

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; [1991, c. 66, Pt. A, §22 (RPR).]

H. For existing facilities and tanks, the best estimate of the age and type of tank or tanks and underground piping at the facility; and [2005, c. 491, §1 (AMD).]

I. For underground oil storage tanks, the expiration date of tank manufacturer's warranty. [2005, c. 491, §1 (AMD).]

[2005, c. 491, §1 (AMD) .]

3. **Amended registration required.** The owner or operator of an underground oil storage facility shall file an amended registration form with the commissioner immediately upon any change in the information required pursuant to subsection 2, including any modifications to the facility or a change of ownership. The board may establish, by rule, a late registration period not to exceed 10 business days in duration. A fee may not be charged for filing an amended registration.

[1991, c. 66, Pt. A, §23 (RPR) .]

4. **Registration fees.** The owner or operator of an underground oil storage facility shall pay a fee to the department of $100 for each tank registered under this section located at the facility, except that single family homeowners are not required to pay a fee for a tank at their personal residence. The fee must be paid at the time the tank is first registered and every 3 years thereafter upon receipt of a bill from the department. The department may prorate the fee as appropriate.

[2009, c. 121, §10 (AMD) .]

5. **Penalty for failure to submit amended registration.** Any person who has not submitted an amended registration form in accordance with subsection 3 shall pay a late fee of $100. This does not preclude the commissioner from seeking civil penalties from any person who fails to register a facility or tank.

[1991, c. 66, Pt. A, §24 (RPR) .]

6. **Providing notice.** Prior to the sale or transfer of any real estate where an underground oil storage facility is located, the owner of the real estate shall file a written notice with the purchaser or transferee. The notice must disclose the existence of the underground oil storage facility, its registration number or numbers, the real estate where the facility is located, whether or not the facility has been abandoned in place pursuant to section 566-A and that the facility is subject to regulation, including registration requirements, by the department under this subchapter.

[2005, c. 491, §1 (AMD) .]

7. **Supplier notification requirement.** Any person who sells a tank intended to be used as an underground oil storage tank shall notify the purchaser in writing of the purchaser's obligations under this section.

[1989, c. 865, §7 (NEW) .]

8. **Certification of proper installation.** Owners of new and replacement facilities shall ensure that the installer provides certification to the commissioner, within 30 days of completion of installation, that the materials and methods used comply with the applicable installation standards of this subchapter.

[1989, c. 865, §7 (NEW) .]

9. **Annual compliance inspection.** The owner of an underground oil storage facility is responsible for ensuring that each underground oil storage tank and associated piping at the facility are inspected annually for compliance with the requirements of this subchapter and any rules adopted under this subchapter and the requirements for gasoline vapor control in rules adopted under section 585-A. The owner shall correct or arrange for correction of any deficiencies detected during the inspection as necessary to bring the facility into compliance with these requirements.

A. The owner of an underground oil storage facility shall submit annual inspection results to the department on or before July 1, 2003 and on or before July 1st annually thereafter. The results must be recorded on a form provided by the department and must include a certification statement, signed by an underground oil storage tank inspector or underground oil storage tank installer certified by the Board of Underground Oil Tank Installers under Title 32, chapter 104-A, that each tank and associated piping have been inspected and any deficiencies discovered during the inspection have been corrected. The owner shall submit the completed form to the department no more than 30 days after the date on which the inspection was completed. [2007, c. 534, §1 (AMD).]

B. [2007, c. 534, §1 (RP).]

C. [2007, c. 534, §1 (RP).]

D. [2007, c. 534, §1 (RP).]

E. Beginning July 1, 2010 and at least once every 3 years thereafter, the annual inspection of each tank must be performed by a certified underground oil storage tank inspector or underground oil storage tank installer who is not the tank owner or operator, an employee of the tank owner or operator or a person having daily on-site responsibility for the operation and maintenance of the tank. [2007, c. 534, §1 (NEW).]

[2007, c. 534, §1 (AMD) .]

10. **Aboveground oil storage tanks with underground piping.** An owner of an aboveground oil storage tank with underground piping is subject to the requirements of this subsection.

A. Effective January 1, 2007, a person may not store motor fuel in an aboveground oil storage facility that has underground piping without first having registered the facility with the commissioner in the same manner as is required of underground oil storage facilities under subsections 2 to 5. [2005, c. 491, §1 (NEW).]

B. Prior to the sale or transfer of an aboveground oil storage tank that has underground piping, the owner shall notify the purchaser or transferee in writing of the existence of the underground piping and the requirement that the tank be registered with the commissioner if the tank will be used to store motor fuel. [2005, c. 491, §1 (NEW).]

C. The owner of an aboveground oil storage tank used to store motor fuel shall ensure that, within 30 days after completion of installation of underground piping associated with the tank, the installer certifies in writing to the commissioner that the materials and methods used comply with the applicable installation standards of this subchapter. [2005, c. 491, §1 (NEW).]

D. The owner of an aboveground oil storage tank used to store motor fuel shall ensure that underground piping associated with the tank is inspected annually for compliance with the requirements of this subchapter and the requirements for gasoline vapor control in rules adopted under section 585-A. The owner shall submit annual inspection results to the department on or before July 1, 2007 and on or before July 1st annually thereafter. The results must be recorded on a form provided by the department

and must include a certification statement, signed by an underground oil storage tank inspector or an underground oil storage tank installer certified by the Board of Underground Oil Tank Installers under Title 32, chapter 104-A that the piping has been inspected and any deficiencies discovered during the inspection have been corrected. The owner shall submit the completed form to the department no more than 30 days after the date on which the inspection was completed. The requirements of this paragraph may be enforced in the same manner as is provided for underground oil storage facilities under subsection 9. [2007, c. 534, §2 (AMD).]

This subsection does not apply to tanks or piping at an oil terminal facility as defined in section 542, subsection 7. Until July 1, 2009, this subsection does not apply to tanks or piping at a facility used to store diesel fuel.

[2007, c. 534, §2 (AMD) .]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1985, c. 626, §2 (AMD). 1987, c. 402, §A199 (AMD). 1987, c. 491, §§6-9 (AMD). 1989, c. 865, §§3-7 (AMD). 1989, c. 890, §§A40,B131- 135 (AMD). 1991, c. 66, §§A22-24 (AMD). 2001, c. 231, §17 (AMD). 2001, c. 626, §§12,13 (AMD). 2005, c. 491, §1 (AMD). 2007, c. 534, §§1, 2 (AMD). 2007, c. 655, §4 (AMD). 2009, c. 121, §10 (AMD). 2011, c. 206, §14 (AMD).

§563-A. PROHIBITION OF NONCONFORMING UNDERGROUND OIL STORAGE FACILITIES AND TANKS

1. **Compliance schedule.** Except as provided in subsections 1-A and 1-B, a person 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, 1989, if that facility or tank is more than 15 years old and is located in a sensitive geological area; [1991, c. 66, Pt. B, §2 (RPR).]

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; [1991, c. 66, Pt. B, §2 (RPR).]

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; and [1991, c. 66, Pt. B, §2 (RPR).]

D. October 1, 1997. [1991, c. 66, Pt. B, §2 (RPR).]

[1991, c. 66, Pt. B, §2 (RPR) .]

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, 1993, 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; [1991, c. 9, Pt. II, §6 (RPR).]

B. October 1, 1995, 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 [1991, c. 9, Pt. II, §6 (RPR).]

C. October 1, 1998. [1991, c. 9, Pt. II, §6 (RPR).]

[1991, c. 9, Pt. II, §6 (RPR) .]

1-B. **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.

[1991, c. 9, Pt. II, §7 (NEW) .]

1-C. **Extension.** The removal requirement for an underground oil storage tank or facility prescribed in subsection 1 is extended 12 months if, prior to the removal date prescribed in subsection 1, a person required to remove an underground oil storage facility or tank:

A. Can not secure financing for that removal as evidenced by 3 letters from financial institutions; or [1991, c. 433, §1 (NEW).]

B. Can not obtain the services of a certified underground oil storage tank installer or remover required under section 566-A as evidenced by 3 letters from certified underground oil storage tank installers or removers. [1991, c. 433, §1 (NEW).]

[1991, c. 433, §1 (NEW) .]

1-D. **Prohibition on delivery.** Effective May 1, 2002, a person may not deliver oil to an underground oil storage tank identified by the department as in violation of subsection 1 or 1-A through the publication of a list of such nonconforming tanks. The department may revise the list as new information becomes available and shall take reasonable steps, such as targeted mailings and posting of information on the Internet, to disseminate the list of nonconforming tanks to persons in the oil delivery business.

[2001, c. 231, §18 (NEW) .]

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 commissioner 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. [1987, c. 491, §10 (NEW).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §136 (AMD) .]

3. **Violations.** After reasonable notice and hearing, if the commissioner finds that an owner of an underground oil storage facility has failed to correct any violations of this subchapter, the commissioner may impose on the owner a schedule that provides for the early application of any or all of the prohibitions contained in subsection 1.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §136 (AMD) .]

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.

[1987, c. 491, §10 (NEW) .]

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.

[1987, c. 491, §10 (NEW) .]

6. **Rules.** The board may adopt rules necessary to administer this section.

[1987, c. 491, §10 (NEW) .]

7. **Report to Legislature.** The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources on or before January 1, 1989, on the progress made toward achieving the compliance schedule established by this section.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §136 (AMD) .]

8. **Repaired concrete underground oil storage tanks.** The requirements of subsection 1 do not apply to underground oil storage tanks that are constructed primarily of concrete and that:

A. Exceed 100,000 gallons in capacity; [1991, c. 494, §2 (NEW).]

B. Have been repaired after December 31, 1988; [1991, c. 494, §2 (NEW).]

C. Have environmental monitoring and other leak detection procedures approved by the commissioner, including monthly visual monitoring for oil and monthly visual inspection of the tank piping; and [1999, c. 640, §1 (AMD).]

D. Store only #6 fuel oil. [1997, c. 167, §1 (AMD).]

After July 1, 2002 or after a documented leak or subsurface discharge of oil, a person may not operate, maintain or store oil in a concrete underground oil storage facility or tank exempt under this subsection. An owner or operator of a concrete underground oil storage tank exempt under this subsection is not eligible for coverage from the fund of clean-up costs and 3rd-party damage claim costs under section 568-A for any discharge discovered at that tank after October 1, 1997.

[1999, c. 640, §1 (AMD) .]

SECTION HISTORY
1987, c. 491, §10 (NEW). 1989, c. 865, §8 (AMD). 1989, c. 890, §§A40,B136 (AMD). 1989, c. 926, §§2,3 (AMD). 1991, c. 9, §§II6,7 (AMD). 1991, c. 66, §B2 (AMD). 1991, c. 433, §1 (AMD). 1991, c. 494, §2 (AMD). 1997, c. 167, §1 (AMD). 1999, c. 640, §1 (AMD). 2001, c. 231, §18 (AMD).

§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: [1987, c. 491, §10 (NEW).]

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. The rules:

A. Must allow the facility from which a prohibited discharge has occurred to return to service while corrective action is taken unless the commissioner determines that a return to service would result in a threat to public health and safety; [1991, c. 763, §2 (NEW).]

B. Upon abandonment or replacement of an underground tank or facility, must require site assessment to be conducted or supervised by a state-certified geologist or registered professional engineer only when that tank or facility is located in a sensitive geologic area; and [1991, c. 763, §2 (NEW).]

C. May not require site assessments for a farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for the sole use of the owner or operator of the facility; [1991, c. 763, §2 (NEW).]

[1991, c. 763, §2 (AMD) .]

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. The rules must allow owners or operators of facilities undergoing routine monitoring in the absence of any other evidence of a leak:

A. To check the accuracy of complete statistical inventory data within 75 days of receipt by the commissioner of the initial statistical analysis by rerunning analyses before inconclusive reports are considered to be a failure of the tank or piping; [1991, c. 763, §3 (NEW).]

B. To check for failures in any mechanical and electronic monitoring devices within 3 working days of an indication of failure before it is considered a failure of the tank or piping; [1991, c. 763, §3 (NEW).]

C. To engage in procedures under paragraphs A and B before requiring the precision testing of facility components; and [1991, c. 763, §3 (NEW).]

D. To check the accuracy of a failed or inconclusive precision test of facility components before the commissioner may order the excavation of the facility or any portion of the facility. An owner or operator is allowed 2 weeks to schedule a repeat of the precision test; [1991, c. 763, §3 (NEW).]

[1991, c. 763, §3 (AMD) .]

3. **Hearings.** Hearings related to clean-up orders issued pursuant to section 568; and

[1987, c. 491, §10 (NEW) .]

4. **Third-party damage claims.** Procedures to be used in filing and processing of 3rd-party damage claims.

[1987, c. 491, §10 (NEW) .]

SECTION HISTORY
1987, c. 491, §10 (NEW). 1989, c. 865, §9 (AMD). 1991, c. 763, §§2,3 (AMD).

§563-C. PROHIBITION ON SITING NEW UNDERGROUND OIL STORAGE FACILITIES NEAR DRINKING WATER SUPPLIES

(REPEALED)

SECTION HISTORY
2001, c. 302, §1 (NEW). 2003, c. 689, §B6 (REV). 2005, c. 561, §6 (AMD). 2007, c. 569, §3 (RP).

§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. [1989, c. 865, §10 (AMD).]

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, continuous 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. [1991, c. 494, §3 (AMD).]

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. [1991, c. 66, Pt. B, §3 (RPR).]

C. [1989, c. 865, §10 (RP).]

D. [1989, c. 865, §10 (RP).]

[1991, c. 494, §3 (AMD) .]

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 automated in-line leak detector; or [1991, c. 494, §4 (AMD).]

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.

Ground water monitoring for the detection of leaks may only be used to meet the requirements of this paragraph where the ground water table is never more than 20 feet from the ground surface and the hydraulic conductivity of the soils between the tank and monitoring wells is not less than 0.01 centimeters per second. [1991, c. 494, §4 (AMD).]

Existing piping must be equipped with leak detection. Pressurized piping must be equipped with an automated in-line leak detector and be monitored by a leak detection system listed in paragraph A or 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.

[1991, c. 494, §4 (AMD) .]

1-B. **Overfill and spill prevention equipment.** Overfill and spill prevention equipment is required for all new, replacement and existing facilities. A phase-in schedule for existing facilities to meet this requirement is as follows.

A. Overfill and spill prevention equipment must be installed in new and replacement underground oil storage tanks at the time the underground oil storage tank is installed. [1991, c. 763, §4 (NEW).]

B. Overfill and spill prevention equipment must be retrofitted on existing tanks constructed of cathodically protected steel, fiberglass or other noncorrosive material approved by the department by December 22, 1998, pursuant to 40 Code of Federal Regulations, 280.20 and 280.21. [1991, c. 763, §4 (NEW).]

[1991, c. 763, §4 (AMD) .]

2. **Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks.**

[1991, c. 66, Pt. B, §4 (RP) .]

2-A. **Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks.** The board's rules must 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; [1991, c. 66, Pt. B, §5 (NEW).]

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; [1991, c. 66, Pt. B, §5 (NEW).]

C. Voltage readings for cathodically protected systems by a cathodic protection tester 6 months after installation and annually thereafter; [1991, c. 66, Pt. B, §5 (NEW).]

D. Monthly inspections by a cathodic protection tester of the rectifier meter on impressed current systems; [1991, c. 66, Pt. B, §5 (NEW).]

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; [1991, c. 66, Pt. B, §5 (NEW).]

F. Proper calibration, operation and maintenance of leak detection devices; [1991, c. 66, Pt. B, §5 (NEW).]

G. 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; [1991, c. 66, Pt. B, §5 (NEW).]

H. 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 that, over a 30-day period, exceed 1.0% of the product throughput;

(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; and

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

The rules may not require the reporting of a leak or discharge of oil above ground of 10 gallons or less that occurs on the premises, including, but not limited to, spills, overfills and leaks, when those leaks or discharges do not reach groundwaters or surface waters of the State and are cleaned up within 24 hours of discovery, if a written log is maintained at the facility or the owner's place of business in this

State. For each discharge the log must record the date of discovery, its source, the general location of the discharge at the facility, the date and method of cleanup and the signature of the facility owner or operator certifying the accuracy of the log; [2003, c. 551, §11 (AMD).]

I. Compatibility of the materials from which the facility is constructed and the product to be stored; [1991, c. 66, Pt. B, §5 (NEW).]

J. 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 and to permit the commissioner or the commissioner's representative to inspect and copy those records; [2009, c. 319, §5 (AMD).]

K. 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 in addition to any other granted by law; and [2009, c. 319, §6 (AMD).]

L. Operators to complete a department training program that meets the minimum requirements specified by the United States Environmental Protection Agency under 42 United States Code, Section 6991i (2007). The training program must provide certification for the successful completion of the program, which must be renewed every 2 years. Training may be provided by a 3rd party if approved by the department. [2011, c. 317, §1 (AMD).]

The requirements in paragraphs A and B do not apply to the following tanks provided the associated piping has secondary containment or a suction pump product delivery system or another leak detection system approved by the commissioner and provided that the tank and associated piping have been installed and are operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter: tanks providing product to a generator; double-walled tanks with continuous interstitial space monitoring; and existing tanks constructed of fiberglass, cathodically protected steel or another commissioner-approved noncorrosive material that are monitored for a leak by a method able to detect a product loss or gain of 0.2 gallons or less per hour.

[2011, c. 317, §1 (AMD) .]

3. **Replacement of tanks at facilities where leaks have been detected.**

[2003, c. 551, §13 (RP) .]

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.

[1991, c. 66, Pt. B, §7 (RPR) .]

5. **Mandatory facility replacement.** Upon the expiration date of a manufacturer's warranty for a tank, the tank and its associated piping must be removed from service and properly abandoned in accordance with section 566-A, except that a double-walled tank may continue in service up to 10 years beyond the expiration of the warranty if:

A. During the year the warranty expires but on a date before the warranty expires, a precision test is conducted to determine the integrity of the tank. Results of the test conducted must be submitted to the commissioner by the facility owner; and [2011, c. 276, §1 (NEW).]

B. During the 5th to 10th years after the expiration of the warranty, a precision test is conducted annually to determine the integrity of the tank. Results of each test must be submitted to the commissioner by the facility owner. [2011, c. 276, §1 (NEW).]

This subsection does not apply until January 1, 2008 to a tank installed before December 31, 1985 that has been retrofitted to meet the requirements of subsections 1-A and 1-B.

[2011, c. 276, §1 (RPR) .]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1985, c. 626, §§3,4 (AMD). 1987, c. 402, §A200 (AMD). 1987, c. 491, §11 (AMD). 1989, c. 312, §17 (AMD). 1989, c. 593, §1 (AMD). 1989, c. 865, §10 (AMD). 1989, c. 890, §§A40,B137-141 (AMD). 1991, c. 66, §§B3-7 (AMD). 1991, c. 494, §§3-6 (AMD). 1991, c. 763, §§4,5 (AMD). 1993, c. 355, §14 (AMD). 1993, c. 732, §§A2,3 (AMD). 1995, c. 493, §10 (AMD). 1997, c. 624, §3 (AMD). 2003, c. 551, §§11-13 (AMD). 2009, c. 319, §§5-7 (AMD). 2011, c. 276, §1 (AMD). 2011, c. 317, §1 (AMD).

§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. [1989, c. 865, §11 (AMD).]

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. [1989, c. 865, §11 (AMD).]

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. [1989, c. 312, §18 (AMD); 1989, c. 865, §11 (AMD).]

B-1. New and replacement facilities with a capacity in excess of 1,100 gallons must prevent overfills and spills by the installation of overfill catchment basins and the use of automatic shut-off devices or tank alarms. [1991, c. 494, §7 (AMD).]

C. [1989, c. 865, §11 (RP).]

D. [1989, c. 865, §11 (RP).]

[1991, c. 494, §7 (AMD) .]

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. [1989, c. 865, §11 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §142 (AMD).]

B. [1991, c. 66, Pt. A, §25 (RP).]

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. [1991, c. 66, Pt. A, §26 (RPR).]

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. [1989, c. 865, §11 (NEW).]

[1991, c. 66, Pt. A, §§25, 26 (AMD) .]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1985, c. 626, §§5,6 (AMD). 1987, c. 402, §A201 (AMD). 1987, c. 491, §12 (AMD). 1989, c. 312, §18 (AMD). 1989, c. 593, §2 (AMD). 1989, c. 865, §11 (AMD). 1989, c. 890, §§A40,B142-144 (AMD). 1991, c. 66, §§A25,26 (AMD). 1991, c. 494, §7 (AMD).

§565-A. AUTHORITY TO PROHIBIT PRODUCT DELIVERY

1. **Order to cease deliveries.** In addition to the enforcement actions allowed under sections 347-A and 348, the commissioner may, after providing an owner or operator of an underground oil storage tank with a notice of violation for failure to comply with a requirement of this subchapter and after providing a reasonable opportunity for correction of the violation, issue an administrative order requiring the owner or operator of the underground oil storage tank that is the subject of the violation to cease deliveries of oil to the tank and to cease operation of the tank and associated piping until the violation has been corrected. The commissioner shall issue an administrative order to cease deliveries to or operation of an underground oil storage tank subject to section 564 upon determining that:

A. The tank is not equipped with the spill prevention, overfill protection, leak detection or corrosion protection measures required under section 564 and applicable department rules; [2007, c. 534, §3 (NEW).]

B. The tank is not being operated or maintained in compliance with section 564 and applicable department rules and the owner or operator has failed to gain compliance with the requirements within 30 days of being provided with a citation for or written notice of the violation; or [2007, c. 534, §3 (NEW).]

C. There is evidence of an ongoing release of product from the tank or facility at which the tank is located. [2007, c. 534, §3 (NEW).]

The commissioner may defer issuance of an administrative order to cease deliveries pursuant to this subsection if the commissioner determines that a delivery prohibition would jeopardize the availability of, or access to, oil in a remote area of the State. The deferral may not exceed 180 days. Notwithstanding

the issuance of an administrative order under this subsection, the commissioner may authorize the owner or operator of the underground oil storage tank to dispense any remaining oil in the tank if, in the commissioner's judgment, doing so will not pose a threat of release of product or will reduce that threat.

[2007, c. 534, §3 (NEW) .]

2. **Service.** Service of an administrative order under subsection 1 must be made by hand delivery by an authorized representative of the department or by certified mail, return receipt requested. The person to whom the order is directed shall comply immediately or within the time period specified in the order or may appeal the order as provided in subsection 3.

[2007, c. 534, §3 (NEW) .]

3. **Appeal.** An administrative order under subsection 1 may be appealed to the board by filing a written petition within 5 working days after receipt of the order. Within 15 working days after receipt of the petition, the board shall hold a hearing on the matter. All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

[2007, c. 534, §3 (NEW) .]

4. **Identification of tanks subject to delivery prohibition.** Whenever the commissioner issues an administrative order under subsection 1, department staff shall affix a red tag to the fill pipe of the underground oil storage tank. The owner or operator may not allow the deposit of oil into the tank while a red tag is affixed to the fill pipe.

As used in this section, "red tag" means a tag, device or mechanism devised by the department for use in signifying that an underground oil storage tank is ineligible for product delivery. The tag must be red in color and must bear words clearly conveying that it is unlawful to deposit oil into the tank. The tag must be made of plastic or other durable, damage-resistant material and must be designed to be easily affixed to the tank fill pipe.

[2007, c. 534, §3 (NEW) .]

5. **Prohibition.** A person may not deposit oil into an underground oil storage tank that has a red tag affixed to the fill pipe or tamper with the tag except to remove it as authorized by the commissioner under subsection 6.

[2007, c. 534, §3 (NEW) .]

6. **Return to service.** A red tag affixed pursuant to this section may not be removed until an underground oil storage tank inspector or underground oil storage tank installer certifies in writing to the commissioner that the applicable violations have been corrected and the commissioner authorizes removal of the tag. The commissioner shall remove or authorize the removal of the tag as soon as practicable upon receipt of the certification. The commissioner may remove or authorize the removal of the tag absent confirmation that the violations have been corrected in emergency situations or when removal is determined to be in the best interest of the public.

[2007, c. 534, §3 (NEW) .]

SECTION HISTORY
2007, c. 534, §3 (NEW).

§566. ABANDONMENT OF UNDERGROUND OIL STORAGE FACILITIES AND TANKS

(REPEALED)

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1985, c. 626, §7 (AMD). 1987, c. 491, §13 (RP).

§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 24 months must be properly abandoned by the owner or operator of the facility or tank or, if the owner or operator is unknown, dissolved or insolvent, by the current owner of the property where the facility or tank is located. All abandoned facilities and tanks must 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; [1987, c. 491, §14 (NEW).]

B. Of a size and type of construction that it cannot be removed; [1987, c. 491, §14 (NEW).]

C. Otherwise inaccessible to heavy equipment necessary for removal; or [1987, c. 491, §14 (NEW).]

D. Positioned in such a manner that removal will endanger the structural integrity of nearby tanks. [1987, c. 491, §14 (NEW).]

[2011, c. 276, §2 (AMD) .]

1-A. **Abandoned tanks brought back into service.** Underground oil storage tanks and facilities that have been out of service for a period of more than 24 months may not be brought back into service without the written approval of the commissioner. The commissioner may approve the return to service if the owner demonstrates to the commissioner's satisfaction that:

A. The facility is in compliance with this subchapter and rules adopted pursuant to this subchapter; [2007, c. 655, §5 (AMD).]

B. The underground oil storage tanks and piping have successfully passed testing as directed by the commissioner; [2009, c. 501, §8 (AMD).]

C. The underground oil storage tanks and piping are constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the commissioner; [2009, c. 501, §8 (AMD).]

D. The facility has conforming suction or double-walled pressurized piping; and [2007, c. 655, §5 (NEW).]

E. The return of the facility to service does not pose an unacceptable risk to groundwater resources. In determining if the facility poses an unacceptable risk to groundwater resources, the commissioner may consider the age and maintenance history of the storage tanks and piping, the number and consequences of past oil discharges from the tanks and piping, the proximity of the facility to drinking water supplies and the proximity of the facility to sensitive geologic areas. [2007, c. 655, §5 (NEW).]

The commissioner may not approve the return to service of a single-walled underground oil storage tank that has been out of service for more than 24 consecutive months.

[2011, c. 276, §3 (AMD) .]

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 prior to abandonment.

[2011, c. 206, §15 (AMD) .]

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, acceptable methods of disposing of the removed tanks, requirements for venting at least 12 feet above ground level flammable gases purged from tanks and from trucks removing oil from 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.

[1991, c. 88, §1 (AMD) .]

4. **Commissioner 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 commissioner may undertake the abandonment. The commissioner shall seek recovery of costs incurred to undertake the abandonment, whether from state or federal funds, in accordance with the procedures set forth in section 569-A, subsection 10. Costs incurred by the commissioner to undertake the abandonment are a lien against the real estate of the owner as provided under section 569-A, subsection 10-A and section 569-B, subsection 6-A.

[2009, c. 121, §11 (AMD) .]

5. **Qualified personnel.** All abandoned facilities and tanks used for the storage of Class 1 liquids that require removal must be removed under the direct, on-site supervision of an underground oil storage tank installer certified pursuant to Title 32, chapter 104-A.

A. [2007, c. 292, §33 (RP).]

B. [2007, c. 292, §33 (RP).]

[2007, c. 292, §33 (AMD) .]

6. **Underground gasoline storage tanks.**

[2007, c. 292, §34 (RP) .]

SECTION HISTORY
1987, c. 491, §14 (NEW). 1989, c. 312, §§19,20 (AMD). 1989, c. 865, §12 (AMD). 1989, c. 890, §§A40,B145 (AMD). 1991, c. 66, §A27 (AMD). 1991, c. 88, §§1-3 (AMD). 1991, c. 763, §6 (AMD). 1991, c. 817, §§20,21 (AMD). 1999, c. 334, §2 (AMD). 2001, c. 626, §14 (AMD). 2007, c. 292, §§33, 34 (AMD). 2007, c. 655, §5 (AMD). 2009, c. 121, §11 (AMD). 2009, c. 501, §§7, 8 (AMD). 2011, c. 206, §15 (AMD). 2011, c. 276, §§2, 3 (AMD).

§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. [1989, c. 312, §21 (AMD).]

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. [1989, c. 312, §21 (AMD).]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1985, c. 626, §8 (AMD). 1985, c. 763, §A98 (AMD). 1987, c. 402, §A202 (AMD). 1989, c. 312, §21 (AMD).

§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.

[1989, c. 865, §13 (NEW) .]

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.

[1989, c. 865, §13 (NEW) .]

SECTION HISTORY
1989, c. 865, §13 (NEW).

§568. CLEANUP AND REMOVAL OF PROHIBITED DISCHARGES

1. **Removal.** Any person discharging or suffering a discharge of oil from an underground oil storage facility or an aboveground oil storage facility in the manner prohibited by section 543 and any other 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 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,

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-A or 569-B.

[2009, c. 121, §12 (AMD) .]

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 or the extension of mains of an existing utility, the department's obligation is limited to construction of those works that are necessary to furnish the contaminated or potentially contaminated properties with a supply of water sufficient for existing uses. The department is not obligated to contribute to a utility's system development charge or to provide works or water sources exceeding those required to abate the threats or hazards posed by the discharge. The fund may be used to pay costs of operation, maintenance and depreciation of the works or 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.

[1991, c. 494, §8 (AMD) .]

2-A. **Limitation on clean-up responsibility.** Notwithstanding subsections 1 and 2, if a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

A. Neither the commissioner nor the responsible party is obligated under this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as described in section 548, subsection 1; and [1993, c. 621, §3 (NEW).]

B. The obligation under this subchapter of the commissioner or any responsible party with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in an area other than one described in paragraph A. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well. [1993, c. 621, §3 (NEW).]

For purposes of this subsection, "viable community public water system" has the same meaning as in section 548.

[1993, c. 621, §3 (NEW) .]

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 under this subchapter or subchapter 2-A. 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 and 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, including an action to prohibit product delivery under section 565-A, 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, to compensate 3rd-party damages resulting from the discharge and to impose restrictions by deed covenant or other means on the use of the real property where the discharge occurred. 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 must 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. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §22 (AMD).]

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. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing is 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. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §22 (AMD).]

C. Upon completion of the clean-up activity, the commissioner shall issue a letter to the responsible party or parties indicating that the clean-up order has been complied with for one or more parcels. [1991, c. 433, §2 (NEW).]

[2009, c. 319, §8 (AMD) .]

4. **Enforcement; penalties; punitive damages.** Enforcement, penalties and punitive damages are as follows.

A. Any person who causes, or is responsible for, a discharge from an underground oil storage facility or an aboveground oil storage facility in violation of section 543 is not 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 commissioner and the board. [2009, c. 121, §13 (AMD).]

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 failure to take prompt action. [1991, c. 66, Pt. A, §28 (RPR).]

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. [1991, c. 66, Pt. A, §28 (RPR).]

[2009, c. 121, §13 (AMD) .]

5. **Acquisition of property; authority.**

[1991, c. 66, Pt. A, §28 (RP) .]

5-A. **Land acquisition.** Upon approval of the board by 2/3 majority vote, the department may acquire by purchase, lease, condemnation, donation or otherwise, any real property or any interest in real property, to undertake remedial actions in response to a discharge of oil, including, but not limited to:

A. Actions to prevent further discharge and to mitigate or terminate the threat of a discharge of oil; [1991, c. 66, Pt. A, §28 (RPR).]

B. Actions to clean up and remove oil from the site; and [1991, c. 66, Pt. A, §28 (RPR).]

C. Replacement of water supplies contaminated by or at significant risk of contamination by a discharge of oil. [1991, c. 66, Pt. A, §28 (RPR).]

The department may exercise the right of eminent domain in the manner described in Title 35-A, chapter 65, to take and hold real property to provide drinking water supplies to replace those contaminated by a discharge and to undertake soil and ground water remediation to protect water supplies that are at significant risk of contamination. The department may transfer or convey to any person real property or any interest in real property once acquired.

[1991, c. 66, Pt. A, §28 (RPR) .]

6. **Reimbursement.** If the commissioner requires an underground oil storage facility owner or operator to remove or close an underground oil storage facility upon evidence of a leak and if after investigation that facility is found not to be the source of a leak, the commissioner shall immediately reimburse that facility owner or operator from the fund for the documented costs of that removal. The facility owner or operator may be reimbursed for damages resulting from the removal, such as loss of income, through the 3rd-party damage claim process in section 569.

[1991, c. 763, §7 (NEW) .]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1987, c. 491, §15 (RPR). 1987, c. 556, (AMD). 1987, c. 735, §71 (AMD). 1987, c. 787, §14 (AMD). 1989, c. 865, §14 (AMD). 1989, c. 890, §§A40,B146 (AMD). 1991, c. 66, §A28 (RPR). 1991, c. 433, §2 (AMD). 1991, c. 494, §§8,9 (AMD). 1991, c. 763, §7 (AMD). 1991, c. 817, §22 (AMD). 1993, c. 621, §3 (AMD). 2005, c. 330, §22 (AMD). 2007, c. 534, §4 (AMD). 2007, c. 655, §6 (AMD). 2009, c. 121, §§12, 13 (AMD). 2009, c. 319, §8 (AMD).

§568-A. FUND COVERAGE REQUIREMENTS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15)

1. **Eligibility for fund coverage.** Eligibility for coverage by the fund of clean-up costs and eligible 3rd-party damage costs is governed by the following provisions.

A. The applicant must submit within 180 days of reporting the discharge a written request to the commissioner to be covered by the fund. The request must include:

(1) A description of the discharge and the locations threatened or affected by the discharge, to the extent known;

(2) An agreement that the applicant shall pay the deductible amount specified in subsection 2;

(3) For underground storage facilities, documentation regarding the applicant's compliance with the requirements of subsection 2, paragraph B; and

(4) For aboveground facilities, documentation required by the Fund Insurance Review Board.

The commissioner with respect to a claim involving an underground oil storage facility, or the State Fire Marshal with respect to a claim involving an aboveground oil storage facility, may waive the 180-day filing requirement for applicants for coverage of clean-up costs for discharges discovered after April 1, 1990 when the applicant has cooperated in a timely manner with the department in cleaning up the discharge. [1995, c. 361, §4 (AMD).]

B. [1995, c. 361, §4 (RP).]

B-1. An applicant is not eligible for coverage for any discharge discovered on or before April 1, 1990. [1995, c. 361, §4 (NEW).]

B-2. An applicant is not eligible for coverage for any discharge discovered or reported to the commissioner after October 1, 1998 if the discharge is from an underground oil storage facility or tank that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department or from an aboveground oil storage facility that has underground piping that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department. This exclusion from coverage does not apply to a discharge from an aboveground oil storage facility if the facility is used exclusively to store home heating oil, consists of tanks with a capacity of 660 gallons or less and has an aggregate tank capacity of 1,320 gallons or less.

[2011, c. 206, §16 (AMD).]

C. An applicant is not eligible for coverage for any discharge from a facility owned or operated by the Federal Government. [1995, c. 361, §4 (AMD).]

D. In any one calendar year, an applicant may only apply for coverage of clean-up costs and 3rd-party damage claims that total less than $2,000,000 aggregate per facility owner. This limit includes claims made in subsequent years on those discharges. [1991, c. 494, §11 (AMD).]

E. An applicant is not eligible for coverage under this section if the applicant has any one or combination of the following relationships with an entity that owns or operates an oil refinery:

(1) Is owned directly by or directly owns that entity;

(2) Is a franchisee of that entity;

(3) Is a member of a partnership or limited partnership that includes that entity;

(4) Is a subsidiary of that entity; or

(5) Is a parent corporation of that entity.

An applicant is not subject to this exclusion from coverage for discharges discovered after September 30, 2001 or if its sole relationship with the entity is a contractual agreement to purchase oil from the entity exclusively for retail sale or for the applicant's consumption. [2001, c. 216, §1 (AMD).]

F. Within 15 working days of receipt of a request under paragraph A, the commissioner in the case of an underground oil storage facility or the State Fire Marshal in the case of an aboveground oil storage facility shall determine whether the request is complete. Failure to inform the applicant of the determination of completeness within 15 working days constitutes acceptance as complete. If the application is not accepted, the commissioner or State Fire Marshal shall return the application to the applicant with the reasons for nonacceptance specified in writing. [2009, c. 319, §9 (AMD).]

F-1. Within 90 days of receipt of an applicant's completed request for coverage by the fund submitted pursuant to this subsection, the commissioner or State Fire Marshal shall issue an order determining eligibility and, if the applicant is eligible, specifying the amount of the deductible under subsection 2. Failure to issue an order within this period constitutes a determination that the applicant is eligible, subject to the deductibles in subsection 2, paragraph A. An order issued under this paragraph may be conditioned on any reasonable terms determined necessary by the commissioner or State Fire Marshal to

prevent or limit human exposure to contamination from the discharge, including a requirement that the applicant impose restrictions by deed covenant or other means on the use of the real property where the discharge occurred. [2009, c. 319, §10 (NEW).]

G. When the commissioner determines that a site previously remediated to the commissioner's satisfaction requires further remediation, the owner or operator of the site may apply for coverage of eligible clean-up costs and 3rd-party damage claims from the fund, notwithstanding the person's failure to meet the 180-day deadline described in paragraph A. [1995, c. 361, §4 (NEW).]

H. The Fund Insurance Review Board shall develop, in consultation with the State Fire Marshal, the documentation requirements for claims submitted under this section by owners of aboveground oil storage facilities. [1995, c. 361, §4 (NEW).]

I. An applicant is not eligible for coverage of costs recovered by settlement with or judgment against another responsible party, the responsible party's representative or the applicant's insurer. Applicants who recover costs by such a settlement or judgment shall reimburse the fund to the extent the amount recovered duplicates payments from the fund. [1999, c. 278, §1 (NEW).]

J. An applicant is not eligible for coverage for any underground oil storage facility installed in violation of the provisions of chapter 13-D. [2007, c. 569, §4 (AMD).]

K. An applicant whose facility is subject to the provisions of chapter 13-D is not eligible for coverage for costs related to providing treatment or temporary or permanent water supply replacement and 3rd-party damage claim costs related to an oil discharge at a facility installed after September 30, 2001 and affecting that property's drinking water supply system. [2007, c. 569, §5 (AMD).]

L. An applicant is not eligible for coverage under this section if the applicant is a motor carrier under the Motor Carrier Act, 49 United States Code, Section 31139 and the discharge for which coverage is sought occurred during the offloading or onloading of oil from or to a motor vehicle used to transport oil. [2009, c. 319, §11 (NEW).]

[2011, c. 206, §16 (AMD) .]

2. **Deductibles.** Except as provided in subsection 2-A, applicants eligible for coverage by the fund under subsection 1 shall pay on a per occurrence basis the applicable standard deductible amount specified in paragraph A. In addition to the applicable standard deductible amount required under paragraph A, the applicant shall pay on a per occurrence basis one or more of the conditional deductible amounts specified in paragraphs B and C to the extent applicable.

A. Standard deductibles are calculated under this paragraph based on the number of underground storage facilities or the capacity of gallons owned by the aboveground storage facility owner at the time the covered discharge is discovered. Standard deductibles are as follows.

(1) For expenses related to a leaking underground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Number of underground storage facilities owned by the facility owner	Deductible
1	$2,500
2 to 5	5,000
6 to 10	10,000
11 to 20	25,000
21 to 30	40,000
over 30	62,500

(2) For expenses related to a leaking aboveground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Total aboveground oil storage capacity in gallons owned by the facility owner	Deductible
Less than 1,320	$500
1,321 to 50,000	2,500
50,001 to 250,000	5,000
250,001 to 500,000	10,000
500,001 to 1,000,000	25,000
1,000,001 to 1,500,000	40,000
greater than 1,500,000	62,500

(3) For facilities with both aboveground and underground tanks when the source of the discharge can not be determined or when the discharge is from both types of tanks, the standard deductible is the applicable amount under subparagraph (1) or (2), whichever is greater. [2001, c. 216, §2 (AMD).]

B. Conditional deductibles for underground facilities and tanks are as follows.

(1) For nonconforming facilities and tanks, the deductible is $10,000 for failure to meet the compliance schedule in section 563-A, except that those facilities or tanks required to be removed by October 1, 1989 have until October 1, 1990 to be removed before they are considered out of compliance.

(2) For failure to pay registration fees under section 563, subsection 4, the deductible is the total of all past due fees.

(3) For motor fuel storage and marketing and retail facilities, the deductibles are:

(a) Five thousand dollars for failure to comply with applicable design and installation requirements in effect at the time of the installation or retrofitting requirements for leak detection pursuant to section 564, subsections 1 and 1-A;

(b) Five thousand dollars for failure to comply with section 564, subsection 1-B and any rules adopted pursuant to that subsection;

(c) Five thousand dollars for failure to comply with section 564, subsection 2-A, paragraphs B to F and I, and any rules adopted pursuant to that subsection; and

(d) Ten thousand dollars for failure to comply with section 564, subsection 2-A, paragraph H, and any rules adopted pursuant to that subsection.

(4) For consumptive use heating oil facilities with an aggregate storage capacity of less than 2,000 gallons, the deductibles are:

(a) Two thousand dollars for failure to comply with section 565, subsection 1, if applicable;

(b) Two thousand dollars for failure to comply with section 565, subsection 2, regarding monitoring; and

(c) Two thousand dollars for failure to comply with section 565, subsection 2, regarding any requirement to report evidence of a possible leak or discharge.

(5) For consumptive use heating oil facilities with an aggregate storage capacity of 2,000 gallons or greater, the deductibles are:

(a) Five thousand dollars for failure to comply with section 565, subsection 1, if applicable;

(b) Five thousand dollars for failure to comply with section 565, subsection 2, regarding monitoring; and

(c) Ten thousand dollars for failure to comply with section 565, subsection 2, regarding any requirement to report evidence of a possible leak or discharge.

(6) For waste oil and heavy oil and airport hydrant facilities with discharges that are not contaminated with hazardous constituents, the deductibles for failure to comply with rules adopted by the board are:

(a) Five thousand dollars for rules regarding design and installation requirements in effect at the time of the installation;

(b) Five thousand dollars for rules regarding retrofitting of leak detection and corrosion protection, if applicable;

(c) Five thousand dollars for rules regarding overfill and spill prevention;

(d) Five thousand dollars for rules regarding the monitoring of cathodic protection systems;

(e) Five thousand dollars for rules regarding testing requirements for tanks and piping on evidence of a leak;

(f) Five thousand dollars for rules regarding maintenance of a leak detection system; and

(g) Ten thousand dollars for rules regarding the reporting of leaks. [1995, c. 361, §5 (NEW).]

C. Conditional deductibles for aboveground facilities and tanks are as follows.

(1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal pursuant to 16-219 CMR, chapter 34, the deductibles are:

(a) Five thousand dollars for failure to obtain a construction permit from the Office of the State Fire Marshal, when required under Title 25, chapter 318 and 16-219 CMR, chapter 34 or under prior applicable law;

(b) Five thousand dollars for failure to design and install piping in accordance with section 570-K and rules adopted by the department;

(c) Five thousand dollars for failure to comply with an existing consent decree, court order or outstanding deficiency statement regarding violations at the aboveground facility;

(d) Five thousand dollars for failure to implement a certified spill prevention control and countermeasure plan, if required;

(e) Five thousand dollars for failure to install any required spill control measures, such as dikes;

(f) Five thousand dollars for failure to install any required overfill equipment;

(g) Five thousand dollars if the tank is not approved for aboveground use; and

(h) Ten thousand dollars for failure to report any leaks at the facility.

(2) For aboveground tanks subject to the jurisdiction of the Maine Fuel Board, the deductibles are:

(a) One hundred and fifty dollars for failure to install the facility in accordance with rules adopted by the Maine Fuel Board and in effect at the time of installation;

(b) Two hundred and fifty dollars for failure to comply with the rules of the Maine Fuel Board;

(c) Two hundred and fifty dollars for failure to make a good faith effort to properly maintain the facility; and

(d) Five hundred dollars for failure to notify the department of a spill. [2013, c. 300, §11 (AMD).]

The commissioner shall make written findings of fact when making a determination of deductible amounts under this subsection. The commissioner's findings may be appealed to the Fund Insurance Review Board, as provided in section 568-B, subsection 2-C. On appeal, the burden of proof is on the commissioner as to which deductibles apply.

After determining the deductible amount to be paid by the applicant, the commissioner shall pay from the fund any additional eligible clean-up costs and 3rd-party damage claims up to $1,000,000 associated with activities under section 569-A, subsection 8, paragraphs B, D and J. The commissioner shall pay the expenses directly, unless the applicant chooses to pay the expenses and seek reimbursement from the fund. The commissioner may pay from the fund any eligible costs above $1,000,000, but the commissioner shall recover these expenditures from the responsible party pursuant to section 569-A.

An applicant found ineligible for fund coverage for failure to achieve substantial compliance under former subsection 1, paragraph B or failure to apply within 180 days of reporting the discharge may, on or before July 1, 1996, make a new application for fund coverage of any discharge discovered after April 1, 1990, if the applicant agrees to pay all applicable deductible amounts in this subsection and the commissioner waives the 180-day filing requirement pursuant to subsection 1.

[2013, c. 300, §11 (AMD) .]

2-A. **Limit on deductible.** The applicant shall pay the total deductible amount or the total eligible clean-up costs and 3rd-party damages, whichever is less.

[1995, c. 361, §6 (RPR) .]

2-B. **Failure to pay deductibles.** An order issued under subsection 1, paragraph F-1 may be conditioned on payment of the applicable deductibles. If an applicant fails to pay the deductible amounts as determined under subsection 2 within 180 days of receipt of a bill from the department or within 180 days of a decision by the review board or an appellate court upholding the determination, whichever is later, the commissioner may seek reimbursement from the applicant or any other responsible party of all costs incurred by the State in the removal, abatement and remediation of the discharge for which coverage was sought.

[2011, c. 206, §17 (NEW) .]

3. **Exemptions from deductible.** The commissioner may waive the deductible requirement for an applicant's personal residence if the commissioner determines that the applicant does not have the financial resources to pay the deductible. The board shall adopt rules to determine the standards to be used to assess an applicant's ability to pay this deductible.

[1989, c. 865, §15 (NEW); 1989, c. 865, §§24, 25 (AFF) .]

3-A. **Appeals to review board.**

[2011, c. 243, §2 (RP) .]

4. **Agreements.** Any payments to or on behalf of applicants for clean-up activities undertaken by the applicant must be pursuant to a written agreement between the applicant and the commissioner. The agreement must include, but is not limited to:

A. A plan and schedule for remedial actions; [1989, c. 865, §15 (NEW); 1989, c. 865, §§24, 25 (AFF).]

B. A provision for enforcement of the agreement and sanctions for nonperformance; [1989, c. 865, §15 (NEW); 1989, c. 865, §§24, 25 (AFF).]

C. Provisions for cost accounting and reporting of costs incurred in remediation activities; and [1989, c. 865, §15 (NEW); 1989, c. 865, §§24, 25 (AFF).]

D. An agreement to clean up the site to the satisfaction of the commissioner. [1989, c. 865, §15 (NEW); 1989, c. 865, §§24, 25 (AFF).]

[1989, c. 865, §15 (NEW); 1989, c. 865, §§24, 25 (AFF) .]

5. **Uncompensated 3rd-party damage claims.**

[1993, c. 355, §15 (RP) .]

6. **Reimbursement of 3rd-party damages paid.** If a person claiming to have suffered property damage or actual economic damage directly or indirectly as a result of a discharge of oil to groundwater prohibited by section 543 files a claim for damages against the owner or operator of an underground or aboveground oil storage tank in a court of competent jurisdiction without simultaneously filing or previously having filed a 3rd-party damage claim pursuant to section 569-A, the owner or operator may file a claim with the commissioner to be reimbursed for damages paid or payable to that 3rd party under a settlement or judgment. Such a claim for reimbursement must be filed and processed as follows.

A. The claim for reimbursement must be filed with the commissioner. If the owner or operator has not previously filed an application for fund coverage pursuant to subsection 1, the person claiming reimbursement shall also make application. The application must comply with the requirements of subsection 1 and must be processed and judged by the standards set forth in that subsection except that it is not required to be filed within 180 days of reporting the discharge. [1993, c. 553, §1 (NEW); 1993, c. 553, §7 (AFF).]

B. If the person is eligible for fund coverage, the commissioner shall calculate the amount of reimbursement to the owner or operator by determining whether each amount claimed would be eligible for payment had the 3rd party applied directly to the fund. Eligible amounts, minus any deductible that has not previously been met by the owner or operator, must be paid to that owner or operator. [1993, c. 553, §1 (NEW); 1993, c. 553, §7 (AFF).]

C. Appeals of decisions made under this subsection may be made to the Fund Insurance Review Board. [1993, c. 553, §1 (NEW); 1993, c. 553, §7 (AFF).]

[1993, c. 553, §1 (NEW); 1993, c. 553, §7 (AFF) .]

7. **Repeal date.** This section is repealed December 31, 2015.

[2009, c. 319, §12 (AMD) .]

SECTION HISTORY
1989, c. 865, §§15,24,25 (NEW). 1991, c. 433, §3 (AMD). 1991, c. 433, §7 (AFF). 1991, c. 494, §§10-12 (AMD). 1991, c. 817, §§23,24 (AMD). 1993, c. 355, §15 (AMD). 1993, c. 363, §§8-11 (AMD). 1993, c. 363, §21 (AFF). 1993, c. 553, §1 (AMD). 1993, c. 553, §7 (AFF). 1993, c. 732, §§A4,5 (AMD). 1995, c. 361, §§4-7 (AMD). 1997, c. 374, §§4,5 (AMD). 1997, c. 374, §14 (AFF). 1999, c. 278, §1 (AMD). 1999, c. 504, §11 (AMD). 1999, c. 531, §A1 (AMD). 1999, c. 531, §A2 (AFF). 1999, c. 652, §11 (AMD). 2001, c. 216, §§1,2 (AMD). 2001, c. 302, §2 (AMD). 2003, c. 245, §10 (AMD). 2005, c. 330, §21 (AMD). 2007, c. 569, §§4, 5 (AMD). 2009, c. 319, §§9-12 (AMD). 2009, c. 501, §9 (AMD). 2011, c. 206, §§16, 17 (AMD). 2011, c. 243, §§1, 2 (AMD). 2013, c. 300, §11 (AMD).

§568-B. FUND INSURANCE REVIEW BOARD CREATED

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15)

1. **Fund Insurance Review Board.** The Fund Insurance Review Board, as established by Title 5, section 12004-G, subsection 11-A, is created to hear and decide appeals from insurance claims-related decisions under section 568-A and monitor income and disbursements from the Ground Water Oil Clean-up Fund under section 569-A. The review board consists of 10 members appointed for 3-year terms as follows:

A. Two persons representing the petroleum industry, appointed by the Governor, one of whom is a representative of a statewide association of energy dealers; [2011, c. 243, §3 (AMD).]

A-1. Two persons, appointed by the Governor, who have expertise in oil storage facility design and installation, oil spill remediation or environmental engineering; [2011, c. 243, §3 (NEW).]

B. Four members of the public , appointed by the Governor, 2 of whom have expertise in biological science, earth science, engineering, insurance or law. The 4 members may not be employed in or have a direct and substantial financial interest in the petroleum industry ; [2011, c. 243, §3 (AMD).]

C. The commissioner or the commissioner's designee; and [1993, c. 363, §12 (NEW); 1993, c. 363, §21 (AFF).]

D. The State Fire Marshal or the fire marshal's designee. [1993, c. 363, §12 (NEW); 1993, c. 363, §21 (AFF).]

Members described in paragraphs A, A-1 and B are entitled to reimbursement for direct expenses of attendance at meetings of the review board or the appeals panel.

[2011, c. 243, §3 (AMD) .]

2. **Powers and duties of review board.** The Fund Insurance Review Board has the following powers and duties:

A. To hear appeals from insurance claims-related decisions of the commissioner and the State Fire Marshal under section 568-A; [2011, c. 243, §3 (AMD).]

B. To adopt rules in accordance with Title 5, chapter 375, subchapter 2 and guidelines necessary for the furtherance of the review board's duties and responsibilities under this subchapter; [2011, c. 243, §3 (AMD).]

C. To contract with the department for such assistance in fulfilling the review board's duties as the review board may require; [2013, c. 22, §1 (AMD).]

D. To monitor income and disbursements from the Ground Water Oil Clean-up Fund under section 569-A and adjust fees pursuant to section 569-A, subsection 5, paragraph E, as required to avoid a shortfall in the fund; [2011, c. 243, §3 (AMD).]

E. To, at such times and in such amounts as it determines necessary, and in consultation with the department, direct the transfer of funds from the Underground Oil Storage Replacement Fund to the Ground Water Oil Clean-up Fund; and [2013, c. 22, §2 (AMD).]

F. To review department priorities for disbursements from the Ground Water Oil Clean-up Fund and make recommendations to the commissioner on how the fund should be allocated. [2011, c. 243, §3 (NEW).]

[2013, c. 22, §§1, 2 (AMD) .]

2-A. **Meetings.** The Fund Insurance Review Board shall meet 6 times per year unless the review board votes not to hold a meeting. Action may not be taken unless a quorum is present. A quorum is 6 members.

[2011, c. 243, §3 (NEW) .]

2-B. **Chair.** The review board shall annually choose a member to serve as chair of the review board.

[2011, c. 243, §3 (NEW) .]

2-C. **Appeals to review board.** An applicant aggrieved by an insurance claims-related decision under section 568-A, including but not limited to decisions on eligibility for coverage, eligibility of costs and waiver and amount of deductible, may appeal that decision to the Fund Insurance Review Board. The appeals panel is composed of the public members appointed under subsection 1, paragraph B. The appeals panel shall hear and decide the appeal. Except as provided in review board rules, the appeal must be filed within 30 days after the applicant receives the decision made under section 568-A. The appeals panel must hear an appeal at its next meeting following receipt of the appeal unless the appeal petition is received less than 30 days before the meeting or unless the appeals panel and the aggrieved applicant agree to meet at a different time. If the appeals panel overturns the decision made under section 568-A, reasonable costs, including reasonable attorney's fees, incurred by the aggrieved applicant in pursuing the appeal to the review board must be paid from the fund. Reasonable attorney's fees include only those fees incurred from the time of an insurance claims-related decision forward. Decisions of the appeals panel are subject to judicial review pursuant to Title 5, chapter 375, subchapter 7.

[2011, c. 243, §3 (NEW) .]

2-D. **Report; adequacy of fund.** On or before February 15th of each year, the Fund Insurance Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the department's and the review board's experience administering the Ground Water Oil Clean-up Fund, clean-up activities and 3rd-party damage claims. The report must include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report also must include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this subsection, the review board may order an independent audit of disbursements from the Ground Water Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund.

[2011, c. 243, §3 (NEW) .]

3. **Repeal date.** This section is repealed December 31, 2015.

[2009, c. 319, §13 (AMD) .]

SECTION HISTORY
1993, c. 363, §12 (NEW). 1993, c. 363, §21 (AFF). 1995, c. 399, §§6-8 (AMD). 1995, c. 399, §21 (AFF). 1999, c. 505, §§A9-11 (AMD). 2001, c. 356, §8 (AMD). 2003, c. 245, §11 (AMD). 2003, c. 551, §14 (AMD). 2009, c. 319, §13 (AMD). 2011, c. 211, §23 (AMD). 2011, c. 211, §27 (AFF). 2011, c. 243, §3 (AMD). 2011, c. 691, Pt. A, §41 (AMD). 2011, c. 691, Pt. A, §42 (AFF). 2013, c. 22, §§1, 2 (AMD).

§569. GROUND WATER OIL CLEAN-UP FUND

(REPEALED)

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1985, c. 626, §§9,10 (AMD). 1985, c. 746, §24 (AMD). 1987, c. 278, (AMD). 1987, c. 491, §§16-21 (AMD). 1987, c. 521, §11 (AMD). 1987, c. 769, §A177 (AMD). 1989, c. 502, §B60 (AMD). 1989, c. 543, §6 (AMD). 1989, c. 865, §§16,24,25 (AMD). 1989, c. 890, §§A40,B147- 150 (AMD). 1991, c. 66, §§A29-31,C1 (AMD). 1991, c. 433, §§4-6 (AMD). 1991, c. 433, §7 (AFF). 1991, c. 439, §6 (AMD). 1991, c. 494, §§13,14 (AMD). 1991, c. 817, §25 (RP). 1997, c. 374, §14 (AFF).

§569-A. GROUND WATER OIL CLEAN-UP FUND

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 38, §569-A, sub-§13)

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. The balance in the fund is limited to $12,500,000. 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 from aboveground and underground storage facilities, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1. The fund may be used only for the purposes specified in this subchapter and may not be diverted for any other use by the department, the Governor or the Legislature. Any person who proposes to enact or amend a law to allow use of the fund for a purpose not specified in this subchapter must submit the proposal to the Legislative Council and to the joint standing committee of the Legislature having jurisdiction over natural resource matters at least 30 days prior to any vote or public hearing on the proposal. An appropriation or allocation of the fund for use other than that specified in this subchapter is not authorized unless the required submittals have been made in a timely manner and the Legislature has approved the proposal by a 2/3 vote of each body. [1995, c. 399, §9 (AMD); 1995, c. 399, §21 (AFF).]

Borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund is not permitted after June 30, 1995. All funds borrowed prior to June 30, 1995 by the Ground Water Oil Clean-up Fund from the Maine Coastal and Inland Surface Oil Clean-up Fund must be repaid with interest to the fund of origin, in as prompt a manner as revenues allow and in no event more than 2 years after the date the funds were transferred, at a rate of interest determined by the Treasurer of State based on the average rate of interest earned on funds invested during the period of the loan. [1995, c. 399, §9 (AMD); 1995, c. 399, §21 (AFF).]

Money in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter and not on loan to the Maine Coastal and Inland Surface Oil Clean-up Fund must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest received on that investment must be credited to the fund. [1991, c. 817, §26 (NEW).]

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.

[1991, c. 817, §26 (NEW) .]

2. **Third-party damages.** Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses directly or indirectly as a result of a discharge of oil from an underground oil storage facility or an aboveground oil storage facility, in this subsection called the "claimant," may apply to the commissioner within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner, upon petition and for good cause shown, may waive the 2-year limitation for filing damage claims.

All 3rd-party damage claims for which no determination of award has been made must be processed in accordance with the substantive and procedural provisions of this section.

A. When a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the claims proceeding as an interested party. A responsible party shall provide written notification of intent to join to the department within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, any determination of the amount of the claim and award is binding in any subsequent action for reimbursements to the fund. If a claimant is not compensated for 3rd-party damages by the responsible party or the expenses are above the applicant's deductible and the claimant, the responsible party and the commissioner agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the fund. [1991, c. 817, §26 (NEW).]

B. If the claimant, the responsible party and the commissioner are not able to agree as to the amount of the damage claim, or if the responsible party does not join as an interested party in a timely manner or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 4. [1991, c. 817, §26 (NEW).]

C. A claimant shall take all reasonable measures to prevent and minimize damages suffered by the claimant as a result of a discharge of oil. Reasonable measures include title searches and site assessments for the acquisition of commercial or industrial properties. [1991, c. 817, §26 (NEW).]

D. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are waived unless the damage or injury was not known at the time of the claim. [1991, c. 817, §26 (NEW).]

E. Damage claim awards paid from the fund to a claimant may not include any amount the claimant has recovered on account of the same damage by way of settlement with the responsible party or the responsible party's representative or judgment of a court of competent jurisdiction against the person causing or otherwise responsible for the discharge. [1993, c. 553, §2 (AMD); 1993, c. 553, §7 (AFF).]

F. It is the intent of the Legislature that the remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive. A court awarding damages to a claimant as a result of a discharge of oil to ground water prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative. [1991, c. 817, §26 (NEW).]

G. Payments from the fund for 3rd-party damage claims may not exceed $200,000 per claimant. [1991, c. 817, §26 (NEW).]

H. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 568, subsection 2 that a public or private water supply is available and best meets the criteria of that subsection and the property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for the expenses of treatment or replacement of the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548. [1993, c. 621, §4 (AMD).]

I. A claimant is not eligible for compensation under this subsection for costs, expenses or damages related to a discharge if the commissioner determines that the claimant is a responsible party as defined under section 562-A, subsection 17. [2003, c. 551, §15 (AMD).]

J. Prior to forwarding a claim to the hearing examiner under subsection 4, the commissioner may require that the amount of the claim be finalized. [1991, c. 817, §26 (NEW).]

K. Third-party damage claims may not include expenditures for the preparation and prosecution of the damage claim such as legal fees or real estate appraisal fees. [1991, c. 817, §26 (NEW).]

L. The commissioner may dismiss a 3rd-party damage claim for untimely filing, for failure by the claimant to provide the information necessary to process the claim within 60 days after the claimant receives written notice that the claim is insufficient for processing or for ineligibility as determined by the commissioner under paragraph I. A dismissal may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2003, c. 551, §16 (NEW).]

[2009, c. 121, §14 (AMD) .]

3. **Claimant contact.** When the commissioner becomes aware of a claimant under subsection 2, the commissioner shall send a letter by certified mail to inform that person of the 3rd-party damage claims process under subsection 2. The letter must contain the name and telephone number of a contact person available to explain the claims procedure.

[1991, c. 817, §26 (NEW) .]

4. **Determination of disputed 3rd-party damage claims.** The commissioner shall establish a disputed claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. The parties to the hearing are the commissioner and the claimant. [1991, c. 817, §26 (NEW).]

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner. [1991, c. 817, §26 (NEW).]

C. Hearings before the hearing examiner are informal and the rules of evidence prevailing on judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination. [1991, c. 817, §26 (NEW).]

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. A party seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination. Determinations made by the hearing examiner must be accorded a presumption of regularity and validity in a subsequent reimbursement action, but this presumption may be rebutted by responsible parties who do not become interested parties. [1993, c. 355, §18 (AMD).]

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State. [1991, c. 817, §26 (NEW).]

[1993, c. 355, §18 (AMD) .]

5. **Funding.** Funding for the Ground Water Oil Clean-up Fund is as follows.

A. A fee is assessed of 38¢ per barrel of gasoline; 19¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel; and 4¢ per barrel of #6 fuel oil. The fee is assessed on the first transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7, and on a person required to register with the commissioner under section 545-B who first transports oil into the State. The fee is not assessed on petroleum products that are exported from this State. These fees must be paid monthly on the basis of records certified to the commissioner. This subsection does not apply to waste oil transported into the State in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I. [2003, c. 245, §12 (AMD).]

B. [1993, c. 553, §8 (AFF); 1993, c. 553, §4 (RP).]

C. The owner or operator of an underground oil storage facility that stores motor fuel or is used in the marketing and distribution of oil shall pay an annual fee of $130 per tank not constructed of fiberglass, cathodically protected steel or other noncorrosive material. [1993, c. 355, §19 (AMD).]

D. When the fund balance reaches $12,500,000, the collection of fees under paragraph A abates. When the commissioner projects that the fund balance will reach $12,500,000, the commissioner must provide a 15-day advance notice of the abatement to persons assessed the fee under paragraph A. The $12,500,000 fund limit may be exceeded to accept transfer fees assessed or received after the 15-day notice has been issued. When the fund balance is reduced to $10,000,000, the fees assessed under paragraph A are reimposed. The commissioner shall provide a 15-day advance notice of the reimposition of those fees. [1995, c. 399, §10 (AMD); 1995, c. 399, §21 (AFF).]

E. If the fund balance is reduced to $5,000,000 or less, the Fund Insurance Review Board may adopt rules increasing the fees imposed under paragraph A by up to 20¢ per barrel for gasoline and up to 10¢ per barrel for other petroleum products, except liquid asphalt and #6 fuel oil, as necessary to avoid a shortfall in the fund. The board may use the emergency rule-making procedures under Title 5, section 8054 if necessary to ensure that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted pursuant to this paragraph terminates and the fees imposed under paragraph A apply when the fund balance reaches $7,000,000. [2001, c. 216, §3 (AMD).]

[2003, c. 245, §12 (AMD) .]

5-A. **Penalty for late payment of fees.** Fees assessed under subsection 5, paragraph A are due to the department on or before the last day of the month immediately following the month in which the oil was transferred or first transported in Maine. Licensees or registrants who fail to pay the fee by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 5. The department may waive the penalty for good cause shown by the licensee or registrant. Good cause may include, without limitation, events that may not be reasonably anticipated or events that were not under the control of the licensee or registrant.

[2001, c. 212, §3 (AMD) .]

6. **Allocation from Ground Water Oil Clean-up Fund.**

[1999, c. 505, Pt. A, §13 (RP) .]

7. **Reimbursement for fees imposed on transfers out of State.** Any person who paid a fee under subsection 5, paragraph A on petroleum products that were exported from this State must be reimbursed by the department upon presentation of documentation of that payment and transfer.

[1997, c. 624, §4 (AMD) .]

8. **Disbursements from fund.** Money in the Ground Water Oil Clean-up Fund must be disbursed for the following purposes and no others:

A. Administrative expenses, personal services and equipment costs of the department related to the administration and enforcement of this subchapter, except that total disbursements for personal services may not exceed $4,500,000 per fiscal year adjusted annually based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics; [2013, c. 300, §12 (AMD).]

A-1. Repayment of loans made to the Ground Water Oil Clean-up Fund from the Maine Coastal and Inland Surface Oil Clean-up Fund; [1997, c. 364, §33 (NEW).]

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures, including restoration of water supplies, related to the discharge of oil from an oil storage facility not paid by a responsible party or an applicant for coverage by the fund; [2009, c. 501, §10 (AMD).]

C. Sums allocated to research and development in accordance with this section, except that money may not be disbursed for this purpose when the fund balance is $3,000,000 or less; [1995, c. 399, §14 (AMD); 1995, c. 399, §21 (AFF).]

D. Payment of the 3rd-party damage claims awarded in accordance with this section that are not paid by the responsible party or applicant for coverage by the fund and payment of 3rd-party damage claims that are paid to owners or operators pursuant to section 568-A, subsection 6; [1993, c. 553, §6 (AMD); 1993, c. 553, §7 (AFF).]

E. Payment of costs of hearings, independent hearing examiners and independent claims adjusters for 3rd-party damage claims; [1991, c. 817, §26 (NEW).]

F. [1993, c. 355, §21 (RP).]

G. Payment of costs of insurance by the State to extend or implement the benefits of the fund; [1991, c. 817, §26 (NEW).]

H. Sums up to $50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 570-A for payment of costs for studies of the environmental impacts of discharges to ground water prohibited by section 543 that may have adverse economic effects and that occur subsequent to the allocation, when the studies are considered necessary by the commissioner; [1991, c. 817, §26 (NEW).]

I. All costs associated with the Board of Underground Oil Storage Tank Installers; [1993, c. 363, §13 (AMD); 1993, c. 363, §21 (AFF).]

J. Payments to or on behalf of applicants eligible for coverage by the fund under section 568-A, subsection 1 for expenses above the deductible specified in section 568-A, subsection 2 incurred in commissioner-approved clean-up activities and specified in an agreement under section 568-A, subsection 4; [1993, c. 363, §13 (AMD); 1993, c. 363, §21 (AFF).]

K. All costs associated with the Fund Insurance Review Board; [1997, c. 613, §2 (AMD).]

L. Costs incurred by the Office of the State Fire Marshal to implement the duties assigned to the State Fire Marshal in this chapter; [1997, c. 613, §2 (AMD).]

M. Sums up to $250,000 annually in fiscal years 1998-99 and 1999-2000 and up to $500,000 annually thereafter, to retrofit, repair or replace aboveground oil storage tanks or facilities when the commissioner determines that action necessary to abate an imminent threat to a groundwater restoration project,

a public water supply or a sensitive geologic area, including coastal islands and peninsulas. Money available under this paragraph may be disbursed by the department to pay reasonable costs actually incurred by municipalities in assisting the department in taking actions under this paragraph. Money available under this paragraph may also be used by the department to fund educational efforts that encourage the retrofit, repair or replacement of aboveground oil storage tanks or facilities. Money may not be disbursed from the fund for the purposes of this paragraph until the department has presented a plan for such disbursements to the Fund Insurance Review Board. Money may not be disbursed from the fund under this paragraph:

(1) After fiscal year 1999-2000 until the department has adopted a written policy establishing:

(a) Criteria for determining those instances when funds should be disbursed under this paragraph, including criteria for determining what constitutes a sensitive geologic area;

(b) Guidelines that ensure that money disbursed from the fund under this paragraph will be used in the most cost-effective manner, considering the likelihood of actual contamination of water supplies absent action taken pursuant to this paragraph, the costs of remediation of such contamination and the possibility that the owner of an aboveground oil storage tank or facility would retrofit, repair or replace the tank at the owner's own expense; and

(c) Guidelines for payments to municipalities for reasonable administrative costs actually incurred by municipalities in assisting the department in taking actions under this paragraph; and

(2) After February 2, 2003 until the department has adopted a written policy that:

(a) Establishes a means test for eligibility for disbursements from the fund;

(b) Establishes a deductible that is adjusted according to the financial means of the person receiving a disbursement; and

(c) Limits eligibility to residents of this State.

Prior to adopting any written policy pursuant to subparagraph (1) or (2), the department shall present for comment a draft policy to the Fund Insurance Review Board. The Fund Insurance Review Board shall provide to the department written comments on the draft policy; and [1999, c. 635, §1 (AMD).]

N. Sums up to $1,250,000 annually during the 2-year period commencing July 1, 1998 and ending June 30, 2000 and up to $2,000,000 annually thereafter to distribute to community action agencies as defined in Title 22, section 5321 for loans and grants to retrofit, repair or replace aboveground and underground oil storage tanks and associated piping at single-family residences. Money may not be disbursed from the fund for the purposes of this paragraph until the department has presented a plan for such disbursements to the Fund Insurance Review Board. A community action agency shall administer the funds in accordance with program operating standards, including the allocation formula established by the Maine State Housing Authority for its weatherization program. Sums available under this paragraph may be disbursed by the department to pay reasonable costs actually incurred by a community action agency in providing services pursuant to this paragraph. Money may not be disbursed from the fund under this paragraph after June 30, 2000 until the department has adopted a written policy establishing guidelines for payments to community action agencies for reasonable administrative costs actually incurred by community action agencies in providing services pursuant to this paragraph. Prior to adopting any written policy pursuant to this paragraph, the department shall present for comment a draft policy to the Fund Insurance Review Board. The Fund Insurance Review Board shall provide to the department written comments on the draft policy. [1999, c. 635, §2 (AMD).]

[2013, c. 300, §12 (AMD) .]

9. **Reporting mechanism.** If the potential liabilities of the fund exceed projected income for the fund, the commissioner shall notify the Fund Insurance Review Board within 30 days of determining that a shortfall will occur and submit recommendations for revising coverage of the fund or generating the needed income.

[1995, c. 399, §15 (AMD); 1995, c. 399, §21 (AFF) .]

10. **Reimbursements to fund.** The commissioner shall seek recovery for the use of the fund of all sums greater than $1,000,000 per occurrence expended from the fund pursuant to subsection 8, paragraph J for an applicant for coverage by the fund found by the commissioner to be eligible under section 568-A, subsection 1 and all sums expended from the fund when no applicant was found by the commissioner to be eligible under section 568-A, subsection 1, including overdrafts, for the purposes described in subsection 8, paragraphs B, D, E, H and J or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount involved too small or the likelihood of success too uncertain. If a request for reimbursement to the fund is not paid within 30 days of demand, the commissioner shall refer the request to the Attorney General or to a collection agency, agent or attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191 for collection.

[1991, c. 817, §26 (NEW) .]

10-A. **Lien.** All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil from an oil storage facility and all costs incurred by the State in the abandonment of an underground oil storage facility or tank under section 566-A, subsection 4 and interest are a lien against the real estate of the responsible party. For a responsible party determined eligible for coverage under section 568-A, subsection 1, the lien is for the amount of any unpaid deductible assigned under section 568-A, subsection 2 and any eligible clean-up costs and 3rd-party damage claims above $1,000,000.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

[2009, c. 501, §11 (AMD) .]

11. **Waiver of reimbursement.** Upon petition of any responsible party, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of either of the following:

A. An act of war; or [1991, c. 817, §26 (NEW).]

B. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency. [1991, c. 817, §26 (NEW).]

Upon such a finding by the board, immediate credit must be entered for the party involved. The findings of the board are conclusive, as it is the legislative intent that the waiver provided in this subsection is a privilege conferred, not a right granted.

[1991, c. 817, §26 (NEW) .]

12. **Extinguishing the 3rd-party commercial risk pool account.**

[1993, c. 355, §22 (RP) .]

13. **Repeal date.** This section is repealed December 31, 2015.

[2009, c. 319, §14 (AMD) .]

SECTION HISTORY
1991, c. 817, §26 (NEW). 1993, c. 355, §§16-22 (AMD). 1993, c. 363, §§13,14 (AMD). 1993, c. 363, §21 (AFF). 1993, c. 410, §H1 (AMD). 1993, c. 412, §§5,6 (AMD). 1993, c. 553, §§2-6 (AMD). 1993, c. 553, §§7,8 (AFF). 1993, c. 621, §4 (AMD). 1993, c. 680, §A36 (AMD). 1995, c. 399, §§9-15 (AMD). 1995, c. 399, §21 (AFF). 1997, c. 364, §§32-34 (AMD). 1997, c. 374, §§6,7 (AMD). 1997, c. 613, §§2,3 (AMD). 1997, c. 624, §4 (AMD). 1999, c. 278, §§2,3 (AMD). 1999, c. 334, §§3,4 (AMD). 1999, c. 505, §§A12,13 (AMD). 1999, c. 635, §§1,2 (AMD). 2001, c. 212, §3 (AMD). 2001, c. 216, §3 (AMD). 2001, c. 605, §1 (AMD). 2003, c. 245, §§12,13 (AMD). 2003, c. 551, §§15,16 (AMD). 2005, c. 157, §1 (AMD). 2005, c. 330, §23 (AMD). 2009, c. 121, §14 (AMD). 2009, c. 319, §14 (AMD). 2009, c. 501, §§10, 11 (AMD). 2013, c. 300, §12 (AMD).

§569-B. GROUND WATER OIL CLEAN-UP FUND

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 12/31/15)

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 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 from aboveground and underground storage facilities, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1. [1995, c. 399, §16 (AMD); 1995, c. 399, §21 (AFF).]

Money in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter and not on loan to the Maine Coastal and Inland Surface Oil Clean-up Fund must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest received on that investment must be credited to the fund. [1991, c. 817, §26 (NEW).]

1. **Research and development.** The Legislature may allocate not more than $100,000 per year of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on ground waters of the State. These allocations must be made in accordance with section 570-A.

[1991, c. 817, §26 (NEW) .]

2. **Third-party damages.** Any person claiming to have suffered actual damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the "claimant," may apply to the commissioner within 6 months after the occurrence or discovery of the discharge stating the amount of damage alleged to have been

suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The board, upon petition and for good cause shown, may waive the 6-month limitation for filing damage claims.

A. If the claimant and the commissioner are able to agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the Ground Water Oil Clean-up Fund. [1991, c. 817, §26 (NEW).]

B. If the claimant and the commissioner are not able to agree as to the amount of the damage claim, the commissioner shall forthwith transmit the claim for action to the department as provided in this subchapter. [1991, c. 817, §26 (NEW).]

C. A claimant shall take all reasonable measures to minimize damages suffered by the claimant as a result of a discharge of oil. [1991, c. 817, §26 (NEW).]

D. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are deemed waived. [1991, c. 817, §26 (NEW).]

E. Damage claims arising under this subchapter are recoverable only in the manner provided under this subchapter. It is the intent of the Legislature that the remedies provided for such damage claims in this subchapter are exclusive. [1991, c. 817, §26 (NEW).]

F. Awards from the fund on damage claims may not include any amount that the claimant has recovered on account of the same damage by way of settlement with or judgment of a court of competent jurisdiction against the person causing or otherwise responsible for the discharge. [1991, c. 817, §26 (NEW).]

G. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 568, subsection 2 that a public or private water supply is available and best meets the criteria of that subsection and the property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for expenses incurred in treating or replacing the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548. [1993, c. 621, §5 (NEW).]

[1993, c. 621, §5 (AMD) .]

3. **Determination of disputed 3rd-party damage claims.** The commissioner shall establish a claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. [1991, c. 817, §26 (NEW).]

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner. [1991, c. 817, §26 (NEW).]

C. Hearings before the hearing examiner are informal and the rules of evidence prevailing on judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination. [1991, c. 817, §26 (NEW).]

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. A claimant seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination. [1991, c. 817, §26 (NEW).]

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State, unless the commissioner has determined that the claimant is a responsible party, in which case the commissioner shall withhold certification until all claims that the commissioner has against the responsible party with respect to the discharge have been satisfied. [1991, c. 817, §26 (NEW).]

[1991, c. 817, §26 (NEW) .]

4. **Funding.** A fee of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by-products other than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, is assessed on the transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7. These fees must be paid monthly by the oil terminal facility licensees on the basis of records certified to the commissioner and credited to the Ground Water Oil Clean-up Fund upon receipt by the department.

A. [1997, c. 374, §8 (RP).]

B. [1997, c. 374, §8 (RP).]

If the fund balance is reduced to $3,000,000 or less, the Fund Insurance Review Board may adopt rules increasing the fees imposed under this subsection by up to 10¢ per barrel for gasoline and up to 5¢ per barrel for other petroleum products, except liquid asphalt and #6 fuel oil, as necessary to avoid a shortfall in the fund. The board may use the emergency rule-making procedures under Title 5, section 8054 to ensure that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted pursuant to board rules terminates and the original fees imposed by this subsection apply when the fund balance reaches $5,000,000.

[1997, c. 374, §8 (AMD) .]

4-A. **Penalty for late payment of fees.** Fees assessed under subsection 4 are due to the department on or before the last day of the month immediately following the month in which the oil was transferred. Licensees who fail to pay the fee by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 4.

[1999, c. 334, §5 (NEW) .]

5. **Disbursements from fund.** Money in the Ground Water Oil Clean-up Fund must be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the department related to the enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Clean-up Fund made pursuant to this section; [1991, c. 817, §26 (NEW).]

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures, including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products from an oil storage facility; [2009, c. 501, §12 (AMD).]

C. Sums allocated to research and development in accordance with this section, except that money may not be disbursed for this purpose when the fund balance is $3,000,000 or less; [1995, c. 399, §19 (AMD); 1995, c. 399, §21 (AFF).]

D. Payment of the 3rd-party damage claims awarded in accordance with this section; [1991, c. 817, §26 (NEW).]

E. Payment of costs of arbitration and arbitrators; [1991, c. 817, §26 (NEW).]

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund; [1991, c. 817, §26 (NEW).]

G. Sums up to $50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 570-A for payment of costs for studies of the environmental impacts of discharges to ground water prohibited by section 543 that may have adverse economic effects and that occur subsequent to the allocation, when the studies are considered necessary by the commissioner; and [1991, c. 817, §26 (NEW).]

H. All costs associated with the Board of Underground Oil Storage Tank Installers. [1991, c. 817, §26 (NEW).]

[2009, c. 501, §12 (AMD) .]

6. **Reimbursements to fund.** The commissioner shall seek recovery for the use of the fund of all sums expended from the fund, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E and G, or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount involved too small or the likelihood of success too uncertain. Requests for reimbursement to the fund if not paid within 30 days of demand must be turned over to the Attorney General for collection.

[1991, c. 817, §26 (NEW) .]

6-A. **Lien.** All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil from an aboveground or underground storage facility and all costs incurred by the State in the abandonment of any underground oil storage facility or tank under section 566-A, subsection 4 are a lien against the real estate of the responsible party.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

[1999, c. 334, §6 (AMD) .]

7. **Waiver of reimbursement.** Upon petition of any responsible party, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

A. An act of war; [1991, c. 817, §26 (NEW).]

B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 568; or [1991, c. 817, §26 (NEW).]

C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency. [1991, c. 817, §26 (NEW).]

Upon such a finding by the board, immediate credit must be entered for the party involved. The findings of the board are conclusive, as it is the legislative intent that the waiver provided in this subsection is a privilege conferred, not a right granted.

[1991, c. 817, §26 (NEW) .]

8. **Effective date.** This section takes effect December 31, 2015.

[2009, c. 319, §15 (AMD) .]

SECTION HISTORY
1991, c. 817, §26 (NEW). 1993, c. 621, §5 (AMD). 1995, c. 399, §§16-19 (AMD). 1995, c. 399, §21 (AFF). 1997, c. 364, §35 (AMD). 1997, c. 374, §§8,9 (AMD). 1999, c. 334, §§5,6 (AMD). 2003, c. 245, §14 (AMD). 2009, c. 319, §15 (AMD). 2009, c. 501, §12 (AMD).

§569-C. LIMITED EXEMPTION FROM LIABILITY FOR STATE OR LOCAL GOVERNMENTAL ENTITIES

1. **Limited exemption from liability.** Liability under section 570 does not apply to the State or any political subdivision that acquired ownership or control of an oil storage facility through tax delinquency proceedings pursuant to Title 36, or through any similar statutorily created procedure for the collection of governmental taxes, assessments, expenses or charges, or involuntarily through abandonment, or in circumstances in which the State or political subdivision involuntarily acquired ownership or control by virtue of its function as a sovereign. The exemption from liability provided under this subsection does not apply if:

A. The State or political subdivision causes, contributes to or exacerbates a discharge or threat of discharge from the facility; or [2011, c. 206, §18 (NEW).]

B. After acquiring ownership of the facility and upon obtaining knowledge of a release or threat of release, the State or political subdivision does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a discharge or threat of discharge;

(2) Provide reasonable access to the department and its authorized representatives so that necessary response actions may be conducted; and

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment. [2011, c. 206, §18 (NEW).]

[2011, c. 206, §18 (NEW) .]

2. **Reimbursement for department expenses.** Notwithstanding the exemption from liability provided in subsection 1, the State or any political subdivision that acquires or has acquired ownership of property that encompasses an oil storage facility pursuant to any of the proceedings referred to in subsection 1 is liable for

any costs incurred by the department pursuant to this chapter during the period in which the State or political subdivision had ownership of the property, up to the amount of the proceeds from the sale or disposition of the property minus any unpaid taxes on the property and the out-of-pocket costs of the sale or disposition.

[2011, c. 206, §18 (NEW) .]

SECTION HISTORY
2011, c. 206, §18 (NEW).

§570. LIABILITY

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-A, subsection 8, paragraphs B, D, E, H and J, or other damage incurred by the State, except for costs found by the commissioner to be eligible for coverage under section 568-A. The term "other damages," as used in this paragraph, includes interest computed at 15% a year from the date of expenditure and damage for injury to, destruction of, loss of or loss of use of natural resources, the reasonable costs of assessing natural resources damage and the costs of preparing and implementing a natural resources restoration plan. The commissioner shall demand reimbursement of costs and damages paid by the department from state or federal funds as provided under section 569-A, subsection 10 except for amounts that are eligible for coverage by the fund under this subchapter. Payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court or the department may file suit in District Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability. This paragraph is repealed December 31, 2015. [2009, c. 319, §22, 23 (AFF); 2009, c. 319, §16 (RPR).]

This paragraph takes effect December 31, 2015. The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-B, subsection 5, paragraphs B, D, E and G or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure, and damage for injury to, destruction of, loss of or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and payment of damages paid by the department from state or federal funds to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court or the department may file suit in District Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability. [2009, c. 319, §17 (NEW).]

In any suit filed under this section, the State need not prove negligence in any form or matter by a defendant. The State need only prove the fact of the prohibited discharge and that a defendant is a responsible party, as defined in section 562-A. [1993, c. 355, §23 (AMD).]

A person who would otherwise be a responsible party is not subject to liability under this section, if that person can establish by a preponderance of the evidence that the liability pursuant to this section for which that person would otherwise be responsible, was caused solely by: [1989, c. 865, §17 (AMD); 1989, c. 865, §24 (AFF).]

1. **Act of God.** An act of God; or

[1989, c. 865, §17 (AMD); 1989, c. 865, §24 (AFF) .]

2. **Act of war.** An act of war.

[1989, c. 865, §17 (AMD); 1989, c. 865, §24 (AFF) .]

3. **Act or omission.**

[1989, c. 865, §24 (AFF); 1989, c. 865, §17 (RP) .]

4. **Combination.**

[1989, c. 865, §24 (AFF); 1989, c. 865, §17 (RP) .]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1987, c. 491, §22 (AMD). 1987, c. 735, §72 (RPR). 1989, c. 865, §§17,24,25 (AMD). 1991, c. 817, §§27,29 (AMD). 1991, c. 817, §§28,30 (AFF). 1993, c. 355, §23 (AMD). 1997, c. 364, §36 (AMD). 1997, c. 374, §§14-16 (AFF). 1997, c. 624, §§5,6 (AMD). 1999, c. 278, §§4,5 (AMD). 2003, c. 245, §§20,21 (AFF). 2007, c. 292, §§35, 36 (AMD). 2009, c. 319, §§16, 17 (AMD). 2009, c. 319, §22, 23 (AFF).

§570-A. BUDGET APPROVAL

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15)

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 569-A, subsection 8, paragraphs A, C, G, H and I for each biennium. The budget must be submitted as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures from the fund as approved by the commissioner. Expenditures pursuant to section 569-A, subsection 8, paragraphs B, D, E and J may be made as authorized by the State Controller following approval by the commissioner. [1997, c. 424, Pt. B, §9 (AMD).]

This section is repealed December 31, 2015. [2009, c. 319, §18 (AMD).]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1989, c. 865, §§18,24,25 (AMD). 1989, c. 890, §§A40,B151 (AMD). 1991, c. 66, §A32 (RPR). 1991, c. 817, §31 (AMD). 1993, c. 355, §24 (AMD). 1997, c. 374, §10 (AMD). 1997, c. 374, §14 (AFF). 1997, c. 424, §B9 (AMD). 2003, c. 245, §15 (AMD). 2009, c. 319, §18 (AMD).

§570-B. PERSONNEL AND EQUIPMENT

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15)

The commissioner shall establish and maintain at appropriate locations employees and equipment necessary to carry out this subchapter. The commissioner, subject to the Civil Service Law, may employ personnel necessary to carry out the purposes of this subchapter and shall prescribe the duties of those employees. The salaries of those employees and the cost of that equipment must be paid from the Ground Water Oil Clean-up Fund established by this subchapter. [1991, c. 66, Pt. A, §33 (RPR).]

This section is repealed December 31, 2015. [2009, c. 319, §19 (AMD).]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1985, c. 785, §B179 (AMD). 1989, c. 865, §§19,24,25 (AMD). 1989, c. 890, §§A40,B152 (AMD). 1991, c. 66, §A33 (RPR). 1997, c. 374, §11 (AMD). 1997, c. 374, §14 (AFF). 2003, c. 245, §16 (AMD). 2009, c. 319, §19 (AMD).

§570-C. MUNICIPAL ORDINANCES; POWERS LIMITED

Nothing in this subchapter may be construed to deny any municipality, by ordinance or by law, the exercise of police powers under any general or special act, provided that ordinances and bylaws in furtherance of the intent of this subchapter and promoting the general welfare, public health and public safety are valid unless in direct conflict with this subchapter or any rule or order of the board or commissioner adopted under authority of this subchapter. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §153 (AMD).]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1989, c. 890, §§A40,B153 (AMD).

§570-D. TRANSITION

Damage claims filed with the department on or before the effective date of this Act which, after the enactment of this subchapter, would be controlled by the provisions of this subchapter may proceed either in the manner set forth herein or in the manner set forth in subchapter II-A, at the choice of the claimant. Reimbursement for any expenditures shall be credited to the fund from which the expenditures were made. [1985, c. 496, Pt. A, §14 (NEW).]

SECTION HISTORY
1985, c. 496, §A14 (NEW).

§570-E. LEGISLATIVE REVIEW

(REPEALED)

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1999, c. 334, §7 (AMD). 2011, c. 538, §12 (RP).

§570-F. SPECIAL PROVISIONS

This subchapter may not be construed to authorize the department to require registration of or to regulate the installation or operation of underground tanks used: [1991, c. 494, §15 (RPR).]

1. **Propane storage.** For the storage of propane; or

[1991, c. 494, §15 (NEW) .]

2. **Other structure.** As an oil-water separator, catch basin, flood drain or other emergency containment structure provided that the structure:

A. Is used to collect, capture or treat storm water surface runoff or oil spills; and [1991, c. 494, §15 (NEW).]

B. Is not used for the storage of oil. [1991, c. 494, §15 (NEW).]

[1991, c. 494, §15 (NEW) .]

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. [1989, c. 865, §20 (AMD); 1989, c. 865, §24 (AFF).]

SECTION HISTORY
1985, c. 496, §A14 (NEW). 1987, c. 491, §23 (AMD). 1989, c. 865, §§20,24,25 (AMD). 1989, c. 890, §§A40,B154 (AMD). 1991, c. 494, §15 (RPR). 1997, c. 374, §14 (AFF).

§570-G. CONSTRUCTION

This subchapter is necessary for the general welfare, public health and public safety of the State and its inhabitants and shall be liberally construed to effect the purposes set forth under this subchapter. No rule or order of the department may be stayed pending appeal under this subchapter. [1987, c. 787, §15 (AMD).]

SECTION HISTORY
1987, c. 491, §24 (NEW). 1987, c. 787, §15 (AMD).

§570-H. REPORT; ADEQUACY OF FUND

(REPEALED)

SECTION HISTORY
1989, c. 865, §§21,24,25 (NEW). 1993, c. 363, §15 (AMD). 1993, c. 363, §21 (AFF). 1995, c. 399, §20 (AMD). 1995, c. 399, §21 (AFF). 1997, c. 374, §14 (AFF). 1999, c. 505, §A14 (AMD). 2001, c. 356, §9 (AMD). 2007, c. 292, §37 (AMD). 2011, c. 211, §24 (AMD). 2011, c. 243, §4 (RP). 2011, c. 691, Pt. A, §43 (RP).

§570-I. BUDGET APPROVAL

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 12/31/15)

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 569-B, subsection 5, paragraphs A, C, F and G for each biennium. The budget must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures from the fund as approved by the commissioner. Expenditures pursuant to section 569-B, subsection 5, paragraphs B, D and E may be made as authorized by the State Controller following approval by the commissioner. [1993, c. 1, §126 (COR).]

This section takes effect December 31, 2015. [2009, c. 319, §20 (AMD).]

SECTION HISTORY
1991, c. 66, §C2 (NEW). RR 1993, c. 1, §126 (COR). 1997, c. 374, §12 (AMD). 2003, c. 245, §17 (AMD). 2009, c. 319, §20 (AMD).

§570-J. PERSONNEL AND EQUIPMENT

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 12/31/15)

The commissioner shall establish and maintain at appropriate locations employees and equipment that, in the commissioner's judgment, are necessary to carry out this subchapter. The commissioner, subject to the Civil Service Law, may employ personnel necessary to carry out the purposes of this subchapter and shall prescribe the duties of those employees. The salaries of those employees and the cost of that equipment must be paid from the Ground Water Oil Clean-up Fund established by this subchapter. [1991, c. 66, Pt. C, §2 (NEW).]

This section is effective December 31, 2015. [2009, c. 319, §21 (AMD).]

SECTION HISTORY
1991, c. 66, §C2 (NEW). 1997, c. 374, §13 (AMD). 2003, c. 245, §18 (AMD). 2009, c. 319, §21 (AMD).

§570-K. ABOVEGROUND OIL STORAGE FACILITIES

1. **Definition.**

[1993, c. 363, §21 (AFF); 1993, c. 363, §16 (RP) .]

2. **Prohibition.** After July 1, 1995, a person may not operate an aboveground oil storage facility that has underground piping not constructed of cathodically protected steel, fiberglass or other noncorrosive material approved by the department.

[1997, c. 624, §7 (AMD); 1997, c. 624, §21 (AFF) .]

3. **Underground piping installation.** All new and replacement underground piping installed on or after June 24, 1991 associated with an aboveground oil storage facility must be installed, operated, maintained and removed in accordance with sections 564, 565 and 566-A and all rules adopted by the board pursuant to sections 564, 565 and 566-A, except that, in the case of fleet fueling or retail facilities, the commissioner may approve leak detection methods other than those required under board rules when warranted by the nature and design of the facility and piping. Effective January 1, 2011, this subsection applies to underground piping installed before June 24, 1991 if the piping is associated with an aboveground tank used to store motor fuel.

A. [1999, c. 334, §8 (RP).]

B. [1999, c. 334, §8 (RP).]

[2005, c. 491, §2 (AMD) .]

4. **Exemption.** The following aboveground oil storage facilities are exempt from the requirements of subsections 2 and 3:

A. Facilities or portions of facilities that are used exclusively for the storage of #2 and other home heating oil and consist of an individual tank of 660 gallons or less capacity or an aggregate tank capacity of 1320 gallons or less; and [1993, c. 363, §17 (NEW); 1993, c. 363, §21 (AFF).]

B. Facilities containing only liquefied petroleum gas or liquefied natural gas. [1993, c. 363, §17 (NEW); 1993, c. 363, §21 (AFF).]

[2001, c. 605, §2 (AMD) .]

5. **Spill prevention and control.** An aboveground oil storage facility used in the marketing and distribution of oil to others must be operated in compliance with the federal requirements for the preparation and implementation of spill prevention control and countermeasure plans under 40 Code of Federal Regulations, 112 in effect on April 17, 2003. Failure to comply with those federal requirements in accordance with the deadlines set by the United States Environmental Protection Agency constitutes a violation of this Title. If the department believes that a facility's plan does not satisfy those federal requirements, the department shall request an opinion from the United States Environmental Protection Agency as to the legal adequacy of the plan and any amendment necessary to bring the facility into compliance with those federal requirements. The department shall prepare educational and technical materials for use by facilities affected by this subsection. The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2006 and on that date every 2 years thereafter on activities undertaken by the department under this subsection.

[2005, c. 212, §1 (AMD) .]

SECTION HISTORY
1991, c. 494, §16 (NEW). 1993, c. 363, §16 (AMD). 1993, c. 363, §17 (AMD). 1993, c. 363, §21 (AFF). 1997, c. 624, §§7,8 (AMD). 1997, c. 624, §21 (AFF). 1999, c. 334, §8 (AMD). 2001, c. 605, §§2,3 (AMD). 2003, c. 245, §19 (AMD). 2005, c. 212, §1 (AMD). 2005, c. 491, §2 (AMD).

§570-L. BUDGET APPROVAL; ABOVEGROUND TANKS PROGRAM

This section establishes a budget process for expenses of the State Fire Marshal and the Fund Insurance Review Board. [1993, c. 363, §18 (NEW); 1993, c. 363, §21 (AFF).]

1. **Fund Insurance Review Board.** The chair of the Fund Insurance Review Board shall submit budget recommendations for disbursements from the fund in accordance with section 569-A, subsection 8, paragraph K. The budget must be submitted in accordance with Title 5, sections 1663 to 1666.

[1993, c. 363, §18 (NEW); 1993, c. 363, §21 (AFF) .]

2. **State Fire Marshal.** The State Fire Marshal shall submit budget recommendations for disbursement from the fund in accordance with section 569-A, subsection 8, paragraph L. The budget must be submitted at the time the State Fire Marshal's budget is otherwise presented.

[1993, c. 363, §18 (NEW); 1993, c. 363, §21 (AFF) .]

SECTION HISTORY
1993, c. 363, §18 (NEW). 1993, c. 363, §21 (AFF).

§570-M. PROHIBITION ON ADDING WATER TO WELL

Except as provided in this section, a person may not add water to a well. Water may be added to a well by: [2001, c. 626, §15 (NEW).]

1. **Licensed well driller.** A well driller licensed under Title 32, chapter 69-C using water that is in conformance with rules adopted under that chapter;

[2001, c. 626, §15 (NEW) .]

2. **Authorized water transporter.** A person authorized to transport water under Title 22, section 2660-A using water in conformance with rules adopted under that section; or

[2001, c. 626, §15 (NEW) .]

3. **Well injection.** Well injection into a Class V well as authorized and licensed by the department pursuant to rules adopted by the board.

[2001, c. 626, §15 (NEW) .]

For the purposes of this section, the term "well" means any hole dug, drilled, driven or bored into the earth used to extract drinking water and does not include monitoring wells, wells constructed exclusively for the relief of artesian pressure at hydroelectric projects, wells constructed for temporary dewatering purposes and wells constructed for the purposes of extracting oil, gas or brine. [2001, c. 626, §15 (NEW).]

SECTION HISTORY
2001, c. 626, §15 (NEW).

Subchapter 3: CRIMINAL LIABILITY

§571. CORRUPTING WATERS FORBIDDEN

1. **Prohibition.** A person may not:

A. Intentionally or knowingly poison, defile or in any way corrupt the water of any well, spring, brook, lake, pond, river or reservoir used for domestic drinking purposes; [2009, c. 550, §9 (NEW).]

B. Knowingly corrupt the sources of any public water supply, or the tributaries of those sources of supply, in a manner that affects the purity of the water supplied; [2009, c. 550, §9 (NEW).]

C. Knowingly defile waters identified in paragraphs A and B in any manner, whether the water is frozen or not; or [2009, c. 550, §9 (NEW).]

D. Put a carcass of any dead animal or other offensive material in waters identified in paragraphs A and B or on the ice of those waters. A person may place the carcass of a dead animal on the ice of a brook, great pond or river for purposes of coyote hunting as long as the carcass is removed before the ice supporting that carcass is gone. This paragraph does not authorize a person to enter the property owned by another person without the permission of the property owner. [2009, c. 550, §9 (NEW).]

[2009, c. 550, §9 (NEW) .]

2. **Penalty.** A person who violates this section commits a Class A crime.

[2009, c. 550, §9 (NEW) .]

SECTION HISTORY
1977, c. 696, §344 (RPR). 2009, c. 550, §9 (RPR).

Chapter 3-A: CLIMATE CHANGE

§574. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 237, §1 (NEW).]

1. **Greenhouse gas.** "Greenhouse gas" means any chemical or physical substance that is emitted into the air and that the department determines by rule may reasonably be anticipated to cause or contribute to climate change. "Greenhouse gas" includes, but is not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 237, §1 (NEW) .]

2. **Sector.** "Sector" means one of the 5 sectors identified in the climate change action plan adopted by the Conference of New England Governors and Eastern Canadian Premiers in August 2001. The 5 sectors are the transportation, industrial, commercial, institutional and residential sectors.

[2003, c. 237, §1 (NEW) .]

SECTION HISTORY
2003, c. 237, §1 (NEW).

§575. LEAD-BY-EXAMPLE INITIATIVE

The department shall establish a lead-by-example initiative under which the department shall: [2003, c. 237, §1 (NEW).]

1. **Greenhouse gas emissions inventory for state-owned facilities and state-funded programs.** Create an inventory of greenhouse gas emissions associated with state-owned facilities and state-funded programs and create a plan for reducing those emissions to below 1990 levels by 2010;

[2003, c. 237, §1 (NEW) .]

2. **Carbon emission reduction.** By January 1, 2006, seek to establish carbon emission reduction agreements with at least 50 businesses and nonprofit organizations;

[2003, c. 237, §1 (NEW) .]

3. **New England greenhouse registry.** Participate in a regional effort to develop and adopt a greenhouse gas registry that includes 3rd-party verification; and

[2003, c. 237, §1 (NEW) .]

4. **Statewide greenhouse gas emissions inventory.** Create an annual statewide greenhouse gas emissions inventory.

[2003, c. 237, §1 (NEW) .]

SECTION HISTORY
2003, c. 237, §1 (NEW).

§576. REDUCTION GOALS

The State's goals for reduction of greenhouse gas emissions within the State are as follows: [2003, c. 237, §1 (NEW).]

1. **Reduction by 2010.** In the short term, reduction to 1990 levels by January 1, 2010;

[2003, c. 237, §1 (NEW) .]

2. **Reduction by 2020.** In the medium term, reduction to 10% below 1990 levels by January 1, 2020; and

[2003, c. 237, §1 (NEW) .]

3. **Long-term reduction.** In the long term, reduction sufficient to eliminate any dangerous threat to the climate. To accomplish this goal, reduction to 75% to 80% below 2003 levels may be required.

[2003, c. 237, §1 (NEW) .]

SECTION HISTORY
2003, c. 237, §1 (NEW).

§577. CLIMATE ACTION PLAN

By July 1, 2004, the department, with input from stakeholders, shall adopt a state climate action plan to meet the reduction goals specified in section 576. The action plan must address reduction in each sector in cost-effective ways and must allow sustainably managed forestry, agricultural and other natural resource activities to be used to sequester greenhouse gas emissions. The department shall submit the action plan to the joint standing committee of the Legislature having jurisdiction over natural resources matters. [2003, c. 237, §1 (NEW).]

SECTION HISTORY
2003, c. 237, §1 (NEW).

§578. PROGRESS EVALUATION

By January 1, 2006 and by that date every 2 years thereafter, the department shall evaluate the State's progress toward meeting the reduction goals specified in section 576, review the cost-effectiveness of the actions taken toward meeting the reduction goals and shall amend the action plan as necessary to ensure that the State can meet the reduction goals. The department shall submit a report of its evaluation to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by January 1, 2016 and by that date every 2 years thereafter. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out legislation relating to the evaluation to the second regular session of any Legislature. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may make recommendations to the joint standing committee of the Legislature having jurisdiction over natural resources matters regarding that legislation. Starting no earlier than January 1, 2008, the department may recommend to the joint standing committee of the Legislature having jurisdiction over natural resources matters that the reduction goals specified in section 576 be increased or decreased. [2013, c. 415, §5 (AMD).]

SECTION HISTORY
2003, c. 237, §1 (NEW). 2005, c. 144, §1 (AMD). 2013, c. 415, §5 (AMD).

§579. REGIONAL GREENHOUSE GAS INITIATIVE

The department may participate in the regional greenhouse gas initiative under chapter 3-B. The commissioner or the commissioner's designee and the members of the Public Utilities Commission are authorized to act as representatives for the State in the regional organization as defined in section 580-A, subsection 20, may contract with organizations and entities when such arrangements are necessary to efficiently carry out the purposes of this section and may coordinate the State's efforts with other states and jurisdictions participating in that initiative, with respect to: [2013, c. 588, Pt. A, §49 (RPR).]

1. **Regional market.** The design, conduct and supervision of a regional market for carbon dioxide allowances;

[2007, c. 317, §16 (NEW) .]

2. **Additional offset categories.** The establishment and mutual recognition of additional offset categories that recognize the State's unique geography, economy and natural resources; and

[2007, c. 317, §16 (NEW) .]

3. **Ensuring no unfair disadvantage.** Efforts seeking to ensure that electricity generated within participating states and jurisdictions is not unfairly disadvantaged as a result of imports of electricity from nonparticipating states and jurisdictions.

[2007, c. 317, §16 (NEW) .]

SECTION HISTORY
2005, c. 330, §24 (NEW). 2007, c. 317, §16 (AMD). 2007, c. 608, §3 (AMD). 2013, c. 369, Pt. D, §1 (AMD). 2013, c. 415, §6 (AMD). 2013, c. 588, Pt. A, §49 (AMD).

Chapter 3-B: REGIONAL GREENHOUSE GAS INITIATIVE

§580. SHORT TITLE

This chapter may be known and cited as "the Regional Greenhouse Gas Initiative Act of 2007." [2007, c. 317, §17 (NEW).]

SECTION HISTORY
2007, c. 317, §17 (NEW).

§580-A. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 317, §17 (NEW).]

1. **Allocation.** "Allocation" means the number of carbon dioxide allowances to be credited to a carbon dioxide budget unit or to the general account of the sponsor of an approved carbon dioxide emissions offset project.

[2007, c. 317, §17 (NEW) .]

1-A. **Account.** "Account" means a general account or a compliance account.

[2009, c. 200, §3 (NEW) .]

2. **Carbon dioxide allowance.** "Carbon dioxide allowance" or "carbon dioxide emissions allowance" means a limited authorization by the department for the emission of up to one ton of carbon dioxide.

[2007, c. 317, §17 (NEW) .]

3. **Carbon dioxide budget unit.** "Carbon dioxide budget unit" means any single fossil fuel fired unit that serves a generator with a nameplate capacity equal to or greater than 25 megawatts of electrical output.

[2007, c. 608, §4 (AMD) .]

4. **Carbon dioxide budget unit compliance account or compliance account.** "Carbon dioxide budget unit compliance account" or "compliance account" means the account established by the department for a carbon dioxide budget unit wherein carbon dioxide emissions allowances and carbon dioxide offset allowances are held and available for compliance purposes under the carbon dioxide cap-and-trade program.

[2009, c. 200, §4 (AMD) .]

5. **Carbon dioxide emissions budget.** "Carbon dioxide emissions budget" means the total amount of carbon dioxide emissions allowances allocated by the State on an annual basis.

[2007, c. 317, §17 (NEW) .]

6. **Carbon dioxide emissions offset project.** "Carbon dioxide emissions offset project" means a project that reduces or avoids loading of carbon dioxide and other greenhouse gases in the atmosphere and is demonstrated to qualify as real, additional, verifiable, enforceable and permanent as those terms are defined in rules adopted by the department. "Carbon dioxide emissions offset project" includes, but is not limited to, landfill and agricultural methane capture and destruction, reduction in emissions of sulfur hexafluoride,

sequestration of carbon due to forestry practices and reduction or avoidance of carbon dioxide emissions from natural gas, oil or propane end-use combustion due to end-use energy efficiency and other categories established by the department by rule.

[2013, c. 369, Pt. D, §2 (AMD) .]

6-A. **Carbon dioxide general account or general account.** "Carbon dioxide general account" or "general account" means the account established by the department upon the request of an entity wherein the entity may hold carbon dioxide allowances and carbon dioxide offset allowances. The general account is separate from the compliance account.

[2009, c. 200, §5 (NEW) .]

7. **Carbon dioxide offset allowance.** "Carbon dioxide offset allowance" means a carbon dioxide allowance awarded to the sponsor of a carbon dioxide emissions offset project.

[2007, c. 317, §17 (NEW) .]

8. **Combined cycle system.** "Combined cycle system" means a system composed of one or more combustion turbines, heat recovery system generators and steam turbines configured to improve overall efficiency of electrical generation or steam production.

[2007, c. 317, §17 (NEW) .]

9. **Combined heat and power unit.** "Combined heat and power unit" means a device that simultaneously generates electricity and thermal power and operates at a high level of output efficiency by utilizing the waste heat created as a by-product of electricity generation for domestic, commercial or industrial heating or cooling purposes, and whose useful thermal output equals at least 10% of the fossil fuel energy input of the unit.

[2007, c. 317, §17 (NEW) .]

10. **Electrical generating unit.** "Electrical generating unit" means a fossil fuel fired combustion device that serves a generator.

[2007, c. 317, §17 (NEW) .]

11. **Fossil fuel.** "Fossil fuel" means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such a material.

[2007, c. 317, §17 (NEW) .]

12. **Fossil fuel fired unit.** "Fossil fuel fired unit" means:

A. With regard to a unit that commenced operation prior to January 1, 2005, a unit fueled by the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted constitutes, or is projected to comprise, more than 50% of the annual heat input on a British Thermal Unit basis during any calendar year; or [2007, c. 608, §5 (NEW).]

B. With regard to a unit that commences operation on or after January 1, 2005, a unit fueled by the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted constitutes, or is projected to comprise, more than 5% of the annual heat input on a British Thermal Unit basis during any calendar year. [2007, c. 608, §5 (NEW).]

[2007, c. 608, §5 (AMD) .]

13. **Generator.** "Generator" means a device that produces electricity and is required to be reported as a generating unit pursuant to the United States Department of Energy Form 860.

[2007, c. 317, §17 (NEW) .]

14. **Gross electrical generation.** "Gross electrical generation" means the electrical output in megawatts at the terminals of the generator.

[2007, c. 317, §17 (NEW) .]

15. **Integrated manufacturing facility.** "Integrated manufacturing facility" means a facility that:

A. Received an air emissions license from the department prior to the effective date of this subsection; [2007, c. 317, §17 (NEW).]

B. Produces electricity from one or more carbon dioxide budget units, including one or more combined heat and power units, for transmission over the facilities of a transmission and distribution utility; and [2007, c. 317, §17 (NEW).]

C. Routinely produces one or more other products for sale. [2007, c. 317, §17 (NEW).]

[2007, c. 317, §17 (NEW) .]

16. **Long-term electricity contract.** "Long-term electricity contract" means a contract for a period of 3 years or more with a carbon dioxide budget unit for the purchase of electricity.

[2007, c. 317, §17 (NEW) .]

17. **Memorandum of Understanding; memorandum.** "Memorandum of Understanding" or "memorandum" means the Regional Greenhouse Gas Initiative Memorandum of Understanding dated December 20, 2005 that establishes an electric power sector carbon emissions cap-and-trade program within the northeast region of the United States.

[2007, c. 317, §17 (NEW) .]

17-A. **Model rule.** "Model rule" means the model rule, as amended, referenced in the memorandum of understanding.

[2013, c. 369, Pt. D, §3 (NEW) .]

18. **Nameplate capacity.** "Nameplate capacity" means the maximum electrical generating output, expressed in megawatts, that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings.

[2007, c. 317, §17 (NEW) .]

18-A. **Proprietary information.** "Proprietary information" means production, commercial or financial information claimed as confidential on documents required to be submitted to participate in an auction, the disclosure of which would impair the competitive position of the account holder and would make available information that is not otherwise available.

[2009, c. 200, §6 (NEW) .]

18-B. **Other independent system operator participating states.** "Other independent system operator participating states" means the following states participating in the regional greenhouse gas initiative as of January 1, 2011 that are located within the New England independent system operator control area: Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont.

[2011, c. 277, §1 (NEW) .]

19. **Regional greenhouse gas initiative.** "Regional greenhouse gas initiative" means the initiative referred to in the Memorandum of Understanding and the corresponding model rule that memorializes the ongoing cooperative effort by the State and other states to design and implement a regional carbon dioxide cap-and-trade program covering carbon dioxide emissions from electrical generating units in the signatory states.

[2007, c. 317, §17 (NEW) .]

20. **Regional organization.** "Regional organization" means the entity that will manage the regional greenhouse gas initiative on a regional basis and with which the State contracts for related service.

[2007, c. 317, §17 (NEW) .]

21. **Regional transmission organization.** "Regional transmission organization" means the independent systems operator that administers and oversees the wholesale electricity markets in which the State participates.

[2007, c. 317, §17 (NEW) .]

22. **Ton.** "Ton" means 2,000 pounds.

[2007, c. 317, §17 (NEW) .]

23. **Transmission and distribution utility.** "Transmission and distribution utility" means a transmission and distribution utility as defined in Title 35-A, section 3201, subsection 6, 12 or 16.

[2007, c. 317, §17 (NEW) .]

SECTION HISTORY
2007, c. 317, §17 (NEW). 2007, c. 608, §§4, 5 (AMD). 2009, c. 200, §§3-6 (AMD). 2011, c. 277, §1 (AMD). 2013, c. 369, Pt. D, §§2, 3 (AMD).

§580-B. CAP-AND-TRADE PROGRAM ESTABLISHED

A carbon dioxide cap-and-trade program, referred to in this section as "the program," is established in accordance with this section. [2007, c. 317, §17 (NEW).]

1. **Application.** All carbon dioxide budget units are subject to the carbon dioxide cap-and-trade program, except that a carbon dioxide budget unit is exempt from the program if:

A. It is incapable of producing enough energy to generate 25 megawatts or more of electrical output; [2007, c. 317, §17 (NEW).]

B. Its sale of electricity to any power distribution system is less than 10% of its gross electrical generation on an annual basis. In calculating this percentage, all electricity transmitted to the regional grid over the facilities of a transmission and distribution utility as a result of verifiable conservation and demand-side management initiatives or any emergency mandate of the regional transmission organization or lawful order of a governmental authority is not included in the calculation of annual sales; or [2007, c. 317, §17 (NEW).]

C. Fifty percent or more of its annual heat input comes from the combustion of fuels other than fossil fuels. [2007, c. 317, §17 (NEW).]

[2007, c. 317, §17 (NEW) .]

2. **Contingent on initiation of comparable programs.** The carbon dioxide cap-and-trade program commences no earlier than January 1, 2009 and only when other states that are participating in the regional greenhouse gas initiative that produce a minimum of 35,000,000 tons of annual carbon dioxide emissions budget and participate in a wholesale electricity market administered and overseen by the regional transmission organization have initiated a comparable carbon dioxide cap-and-trade program. Nothing in this section precludes the department from initiating air emissions licensing of carbon dioxide budget sources or from participating in auctions for the sale of carbon dioxide allowances.

[2007, c. 608, §6 (AMD) .]

2-A. **Condition for withdrawal.** The State shall withdraw from the regional greenhouse gas initiative when a sufficient number of other independent system operator participating states have withdrawn such that the total carbon dioxide emissions budget for the calendar year 2009, as specified in the Memorandum of Understanding, of the remaining other independent system operator participating states is less than 35,000,000 tons. If the condition is met for withdrawal from the regional greenhouse gas initiative, the department shall:

A. Immediately take all necessary steps to withdraw the State from all memoranda of understanding and contracts with states participating in the regional greenhouse gas initiative relating to the regional greenhouse gas initiative; and [2011, c. 277, §2 (NEW).]

B. Submit legislation to the Legislature to make the necessary changes in law to reflect the State's withdrawal from the regional greenhouse gas initiative. [2011, c. 277, §2 (NEW).]

[2011, c. 277, §2 (NEW) .]

3. **Base annual budget.** Until January 1, 2014, the base annual carbon dioxide emissions budget is established at 5,948,902 tons of carbon dioxide. For the year 2014, the base annual carbon dioxide emissions budget is established at 3,277,250 tons of carbon dioxide. Beginning with the year 2015, the annual carbon dioxide emissions budget must decline by 2.5% each year through the year 2020.

[2013, c. 369, Pt. D, §4 (AMD) .]

3-A. **Interim adjustments for banked allowances.** The 2014 base annual carbon dioxide emissions budget of 3,277,250 tons of carbon dioxide and base annual budgets for 2015 to 2020 must be reduced by an amount equivalent to the quantity of banked allowances in excess of the quantity of allowances required for compliance at the end of 2013. The State's interim adjustments for banked allowances must be made in proportion to the State's share of the total annual carbon dioxide emissions budget for all states participating in the regional greenhouse gas initiative.

[2013, c. 369, Pt. D, §5 (NEW) .]

4. **Rules implementing program.** The department shall adopt rules to implement the program. Rules must be consistent with the model rule. The rules must include, but are not limited to:

A. Provisions for the establishment of a system for the annual assignment, sale and distribution of carbon dioxide emissions allowances consistent with the carbon dioxide emissions budget; [2007, c. 317, §17 (NEW).]

B. Provisions for the establishment of carbon dioxide budget unit compliance obligation accounts; [2007, c. 317, §17 (NEW).]

C. Provisions for the establishment of carbon dioxide offset project allowance categories and requirements; [2007, c. 317, §17 (NEW).]

D. Provisions for the implementation of a licensing process for carbon dioxide budget units; [2007, c. 317, §17 (NEW).]

E. Provisions for the establishment of a carbon dioxide emissions and carbon dioxide allowance tracking program; and [2007, c. 317, §17 (NEW).]

F. Provisions to manage the carbon dioxide allowance auction developed in coordination with other states and jurisdictions in the regional greenhouse gas initiative and in a manner that is consistent with provisions adopted by those states and jurisdictions and, to the extent feasible, that:

(1) Ensure close monitoring of allowance transactions in a manner that guards against collusion and market manipulation;

(2) Ensure ongoing authentic price discovery and minimize price volatility;

(3) Facilitate open participation for bidding to all individuals or entities that meet the financial requirements jointly adopted by the participating states;

(4) Minimize administration and transaction costs and provide for an open and transparent user-friendly system;

(5) Provide that ongoing monitoring of market activity is undertaken by entities that have complete financial independence from any market participant;

(6) For purposes of civil and criminal enforcement authority under section 349, establish a contract term at the time an allowance is purchased at the regional auction for violations of market rules jointly adopted by the participating states and jurisdictions or through another method of ensuring state jurisdiction; and

(7) Guarantee that the Attorney General, the Public Utilities Commission and the commissioner have access to all auction information and information concerning allowance trading activity, including reports provided to the regional organization by a market monitor. [2007, c. 317, §17 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 369, Pt. D, §6 (AMD) .]

5. **Enforcement.** Violations of this chapter are enforceable, and penalties may be imposed in accordance with sections 347-A, 348 and 349.

[2007, c. 317, §17 (NEW) .]

6. **Waiver of enforcement; suspension of compliance obligation.** The commissioner has authority, under the exceptional circumstances set out in paragraphs A and B, to waive or suspend requirements of this chapter.

A. If the regional greenhouse gas initiative results in price levels for allowances that will result in immediate and irreparable harm to the operations of a carbon dioxide budget unit regulated under this chapter, including but not limited to the termination of business at that location, the commissioner may, in consultation with the Attorney General and the chair of the Public Utilities Commission, grant a temporary waiver of enforcement not to exceed one year for any violation by an individual regulated carbon dioxide budget unit of a requirement of this chapter. [2007, c. 317, §17 (NEW).]

B. In cases of emergency events that are beyond the control of a carbon dioxide budget unit, the commissioner may temporarily suspend the compliance obligation under a particular permit until such time as the emergency no longer is in effect. [2007, c. 317, §17 (NEW).]

The department shall adopt rules for the implementation of this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and must be submitted to the Legislature by January 15, 2008 for review by the Joint Standing Committee on Natural Resources during the Second Regular Session of the 123rd Legislature.

[2007, c. 317, §17 (NEW) .]

7. **Allocation of carbon dioxide emissions allowances.** The department shall allocate 100% of the annual carbon dioxide emissions allowances for public benefit to produce funds for carbon reduction and energy conservation, as specified in Title 35-A, section 10109. Except as provided in subsections 7-A and 8, the department shall sell the carbon dioxide emissions allowances at public auction, in accordance with rules adopted under subsection 4. Revenue resulting from the sale of allowances must be deposited in the Regional Greenhouse Gas Initiative Trust Fund established under Title 35-A, section 10109.

[2009, c. 652, Pt. A, §60 (RPR) .]

7-A. **Voluntary renewable energy market set-aside.** The department shall set aside a portion of the State's annual carbon dioxide emissions budget in a voluntary renewable market set-aside account. The allowances from this account must be retired in an amount equal to the amount of carbon dioxide emissions reduced by the voluntary purchase of eligible renewable energy credits by persons in the State up to the amount held in the set-aside account. For purposes of this subsection, "eligible renewable energy credits" means renewable energy credits generated within the states that are participating in the regional greenhouse gas initiative.

Before February 1, 2010, the portion of the State's annual carbon dioxide emissions budget that is set aside in a voluntary renewable market set-aside account pursuant to this subsection may not exceed 2% of that budget. The department shall report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by January 15, 2010 as to whether that 2% cap is appropriate. By January 31, 2010, the Efficiency Maine Trust, established under Title 35-A, section 10103, in consultation with the department, shall establish the cap on the portion of the State's annual carbon dioxide emissions budget that is set aside in a set-aside account.

[2009, c. 372, Pt. B, §5 (AMD) .]

8. **Combined heat and power incentive; set aside.** The department shall set aside a portion of the State's annual carbon dioxide emissions allowances in an allowance account for carbon dioxide budget units that are combined heat and power units and are located at integrated manufacturing facilities. The department shall use these allowances for existing carbon dioxide budget units to reflect only that portion of each unit's emissions related to electricity and thermal power generated at a carbon dioxide budget unit that is a combined heat and power unit, whether it is a combined cycle system or other energy generation configuration of which the carbon dioxide budget unit is a part, that are not transmitted across the facilities of a transmission and distribution utility.

The department shall adopt rules setting forth the proper treatment of combined heat and power units. The rules may distinguish between combined heat and power units that commence operation after July 1, 2007 and those that commence operation before July 1, 2007. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 317, §17 (NEW) .]

9. **Integrated manufacturing facilities.** This subsection governs the treatment of integrated manufacturing facilities under this chapter.

A. The compliance obligation for a carbon dioxide budget unit at an integrated manufacturing facility is the carbon dioxide emissions associated with electricity resulting from the combustion of fossil fuels and transmitted over the facilities of a transmission and distribution utility. Absent any contractual

arrangement to the contrary, the department shall presume that electricity from sources other than carbon dioxide budget units is transmitted first. The department shall adopt rules governing the compliance obligation for electricity generated at integrated manufacturing facilities and transmitted over the facilities of a transmission and distribution utility. [2007, c. 317, §17 (NEW).]

B. The department shall establish the Integrated Manufacturing Facility Retirement Account to ensure proper accounting for carbon emissions from the generation of electricity and heat from fossil fuels at integrated manufacturing facilities. [2007, c. 317, §17 (NEW).]

C. The purchase of electricity pursuant to a long-term electricity contract renders the purchaser an owner of a carbon dioxide budget unit for purposes of this chapter and obligates the owner to obtain the carbon dioxide emissions allowances applicable to the compliance obligation associated with the carbon dioxide budget unit. For purposes of this paragraph, "owner" means:

(1) The holder of any portion of the legal or equitable title in a carbon dioxide budget unit;

(2) The holder of a leasehold interest in a carbon dioxide budget unit, other than a passive lessor or a person who has an equitable interest through such lessor whose rental payments are not based, either directly or indirectly, upon the revenues or income from that unit; or

(3) A purchaser of electricity from a carbon dioxide budget unit under a contractual arrangement for greater than a 3-year period.

If no person has title to the electricity under subparagraphs (1) to (3), the owner is any holder of any portion of the legal or equitable title to the output of a carbon dioxide budget unit or any holder of a leasehold interest in such a unit. [2007, c. 317, §17 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 317, §17 (NEW) .]

10. **Annual report.** The department, the Public Utilities Commission and the trustees of the Efficiency Maine Trust established pursuant to Title 35-A, section 10103 shall submit a joint report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and utilities and energy matters by March 15th annually. The report must assess and address:

A. The reductions of greenhouse gas emissions from carbon dioxide budget units, conservation programs funded by the Regional Greenhouse Gas Initiative Trust Fund pursuant to Title 35-A, section 10109 and carbon dioxide emissions offset projects; [2009, c. 652, Pt. A, §61 (RPR).]

B. The improvements in overall carbon dioxide emissions and energy efficiency from sources that emit greenhouse gases including electrical generation and fossil fuel fired units; [2009, c. 652, Pt. A, §61 (RPR).]

C. The maximization of savings through systemic energy improvements statewide; [2009, c. 652, Pt. A, §61 (RPR).]

D. Research and support of new carbon dioxide offset allowance categories for development in the State; [2009, c. 652, Pt. A, §61 (RPR).]

E. Management and cost-effectiveness of the State's energy conservation and carbon reduction programs and efforts funded by the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109; [2009, c. 652, Pt. A, §61 (RPR).]

F. The extent to which funds from the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109, serve customers from all classes of the State's transmission and distribution utilities; and [2009, c. 652, Pt. A, §61 (RPR).]

G. The revenues and expenditures of the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109. [2009, c. 652, Pt. A, §61 (RPR).]

The department, the Public Utilities Commission and the trustees of the Efficiency Maine Trust may include in the report any proposed changes to the program established under this chapter.

The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to areas within the committee's jurisdiction in connection with the program. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit legislation relating to areas within the committee's jurisdiction in connection with the program.

[2013, c. 369, Pt. D, §7 (AMD) .]

11. **Confidentiality.** To protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program established in this section, the following records are confidential as provided in this subsection.

A. Except as provided in this paragraph, the following records are confidential for a period of 3 years beginning at the time of application, submission, award or record creation by the department or its agents:

(1) Auction bid and award information specific to any one account holder;

(2) Carbon dioxide allowance and carbon dioxide offset allowance account holdings; and

(3) Carbon dioxide allowance and carbon dioxide offset allowance transactions.

This paragraph does not prohibit the release of carbon dioxide allowance and carbon dioxide offset allowance account holdings and transactions in an aggregated form that does not permit the identification of any person or entity.

The commissioner may release information described in subparagraph (1), (2) or (3) before the expiration of the 3-year period if the commissioner determines that confidentiality of that information is no longer required to protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program. [2009, c. 200, §11 (NEW).]

B. The following records remain confidential and may not be disclosed except pursuant to a court order or upon the written consent of the account holder:

(1) Proprietary information contained in documents required to be submitted to participate in an auction conducted under the carbon dioxide cap-and-trade program; and

(2) Carbon dioxide allowance and carbon dioxide offset allowance transaction prices. This subparagraph does not prohibit the release of transaction prices calculated in an aggregated manner that does not permit the identification of any person or entity. [2009, c. 200, §11 (NEW).]

Records containing any emission, offset or allowance tracking information submitted for the purpose of demonstrating compliance with the carbon dioxide cap-and-trade program and rules adopted to implement the program are public records subject to disclosure under Title 1, chapter 13.

[2009, c. 200, §11 (NEW) .]

SECTION HISTORY
2007, c. 317, §17 (NEW). 2007, c. 608, §§6, 7 (AMD). 2009, c. 200, §§7-11 (AMD). 2009, c. 372, Pt. B, §§4-6 (AMD). 2009, c. 652, Pt. A, §§60, 61 (AMD). 2011, c. 277, §2 (AMD). 2013, c. 369, Pt. D, §§4-7 (AMD).

§580-C. CONSTRUCTION; ABSENCE OF LIMITATION

Nothing in this chapter may be construed to limit: [2007, c. 317, §17 (NEW).]

1. **Withdrawal by State.** The ability of this State to withdraw from the regional greenhouse gas initiative; or

[2007, c. 317, §17 (NEW) .]

2. **Categories of carbon dioxide emissions offset projects.** The categories of carbon dioxide emissions offset projects that may qualify under agreements among the states and jurisdictions participating in the regional greenhouse gas initiative, particularly with respect to additional categories that take advantage of the geographical, economic or natural resources of this State.

[2007, c. 317, §17 (NEW) .]

SECTION HISTORY
2007, c. 317, §17 (NEW).

Chapter 4: PROTECTION AND IMPROVEMENT OF AIR

§581. DECLARATION OF FINDINGS AND INTENT

The Legislature finds and declares that air pollution exists with varying degrees of severity within this State; that such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is aesthetically unappealing. [1969, c. 474, §1 (NEW).]

The Legislature by this chapter intends to exercise the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life. [1969, c. 474, §1 (NEW).]

Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damage or other relief on account of injury to persons or property due to violation of air quality standards or emission standards and to maintain any action or other appropriate procedure therefor; nor to so affect the powers of the State to initiate, prosecute and maintain actions to abate public nuisances. [1969, c. 474, §1 (NEW).]

SECTION HISTORY
1969, c. 474, §1 (NEW).

§582. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 546, §11 (AMD).]

1. **Air contaminants.** "Air contaminants" includes, but is not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.

[1989, c. 546, §11 (AMD) .]

2. **Air contamination source.** "Air contamination source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores; heating and power plants and stations; buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings; garages and vending and service locations and stations, railroad locomotives, ships, boats and other water-borne craft; portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles; and any machinery, equipment, stack, conduit, flue, duct, vent, chimney or other apparatus leading out of any of the foregoing.

[1979, c. 127, §212 (AMD) .]

3. **Air pollution.** "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property throughout the State or throughout such areas of the State as shall be affected thereby.

[1983, c. 760, §1 (AMD) .]

4. **Air pollution control apparatus.** "Air pollution control apparatus" means and includes any appliance, equipment or machinery which removes, reduces controls, eliminates, disposes of or renders less noxious the emission of air contaminants into ambient air.

[1989, c. 546, §11 (AMD) .]

5. **Ambient air.** "Ambient air" means all air outside of buildings, stacks or exterior ducts.

[1969, c. 474, §1 (NEW) .]

5-A. **Best practical treatment.** "Best practical treatment" means that method which controls or reduces emissions of air contaminants to the lowest possible level considering:

A. The then existing state of technology; [1973, c. 438, §1 (NEW).]

B. The effectiveness of available alternatives for reducing emissions from the source being considered; and [1989, c. 546, §11 (AMD).]

C. The economic feasibility for the type of establishment involved. [1973, c. 438, §1 (NEW).]

[1989, c. 546, §11 (AMD) .]

5-B. **Baseline concentration.**

[1979, c. 718, §1 (RP) .]

5-C. **Best available retrofit technology or BART.** "Best available retrofit technology" or "BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each visibility-impairing air pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source and the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology.

[2007, c. 95, §1 (NEW) .]

5-D. **BART eligible unit.** "BART eligible unit" means an existing stationary facility.

[2007, c. 95, §2 (NEW) .]

5-E. **Existing stationary facility.** "Existing stationary facility" has the same meaning as in 40 Code of Federal Regulations, Section 51.301 (2006).

[2007, c. 95, §3 (NEW) .]

6. **Board.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §155 (RP) .]

6-A. **Commissioner.**

[1977, c. 78, §207 (RP) .]

6-A-1. **Bulk gasoline plant.** "Bulk gasoline plant" means, except for gasoline service stations, any gasoline storage and distribution facility or bulk gasoline terminal with a daily throughput of 76,000 liters, or 20,000 gallons, or less, that receives gasoline from refineries, bulk gasoline terminals or through direct import.

[1989, c. 546, §11 (NEW) .]

6-B. **Bulk gasoline terminal.** "Bulk gasoline terminal" means a gasoline storage facility that receives gasoline from refineries, primarily by pipeline, ship or barge, and delivers gasoline to bulk gasoline plants or commercial or retail accounts primarily by tank vehicle and that has a daily throughput of more than 76,000 liters, or 20,000 gallons, of gasoline.

[2013, c. 381, Pt. B, §34 (AMD) .]

7. **Emission.** "Emission" means a release of air contaminants into ambient air or the air contaminants so released.

[1989, c. 546, §11 (AMD) .]

7-A. **Emission source.** "Emission source" means any and all sources of emissions of air contaminants, whether privately or publicly owned or operated.

[1973, c. 438, §3 (NEW) .]

7-A-1. **External floating roof.** "External floating roof" means a storage vessel cover in an open-top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

[1979, c. 385, §1 (NEW) .]

7-B. **Fuel-burning equipment.** "Fuel-burning equipment" means any furnace, boiler or apparatus,and all appurtenances thereto, used in the process of burning fuel including stationary internal combustion engines.

[1989, c. 546, §11 (AMD) .]

7-C-1. **Fugitive emissions.** "Fugitive emissions" means emissions of air contaminants which do not pass through a stack, flue, chimney or vent.

[1989, c. 546, §11 (AMD) .]

7-D. **General process source.** "General process source" means any emission source, except fuel-burning equipment, incinerators, mobile sources, open burning sources and sources of fugitive emissions.

[1989, c. 546, §11 (AMD) .]

7-E. **Incinerator.** "Incinerator" means any device, apparatus or equipment used for destroying, reducing or salvaging by fire any material or substance, but does not include any device, apparatus or equipment used to burn material-separated, refuse-derived fuel.

[1991, c. 220, §1 (AMD) .]

7-E-1. **Internal floating roof.** "Internal floating roof" means a cover or roof in a fixed-roof tank which rests upon or is floated upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

[1979, c. 385, §1 (NEW) .]

7-E-2. **Lowest achievable emission rate.** "Lowest achievable emission rate" means the more stringent rate of emissions based on the following:

A. The most stringent emission limitation which is contained in any implementation plan of any state for that class or category of source, unless the owner or operator of the proposed source demonstrates that those limitations are not achievable; or [1989, c. 546, §11 (AMD).]

B. The most stringent emission limitation achieved in practice by that class or category of source, whichever is more stringent. In no event may "lowest achievable emission rate" result in the emission of any pollutant in excess of those standards and limitations promulgated pursuant to Section 111 or 112 of the United States Clean Air Act, as amended, or any emission standard established by the board. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §156 (AMD).]

[1989, c. 546, §11 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §156 (AMD) .]

7-F. **Modification.**

[1979, c. 718, §4 (RP) .]

7-G. **Hazardous air pollutant.** "Hazardous air pollutant" means an air pollutant to which no ambient air standard is applicable and which in the judgment of the board causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness. This term includes, but is not limited to, those pollutants for which the United States Environmental Protection Agency has adopted National Emission Standards for Hazardous Air Pollutants pursuant to 40 Code of Federal Regulations, Part 61.

[1989, c. 546, §11 (AMD) .]

7-H. **Gasoline dispensing facility.** "Gasoline dispensing facility" means any gasoline service station, bulk terminal or bulk plant or any other facility or organization, governmental or private, that stores gasoline in tanks having a capacity of greater than 250 gallons, and dispenses fuel for motor vehicle use.

[1989, c. 197, §2 (NEW) .]

7-I. **Material-separated, refuse-derived fuel.** "Material-separated, refuse-derived fuel" means a binder-enhanced, pelletized, solid fuel product made from the combustible fraction of a municipal solid waste stream that has been processed to remove the recyclable material before combustion. The product may not contain more than 6% by weight of plastic, metal, glass or food waste. In addition, the production of material-separated, refuse-derived fuel may not exceed 40% by weight of the total municipal solid waste stream from which it was derived.

[1991, c. 220, §2 (NEW) .]

8. **Municipality.** "Municipality" includes, for purposes of enacting an air pollution control ordinance, only cities, organized towns and plantations.

[1983, c. 703, §1 (AMD) .]

8-A. **Opacity.** "Opacity" means the degree of light obscuring capability of emissions of visible air contaminants expressed as a percentage. Complete obscuration shall be expressed as 100% opacity.

[1989, c. 546, §11 (AMD) .]

8-B. **Open burning.** "Open burning" means the burning of any type of combustible material in the open ambient air without being completely enclosed and where the products of combustion are emitted directly into the ambient air without passing through a stack, chimney or duct or other device or structure.

[1973, c. 438, §4 (NEW) .]

8-C. **Outdoor wood boiler.** "Outdoor wood boiler" means a fuel burning device:

A. Designed to burn wood, biomass fuel products or other solid fuels; [2009, c. 209, §1 (AMD).]

B. That the manufacturer specifies for outdoor installation or in structures not normally occupied by humans or is an indoor-rated device housed in a modular or containerized structure; and [2009, c. 209, §2 (AMD).]

C. That heats building space or water, or both, through the distribution, typically through pipes for a fluid or ducts for air, of a fluid or air heated in the device. [2009, c. 209, §3 (AMD).]

[2009, c. 209, §§1-3 (AMD) .]

9. **Person.** "Person" means any individual, partnership, corporation, whether private, public or quasi-municipal, municipality, state governmental agency or other legal entity.

[1969, c. 474, §1 (NEW) .]

9-A. **Process weight rate.** "Process weight rate" means the average total weight of all materials, not including any gaseous or liquid fuels, solid fuels or combustion air, introduced into any manufacturing, industrial or combustion process that may result in the emission of any regulated pollutant to the ambient air, computed on an hourly basis, and shall be expressed in terms of weight per unit of time.

[1989, c. 546, §11 (AMD) .]

9-B. **Petroleum liquids.** "Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

[1989, c. 546, §11 (AMD) .]

9-B. **Potential emmissions.**

[1979, c. 718, §5 (RP) .]

9-C. **Potential emmissions.**

[1981, c. 470, Pt. A, §166 (RP) .]

9-D. **PM10.** "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 Code of Federal Regulations, Part 50, Appendix J and designated in accordance with 40 Code of Federal Regulations, Part 53.

[1995, c. 493, §11 (NEW) .]

10. **Region.** "Region" means an air quality region or regions established by the board pursuant to section 583.

[1989, c. 546, §11 (AMD) .]

10-A. **Resource recovery facility.** "Resource recovery facility" has the same meaning as an incineration facility defined in section 1303-C, subsection 16 except that, for the purposes of this chapter, a facility that burns material-separated, refuse-derived fuel but does not burn municipal solid waste or refuse-derived fuel as defined in section 1303-C is not a resource recovery facility.

[1991, c. 220, §3 (NEW) .]

10-B. **Reformulated gasoline.** "Reformulated gasoline" has the same meaning as in 40 Code of Federal Regulations, Section 80.2(ee) (2012).

[2013, c. 221, §1 (NEW) .]

11. **Ringelmann Chart.** "Ringelmann Chart" shall mean the chart published and described in the United States Bureau of Mines Information Circular 8333, on which are illustrated graduated shades of gray for use in estimating the light obscuring density or opacity of any black emissions or any other such device which may be approved by the board.

[1989, c. 546, §11 (AMD) .]

11-A. **Solid waste fuel.** "Solid waste fuel," when burned as fuel in solid waste fuel-burning equipment, means any material, other than primary fossil fuel, including, without limitation, garbage, refuse, sludge from a waste treatment plant or air pollution control facility, sawdust, shavings, chips, bark, slabs or inert fill material.

[1979, c. 476, §2 (NEW) .]

11-B. **Solid waste fuel-burning equipment.** "Solid waste fuel-burning equipment" means any furnace, boiler or apparatus, and all appurtenances thereto, capable of burning solid waste fuel for the primary purpose of producing thermal energy. Equipment used to burn material-separated, refuse-derived fuel either alone or with another fuel other than solid waste fuel or refuse-derived fuel as defined in section 1303-C is not solid waste fuel-burning equipment.

[1991, c. 220, §4 (AMD) .]

11-C. **True vapor pressure.** "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962.

[1981, c. 470, Pt. A, §167 (RAL) .]

11-D. **Toxicity score.** "Toxicity score" means a score given to a hazardous air pollutant by the Department of Health and Human Services, Maine Center for Disease Control and Prevention.

[2007, c. 589, §4 (AMD); 2007, c. 589, §9 (AFF) .]

11-E. **Air quality units.** "Air quality units" means the toxicity score for a hazardous air pollutant multiplied by the estimated emissions of that hazardous air pollutant.

[2007, c. 589, §5 (AMD); 2007, c. 589, §9 (AFF) .]

12. **Waste.** "Waste" means refuse, garbage, rubbish, trash or unwanted or discarded materials of any kind and source.

[1989, c. 546, §11 (AMD) .]

Additional words, terms and phrases, whether used in this chapter or not, may be defined for purposes of this chapter by the board by regulation, but in no case may a definition established by this section be altered by board regulation. [1971, c. 618, §12 (AMD).]

SECTION HISTORY
1969, c. 431, §9 (AMD). 1969, c. 474, §1 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 438, §§1-6 (AMD). 1977, c. 78, §207 (AMD). 1979, c. 127, §§212,213 (AMD). 1979, c. 381, §§1-5 (AMD). 1979, c. 385, §1 (AMD). 1979, c. 476, §§1,2 (AMD). 1979, c. 541, §A271 (AMD). 1979, c. 663, §232 (AMD). 1979, c. 718, §§1-5 (AMD). 1981, c. 470, §§A166,A167 (AMD). 1983, c. 504, §6 (AMD). 1983, c. 535, §1 (AMD). 1983, c. 703, §1 (AMD). 1983, c. 760, §1 (AMD). 1989, c. 197, §§1,2 (AMD). 1989, c. 546, §11 (AMD). 1989, c. 890, §§A40,B155, 156 (AMD). 1991, c. 220, §§1-4 (AMD). 1993, c. 412, §7 (AMD). 1995, c. 493, §11 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 95, §§1-3 (AMD). 2007, c. 442, §1 (AMD). 2007, c. 589, §§4, 5 (AMD). 2007, c. 589, §9 (AFF). 2009, c. 209, §§1-3 (AMD). 2013, c. 221, §1 (AMD). 2013, c. 381, Pt. B, §34 (AMD).

§583. ESTABLISHMENT OF AIR QUALITY REGIONS

The board may establish reasonable air quality regions within the State for the purposes of conducting air quality studies, and establishing reasonable ambient air quality standards and emission standards therein. [1975, c. 618, §12 (AMD).]

The following air quality regions, established by the board are adopted: [1975, c. 618, §12 (AMD).]

1. **Metropolitan Portland Air Quality Region.** The Metropolitan Portland Air Quality Region shall consist of the Counties of York, Cumberland, Sagadahoc and the municipalities of Brownfield, Denmark, Fryeburg, Hiram and Porter in the County of Oxford.

[1971, c. 346, (NEW) .]

1-A. **Portland Peninsula Air Quality Region.** The Portland Peninsula Air Quality Region shall consist of that section of the City of Portland bordered on the west by Interstate 295, on the south and east by the Fore River and on the north by Casco Bay and the inlet to Back Bay.

[1985, c. 746, §25 (AMD) .]

2. **Central Maine Air Quality Region.** The Central Maine Air Quality Region shall consist of the Counties of Androscoggin, Kennebec, Knox, Lincoln and Waldo; of the municipalities of New Portland, Embden, Solon, Athens, Harmony, Cambridge, Ripley and all other municipalities in Somerset County to the south of these; of the municipalities and unorganized territory of Township No. 6, Phillips, Salem Township, Freeman Township and all other municipalities and unorganized territory in Franklin County to the south of these; and of the municipalities and unorganized territory of Stow, Batchelder, Grant, Gilead, Riley T.A. No. 1, Grafton T.A. No. 2, Andover North Surplus, Byron and all other municipalities in Oxford County to the south and east of these with the exception of those municipalities within the Metropolitan Portland Air Quality Region.

[1971, c. 346, (NEW) .]

3. **Downeast Air Quality Region.** The Downeast Air Quality Region shall consist of the Counties of Hancock and Washington; of the municipality of Stacyville, the unorganized territory of T.3, R.7, W.E.L.S., T.3, R.8, W.E.L.S. and all other municipalities and unorganized territory in Penobscot County to the south of these; and of the municipalities and unorganized territory of Blanchard Plantation, Monson, Willimantic, Bowerbank, Barnard Plantation, T.6, R.8, W.E.L.S. (Williamsburg Township), Brownville, Lake View Plantation and all other municipalities and unorganized territory in Piscataquis County to the south of these.

[1971, c. 346, (NEW) .]

4. **Aroostook Air Quality Region.** The Aroostook Air Quality Region shall consist of all municipalities and unorganized territory in Aroostook County not included within the Northwest Air Quality Region.

[1971, c. 346, (NEW) .]

5. **Northwest Maine Air Quality Region.** The Northwest Maine Air Quality Region shall consist of the municipality of Upton, the unorganized territory of C Surplus Township, C Township and all other municipalities and unorganized territory in Oxford County to the north of these; the municipalities and unorganized territory of D Township, E Township, Madrid, T.4, R.1, B.K.P., W.K.R., Kingfield and all other municipalities and unorganized territory in Franklin County to the north of these; of the municipalities and unorganized territory of Lexington Plantation, Concord Township, Bingham, Brighton Plantation and all other municipalities and unorganized territory in Somerset County to the north of these; of the municipalities and unorganized territory of Shirley, Elliottsville Plantation, T.7, R.9, W.E.L.S., T.6, R.9, W.E.L.S. (Katahdin Iron Works), T.5, R.9, W.E.L.S., T.4, R.9, W.E.L.S. and all municipalities and unorganized territory in Piscataquis County to the north of these; of the municipality of Patten, the unorganized territory of T.4, R.7, W.E.L.S., T.4, R.8, W.E.L.S., and all other municipalities and unorganized territory in Penobscot County to the north of these; and the municipality of St. Francis, the unorganized territory of T.16, R.9, W.E.L.S., T.15, R.9, W.E.L.S., T.14, R.9, W.E.L.S., T.13, R.9, W.E.L.S., T.12, R.9, W.E.L.S., T.11, R.9, W.E.L.S., and all other municipalities and unorganized territory in Aroostook County to the west of these.

[1971, c. 346, (NEW) .]

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 346, (AMD). 1971, c. 618, §12 (AMD). 1975, c. 669, §1 (AMD). 1985, c. 746, §25 (AMD).

§583-A. REGULATIONS FOR HEARING AND APPLICATIONS

(REPEALED)

SECTION HISTORY
1975, c. 282, §1 (NEW). 1977, c. 300, §39 (RP).

§583-B. CLASSIFICATION OF AIR QUALITY CONTROL REGIONS

The air quality regions set forth in section 583 or portions thereof are classified as follows: [1979, c. 381, §6 (NEW).]

1. **Class I.** Class I:

A. Those federal lands which have been established as mandatory Class I areas by the Federal Clean Air Act: Acadia National Park located in the Downeast Air Quality Region; Moosehorn National Wildlife Refuge located in the Downeast Air Quality Region; and the Roosevelt Campobello International Park located in New Brunswick, Canada; [1979, c. 381, §6 (NEW).]

[1979, c. 381, §6 (NEW) .]

2. **Class II.** The areas in the State not designated Class I or Class III or nonattainment areas shall be Class II areas;

[1979, c. 381, §6 (NEW) .]

3. **Class III.**

[1979, c. 381, §6 (NEW) .]

4. **Nonattainment areas.** The board shall have the authority to designate certain regions or portions thereof as nonattainment areas after opportunity for a public hearing and determination that any ambient air quality standard is being exceeded;

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §157 (AMD) .]

5. **Redesignation of class.**

A. [1979, c. 732, §28 (RP).]

B. Other areas may be redesignated as follows:

(1) The board may recommend to the Legislature the redesignation of any air quality region in whole or in part, to Class I, II or III. Prior to this recommendation, an opportunity for a public hearing shall be offered in areas which may be affected by the proposed redesignation. Prior to notice of the hearing opportunity, a report shall be made available with a description and an analysis of health, environmental, economic, social and energy impacts with the proposed redesignation. Should the area proposed for redesignation include or be deemed to affect federally owned lands, the board shall consult with the appropriate federal land manager prior to the redesignation. All proposed redesignations shall be submitted to the Legislature for enactment. [1983, c. 566, §33 (AMD).]

[1983, c. 566, §33 (AMD) .]

SECTION HISTORY
1979, c. 381, §6 (NEW). 1979, c. 732, §§28,31 (AMD). 1983, c. 566, §§32,33 (AMD). 1989, c. 890, §§A40,B157 (AMD).

§584. ESTABLISHMENT OF AMBIENT AIR QUALITY STANDARDS

The board may recommend to the Legislature reasonable standards, in this chapter called "ambient air quality standards," within a reasonable air quality region regulating and limiting the amount and types of air contaminants which may exist in the ambient air of the region. The standards shall be designed to preserve or enhance the quality of ambient air within the region and to prevent air pollution. The board shall determine by rule the extent to which those standards apply within those areas to which the public does not have general access. [1989, c. 144, §1 (AMD).]

Prior to recommending ambient air quality standards, the board shall offer an opportunity for a public hearing and shall give public notice of its intent to recommend standards for the region in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1989, c. 144, §1 (AMD).]

The board shall solicit and consider all available information concerning the existing quality of the ambient air within the region; the recreational, industrial and residential uses of land within the region; the effects of existing air contaminants and air pollution upon the uses; the availability and effectiveness of air pollution control apparatus designed to control and reduce the existing air contaminants and air pollution; the

expense of purchasing and installing the same, and such other evidence as in the board's judgment will enable it to recommend to the Legislature standards necessary to prevent air pollution within the region. [1989, c. 144, §1 (AMD).]

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 462, §1 (AMD). 1971, c. 618, §12 (AMD). 1975, c. 282, §2 (AMD). 1979, c. 541, §A272 (AMD). 1983, c. 566, §§34-36 (AMD). 1983, c. 760, §2 (AMD). 1987, c. 878, §1 (AMD). 1989, c. 144, §1 (AMD).

§584-A. AMBIENT AIR QUALITY STANDARDS

For purposes of statutory interpretation, rules, licensing determinations, policy guidance and all other actions by the department or the board, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard established pursuant to Section 109 of the federal Clean Air Act, 42 United States Code, Section 7409, as amended. The department shall implement ambient air quality standards as required by the federal Clean Air Act, 42 United States Code, Section 7409 and regulations promulgated under that section by the United States Environmental Protection Agency. Nothing in this section may be construed to limit the authority of the department to adopt emission standards designed to achieve and maintain ambient air quality standards. [2011, c. 206, §19 (RPR).]

5. **Hydrocarbon.**

[1995, c. 642, §7 (RP) .]

SECTION HISTORY
1971, c. 570, (NEW). 1979, c. 381, §6-A (AMD). 1981, c. 157, (AMD). 1983, c. 359, §1 (AMD). 1987, c. 242, (AMD). 1989, c. 155, §1 (AMD). 1991, c. 646, (AMD). 1995, c. 306, §§1,2 (AMD). 1995, c. 642, §7 (AMD). 1999, c. 79, §1 (AMD). 2009, c. 121, §15 (AMD). 2011, c. 206, §19 (RPR).

§584-B. ESTABLISHMENT OF AMBIENT INCREMENTS -- CLASS I REGIONS

In addition to the ambient air quality standards set forth in section 584-A, any Class I region or part thereof within the State, including those federal lands designated by the Federal Clean Air Act Amendments of 1977, is subject to a maximum allowable increase in concentration of sulfur dioxide, particulate matter and nitrogen oxides over the baseline concentration of that pollutant. An increase shall not be exceeded more than once annually for any period other than an annual period. The maximum allowable increase consists of: [1989, c. 860, §1 (AMD).]

1. **PM10.** In regards to PM10:

A. An increase in the annual arithmetic mean at any location not to exceed 4 micrograms per cubic meter; and [1995, c. 493, §12 (AMD).]

B. An increase in concentration for any 24-hour period at any location not to exceed 8 micrograms per cubic meter; and [1995, c. 493, §12 (AMD).]

[1995, c. 493, §12 (AMD) .]

2. **Sulfur dioxide.** In regards to sulfur dioxide:

A. An increase in the annual arithmetic mean at any location not to exceed 2 micrograms per cubic meter; [1979, c. 381, §7 (NEW).]

B. An increase in concentration for any 24-hour period at any location not to exceed 5 micrograms per cubic meter; and [1979, c. 381, §7 (NEW).]

C. An increase in concentration for any 3-hour period at any location not to exceed 25 micrograms per cubic meter. [1979, c. 381, §7 (NEW).]

[1979, c. 381, §7 (NEW) .]

3. **Nitrogen oxides.** In regards to nitrogen oxides:

A. An increase in the annual arithmetic mean at any location not to exceed 2.5 micrograms per cubic meter to be expressed as nitrogen dioxide. [1989, c. 860, §2 (NEW).]

[1989, c. 860, §2 (NEW) .]

SECTION HISTORY
1979, c. 381, §7 (NEW). 1989, c. 860, §§1,2 (AMD). 1995, c. 493, §12 (AMD).

§584-C. ESTABLISHMENT OF AMBIENT INCREMENTS -- CLASS II REGIONS

In addition to the ambient air quality standards set forth in section 584-A, any Class II region or part thereof within the State is subject to a maximum allowable increase in concentration of particulate matter, sulfur dioxide and nitrogen oxides over the baseline concentration of that pollutant. An increase shall not be exceeded more than once annually for any period other than an annual period. The maximum allowable increase consists of: [1989, c. 860, §3 (AMD).]

1. **PM10.** In regards to PM10:

A. An increase in the annual arithmetic mean at any location not to exceed 17 micrograms per cubic meter; and [1995, c. 493, §13 (AMD).]

B. An increase in concentration for any 24-hour period at any location not to exceed 30 micrograms per cubic meter; [1995, c. 493, §13 (AMD).]

[1995, c. 493, §13 (AMD) .]

2. **Sulfur dioxide.** In regards to sulfur dioxide:

A. An increase in the annual arithmetic mean at any location not to exceed 20 micrograms per cubic meter; [1979, c. 381, §7 (NEW).]

B. An increase in concentration for any 24-hour period at any location not to exceed 91 micrograms per cubic meter; and [1979, c. 381, §7 (NEW).]

C. An increase in concentration for any 3-hour period at any location not to exceed 512 micrograms per cubic meter; and [1993, c. 1, §128 (COR).]

[1993, c. 1, §128 (COR) .]

3. **Nitrogen oxides.** In regards to nitrogen oxides:

A. An increase in the annual arithmetic mean at any location not to exceed 25.0 micrograms per cubic meter to be expressed as nitrogen dioxide. [1989, c. 860, §4 (NEW).]

[1989, c. 860, §4 (NEW) .]

SECTION HISTORY

1979, c. 381, §7 (NEW). 1989, c. 860, §§3,4 (AMD). RR 1993, c. 1, §§127,128 (COR). 1995, c. 493, §13 (AMD).

§584-D. ESTABLISHMENT OF AMBIENT INCREMENTS -- CLASS III REGIONS

In addition to the ambient air quality standards set forth in section 584-A, any Class III region or part thereof within the State is subject to a maximum allowable increase in concentration of particulate matter , sulfur dioxide and nitrogen oxide over the baseline concentration of that pollutant. An increase shall not be exceeded more than once annually for any period other than the annual period. The maximum allowable increase consists of: [1989, c. 860, §5 (AMD).]

1. **PM10.** In regards to PM10:

A. An increase in the annual arithmetic mean at any location not to exceed 34 micrograms per cubic meter; and [1995, c. 493, §14 (AMD).]

B. An increase in concentration for any 24-hour period at any location not to exceed 60 micrograms per cubic meter; [1995, c. 493, §14 (AMD).]

[1995, c. 493, §14 (AMD) .]

2. **Sulfur dioxide.** In regards to sulfur dioxide:

A. An increase in the annual arithmetic mean at any location not to exceed 40 micrograms per cubic meter; [1979, c. 381, §7 (NEW).]

B. An increase in concentration for any 24-hour period at any location not to exceed 182 micrograms per cubic meter; and [1979, c. 381, §7 (NEW).]

C. An increase in concentration for any 3-hour period at any location not to exceed 700 micrograms per cubic meter; and [1993, c. 1, §130 (COR).]

[1993, c. 1, §130 (COR) .]

3. **Nitrogen oxides.** In regards to nitrogen oxides:

A. An increase in the annual arithmetic mean at any location not to exceed 30.0 micrograms per cubic meter to be expressed as nitrogen dioxide. [1989, c. 860, §6 (NEW).]

[1989, c. 860, §6 (NEW) .]

SECTION HISTORY
1979, c. 381, §7 (NEW). 1989, c. 860, §§5,6 (AMD). RR 1993, c. 1, §§129,130 (COR). 1995, c. 493, §14 (AMD).

§584-E. EXCLUSIONS FROM APPLICABLE INCREMENTS -- CLASS I, II AND III REGIONS

1. **Exclusions from applicable increments.** The following concentrations shall be excluded in determining compliance with applicable increments:

A. Concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such order; [1979, c. 381, §7 (NEW).]

B. Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities; and [1979, c. 381, §7 (NEW).]

C. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration. [1979, c. 381, §7 (NEW).]

[1979, c. 381, §7 (NEW) .]

SECTION HISTORY
1979, c. 381, §7 (NEW).

§584-F. OZONE HEALTH WARNINGS

1. **Dissemination of warnings to media.** Whenever monitored data demonstrates or the department predicts that ground-level ozone concentrations have exceeded or will exceed .08 parts per million averaged over an 8-hour period, the department shall disseminate a health warning to the mass media, including television, radio and print media, and shall urge the media to issue the warning to the general public. The department shall use best efforts to educate the media as to the need to broadly disseminate health warnings to the public.

[1999, c. 79, §2 (AMD) .]

2. **Telephone hot line.** The department shall provide information to the public on daily ground-level ozone concentrations by a toll-free ozone information telephone hot line.

[1995, c. 306, §3 (NEW) .]

SECTION HISTORY
1995, c. 306, §3 (NEW). 1999, c. 79, §2 (AMD).

§585. ESTABLISHMENT OF EMISSION STANDARDS

The board may establish and may amend standards, herein called "emission standards", limiting and regulating in a just and equitable manner the amount and type of air contaminants which may be emitted to the ambient air within a region. Such emission standards shall be designed to prevent air pollution and to achieve and maintain the ambient air quality standards within the region in which applicable. [1971, c. 618, §12 (AMD).]

Prior to the establishment or amendment of emission standards, the board shall offer an opportunity for a public hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. The board shall solicit and consider all available information concerning the ambient air quality standards of the region; the existing emissions of air contaminants within the region, their nature, amount and sources; the effect of the emissions upon the ambient air quality standards of the region; the availability, effectiveness and cost of air pollution control apparatus designed to prevent and control air pollution caused by such emissions, and such other evidence as in the board's judgment will enable it to determine and establish emission standards for the region which will achieve and maintain the ambient air quality standards therein. [1983, c. 566, §37 (AMD).]

The board shall by rule establish or may amend emission standards limiting and regulating the amount and type of air contaminants that may be emitted to the ambient air of a region to achieve the goals set forth in this section. The rule must state the date upon which the standards or any individual standard becomes effective. In establishing the date, the board shall consider the degree of air pollution existing within the region, the length of time necessary to inform persons affected by the establishment of these standards that these standards exist, the time needed by the board to implement effective controls and the time needed

by persons affected to design and install air pollution control apparatus to comply with the new standards. [1989, c. 144, §2 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §158 (AMD).]

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 462, §2 (AMD). 1971, c. 618, §12 (AMD). 1977, c. 300, §40 (AMD). 1983, c. 566, §§37,38 (AMD). 1987, c. 878, §2 (AMD). 1989, c. 144, §§2,3 (AMD). 1989, c. 890, §§A40,B158 (AMD).

§585-A. ESTABLISHMENT OF STANDARDS

The board may establish and amend regulations to implement ambient air quality standards and emission standards. These regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and prevent air pollution. [1989, c. 144, §4 (AMD).]

Prior to the establishment or amendment of rules, the board shall offer an opportunity for a public hearing thereon in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. The board shall solicit and consider all available information concerning applicable ambient air quality and emission standards; the availability, effectiveness and cost of any air pollution control apparatus designed to prevent or control air pollution or violations of ambient air quality or emission standards which would be required by any proposed rules; and such other evidence as in the board's judgment will enable it to determine and establish rules adequate to maintain applicable ambient air quality and emission standards. [1989, c. 144, §4 (AMD).]

The board shall establish or amend rules to achieve the purposes set forth in this section. The board may delay the effective date of the rules. [1989, c. 144, §4 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §159 (AMD).]

The department shall confer with the joint standing committee of the Legislature having jurisdiction over natural resource matters before it proposes any revisions to the state implementation plan, required in the federal Clean Air Act, Section 110, 42 United States Code, Section 7410, that would require the State to implement new emissions reduction strategies or programs or substantially revise or terminate existing emissions reduction strategies or programs. Notwithstanding any other parts of this section, rules adopted pursuant to this section relating to motor vehicle fuel standards are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [1999, c. 107, §1 (AMD).]

SECTION HISTORY
1971, c. 462, §3 (NEW). 1971, c. 618, §12 (AMD). 1977, c. 300, §41 (AMD). 1983, c. 566, §§39,40 (AMD). 1987, c. 878, §3 (AMD). 1989, c. 144, §4 (AMD). 1989, c. 890, §§A40,B159 (AMD). 1997, c. 531, §1 (AMD). 1999, c. 107, §1 (AMD).

§585-B. HAZARDOUS AIR POLLUTANT STANDARDS

1. **Standards.** The board may establish and amend emission standards for hazardous air pollutants, and regulations to implement these standards. If emission standards are not feasible, the board may adopt design, equipment, work practice or operational standards for activities emitting hazardous pollutants.

[1989, c. 144, §5 (AMD) .]

2. **Procedure.** All standards and regulations under this section shall be adopted in conformance with the Maine Administrative Procedure Act, Title 5, chapter 375, except as provided in this section. Prior to the establishment or amendment of these standards and regulations, the board shall conduct a public hearing to receive testimony on:

A. Any health risk assessment on the pollutants proposed to be controlled that has been conducted by the Department of Health and Human Services; [1983, c. 535, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

B. The extent to which the public is exposed to the pollutant; [1983, c. 535, §2 (NEW).]

C. The availability, effectiveness and cost of any air pollution control apparatus designed to prevent or control the emissions of hazardous pollutants; and [1983, c. 535, §2 (NEW).]

D. Any other information that would assist the board in establishing standards adequate to protect the public health and safety. [1983, c. 535, §2 (NEW).]

[1983, c. 535, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Relation to ambient standards.** The board may control hazardous air pollutants if no ambient air quality standards have been established for those pollutants.

[1989, c. 144, §5 (AMD) .]

4. **Legislative review.**

[1989, c. 144, §6 (RP) .]

5. **Standards for mercury.** Notwithstanding subsection 1, an air emission source may not emit mercury in excess of 45.4 kilograms, or 100 pounds, per year after January 1, 2000; 22.7 kilograms, or 50 pounds, per year after January 1, 2004; 15.9 kilograms, or 35 pounds, after January 1, 2007; and 11.4 kilograms, or 25 pounds, after January 1, 2010. As an alternative to not emitting mercury in excess of 11.4 kilograms, or 25 pounds, after January 1, 2010, an air emission source may reduce mercury emissions by 90 percent by weight after January 1, 2010. Compliance with these limits must be specified in the license of the air emission source. The department shall establish by rule testing protocols and measurement methods for emissions sources for which the department has not established such protocols and methods for determining compliance with the emission standard for mercury. These rules are routine technical rules under Title 5, chapter 375, subchapter 2-A.

An air emission source may apply to the board for an extension or modification of the 11.4-kilogram, or 25-pound, limit as follows.

A. An emission source may submit an application to the board no later than January 1, 2009 for a 6-month extension of the January 1, 2010 deadline to meet the 11.4-kilogram, or 25-pound, limit. The board shall grant the extension if the board determines, based on information presented by the source, that compliance with the limit is not achievable by the deadline due to engineering constraints, availability of equipment or other justifiable technical reasons. [2005, c. 590, §1 (AMD).]

B. An emission source may submit an application to the board no later than January 1, 2009 for a license modification establishing an alternative emission limit for mercury. The board shall grant the license modification if the board finds that the proposed mercury emission limit meets the most stringent emission limitation that is achievable and compatible with that class of source, considering economic feasibility. [2005, c. 590, §1 (AMD).]

Pending a decision on an application for an extension or a license modification under this subsection, the 15.9-kilogram, or 35-pound, limit applies to the emission source.

Notwithstanding the January 1, 2000 compliance date in this subsection, a resource recovery facility that is subject to an emissions limit for mercury adopted by rule by the board before January 1, 2000 shall comply with the 45.4-kilogram, or 100-pound, mercury emissions limit after December 19, 2000.

For determining compliance with this subsection, the results of multiple stack tests may be averaged in accordance with guidance provided by the department.

[2013, c. 300, §13 (AMD) .]

6. **Mercury reduction plans.** An air emission source emitting mercury in excess of 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except as provided in subsection 7, the mercury reduction plan must be submitted to the department no later than September 1, 2008. The mercury reduction plan must contain:

A. Identification, characterization and accounting of the mercury used or released at the emission source; and [2005, c. 590, §2 (NEW).]

B. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, equipment or production changes that may be utilized by the emission source to reduce the amount of mercury used or released by that emission source, including a financial analysis of the costs and benefits of reducing the amount of mercury used or released. [2005, c. 590, §2 (NEW).]

C. [2005, c. 2, §24 (RP).]

The department may keep information submitted to the department under this subsection confidential as provided under section 1310-B.

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than March 1, 2009 summarizing the mercury emissions and mercury reduction potential from those emission sources subject to this subsection. In addition, the department shall include an evaluation of the appropriateness of the 25-pound mercury standard established in subsection 5. The evaluation must address, but is not limited to, the technological feasibility, cost and schedule of achieving the standards established in subsection 5. The department shall submit an updated report to the committee by March 1, 2013. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out to the 126th Legislature a bill relating to the evaluation and the updated report.

[2009, c. 535, §2 (AMD) .]

7. **Stack tests for mercury.** An air emission source emitting mercury in excess of 10 pounds in calendar year 2010 must:

A. Conduct a stack test for mercury twice in calendar year 2011 and twice in calendar year 2012. The stack tests must be conducted at least 4 months apart; and [2009, c. 535, §3 (NEW).]

B. By January 1, 2013, develop a mercury reduction plan and submit the plan to the department in accordance with subsection 6. The plan must contain the results of the 4 stack tests conducted pursuant to paragraph A. [2009, c. 535, §3 (NEW).]

For determining compliance with subsection 5, the results of multiple stack tests under this subsection may be averaged in accordance with guidance provided by the department.

The department may approve an alternative to the stack testing requirements in this subsection, such as, but not limited to, mercury input data or a continuous mercury emission monitoring system.

[2009, c. 535, §3 (NEW) .]

SECTION HISTORY
1983, c. 535, §2 (NEW). 1989, c. 144, §§5,6 (AMD). 1997, c. 722, §3 (AMD). 2003, c. 689, §B6 (REV). RR 2005, c. 2, §24 (COR). 2005, c. 590, §§1,2 (AMD). 2009, c. 338, §§1, 2 (AMD). 2009, c. 535, §§1-3 (AMD). 2013, c. 300, §13 (AMD).

§585-C. HAZARDOUS AIR POLLUTANT EMISSIONS INVENTORY

1. **Findings and purpose.** The Legislature finds that advancing scientific knowledge increasingly demonstrates that many air pollutants may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness to the residents of the State. Accordingly, the Legislature concludes that it is in the public interest to identify the extent of potential health risks.

[1983, c. 835, §2 (NEW) .]

2. **Emissions inventory.** The commissioner shall carry out and maintain an inventory of the sources in the State emitting any substance that may be a hazardous air pollutant.

A. This inventory must include the following data for each of those substances:

(1) The number of sources;

(2) The location of each source or category of source;

(3) The quantity emitted by each source or category of source;

(4) The total emissions; and

(5) The percentage of total emissions generated by sources with existing air licenses. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §160 (AMD).]

B. In conducting this inventory, the commissioner may rely upon questionnaires or other reasonable methods, including those established by the United States Environmental Protection Agency, for the purpose of carrying out this duty as promptly and efficiently as possible. The commissioner shall clearly indicate on any requests for information the minimum amount of emissions that must be reported. The commissioner may not require reporting of this information more frequently than every other year. [1995, c. 313, §1 (AMD).]

C. In carrying out this inventory, the commissioner may require persons to provide information on forms supplied by the commissioner. Refusal to provide the information subjects the person of whom it is requested to a civil penalty of not more than $100 for each day's delay. Submission of false information constitutes a violation of section 349, subsection 3, in addition to being subject to remedies otherwise available by law. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §160 (AMD).]

D. Information relating to the emissions inventory submitted to the commissioner under this section may be designated by the person submitting it as being only for the confidential use of the commissioner. Designated confidential information must be handled as confidential information is handled under section 1310-B, with the exception of emissions data which is public record. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §160 (AMD).]

E. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §160 (RP).]

[1995, c. 313, §1 (AMD) .]

SECTION HISTORY
1983, c. 835, §2 (NEW). 1989, c. 890, §§A40,B160 (AMD). 1995, c. 313, §1 (AMD). 1995, c. 313, §1 (AMD).

§585-D. NEW MOTOR VEHICLE EMISSION STANDARDS

Subject to the provisions of this section, the board may adopt and enforce standards that meet the requirements of the federal Clean Air Act, Section 177, 42 United States Code, Section 7507 relating to control of emissions from new motor vehicles or new motor vehicle engines. These standards, known as a "low-emission vehicle program," must be designed to prevent air pollution and achieve and maintain ambient air quality standards within the State. [2005, c. 245, §1 (AMD).]

1. New England states adoption.

[1999, c. 582, §1 (RP) .]

2. Ozone transport region adoption.

[1999, c. 582, §1 (RP) .]

The department may not implement the low-emission vehicle program if the implementation of that program includes the adoption, sale or use of the reformulated gasoline approved for sale and use in California. [2005, c. 245, §1 (AMD).]

SECTION HISTORY
1993, c. 358, §1 (NEW). 1997, c. 364, §§37,38 (AMD). 1999, c. 582, §1 (AMD). 2005, c. 245, §1 (AMD). 2007, c. 619, §7 (AMD). 2011, c. 120, §8 (AMD).

§585-E. GASOLINE STATION VAPOR RECOVERY REQUIREMENTS

(REPEALED)

SECTION HISTORY
1995, c. 493, §15 (NEW). 2001, c. 233, §§1,2 (AMD). 2007, c. 559, §§1-5 (AMD). MRSA T. 38, §585-E, sub-§6 (RP).

§585-F. MOTOR VEHICLE EMISSIONS LABELING PROGRAM

The board may adopt rules to implement a motor vehicle emissions labeling program for all new vehicles sold within the State in order to educate the public about the types and amounts of motor vehicle emissions. Rules adopted pursuant to this section are routine technical rules under Title 5, chapter 375, subchapter II-A. [1997, c. 500, §8 (NEW).]

SECTION HISTORY
1997, c. 500, §8 (NEW).

§585-G. MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM REQUIREMENT

The department shall submit to the United States Environmental Protection Agency a revision to the state implementation plan, required in the federal Clean Air Act, Section 110, 42 United States Code, Section 7410, that incorporates the motor vehicle inspection program under Title 29-A, chapter 15, subchapter 1, to meet the requirement for a vehicle emission control inspection and maintenance program in the federal Clean Air Act, Section 184, 42 United States Code, Section 7511c. [1997, c. 786, §8 (NEW).]

SECTION HISTORY
1997, c. 786, §8 (NEW).

§585-H. MTBE MONITORING AND REDUCTIONS

(REPEALED)

SECTION HISTORY
1999, c. 709, §2 (NEW). 2003, c. 638, §3 (AMD). 2011, c. 120, §9 (RP).

§585-I. MTBE

The following provisions apply to the sale of MTBE in the State. [2003, c. 638, §4 (NEW).]

1. **Definition.** For purposes of this section, "MTBE" means the gasoline oxygenate methyl tertiary butyl ether.

[2003, c. 638, §4 (NEW) .]

2. **Prohibition on sale.** Beginning January 1, 2007, a person may not sell, offer for sale, distribute or blend in this State gasoline that contains more than 1/2 of 1% by volume MTBE that is intended for sale to ultimate consumers in this State.

[2003, c. 638, §4 (NEW) .]

3. **Emergency order.** Notwithstanding subsection 2, whenever the commissioner finds that a danger to public health or safety exists due to low supply of gasoline in the State, the commissioner may issue an emergency order waiving the sales prohibition in subsection 2.

[2003, c. 638, §4 (NEW) .]

SECTION HISTORY
2003, c. 638, §4 (NEW).

§585-J. ARCHITECTURAL COATINGS

1. **Manufactured on or after January 1, 2006.** A person may not manufacture, blend or repackage for sale within the State, supply, sell or offer for sale within the State or solicit for application or apply within the State, any architectural or industrial maintenance coating manufactured on or after January 1, 2006 that contains volatile organic compounds in excess of limits specified in this subsection. Limits are expressed in grams of volatile organic compounds per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds or colorant added to tint bases. "Manufacturer's maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

A. Interior wood clear and semitransparent stains may not contain volatile organic compounds in excess of 550 grams per liter. [2005, c. 181, §1 (NEW).]

B. Varnishes may not contain volatile organic compounds in excess of 450 grams per liter. Effective January 1, 2011, varnishes may not contain volatile organic compounds in excess of 350 grams per liter. [2005, c. 181, §1 (NEW).]

[2005, c. 181, §1 (NEW) .]

2. **Manufactured prior to January 1, 2006.** An architectural or industrial maintenance coating manufactured prior to January 1, 2006 may be sold, supplied, offered for sale or applied after January 1, 2006 as long as the architectural or industrial maintenance coating complies with the standards in effect at the time the coating was manufactured, and the coating displays the date of manufacture on the lid, label or bottom of the container.

[2005, c. 181, §1 (NEW) .]

3. **Rulemaking.** The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 181, §1 (NEW) .]

SECTION HISTORY
2005, c. 181, §1 (NEW).

§585-K. GREENHOUSE GAS EMISSION STANDARDS; MORATORIUM

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

A. "Coal gasification facility" means a facility that uses a process other than the biological degradation of waste to convert coal or coal-derived materials into a synthesis gas or a product made from synthesis gas, including, without limitation, electricity, liquid fuels and chemicals. [2009, c. 306, §1 (AMD).]

B. "Greenhouse gas" has the same meaning as set forth in section 574. [2007, c. 584, §1 (NEW).]

[2009, c. 306, §1 (AMD) .]

2. **Greenhouse gas emission standards.** The board shall establish by rule, and may thereafter amend, standards for the emission of greenhouse gases derived from coal gasification facilities that commence operations after August 1, 2008. Rules established pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 584, §1 (NEW) .]

3. **Moratorium.** Between the effective date of this subsection and the earlier of the effective date of rules authorized pursuant to subsection 2 and August 1, 2011, the department may not issue any license or permit to a coal gasification facility that is not licensed under this chapter prior to August 1, 2008.

[2007, c. 584, §1 (NEW) .]

4. **Net emissions and carbon capture and sequestration.** In calculating greenhouse gas emissions, carbon dioxide that is captured and used for a commercial purpose or that is permanently disposed of in geological formations in compliance with all applicable laws and rules may not be counted as emissions from the emission source.

[2007, c. 584, §1 (NEW) .]

5. **Air emission license requirements apply.** The licensing requirements in section 590 and the prohibition in section 591 apply with regard to the standards established by the board pursuant to subsection 2. The lack of ambient air quality standards for greenhouse gases does not supersede or invalidate this section.

[2007, c. 584, §1 (NEW) .]

6. **Criteria and procedures.** The criteria and procedures in sections 585 and 585-A govern the establishment of greenhouse gas emission standards under this section. Emission standards established pursuant to subsection 2 must be designed to achieve the goals of this chapter and chapter 3-A.

[2007, c. 584, §1 (NEW) .]

7. **Construction; absence of limitation.** Nothing in this section may be construed to limit the authority of the department or any agency or any political subdivision of the State to regulate any pollutant or air contaminant or to establish emission standards pursuant to section 585.

§585-K. Idling requirements for motor vehciles

(As enacted by PL 2007, c. 582, §1 is REALLOCATED TO TITLE 38, SECTION 585-L)

[2007, c. 584, §1 (NEW) .]

SECTION HISTORY
RR 2007, c. 2, §26 (RAL). 2007, c. 582, §1 (NEW). 2007, c. 584, §1 (NEW). 2009, c. 306, §1 (AMD).

§585-L. IDLING REQUIREMENTS FOR MOTOR VEHICLES

(REALLOCATED FROM TITLE 38, SECTION 585-K)

1. **Applicability.** This section applies to:

A. Commercial motor vehicles, as defined in 49 Code of Federal Regulations, Section 390.5 (2007), and commercial motor vehicles used on a highway in intrastate commerce; [2007, c. 2, §26 (RAL).]

B. Locations where commercial motor vehicles load or unload; and [2007, c. 2, §26 (RAL).]

C. Gasoline-powered motor vehicles except private passenger vehicles. [2007, c. 2, §26 (RAL).]

[2007, c. 2, §26 (RAL) .]

2. **General requirement for loading and unloading locations.** A person who owns a location where a commercial motor vehicle that is not subject to an exemption under subsection 4 loads or unloads may not cause a driver of that vehicle to idle for a period longer than 30 minutes by requesting that the vehicle continue running while waiting to load or unload at that location. To the maximum extent practical, a person subject to this subsection shall minimize delays in loading and unloading operations in order to reduce idling times.

[2007, c. 2, §26 (RAL) .]

3. **General requirement for vehicles.** An owner or operator of a commercial motor vehicle may not cause or permit such a vehicle to idle for more than 5 minutes in any 60-minute period except as provided in subsection 4. An owner or operator of a gasoline-powered motor vehicle, except a private passenger vehicle, may not cause or permit such a vehicle to idle for more than 5 minutes in any 60-minute period except as provided in subsection 4.

[2007, c. 2, §26 (RAL) .]

4. **Exemptions.** Subsection 3 does not apply for the period or periods when:

A. A motor vehicle idles while forced to remain motionless because of traffic or an official traffic control device or signal or at the direction of a law enforcement official; [2007, c. 2, §26 (RAL).]

B. A motor vehicle idles when operating a defroster, heater, air conditioner or installing equipment solely to prevent a safety or health emergency and not as part of a rest period; [2007, c. 2, §26 (RAL).]

C. A police, fire, ambulance, public safety, military or other emergency or law enforcement vehicle idles while being used in the course of official business; [2007, c. 2, §26 (RAL).]

D. The primary propulsion engine idles for maintenance, servicing, repair or diagnostic purposes if idling is required for such an activity; [2007, c. 2, §26 (RAL).]

E. A motor vehicle idles as part of a state or federal inspection to verify that all equipment is in good working order if idling is required as part of the inspection; [2007, c. 2, §26 (RAL).]

F. Idling of the primary propulsion engine is necessary to power work-related mechanical or electrical operations other than propulsion, including, but not limited to, mixing, dumping or processing cargo, straight truck refrigeration or to protect prescription or over-the-counter drug products. This exemption does not apply when idling for cabin comfort or to operate nonessential on-board equipment; [2007, c. 2, §26 (RAL).]

G. A utility vehicle idles during electric utility service restoration operations or when needed to protect temperature-sensitive electrical testing equipment; [2007, c. 2, §26 (RAL).]

H. An armored vehicle idles when a person remains inside the vehicle to guard the contents or the vehicle is being loaded or unloaded; [2007, c. 2, §26 (RAL).]

I. An occupied commercial motor vehicle with a sleeper berth compartment idles for purposes of air conditioning or heating during a rest or sleep period; [2007, c. 2, §26 (RAL).]

J. An occupied commercial motor vehicle idles for purposes of air conditioning or heating while waiting to load or unload; [2007, c. 2, §26 (RAL).]

K. A passenger bus idles a maximum of 15 minutes in any 60-minute period to maintain passenger comfort while nondriver passengers are on board; [2007, c. 2, §26 (RAL).]

L. A motor vehicle idles due to mechanical difficulties over which the operator has no control if the vehicle owner submits the repair paperwork or product receipt by mail within 30 days to the appropriate authority verifying that the mechanical problem has been fixed. If no repair paperwork is submitted within 30 days, the vehicle owner is subject to penalties as provided in subsection 5; [2007, c. 2, §26 (RAL).]

M. A motor vehicle idles for not longer than an additional 10 minutes beyond the limit imposed in subsection 3 to operate heating equipment when the ambient air temperature is 32 degrees Fahrenheit or below; or [2007, c. 2, §26 (RAL).]

N. A motor vehicle idles as needed for the purpose of providing heat when the ambient air temperature is below 0 degrees Fahrenheit. [2007, c. 2, §26 (RAL).]

[2007, c. 2, §26 (RAL) .]

5. **Penalties.** A person who violates this section is subject to the following penalties.

A. A person who violates this section commits a traffic infraction under Title 29-A, chapter 23, subchapter 6. [2007, c. 2, §26 (RAL).]

B. A vehicle operator who violates this section after having previously violated this section commits a civil violation for which a fine of $150 must be adjudged. A vehicle owner or a person who owns a location where a commercial motor vehicle loads or unloads who violates this section after having previously violated this section commits a civil violation for which a fine of $500 must be adjudged. [2007, c. 2, §26 (RAL).]

[2007, c. 2, §26 (RAL) .]

SECTION HISTORY
RR 2007, c. 2, §26 (RAL).

§585-M. PROHIBITION ON SALE OF GASOLINE CONTAINING CORN-BASED ETHANOL

1. **Prohibition on sale.** A person may not sell or offer for sale gasoline that contains corn-based ethanol as an additive at a level greater than 10% by volume.

[2013, c. 69, §1 (NEW) .]

2. **Effective date.** This section does not take effect until at least 2 of the 6 New England states in addition to this State have enacted laws that prohibit the sale of gasoline that contains corn-based ethanol as an additive at a level greater than 10% by volume. The commissioner shall notify the Secretary of State, the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes when at least 2 New England states in addition to this State have enacted laws that prohibit the sale of gasoline that contains corn-based ethanol at a level greater than 10% by volume. In no event may this section take effect until 90 days after adjournment of the First Regular Session of the 126th Legislature.

[2013, c. 69, §1 (NEW) .]

SECTION HISTORY
2013, c. 69, §1 (NEW).

§585-N. REFORMULATED GASOLINE

Beginning June 1, 2015, a retailer who sells gasoline in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox or Lincoln County may sell only reformulated gasoline in those counties. [2013, c. 453, §1 (AMD).]

SECTION HISTORY
2013, c. 221, §2 (NEW). 2013, c. 453, §1 (AMD).

§586. SUBPOENA POWER

(REPEALED)

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 618, §12 (AMD). 1985, c. 746, §26 (RP).

§587. VARIANCES

Any person who owns or is in control of any source for which an air emission license was granted and construction was commenced prior to January 6, 1975, or a source other than a new or modified major stationary source for which an air emission license is granted after January 6, 1975, may apply to the department for a variance from ambient air quality standards or emission standards promulgated under this chapter. The application must be accompanied by such information and data as the department may reasonably require. The department may grant the variance if it finds that: [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §161 (AMD).]

1. **No danger to human health or safety.** The emissions occurring or proposed to occur do not endanger human health or safety;

[1979, c. 381, §9 (AMD) .]

2. **Compliance to produce hardship.** Compliance with the rules or regulations from which variance is sought would produce serious hardships; and

[1979, c. 381, §9 (AMD) .]

3. **Violation.** The variance will not cause or contribute to a violation of the applicable ambient air increment.

[1983, c. 566, §41 (AMD) .]

No variance may be granted except after opportunity for a public hearing in the municipality where the applicant maintains the building or business in connection with which the variance is sought. [1983, c. 566, §41 (AMD).]

If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it is good only until the necessary means for prevention, abatement or control become known and available and subject to the taking of such reasonable substitute or alternate measures as the department may prescribe. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §162 (AMD).]

If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it is for a period not to exceed such reasonable time as the department finds is requisite for the taking of the necessary measures. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §162 (AMD).]

If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections 1 and 2, it is only for such time as the department considers reasonable. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §162 (AMD).]

Any variance may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department on account of the variance, no renewal of the variance may be granted, unless following public hearing on the complaint on due notice, the department finds that renewal is justified. No renewal may be granted except on application therefor. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §162 (AMD).]

Any person adversely affected by a variance or renewal granted by the board may obtain judicial review thereof by a proceeding in the Superior Court. Judicial review of the denial of a variance or denial of renewal thereof may be had only on the ground that the denial was arbitrary or capricious. [1971, c. 618, §12 (AMD).]

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 347-A, subsection 3, to any person or that person's property. [1989, c. 878, Pt. A, §115 (AMD).]

Any owner or operator of a new or modified major emitting source who applies for an air emission license after January 6, 1975, shall not be eligible for a variance from ambient air quality standards, including applicable ambient air increments, except that the source may apply for a variance to increments applicable to mandatory federal Class I areas under the terms and conditions set forth in section 165(d) of the Federal Clean Air Act, 42 United States Code Annotated, section 7475(d). [1979, c. 381, §11 (NEW).]

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 682, (AMD). 1975, c. 282, §3 (AMD). 1977, c. 300, §42 (AMD). 1979, c. 381, §§8-11 (AMD). 1983, c. 566, §41 (AMD). 1989, c. 878, §A115 (AMD). 1989, c. 890, §§A40,B161, 162 (AMD).

§588. TRANSCRIPT TO BE MADE

(REPEALED)

SECTION HISTORY
1969, c. 474, §1 (NEW). 1977, c. 300, §43 (RP).

§589. REGISTRATION; PENALTIES

The commissioner may require the registration of persons or air contamination sources, of a type the board may by rule prescribe, engaged in activities that emit air contaminants and may also require persons operating stationary air contamination sources to install, maintain and use reasonable emission monitoring devices as the board by rule may prescribe. [1991, c. 384, §16 (AFF); 1991, c. 384, §9 (RPR).]

1. **Reporting requirements.** Persons may be required by the commissioner to periodically report on the location, size of outlet, height of outlet, rate and period of emission and composition of air contaminants, location and type of air pollution control apparatus and other information as prescribed by rule of the board.

A. The commissioner shall establish procedures for reporting ambient air quality data, including reporting violations of ambient air quality standards and emission standards. [1991, c. 384, §9 (NEW); 1991, c. 384, §16 (AFF).]

B. A person may not be required to submit to the commissioner more than one copy of ambient air monitoring data or meteorological data more frequently than quarterly unless required by the federal Environmental Protection Agency. [1991, c. 384, §9 (NEW); 1991, c. 384, §16 (AFF).]

[1991, c. 384, §9 (NEW); 1991, c. 384, §16 (AFF) .]

2. **Stack tests.** A person is not required to conduct stack tests for chlorine or chlorine dioxide more frequently than once every 5 years unless visible emissions, operating parameters or other information indicates the source may be operating out of compliance with any applicable emission standard or unless there are more stringent federal requirements. A person is not required to conduct stack tests for particulate matter on a source monitored by a continuous monitoring device for opacity as specified by 40 Code of Federal Regulations, Part 60, Appendix B, specification 1 or appropriate surrogate parameters as required by the commissioner more frequently than once every 5 years unless visible emissions, operating parameters or other information indicates the source may be operating out of compliance with any applicable emission standard or unless there are more stringent federal requirements. If visible emissions, operating parameters or other information indicates potential noncompliance with an air emission standard or if there are more stringent federal requirements, the department may require additional stack tests.

[2007, c. 589, §6 (AMD); 2007, c. 589, §9 (AFF) .]

3. **Emission monitoring devices.** Except as provided in this subsection, failure by a person to register, install, maintain and use emission monitoring devices or to file reports from those devices renders that person liable to the penalties prescribed in section 349. Emission monitoring devices must record accurate and reliable data during all source-operating time except for periods when emission monitoring devices are subject to established quality assurance and quality control procedures or to unavoidable malfunction. In any enforcement action brought by the department, the burden of proof is on the licensee to demonstrate that the failure of emission monitoring devices to record accurate and reliable data was due to an unavoidable malfunction or the performance of established quality assurance and quality control procedures on the monitoring system.

A. The department may not initiate enforcement action pursuant to section 349 against any person for failure to operate a continuous emission monitoring system for gaseous emissions as long as the system is recording accurate and reliable data at least 90% of the source-operating time in each quarter

of the calendar year. If the continuous emission monitoring system for gaseous emissions is recording accurate and reliable data less than 90% of source-operating time within any quarter of the calendar year, the department may initiate enforcement action and may include in that enforcement action any period of time that the continuous emission monitoring system was not recording accurate and reliable data during that quarter unless the licensee can demonstrate to the satisfaction of the department that the failure of the system to record accurate and reliable data was due to the performance of established quality assurance and quality control procedures or unavoidable malfunctions. [1993, c. 464, §1 (NEW).]

B. The department may not initiate enforcement action pursuant to section 349 against any person for failure to operate a continuous opacity monitoring system as long as the system is recording accurate and reliable data at least 95% of the source-operating time in each quarter of the calendar year, excluding time periods when the licensee is performing quality assurance and quality control procedures on the system that are required by the department. If the continuous opacity monitoring system is recording accurate and reliable data less than 95% of the source-operating time within any quarter of the calendar year, the department may initiate enforcement action and may include in that enforcement action any period of time that the continuous opacity monitoring system was not recording accurate and reliable data during that quarter unless the licensee can demonstrate to the satisfaction of the department that the failure of the system to record accurate and reliable data was due to the performance of established quality assurance and quality control procedures or unavoidable malfunctions. [1993, c. 464, §1 (NEW).]

[1993, c. 464, §1 (AMD) .]

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 462, §4 (RPR). 1971, c. 618, §12 (AMD). 1977, c. 300, §44 (AMD). 1989, c. 890, §§A40,B163 (AMD). 1991, c. 384, §16 (AFF). 1991, c. 384, §9 (RPR). 1993, c. 464, §1 (AMD). 2007, c. 589, §6 (AMD). 2007, c. 589, §9 (AFF).

§590. LICENSING

1. **License required.** After ambient air quality standards and emission standards have been established within a region, the board may by rule provide that a person may not operate, maintain or modify in that region any air contamination source or emit any air contaminants in that region without an air emission license from the department. An incinerator may not be used to dispose of solid waste without a license from the department, except an incinerator with a primary chamber volume no greater than 133 cubic feet or 1,000 gallons that burn only wood waste as defined in Title 12, section 9324, subsection 7-A and painted and unpainted wood from construction and demolition debris.

[2001, c. 626, §16 (AMD) .]

2. **Applications.** Applications for air emission licenses must be made in a form prescribed by the commissioner and contain the information related to the proposed air contamination source and emission of air contaminants required by rule of the board. All hearings under this section must be held in a municipality within the region where the proposed emission is to be located. At this hearing, the department shall solicit and receive testimony concerning the nature of the proposed emissions; their effect on existing ambient air quality standards within the region; the availability and effectiveness of air pollution control apparatus designed to maintain the emission for which a license is sought at the levels required by law; and the expense of purchasing and installing this apparatus. The department shall grant the license and may impose appropriate and reasonable conditions as necessary to secure compliance with ambient air quality standards if the department finds that the proposed emission will:

A. Receive the best practical treatment; [1991, c. 658, §1 (NEW).]

B. Not violate or be controlled so as not to violate applicable emission standards; and [1991, c. 658, §1 (NEW).]

C. Either alone or in conjunction with existing emissions, not violate or be controlled so as not to violate applicable ambient air quality standards. [1991, c. 658, §1 (NEW).]

[1991, c. 658, §1 (NEW) .]

3. **Best practical treatment.** Emissions from existing sources undergoing license renewal are receiving best practical treatment if those emissions are being controlled by an air pollution control apparatus installed less than 15 years prior to the date of license application approval or an accepted best practical treatment analysis shows that those emissions are being controlled in a manner consistent with emission controls commonly used in sources of similar age and design in similar industries, unless:

A. The applicant is proposing replacement of the existing air pollution control apparatus; [1991, c. 658, §1 (NEW).]

B. Additional reductions are necessary to achieve or maintain ambient air quality standards; [1991, c. 658, §1 (NEW).]

C. The department determines that emissions of air contaminants for which an ambient air quality standard has not been adopted pose an unreasonable risk to the environment or public health; or [1991, c. 658, §1 (NEW).]

D. Additional reductions are necessary to restore ambient air quality increments, even if the applicant has been previously authorized to use that increment. [1991, c. 658, §1 (NEW).]

The department may at the time of the license renewal require additional instrumentation; operating practices; automated process controls; replacement of component parts; emission testing, including requirements for continuous emission monitors; equipment maintenance programs; or record keeping to increase the efficiency of existing air pollution control apparatus or other pollution mitigating measures.

[1991, c. 658, §1 (NEW) .]

4. **Low sulfur fuel.** Best practical treatment does not include the use of fuel with a lower sulfur content than that specified in section 603-A unless a lower sulfur fuel is required to comply with applicable emission standards or applicable ambient air quality standards.

[1991, c. 658, §1 (NEW) .]

5. **License conditions for start-up, shutdown and malfunctions.** In making license decisions and conditions, the department shall consider the extent to which operation of the licensed facility requires an allowance for excess emissions during cold start-ups and shutdowns of the facility as long as that facility is operated to minimize emissions and is otherwise subject to applicable standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, infrequent emissions are unavoidable during these periods, the department shall establish appropriate license allowances and conditions.

[1993, c. 232, §3 (AMD) .]

6. **Installation period.** If an air emission license renewal or amendment can be granted only if the licensee installs additional emission controls or other mitigating measures, then the licensee may continue to emit pollutants from air contaminant sources that will receive these controls or measures up to the same level allowed in its existing air emission license as long as the additional emission controls or mitigating measures are fully operational as soon as practicable but in no case later than 24 months after the department issues the

license renewal or amendment, except as provided in this subsection. After a showing by the licensee that it can not install and bring to full operation required emission controls or mitigating measures within the 24-month period, the department may establish a later date for the installation and operation.

[1991, c. 658, §1 (NEW) .]

7. **Compliance with federal law.** The department has the authority to deny an air emission license for a new or modified major emitting source when it determines that the source will not comply with the requirements imposed pursuant to the Federal Clean Air Act, Title 1, Part C, subpart 2, as amended, related to the impairment of visibility in mandatory Class 1 federal areas.

[1991, c. 658, §1 (NEW) .]

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 462, §5 (AMD). 1971, c. 618, §12 (AMD). 1975, c. 282, §4 (AMD). 1979, c. 381, §§12-14 (AMD). 1985, c. 745, §§1,2 (AMD). 1989, c. 890, §§A40,B164 (AMD). 1991, c. 384, §§10,11 (AMD). 1991, c. 384, §16 (AFF). 1991, c. 483, §3 (AMD). 1991, c. 658, §1 (RPR). 1993, c. 232, §3 (AMD). 2001, c. 626, §16 (AMD).

§590-A. LICENSE TERMS

The term of air emission licenses is 10 years, except that the term of licenses for air contaminant sources subject to the state permitting provisions of 40 Code of Federal Regulations, Part 70 is 5 years and licenses issued pursuant to rules adopted pursuant to section 580-B, subsection 4, paragraph D have no term. The board may establish, by rule, shorter license terms for the following source categories as it considers necessary to protect the public health, safety and welfare: [2011, c. 538, §13 (AMD).]

1. **Waste incinerators.** Sources designed to burn solid waste for which a municipality is responsible pursuant to section 1305;

[1987, c. 279, (NEW) .]

2. **Innovative control.** Sources utilizing new or innovative air pollution control technology; and

[1987, c. 279, (NEW) .]

3. **New sources.** New sources that have not previously received an air emissions license from the department and those individual emission sources that have not previously been included in an air emissions license.

[1987, c. 279, (NEW) .]

SECTION HISTORY
1987, c. 279, (NEW). 2011, c. 538, §13 (AMD).

§590-B. TESTING AT RESOURCE RECOVERY FACILITIES

1. **Testing; first 2 years of commercial operation.** Testing is required at each resource recovery facility burning municipal solid waste at least once in every 6-month period during the first 2 years of commercial operation for the presence of dioxin and heavy metals, including, but not limited to, lead, cadmium and chromium in the emissions of the facility. The cost of these tests must be paid by the applicant or permittee.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §165 (AMD) .]

2. **Testing after first 2 years of licensure.** After the facility has been in operation and licensed for 2 years, testing is required for dioxin and heavy metals, including, but not limited to, lead, cadmium and chromium in the emissions of the facility at a frequency determined by the board by rule. The cost of these tests must be paid by the applicant or permittee.

A. The rules adopted by the board under this section establish a system of monitoring the overall air emission performance of resource recovery facilities employing surrogate measures of combustion efficiency and other parameters that, in the judgment of the board, may affect the creation of dioxin emissions and the emission of heavy metals. The board shall provide for minimum acceptable operating conditions as indicated by the surrogate measures. Failure to achieve and maintain these conditions will result in testing for dioxin and heavy metals as indicated by the surrogate measures. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §165 (AMD).]

B. Scheduling of tests required by this subsection must reflect the operating conditions that originally required the testing to ensure the greatest protection of public health and the environment. Seasonal differences in waste stream composition and atmospheric and climatic conditions must be taken into account in conducting the tests. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §165 (AMD).]

C. The board shall adopt rules under this section on or before January 1, 1989. [1987, c. 688, (NEW).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §165 (AMD) .]

2-A. **Testing results.** The results of all tests required under this section must be submitted to the commissioner within 30 days of testing.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §165 (NEW) .]

3. **Public and local participation.** The municipal officers, or their designees, of the municipality within which the facility is located or, in the case of a facility located within an unorganized territory or plantation, the county commissioners, or their designees, may conduct an independent review of any testing protocol, test results and their interpretations and any standards or assumptions upon which the test protocol or results are based, which items are required by this section.

The review authorized in this subsection may make use of the services of independent consultants and may include, without limitation, review of the testing protocol, test results and their interpretations and any standards or assumptions upon which the test protocol or results are based. The cost of each review must be paid by the applicant or permittee in an amount not to exceed $1,000 per test.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §165 (AMD) .]

4. **Authority for further tests.** The department shall have the authority to make such further tests for compliance as the department determines necessary and the board may reinstate a license when tests indicate compliance.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §165 (AMD) .]

SECTION HISTORY
1987, c. 688, (NEW). 1989, c. 890, §§A40,B165 (AMD).

§590-C. INCINERATOR CLASSIFICATION

(REPEALED)

SECTION HISTORY
1989, c. 546, §12 (NEW). 1991, c. 171, §1 (RP).

§590-D. WASTE CLASSIFICATION

(REPEALED)

SECTION HISTORY
1989, c. 546, §12 (NEW). 1991, c. 171, §1 (RP).

§590-E. COMBUSTION OF MATERIAL-SEPARATED, REFUSE-DERIVED FUEL

A facility may not burn any material-separated, refuse-derived fuel in fuel-burning equipment with a total heat input capacity of 500,000 British thermal units per hour or less. A facility may burn material-separated, refuse-derived fuel in fuel-burning equipment with a total heat input capacity of greater than 500,000 British thermal units per hour, if: [1991, c. 220, §5 (NEW).]

1. **Registration.** The fuel-burning equipment is registered with the Maine Fuel Board;

[2013, c. 300, §14 (AMD) .]

2. **Automatic stoker.** The fuel-burning equipment has a total heat input capacity of less than 10,000,000 British thermal units per hour and is equipped with an automatic stoker that has a feed rate of at least 50 pounds per hour; and

[1991, c. 220, §5 (NEW) .]

3. **No ambient air quality violation.** The department determines that the facility has demonstrated that the facility will not violate ambient air quality standards. In making this demonstration, the owner or operator of the facility shall use the department's meteorological model used for screening sources, or its equivalent as approved by the department, and submit all air quality modeling results required to make this determination to the department. The department shall notify the facility of its determination on air quality impacts in writing within 60 days of receiving the air quality modeling results from the facility. If the department fails to act within this 60-day period, the determination is deemed to be in favor of the facility. A facility or fuel-burning equipment that requires an air emission license under this chapter is exempt from this subsection.

[1991, c. 220, §5 (NEW) .]

SECTION HISTORY
1991, c. 220, §5 (NEW). 2013, c. 300, §14 (AMD).

§590-F. SAFETY PRECAUTIONS FOR CHILDREN TOURING INCINERATOR FACILITIES

A resource recovery facility burning municipal solid waste may not permit students who have not yet entered 7th grade to enter the facility for the purpose of touring the facility. Prior to allowing 7th grade, 8th grade and secondary school students of a public or private school to enter a resource recovery facility that burns municipal solid waste for the purpose of touring the facility: [2003, c. 441, §1 (NEW).]

1. **List of violations to superintendent or headmaster.** The facility shall send to the office of the superintendent within the school administrative unit or to the headmaster of the private school a list of air quality violations issued to the facility by the federal Occupational Safety and Health Administration within the last 2 years; and

[2003, c. 441, §1 (NEW) .]

2. **List to parents.** The office of the superintendent or the headmaster shall send the list of violations under subsection 1 to the parent or guardian of any participating student.

[2003, c. 441, §1 (NEW) .]

SECTION HISTORY
2003, c. 441, §1 (NEW).

§591. PROHIBITIONS

No person may discharge air contaminants into ambient air within a region in such manner as to violate ambient air quality standards established under this chapter or emission standards established pursuant to section 585, 585-B or 585-K. [2007, c. 584, §2 (AMD).]

When the board, pursuant to section 590, has by rule provided that no person may operate or maintain within a region any air contamination source or emit any air contaminants without an emission license from the department, the operation or maintenance without that license is prohibited. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §166 (AMD).]

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 462, §7 (AMD). 1971, c. 618, §12 (AMD). 1983, c. 835, §3 (AMD). 1989, c. 890, §§A40,B166 (AMD). 2007, c. 584, §2 (AMD).

§591-A. MODIFICATIONS TO A LICENSED SOURCE

1. **Modifications.** Modification of a licensed source means any physical or operational change in an emission unit or emission source that:

A. Increases the quantity of any air contaminant emitted; [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

B. Increases the impact of the emissions of that emission unit or source on ambient air quality due to changes in stack height, physical building characteristics or plume characteristics unless the commissioner finds that the change will not cause a violation of ambient air quality standards and ambient increment standards; [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

C. Results in the emission of any air contaminant not previously emitted; [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

D. Constitutes construction of a new emission unit; or [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

E. Constitutes the reconstruction of a new emission unit as defined in 40 Code of Federal Regulations, 60.15 (1990). [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

[1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF) .]

2. **Changes not considered modifications.** The following changes are not modifications to a licensed source:

A. Routine maintenance, repair and replacement; [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

B. An increase in the production rate at an existing source if the increase does not exceed the operating design capacity of the source, unless that change is prohibited under any federally enforceable permit condition established after January 6, 1975 pursuant to 40 Code of Federal Regulations, 52.21 (1990) or

under regulations approved pursuant to 40 Code of Federal Regulations, Part 51, Subpart I or 40 Code of Federal Regulations, 51.166 (1990); [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

C. An increase in the hours of operation at an existing source, unless that change is prohibited under any federally enforceable permit condition established after January 6, 1975 pursuant to 40 Code of Federal Regulations, 52.21 (1990) or under regulations approved pursuant to 40 Code of Federal Regulations, Part 51, Subpart I or 40 Code of Federal Regulations, 51.166 (1990); [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

D. Use of an alternative fuel or raw material if the source is designed to accommodate that alternative fuel or raw material and if prior to January 6, 1975, the source is licensed to use that alternative fuel or raw material; or [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

E. Replacement of an air pollution control apparatus if the replacement is found by the department to be the best practical treatment for the emission. [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

[1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF) .]

SECTION HISTORY
1991, c. 384, §12 (NEW). 1991, c. 384, §16 (AFF).

§591-B. METEOROLOGICAL DATA COLLECTION

1. **Data requirements.** A minimum of one year of acceptable on-site meteorological data is required for any modeling analysis. If more than one year of on-site data is available, all acceptable data must be used, up to a maximum of 5 years of data. If less than 5 consecutive years of acceptable on-site data is available, the source must continue to collect meteorological data to obtain an acceptable 5-year data base. Acceptable data means that the data meets the department's requirements based on the federal Environmental Protection Agency's guidelines on air quality models.

[1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF) .]

2. **New data collection requirements.** Once an acceptable on-site 5-year data base has been approved by the commissioner, it is acceptable for modeling purposes until:

A. The department's requirements based on federal requirements for meteorological data change; [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

B. Sufficient ambient air quality violations occur to make collection of additional meteorological data necessary; or [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

C. The emission source configuration is significantly changed. [1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF).]

[1991, c. 384, §12 (NEW); 1991, c. 384, §16 (AFF) .]

SECTION HISTORY
1991, c. 384, §12 (NEW). 1991, c. 384, §16 (AFF).

§592. VIOLATIONS; GENERAL PROCEDURES

(REPEALED)

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 618, §12 (AMD). 1977, c. 300, §45 (RP).

§592-A. SOILING OF PROPERTY; NUISANCE

1. **Total suspended particulate matter.** No person may discharge total suspended particulate matter to the ambient air in an amount or concentration that soils property or creates a nuisance condition. Total suspended particulate matter concentrations of less than 150 micrograms per cubic meter for any 24-hour period in the ambient air are presumed not to constitute soiling or nuisance conditions. Any person who demonstrates on the basis of total suspended particulate ambient air quality monitoring information acceptable to the commissioner that emissions discharged by that person have not substantially caused or contributed to total suspended particulate matter concentrations in excess of 150 micrograms per cubic meter over a 24-hour period at any applicable location may not be held in violation of this subsection.

[1989, c. 155, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §167 (AMD) .]

2. **Fugitive emissions.** Any commercial and industrial source or facility, all municipalities and all state or federal facilities, whether or not requiring a license pursuant to this chapter, that cause or contribute to the discharge of fugitive emissions that the commissioner determines to constitute a nuisance are required to establish and maintain a continuing program for best management practices for suppression of fugitive emissions during any periods of construction, renovation or normal operation. The commissioner shall determine those procedures which constitute best management practices. A description of a source's program for suppression of fugitive emissions must be made available to the commissioner upon request. Public or private roads that are not part of a commercial and industrial source or facility are not subject to the requirements of this subsection.

[1991, c. 138, (AMD) .]

SECTION HISTORY
1989, c. 155, §2 (NEW). 1989, c. 890, §§A40,B167 (AMD). 1991, c. 138, (AMD).

§593. VIOLATIONS; EMERGENCY PROCEDURES

(REPEALED)

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 618, §12 (AMD). 1973, c. 438, §7 (AMD). 1977, c. 300, §46 (RP).

§594. APPEALS

(REPEALED)

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 618, §12 (AMD). 1977, c. 300, §47 (RP).

§595. ENFORCEMENT; VIOLATIONS

(REPEALED)

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 256, §6 (AMD). 1971, c. 618, §12 (AMD). 1975, c. 282, §5 (RPR). 1977, c. 300, §48 (RP).

§596. VIOLATIONS OF ORDERS AND REGULATIONS; PENALTIES

(REPEALED)

SECTION HISTORY
1969, c. 474, §1 (NEW). 1971, c. 256, §6 (AMD). 1971, c. 618, §12 (AMD). 1975, c. 282, §5 (RPR). 1977, c. 300, §48 (RP).

§597. MUNICIPAL AIR POLLUTION CONTROL

Nothing in this chapter shall be construed as a preemption of the field of air pollution study and control on the part of the State. Municipalities may study air pollution and adopt and enforce air pollution control and abatement ordinances, to the extent that these ordinances are not less stringent than this chapter or than any standard, order or other action promulgated pursuant to this chapter. Local ordinance provisions which touch on matters not dealt with by this chapter or which are more stringent than this chapter shall bind persons residing in the municipality. [1969, c. 474, §1 (NEW).]

SECTION HISTORY
1969, c. 474, §1 (NEW).

§598. VISIBLE EMISSIONS

(REPEALED)

SECTION HISTORY
1973, c. 438, §8 (NEW). 1979, c. 476, §3 (AMD). 1979, c. 718, §6 (RPR). 1989, c. 890, §§A40,B168 (AMD). 1991, c. 171, §2 (RP).

§599. OPEN BURNING

(REPEALED)

SECTION HISTORY
1973, c. 438, §8 (NEW). 1975, c. 228, §§2,3 (AMD). 1977, c. 300, §49 (AMD). 1979, c. 127, §214 (AMD). 1979, c. 556, §8 (AMD). 1981, c. 273, §§1-3 (AMD). 1983, c. 504, §7 (RPR). 1983, c. 703, §§2,3 (AMD). 1983, c. 743, §14 (AMD). 1985, c. 188, (AMD). 1989, c. 174, §§10-13 (AMD). 1989, c. 890, §§A40,B169 (RP).

§600. FUEL-BURNING EQUIPMENT PARTICULATE EMISSION STANDARD

(REPEALED)

SECTION HISTORY
1973, c. 438, §8 (NEW). 1979, c. 476, §§4,5 (AMD). 1983, c. 504, §8 (RPR). 1989, c. 890, §§A40,B170 (AMD). 1991, c. 171, §3 (RP).

§601. INCINERATOR PARTICULATE EMISSION STANDARD

(REPEALED)

SECTION HISTORY
1973, c. 438, §8 (NEW). 1975, c. 669, §§2,3 (AMD). 1977, c. 602, §§1-3 (AMD). 1977, c. 696, §345 (AMD). 1989, c. 890, §§A40,B171 (AMD). 1991, c. 171, §4 (RP).

§602. GENERAL PROCESS SOURCE PARTICULATE EMISSIONS

(REPEALED)

SECTION HISTORY
1973, c. 438, §8 (NEW). 1989, c. 890, §§A40,B172 (AMD). 1991, c. 171, §5 (RP).

§603. LOW SULFUR FUEL

(REPEALED)

SECTION HISTORY
1973, c. 438, §8 (NEW). 1975, c. 669, §4 (RPR). 1983, c. 504, §9 (RP).

§603-A. LOW SULFUR FUEL

1. **Scope.** This section applies to those fuel-burning sources in the State that are not required to achieve the lower emission rates of new source performance standards or as required to satisfy the case-by-case requirements of best available control technology or best available retrofit technology.

[2007, c. 95, §4 (AMD) .]

2. **Prohibitions.** Except as provided in subsections 4 and 9, a person may not use any liquid fossil fuel with a sulfur content exceeding the limits in paragraph A or any solid fossil fuel with a sulfur content to heat content ratio exceeding the limits of paragraph B.

A. The sulfur content for liquid fossil fuels is as follows.

(1) In the Central Maine, Downeast, Aroostook County and Northwest Maine Air Quality Control Regions and the Metropolitan Portland Air Quality Control Region outside the Portland Peninsula Air Quality Control Region, a person may not use any residual fuel oil with a sulfur content greater than 2.0% by weight; beginning January 1, 2018, the limit for those regions is 0.5% by weight.

(2) In the Portland Peninsula Air Quality Control Region, a person may not use any residual fuel oil with a sulfur content greater than 1.5% by weight; beginning January 1, 2018, the limit for that region is 0.5% by weight.

(3) Statewide, a person may not use a distillate fuel:

(a) Beginning July 1, 2016, with a sulfur content greater than 0.005% by weight; and

(b) Beginning January 1, 2018, with a sulfur content greater than 0.0015% by weight.

The sulfur content requirements in this subparagraph do not apply to the use of distillate fuel for manufacturing purposes. [2013, c. 300, §15 (AMD).]

B. The sulfur content for solid fossil fuels is as follows:

(1) One and two-tenths pounds sulfur per million British Thermal Units until November 1, 1991, and .96 pounds sulfur per million British Thermal Units thereafter, calculated as a calendar quarter average for sources in the Central Maine, Downeast, Aroostook County, Northwest Maine Air Quality Control Regions and that portion of the Metropolitan Portland Air Quality Region outside the Portland Peninsula Air Quality Region. A calendar quarter is composed of the months as follows: (1) January, February, March; (2) April, May, June; (3) July, August, September; and (4) October, November, December; and

(2) Seventy-two hundredths pounds sulfur per million British Thermal Units calculated as a calendar quarter average for sources in the Portland Peninsula Air Quality Region. A calendar quarter is composed of the months as follows: (1) January, February, March; (2) April, May, June; (3) July, August, September; and (4) October, November, December. [2007, c. 95, §5 (AMD).]

[2013, c. 300, §15 (AMD) .]

3. **Records.**

[1991, c. 663, §1 (RP) .]

4. **Flue gas desulfurization.** Any source that installs any approved flue gas desulfurization system or other prescribed sulfur removal device must be permitted to use fuel with a sulfur content in excess of the limitations of subsection 2 such that, after control, total sulfur dioxide emissions do not exceed 1.92 pounds of sulfur dioxide per million British Thermal Units in any 24-hour period or emission rates corresponding to the fuel sulfur limitations required for sources on the Portland peninsula.

Except for lime kilns at pulp and paper mills, the department may require any person achieving compliance by means of an approved flue gas desulfurization system or other prescribed sulfur removal device to operate a continuous emission monitoring device for sulfur dioxide.

[1993, c. 464, §2 (AMD) .]

4-A. **Electrical generating facilities.**

[1999, c. 657, §25 (RP) .]

5. **Fuel blending.**

[1991, c. 663, §2 (RP) .]

6. **Test methods and procedures.**

[1991, c. 663, §2 (RP) .]

7. **Emergency variance.**

[1991, c. 663, §2 (RP) .]

8. **Best available retrofit technology or BART requirements.** For those BART eligible units determined by the department to need additional sulfur air pollution controls to improve visibility, the controls must:

A. Be installed and operational no later than January 1, 2013; and [2007, c. 95, §6 (NEW).]

B. Either:

(1) Require the use of sulfur oil having 1% or less of sulfur by weight; or

(2) Be equivalent to a 50% reduction in sulfur emissions from a BART eligible unit based on a BART eligible unit source emission baseline determined by the department under 40 Code of Federal Regulations, Section 51.308 (d)(3)(iii)(2006) and 40 Code of Federal Regulations, Section 51 Appendix Y (2006). [2007, c. 95, §6 (NEW).]

[2007, c. 95, §6 (NEW) .]

9. **Equivalent alternative sulfur reduction application.** The department shall adopt major substantive rules as defined in Title 5, chapter 375, subchapter 2-A that provide an opportunity for a licensed air contamination source that holds a license on the effective date of this subsection to apply for an equivalent alternative sulfur reduction strategy to the residual fuel oil and distillate fuel requirements in subsection 2. The rules must provide for the achievement of equivalent sulfur emission reductions through other means, including, but not limited to, reductions in consumption of residual fuel oil and distillate fuel, early sulfur emission reductions from a baseline emissions inventory year of 2002 and conversions to alternative fuels. The department shall submit the major substantive rules to the Legislature by January 31, 2014. Approved alternate sulfur reduction strategies must be in effect by January 1, 2018.

[2009, c. 604, §2 (NEW) .]

SECTION HISTORY
1983, c. 504, §10 (NEW). 1985, c. 162, §9 (AMD). 1989, c. 501, §§CC1-3 (AMD). 1989, c. 890, §§A40,B173 (AMD). 1991, c. 663, §§1,2 (AMD). 1993, c. 464, §2 (AMD). 1999, c. 657, §§24,25 (AMD). 2007, c. 95, §§4-6 (AMD). 2009, c. 604, §§1, 2 (AMD). 2013, c. 300, §15 (AMD).

§603-B. ACID DEPOSITION CONTROL

1. **Legislative findings and intent.** The Legislature finds that acid deposition, commonly referred to as "acid rain," resulting from commercial, industrial or other emissions of sulfur dioxide and nitrogen oxides, is occurring in the State. The Legislature also finds that acid deposition poses a present and severe threat to the State's natural resources, including its fish and wildlife, agriculture and water resources, as well as to the State's economy and public health. Increasing evidence suggests that acid deposition also affects the State's economy by reducing the growth productivity of the State's forest resources.

[1985, c. 498, §1 (NEW) .]

2. **Nitrogen oxides emission inventory.** The department shall prepare an inventory of both current and potential nitrogen oxide emission sources in the State. The department shall also evaluate the contribution of nitrogen oxide emissions to acid deposition and other air pollution problems in the State. The inventory and evaluation shall be completed and submitted to the Legislature by January 31, 1987.

[1985, c. 498, §1 (NEW) .]

3. **Acid rain impact study.** The department shall complete a study covering the following areas:

A. A resampling and measuring of the response of the State's lakes located in sensitive geologic areas; [1985, c. 498, §1 (NEW).]

B. An identification of sensitive receptor areas throughout the State based on, but not limited to, the following criteria: Geology; elevation; lake size; watershed area; and aquatic and terrestrial flora; [1985, c. 498, §1 (NEW).]

C. An assessment of the impact of acid deposition on the growth and productivity of the State's forest resources; and [1985, c. 498, §1 (NEW).]

D. A determination through long-range modeling techniques of the contribution of both in-state sources and out-of-state sources to acid rain deposition in the State. [1985, c. 498, §1 (NEW).]

In preparing this study, the department shall coordinate with and utilize as fully as possible the research being conducted at the University of Maine and research conducted by the United States Environmental Protection Agency regarding the acid rain problem. Results of this study shall be reported to the Legislature, together with recommendations for further actions, no later than January 31, 1987.

[1985, c. 779, §84 (AMD) .]

SECTION HISTORY
1985, c. 498, §1 (NEW). 1985, c. 779, §84 (AMD).

§604. SULFUR DIOXIDE EMISSION STANDARD FOR SULFITE PULPING PROCESSES

(REPEALED)

SECTION HISTORY
1973, c. 438, §8 (NEW). 1991, c. 171, §6 (RP).

§605. MALFUNCTIONS

Any person owning or operating any emission source that suffers a malfunction or breakdown in any component part and that malfunction or breakdown causes a violation of any emission standards shall notify the commissioner within 48 hours and submit a written report to the department on a quarterly basis. [1995, c. 235, §2 (AMD).]

SECTION HISTORY
1973, c. 438, §8 (NEW). 1983, c. 566, §42 (AMD). 1989, c. 890, §§A40,B174 (AMD). 1995, c. 235, §2 (AMD).

§606. NONPOINT SOURCES OR INDIRECT SOURCES; REVIEW OF PUBLIC WAYS

(REPEALED)

SECTION HISTORY
1975, c. 282, §6 (NEW). 1975, c. 570, (NEW). 1975, c. 770, §211 (RP). 1985, c. 746, §27 (RP).

§606-A. TIRE-DERIVED FUEL

Any physical or operational change of an industrial power boiler that does not result in an increase in permitted emissions and that is undertaken for the purpose of allowing the source to burn tire-derived fuel is not a modification of the source or emissions unit pursuant to regulations implementing section 590. [1989, c. 869, Pt. C, §8 (NEW).]

SECTION HISTORY
1989, c. 869, §C8 (NEW).

§607. MUNICIPAL ALTERNATIVE

(REPEALED)

SECTION HISTORY
1975, c. 770, §212 (NEW). 1979, c. 535, (AMD). 1989, c. 890, §§A40,B175 (RP).

§608. STATIONARY SOURCE PERFORMANCE STANDARDS

(REPEALED)

SECTION HISTORY
1975, c. 669, §5 (NEW). 1979, c. 381, §15 (RP).

§608-A. SOIL DECONTAMINATION

Any rotary drum mix asphalt plant may process up to 10,000 cubic yards of soil contaminated by gasoline or #2 fuel oil per year without an air emissions license pursuant to section 590. This limit may be exceeded with written authorization from the commissioner. The plant owner or operator shall notify the commissioner at least 24 hours prior to processing the contaminated soil and specify the contaminating fuel and quantity, origin of the soil and fuel and the disposition of the contaminated soil. The owner or operator shall maintain records of these activities for 6 years. [1991, c. 817, §32 (RPR).]

SECTION HISTORY
1989, c. 546, §13 (NEW). 1989, c. 869, §C9 (AMD). 1989, c. 890, §§A40,B176 (AMD). 1991, c. 66, §A34 (RPR). 1991, c. 499, §20 (RPR). 1991, c. 817, §32 (RPR).

§609. PETROLEUM LIQUID STORAGE VAPOR CONTROL

(REPEALED)

SECTION HISTORY
1979, c. 385, §2 (NEW). 1989, c. 197, §3 (RPR). 1989, c. 890, §§A40,B177 (AMD). 1991, c. 171, §7 (RP).

§609-A. GASOLINE SERVICE STATION VAPOR CONTROL

(REPEALED)

SECTION HISTORY
1989, c. 197, §4 (NEW). 1991, c. 171, §8 (RP).

§609-B. MOTOR VEHICLE FUEL VOLATILITY LIMIT

(REPEALED)

SECTION HISTORY
1989, c. 197, §4 (NEW). 1991, c. 171, §8 (RP).

§609-C. GASOLINE TANK TRUCK TIGHTNESS; SELF-CERTIFICATION

(REPEALED)

SECTION HISTORY
1989, c. 197, §4 (NEW). 1989, c. 890, §§A40,B178 (AMD). 1991, c. 171, §9 (RP).

§610. PETROLEUM LIQUIDS TRANSFER VAPOR RECOVERY

(REPEALED)

SECTION HISTORY

1979, c. 385, §2 (NEW). 1981, c. 441, (AMD). 1981, c. 580, §§1,2 (AMD). 1989, c. 197, §5 (RPR). 1989, c. 890, §§A40,B179 (AMD). 1991, c. 171, §10 (RP).

§610-A. HEXAVALENT CHROMIUM PARTICULATE EMISSION STANDARD *(REPEALED)*

SECTION HISTORY
1987, c. 769, §A178 (NEW). 1991, c. 171, §11 (RP).

§610-B. OUTDOOR WOOD BOILERS

1. **Phase I emission standard.**

[2007, c. 442, §2 (NEW); T. 38, §610-B, sub-§1 (RP) .]

2. **Phase II emission standard.** A person may not sell or distribute for sale an outdoor wood boiler after April 1, 2010 unless it meets a particulate matter emission limit of 0.32 pounds per million British Thermal Units heat output.

[2007, c. 442, §2 (NEW) .]

2-A. **Voluntary, technology-forcing emission standard.** An outdoor wood boiler meeting a particulate matter emission limit of 0.06 pounds per million British Thermal Units heat output is not subject to a setback requirement as long as it meets the stack height requirements for an outdoor wood boiler meeting the emission standard in subsection 2 in accordance with rules adopted by the department.

[2009, c. 209, §4 (NEW) .]

3. **Nuisance condition.** A person may not operate an outdoor wood boiler in a manner that creates a nuisance condition as defined in the department's rules.

[2007, c. 442, §2 (NEW) .]

4. **Emergency powers.** If the commissioner finds after investigation that an outdoor wood boiler is being operated in a manner that creates a nuisance condition or may create or creates a danger to public health or safety, the commissioner may order the owner or any person operating that outdoor wood boiler to immediately cease or prevent that operation, and the commissioner may take such action as may be necessary to terminate or mitigate the danger or likelihood of danger.

A. An order issued under this subsection must contain findings of fact describing, insofar as possible, the site of the operation and the nuisance condition or danger to the public health or safety. [2007, c. 680, §1 (NEW).]

B. Service of a copy of the commissioner's findings and order under this subsection must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2007, c. 680, §1 (NEW).]

C. The person to whom the order is directed shall comply immediately. An order may not be appealed to the Superior Court, but the person to whom the 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 the person to whom the order was directed. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote.

The nature of the hearing before the board is 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 is directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2007, c. 680, §1 (NEW).]

[2007, c. 680, §1 (NEW) .]

The Department of Environmental Protection shall adopt rules to implement this section. Notwithstanding section 592-A, the rules must include a definition of "nuisance condition" specifically relating to the operation of outdoor wood boilers. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 442, §2 (NEW).]

SECTION HISTORY
2007, c. 442, §2 (NEW). 2007, c. 680, §1 (AMD). 2009, c. 209, §4 (AMD). MRSA T. 38, §610-B, sub-§1 (AMD).

§610-C. OUTDOOR WOOD BOILER FUND

(REPEALED)

SECTION HISTORY
2007, c. 680, §2 (NEW). 2009, c. 209, §5 (AMD). MRSA T. 38, §610-C, sub-§4 (RP).

§610-D. RESIDENTIAL WOOD STOVE REPLACEMENT FUND

1. **Fund established.** The Residential Wood Stove Replacement Fund, referred to in this section as "the fund," is established as a nonlapsing fund administered by the department for the purpose of providing financial incentives for the replacement of wood stoves with cleaner alternatives.

[2009, c. 653, §1 (NEW) .]

2. **Sources of money.** The fund consists of any money received from the following sources:

A. Contributions from any source, both public and private; and [2009, c. 653, §1 (NEW).]

B. [2009, c. 653, §1 (NEW); T. 38, §610-D, sub2, ¶B (RP).]

Money deposited in the fund must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on that investment must be credited to the fund.

[2009, c. 653, §1 (NEW) .]

3. **Disbursements from the fund.** The department shall apply the money in the fund toward the award of financial incentives to residents of the State to replace residential wood stoves manufactured prior to 1988 and used as a primary source of heat in an owner's primary residence with residential heating appliances with lower emissions of pollution, such as wood stoves, pellet stoves or vented gas stoves, that have been certified by the United States Environmental Protection Agency. Costs incurred by the department to administer the residential wood stove replacement program under subsection 4 may be paid by the fund.

[2009, c. 653, §1 (NEW) .]

4. **Residential wood stove replacement program.** The department shall establish through rulemaking a residential wood stove replacement program. The program must include, but is not limited to:

A. Public outreach and education; [2009, c. 653, §1 (NEW).]

B. Establishment of eligibility criteria for participating in the program, benefits available under the program and the process for establishing eligibility for benefits; and [2009, c. 653, §1 (NEW).]

C. Approved methods for removal and disposal of the replaced residential wood stoves. [2009, c. 653, §1 (NEW).]

[2009, c. 653, §1 (NEW) .]

5. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 653, §1 (NEW) .]

SECTION HISTORY
2009, c. 653, §1 (NEW). MRSA T. 38, §610-D, sub2, ¶B (AMD).

Chapter 5: GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS

Subchapter 1: MILLS AND DAMS

Article 1: ERECTION AND FLOWAGE RIGHTS

Subarticle 1: GENERAL PROVISIONS

§611. OWNER OR MORTGAGEE IN POSSESSION LIABLE FOR ACTS OF TENANTS

The owner or mortgagee in possession, as well as any tenant, of any mill used for manufacturing lumber is liable for the acts of the tenant in unlawfully obstructing or diverting the water of any river or stream by the slabs or other mill waste from that mill, but no action may be maintained without a demand of damages, at least 30 days prior to its commencement. Such an unlawful obstruction or diversion by the tenant shall terminate, at the election of the owner or mortgagee and on written notice to the tenant, the tenancy. [1987, c. 769, Pt. A, §179 (RPR).]

SECTION HISTORY
1983, c. 359, §2 (NEW). 1985, c. 746, §28 (AMD). 1987, c. 769, §A179 (RPR).

§612. STREAMS FORMING STATE BOUNDARY

This chapter applies to mills and dams erected upon streams forming the boundary line of the State although a part of the dam is not in the State. The rights and remedies of all parties concerned shall be ascertained and determined as if the whole of such streams were in the State. This chapter shall not apply to mills and dams erected upon streams whose waters ultimately reach the ocean at a point wholly outside the territorial limits of the United States of America unless said dams are authorized by Act of the Legislature or by a decree of the Public Utilities Commission made after public notice and hearing on petition for such authorization.

Subarticle 1-A: LICENSING OF HYDROELECTRIC FACILITIES

§621. PURPOSE

(REPEALED)

SECTION HISTORY
1979, c. 465, (NEW). 1983, c. 458, §14 (RP).

§622. DEFINITIONS

(REPEALED)

SECTION HISTORY
1979, c. 465, (NEW). 1981, c. 470, §A168 (AMD). 1983, c. 458, §15 (RP).

§623. PROHIBITION

(REPEALED)

SECTION HISTORY
1979, c. 465, (NEW). 1983, c. 458, §16 (RP).

§624. APPLICATION AND NOTICE PROCEDURES

(REPEALED)

SECTION HISTORY
1979, c. 465, (NEW). 1983, c. 458, §16 (RP).

§625. BOARD ACTION, ADMINISTRATIVE APPEAL AND HEARINGS

(REPEALED)

SECTION HISTORY
1979, c. 465, (NEW). 1983, c. 453, §7 (AMD). 1983, c. 458, §16 (RP). 1985, c. 506, §A80 (RP).

§626. CRITERIA

(REPEALED)

SECTION HISTORY
1979, c. 465, (NEW). 1981, c. 470, §A169 (AMD). 1983, c. 458, §17 (RP).

Subarticle 1-B: PERMITS FOR HYDROPOWER PROJECTS HEADING: PL 1983, C. 458, §18 (NEW)

§630. SHORT TITLE

This subarticle may be cited and referred to in proceedings and agreements as the "Maine Waterway Development and Conservation Act." [1983, c. 458, §18 (NEW).]

SECTION HISTORY
1983, c. 458, §18 (NEW).

§631. PURPOSES

1. **Findings.** The Legislature finds and declares that the surface waters of the State constitute a valuable indigenous and renewable energy resource; and that hydropower development utilizing these waters is unique in its benefits and impacts to the natural environment, and makes a significant contribution to the general welfare of the citizens of the State for the following reasons.

A. Hydropower is the state's only economically feasible, large-scale energy resource which does not rely on combustion of a fuel, thereby avoiding air pollution, solid waste disposal problems and hazards to human health from emissions, wastes and by-products. Hydropower can be developed at many sites with minimal environmental impacts, especially at sites with existing dams or where current type turbines can be used. [1983, c. 458, §18 (NEW).]

B. Like all energy generating facilities, hydropower projects can have adverse effects; in contrast with other energy sources, they may also have positive environmental effects. For example, hydropower dams can control floods and augment downstream flow to improve fish and wildlife habitats, water quality and recreational opportunities. [1983, c. 458, §18 (NEW).]

C. Hydropower is presently the state's most significant indigenous resource that can be used to free our citizens from their extreme dependence on foreign oil for peaking power. [1983, c. 458, §18 (NEW).]

[1983, c. 458, §18 (NEW) .]

2. **Policy and purpose.** The Legislature declares that hydropower justifies singular treatment. The Legislature further declares that it is the policy of the State to support and encourage the development of hydropower projects by simplifying and clarifying requirements for permits, while assuring reasonable protection of natural resources and the public interest in use of waters of the State. It is the purpose of this subarticle to require a single application and permit for the construction of all hydropower projects and for the reconstruction or structural alteration of certain projects, including water storage projects. The permit application process shall be administered by the Department of Environmental Protection, except that, for hydropower projects within the jurisdiction of the Maine Land Use Planning Commission, the commission shall administer the permit application process under this subarticle.

[1983, c. 458, §18 (NEW); 2011, c. 682, §38 (REV) .]

3. **Encouragement of tidal and wave power development.** It is the policy of the State to encourage the attraction of appropriately sited development related to tidal and wave energy, including any additional transmission and other energy infrastructure needed to transport such energy to market, consistent with all state environmental standards; the permitting and siting of tidal and wave energy projects; and the siting, permitting, financing and construction of tidal and wave energy research and manufacturing facilities.

[2009, c. 615, Pt. A, §5 (NEW) .]

SECTION HISTORY
1983, c. 458, §18 (NEW). 2009, c. 615, Pt. A, §5 (AMD). 2011, c. 682, §38 (REV).

§632. DEFINITIONS

As used in this subarticle, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 458, §18 (NEW).]

1. **Board.** "Board" means the Board of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Planning Commission, "board" means the Maine Land Use Planning Commission.

[1983, c. 458, §18 (NEW); 2011, c. 682, §38 (REV) .]

1-A. **Commissioner.** "Commissioner" means the Commissioner of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Planning Commission, "commissioner" means the Director of the Maine Land Use Planning Commission.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §180 (NEW); 2011, c. 682, §38 (REV) .]

2. **Department.** "Department" means the Department of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Planning Commission, "department" means the Maine Land Use Planning Commission.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §181 (AMD); 2011, c. 682, §38 (REV) .]

3. **Hydropower project.** "Hydropower project" means any development that utilizes the flow or other movement of water, including tidal or wave action, as a source of electrical or mechanical power or that regulates the flow of water for the purpose of generating electrical or mechanical power. A hydropower

project development includes all powerhouses, dams, water conduits, turbines or other in-stream power devices, generators, transmission lines, water impoundments, roads and other appurtenant works and structures that are part of the development.

[2007, c. 160, §1 (AMD) .]

SECTION HISTORY
1983, c. 458, §18 (NEW). 1989, c. 890, §§A40,B180, 181 (AMD). 2007, c. 160, §1 (AMD). 2011, c. 682, §38 (REV).

§633. PROHIBITION

1. **Permit required.** A person may not initiate construction or reconstruction of a hydropower project, or structurally alter a hydropower project in ways that change water levels or flows, without first obtaining a permit from the department.

[2007, c. 160, §2 (AMD) .]

2. **Exceptions.** This subarticle does not apply to activities for which, prior to the effective date of this Act, a permit or permits have been issued pursuant to any of the following laws: Land use regulation laws, Title 12, sections 681 to 689; stream alteration laws, former sections 425 to 430; great ponds laws, former sections 391 to 394; alteration of coastal wetlands laws, former sections 471 to 478; site location of development laws, sections 481 to 489-E; and small hydroelectric generating facilities laws, this subarticle.

[2011, c. 653, §24 (AMD); 2011, c. 653, §33 (AFF) .]

3. **Exemptions.** Normal maintenance and repair of an existing and operating hydropower project shall be exempt from this subarticle, provided that:

A. The activity does not involve any dredging or filling below the normal high-water line of any great pond, coastal wetland, river, stream or brook; and [1983, c. 458, §18 (NEW).]

B. The activity does not involve any dredging or filling on the land adjacent to any great pond, coastal wetland, river, stream or brook such that any dredged spoil, fill or structure may fall or be washed into those waters. [1983, c. 458, §18 (NEW).]

[1983, c. 458, §18 (NEW) .]

SECTION HISTORY
1983, c. 458, §18 (NEW). 1987, c. 402, §A203 (AMD). 1989, c. 878, §G8 (AMD). 1989, c. 890, §§A40, B182 (AMD). 2007, c. 160, §2 (AMD). 2011, c. 653, §24 (AMD). 2011, c. 653, §33 (AFF).

§634. PERMIT REQUIREMENTS

1. **Coordinated permit review.** Permits required under the following laws are not required by any state agency for projects reviewed or exempted from review under this subarticle: natural resource protection laws, chapter 3, subchapter I, article 5-A; site location of development laws, chapter 3, subchapter I, article 6; and land use regulation laws, Title 12, chapter 206-A. Notwithstanding section 654, the department may attach reasonable conditions consistent with this subarticle concerning the operation of hydropower projects. The commissioner shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §183 (AMD) .]

2. **Application.** An application for a permit required by section 633 must be made on forms provided by the commissioner and filed with the commissioner. Public notice of the filing must be made as required by the board.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §183 (AMD) .]

3. **Application review.** Within 10 working days of receiving a completed application, the commissioner shall notify the applicant of the official date on which the application was accepted.

The commissioner shall circulate the application among the Department of Environmental Protection, Department of Agriculture, Conservation and Forestry, Department of Inland Fisheries and Wildlife, Department of Marine Resources, Department of Transportation, Maine Historic Preservation Commission, Governor's Energy Office, Public Utilities Commission and the municipal officials of the municipality in which the project is located. The Governor's Energy Office and the Public Utilities Commission shall submit written comments on section 636, subsection 7, paragraph F. For projects within the jurisdiction of the Maine Land Use Planning Commission, the director may request and obtain technical assistance and recommendations from the staff of the department. The Commissioner of Environmental Protection shall respond to the requests in a timely manner. The recommendations of the Commissioner of Environmental Protection must be considered by the commission in acting upon a project application.

[2011, c. 655, Pt. MM, §21 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV) .]

4. **Dam removal.** A person intending to file an application for a permit to remove an existing dam must attend a preapplication meeting with the department and must hold a public informational meeting prior to filing the application. The preapplication meeting and the public informational meeting must be held in accordance with the department's rules on the processing of applications.

[2003, c. 134, §2 (NEW) .]

SECTION HISTORY
1983, c. 458, §18 (NEW). 1985, c. 772, §2 (AMD). 1989, c. 309, §3 (AMD). 1989, c. 501, §DD46 (AMD). 1989, c. 890, §§A40,B183 (AMD). 2003, c. 134, §2 (AMD). 2011, c. 655, Pt. MM, §21 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §38 (REV).

§634-A. ADMINISTERING AGENCY

1. **Department.** The department shall administer the permit process for a hydropower project that:

A. Is located wholly or partly within an organized municipality; or [2009, c. 270, Pt. D, §5 (NEW).]

B. Uses tidal or wave action as a source of electrical or mechanical power, regardless of the hydropower project's location. [2009, c. 615, Pt. F, §2 (AMD).]

[2009, c. 615, Pt. F, §2 (AMD) .]

2. **Maine Land Use Planning Commission.** The Maine Land Use Planning Commission shall administer the permit process for a hydropower project that is located wholly within the State's unorganized and deorganized areas as defined by Title 12, section 682, subsection 1 and that does not use tidal or wave action as a source of electrical or mechanical power.

[2009, c. 615, Pt. F, §3 (AMD); 2011, c. 682, §38 (REV) .]

SECTION HISTORY
2009, c. 270, Pt. D, §5 (NEW). 2009, c. 615, Pt. F, §§2, 3 (AMD). 2011, c. 682, §38 (REV).

§635. DEPARTMENT DECISION

Upon receipt of a properly completed application, the department shall: [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §184 (AMD).]

1. **Approval.** Approve the proposed project upon such terms and conditions as are appropriate and reasonable to protect and preserve the environment and the public's health, safety and general welfare, including the public interest in replacing oil with hydroelectric energy. These terms and conditions may include, but are not limited to:

A. Establishment of a water level range for the body of water impounded by a hydropower project; [1983, c. 458, §18 (NEW).]

B. Establishment of instantaneous minimum flows for the body of water affected by a hydropower project; and [1983, c. 458, §18 (NEW).]

C. Provision for the construction and maintenance of fish passage facilities. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §184 (AMD).]

When the proposed project involves maintenance, reconstruction or structural alteration at an existing hydropower project and when the proposed project will not alter historic water levels or flows after its completion, the department may impose temporary terms and conditions of approval relating to paragraph A or paragraph B but may not impose permanent terms and conditions that alter historic water levels or flows;

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §184 (AMD) .]

2. **Disapproval.** Disapprove the proposed project setting forth in writing the reasons for the disapproval; or

[1983, c. 458, §18 (NEW) .]

3. **Hearing.** Schedule a hearing on the proposed project. Any hearing held under this subsection must follow the notice requirements and procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV. After a hearing is held under this subsection, the department shall make findings of facts and issue an order approving or disapproving the proposed project, as provided in subsections 1 and 2.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §184 (AMD) .]

SECTION HISTORY
1983, c. 458, §18 (NEW). 1983, c. 779, §§2,3 (AMD). 1989, c. 890, §§A40,B184 (AMD).

§635-A. TIME LIMITS FOR PROCESSING APPLICATIONS

Whenever the commissioner receives a properly completed application, the department shall make a decision as expeditiously as possible. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §185 (AMD).]

When the proposed project lies within the jurisdiction of the Maine Land Use Planning Commission, decisions shall be made within 105 working days except that decisions delegated to the director shall be made within 60 working days. Following one extension of up to 45 working days, the director may waive the time limit requirements of this section only at the request of the applicant. [1985, c. 362, §1 (AMD); 2011, c. 682, §38 (REV).]

SECTION HISTORY
1983, c. 779, §4 (NEW). 1985, c. 362, §1 (AMD). 1989, c. 890, §§A40,B185 (AMD). 2011, c. 682, §38 (REV).

§635-B. PROCEDURES FOR WATER QUALITY CERTIFICATION

Issuance of a water quality certificate required under the Federal Water Pollution Control Act, Section 401, is coordinated for the applicant under this subarticle by the Commissioner of Environmental Protection. The issuance of a water quality certificate is mandatory in every case where the department approves an application for a permit or general permit under this subarticle. An application for a tidal energy demonstration project under section 636-A that is accepted as complete by the department serves as an application for water quality certification for the proposed project pursuant to the Federal Water Pollution Control Act, Section 401, 33 United States Code, Section 1341. The department shall issue or deny certification at the same time it approves or disapproves the proposed project. If issued, the certification must state that there is a reasonable assurance that the project will not violate applicable water quality standards. The coordination function of the department with respect to water quality certification does not include any proceedings or substantive criteria in addition to those otherwise required by this subarticle. [2009, c. 270, Pt. D, §6 (AMD).]

SECTION HISTORY
1989, c. 309, §4 (NEW). 1989, c. 890, §§A40,B186 (AMD). 2009, c. 270, Pt. D, §6 (AMD).

§636. APPROVAL CRITERIA

The department shall approve a project when it finds that the applicant has demonstrated that the following criteria have been met. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §187 (AMD).]

1. **Financial capability.** The applicant has the financial capability and technical ability to undertake the project. In the event that the applicant is unable to demonstrate financial capability, the department may grant the permit contingent upon the applicant's demonstration of financial capability prior to commencement of the activities permitted.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §188 (AMD) .]

2. **Safety.** The applicant has made adequate provisions for protection of public safety.

[1983, c. 458, §18 (NEW) .]

3. **Public benefits.** The project will result in significant economic benefits to the public, including, but not limited to, creation of employment opportunities for workers of the State.

[1983, c. 458, §18 (NEW) .]

4. **Traffic movement.** The applicant has made adequate provisions for traffic movement of all types out of or into the development area.

[1983, c. 458, §18 (NEW) .]

5. **Maine Land Use Planning Commission.** Within the jurisdiction of the Maine Land Use Planning Commission, the project is consistent with zoning adopted by the commission. This criterion does not apply to any project that uses tidal or wave action as a source of electrical or mechanical power.

[2009, c. 615, Pt. F, §4 (AMD); 2011, c. 682, §38 (REV) .]

6. **Environmental mitigation.** The applicant has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts.

[1983, c. 458, §18 (NEW) .]

7. **Environmental and energy considerations.** The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon the following considerations:

A. Whether the project will result in significant benefit or harm to soil stability, coastal and inland wetlands or the natural environment of any surface waters and their shorelands; [1989, c. 309, §5 (AMD).]

B. Whether the project will result in significant benefit or harm to fish and wildlife resources. In making its determination, the department shall consider other existing uses of the watershed and fisheries management plans adopted by the Department of Inland Fisheries and Wildlife and the Department of Marine Resources; [2009, c. 561, §39 (AMD).]

C. Whether the project will result in significant benefit or harm to historic and archeological resources; [1983, c. 458, §18 (NEW).]

D. Whether the project will result in significant benefit or harm to the public rights of access to and use of the surface waters of the State for navigation, fishing, fowling, recreation and other lawful public uses; [1983, c. 458, §18 (NEW).]

E. Whether the project will result in significant flood control benefits or flood hazards; and [1989, c. 309, §6 (AMD).]

F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of nonrenewable fuels it would replace. [1989, c. 309, §6 (AMD).]

G. [1989, c. 309, §7 (RP).]

The department shall make a written finding of fact with respect to the nature and magnitude of the impact of the project on each of the considerations under this subsection, and a written explanation of their use of these findings in reaching their decision.

[2009, c. 561, §39 (AMD) .]

8. **Water quality.** There is reasonable assurance that the project will not violate applicable state water quality standards, including the provisions of section 464, subsection 4, paragraph F, as required for water quality certification under the United States Water Pollution Control Act, Section 401. This finding is required for both the proposed impoundment and any affected classified water bodies downstream of the proposed impoundment.

A. Notwithstanding section 464, subsection 2, the department shall reclassify the waters of the proposed impoundment to Class GPA if the department finds:

(1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;

(2) The proposed impoundment will exceed 30 acres in surface area;

(3) The proposed impoundment will not have any upstream direct discharges except cooling water; and

(4) The proposed impoundment will not violate section 464, subsection 4, paragraph F. [1989, c. 309, §8 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §190 (AMD).]

[1989, c. 309, §8 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §190 (AMD) .]

SECTION HISTORY
1983, c. 458, §18 (NEW). 1985, c. 772, §§3,4 (AMD). 1989, c. 309, §§5-8 (AMD). 1989, c. 890, §§A40,B187- 190 (AMD). 1995, c. 406, §15 (AMD). 1999, c. 401, §BB19 (AMD). 2009, c. 270, Pt. D, §7 (AMD). 2009, c. 561, §39 (AMD). 2009, c. 615, Pt. F, §4 (AMD). 2011, c. 682, §38 (REV).

§636-A. GENERAL PERMIT FOR TIDAL ENERGY DEMONSTRATION PROJECT

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

A. "Tidal energy demonstration project" or "project" means a hydropower project that uses tidal action as a source of electrical power and that:

(1) Has a total installed generating capacity of 5 megawatts or less; and

(2) Is proposed for the primary purpose of testing tidal energy generation technology, which may include a mooring or anchoring system and transmission line, and collecting and assessing information on the environmental and other effects of the technology. [2009, c. 270, Pt. D, §8 (NEW).]

[2009, c. 270, Pt. D, §8 (NEW) .]

2. **General permit.** A person may apply for a general permit for a tidal energy demonstration project in accordance with this section. If a general permit is granted pursuant to this section, an individual permit under section 633 is not required for the construction and operation of a tidal energy demonstration project.

[2009, c. 270, Pt. D, §8 (NEW) .]

3. **Application requirements.** An applicant for a general permit must file with the department an application that contains the following:

A. Written certification that the applicant has filed an application with the Federal Energy Regulatory Commission for a pilot project license for a proposed tidal energy demonstration project, along with a copy of that application as filed with the commission. The application must contain such information as is required by the Federal Energy Regulatory Commission, including, but not limited to:

(1) A description of the waters of the State in which the proposed project will be located;

(2) A description of proposed project facilities and operation;

(3) Site-specific information regarding the physical environment in which the project is proposed to be located and the anticipated environmental effects of the proposed project;

(4) A plan for monitoring the environmental effects of the project through the term of the general permit;

(5) A plan for safeguarding the public and environmental resources through the term of the general permit;

(6) A plan for removing the project after the termination of the general permit unless the applicant is pursuing a license for a commercial tidal power project at the site; and

(7) Documentation that, in developing the application, the applicant has consulted with the appropriate local, state and federal resource agencies, as well as local governments, Indian tribes, nongovernmental organizations and members of the public likely to be interested in the project; [2009, c. 270, Pt. D, §8 (NEW).]

B. Documentation, including certificates of insurance, that the applicant has and will maintain a current general liability policy for the project that covers bodily injury, property damages and environmental damages in an amount considered reasonable by the department in consideration of the scope, scale and location of the project; [2009, c. 270, Pt. D, §8 (NEW).]

C. Documentation that the applicant has the financial and technical capacity to construct and operate the project as proposed; [2009, c. 270, Pt. D, §8 (NEW).]

D. A copy of an environmental assessment issued by the Federal Energy Regulatory Commission for the proposed tidal energy demonstration project that includes a finding of "no significant environmental impact" pursuant to the National Environmental Policy Act of 1969, Public Law 91-190, 42 United States Code, Chapter 55, although the department may accept an application as complete for processing prior to the Federal Energy Regulatory Commission's issuance of a finding of no significant environmental impact; and [2013, c. 177, §1 (AMD).]

E. Written acknowledgement that, in accordance with this section, the department may require the applicant to take remedial action, at the applicant's expense, pursuant to subsection 9, including but not limited to removal of the generating facilities and submerged utility line and termination of the project. [2009, c. 270, Pt. D, §8 (NEW).]

[2013, c. 177, §1 (AMD) .]

4. **Notification.** The department shall notify an applicant in writing within 60 days of its acceptance of the application as complete for processing or within 30 days of the Federal Energy Regulatory Commission's issuance of a finding of no significant environmental impact, whichever later occurs, if the department determines that the requirements of this section have not been met. The notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

[2013, c. 177, §2 (AMD) .]

5. **Fees.** Except as otherwise provided by section 344-A, the department shall assess a fee for review of applications filed pursuant to this section as provided by section 352.

[2009, c. 270, Pt. D, §8 (NEW) .]

6. **Violation.** Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 3 or as subsequently modified with the approval of the department in consultation with agencies and other entities with whom the applicant consulted in accordance with subsection 3, paragraph A, subparagraph (7) is a violation of the general permit.

[2009, c. 270, Pt. D, §8 (NEW) .]

7. **General permit term.** Except as otherwise provided in subsections 8 and 9, a general permit granted under this section is valid for the term of the pilot project license, including any related annual license, issued by the Federal Energy Regulatory Commission for the tidal energy demonstration project that is the subject of

the general permit. The department may grant one or more extensions of the general permit term to coincide with any approved extension of the term of the pilot project license or any related annual license issued by the Federal Energy Regulatory Commission.

[2009, c. 270, Pt. D, §8 (NEW) .]

8. **Surrender.** A general permit granted pursuant to this section is deemed to have been surrendered and terminates on the date of approval by the Federal Energy Regulatory Commission of the surrender and termination of the pilot project license or any related annual license for the tidal energy demonstration project that is the subject of the general permit. An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 7. Subject to conditions regarding project removal under subsection 10, the general permit terminates on the date of its surrender pursuant to this subsection.

[2009, c. 270, Pt. D, §8 (NEW) .]

9. **Remedial action.** If the department determines, based on the results of monitoring conducted by the applicant or other information, that there is substantial evidence that the project is having a significant adverse effect on a protected natural resource as defined by section 480-B, subsection 8, wildlife, including avian wildlife, bat species, marine mammals, fish or other marine resources or public health or safety, the department shall order the applicant to take action that the department considers necessary to address that adverse effect. Remedial action required by the department may include, but is not limited to:

A. Suspension or modification of project operations; or [2009, c. 270, Pt. D, §8 (NEW).]

B. Cessation of operations and removal of some or all elements of the project, including but not limited to the generating facilities, if there is no practicable alternative to address the adverse effect. [2009, c. 270, Pt. D, §8 (NEW).]

[2009, c. 270, Pt. D, §8 (NEW) .]

10. **Project removal.** Within 60 days of termination of the project pursuant to subsection 7 or 8, unless the applicant is pursuing a license for a commercial tidal power project at the site, and within 60 days of termination of the project pursuant to subsection 9, the applicant shall initiate implementation of the project removal plan provided for under subsection 3, paragraph A, subparagraph (6). If the applicant fails to begin implementing the plan within this 60-day period, the department may take such measures as it considers necessary to initiate and fully implement the plan by drawing on the financial surety provided pursuant to the project removal plan. The applicant's acceptance of the general permit constitutes agreement and consent by the applicant and its heirs, successors and assigns that the department may take such action as necessary to initiate and fully implement the project removal plan. The holder of the project removal funds shall release the project removal funds when the applicant has demonstrated and the department concurs that the project removal plan has been satisfactorily completed or upon written authorization by the department in the event the department implements the plan pursuant to this subsection.

[2009, c. 270, Pt. D, §8 (NEW) .]

11. **Local review.** A municipality may not enact or enforce any land use, zoning or other standard, conditions or requirement regarding a tidal energy demonstration project located within the municipality that is stricter than the standards, conditions or requirements of this section. The municipality has the burden of proof regarding the location of the project in relation to its boundaries. Any action by the municipality regarding its authorization to site, construct or operate a tidal energy demonstration project must be taken within 60 days of the granting of a general permit under this section.

[2009, c. 270, Pt. D, §8 (NEW) .]

SECTION HISTORY

2009, c. 270, Pt. D, §8 (NEW). 2013, c. 177, §§1, 2 (AMD).

§637. REVIEW OF RULES

Rules adopted by the board pursuant to this subarticle shall be immediately submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review and may not become effective until 91 days after the adjournment of the next regular session of the Legislature which adjourns after their submission. This committee may report out legislation it deems necessary to clarify legislative intent regarding rules adopted pursuant to this subarticle. [1985, c. 698, §16 (NEW).]

SECTION HISTORY
1985, c. 698, §16 (NEW).

§638. NOTICE OF RELICENSING DEADLINE

By January 15, 2015, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report describing all pending applications for water quality certification under Section 401 of the federal Clean Water Act for dams located in the State that are subject to the jurisdiction of the Federal Energy Regulatory Commission. The report submitted under this section must include, for each pending application, the filing date of the application, the respective response deadline for the department and a short statement describing the department's plan to address that deadline. The report must also include a list of the licensing or relicensing deadlines for the dams described in this section that are anticipated to occur within 5 years after the date of the report and, if applicable, the department's plan to address each deadline. [2013, c. 545, §1 (NEW).]

SECTION HISTORY
2013, c. 545, §1 (NEW).

Subarticle 1-C: PUBLIC PARTICIPATION IN THE LICENSING AND RELICENSING OF HYDROELECTRIC DAMS HEADING: PL 1989, C. 453, §2 (NEW)

§640. PUBLIC PARTICIPATION

Unless otherwise provided in accordance with regulations promulgated by the Federal Energy Regulatory Commission, for all existing hydropower projects located in Maine currently licensed under the Federal Power Act, and for all proposed hydropower projects requiring a license to operate under the Federal Power Act, all state agencies that review, comment on and consult in the proposed studies, plans, terms and conditions in the course of licensing or relicensing these projects, including the Department of Agriculture, Conservation and Forestry, the Governor's Energy Office, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife and the Department of Marine Resources, shall cooperatively take the following steps to ensure that interested members of the public are informed of, and allowed to participate in, the review and comment process. [2011, c. 655, Pt. MM, §22 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

1. **Publication.** At the commencement of the consultation, review and comment process, the state agencies involved shall publish notification of this fact, informing the public of the issues anticipated to be involved in the licensing or relicensing process, the timetable for processing of the license and the opportunities the public has to comment on and participate in the process. The notice shall be designed to reach readership both statewide and in the vicinity of the hydropower project, including all persons that have contacted the agencies with an interest in this matter and all potentially interested persons.

[1989, c. 453, §2 (NEW) .]

2. **Written notification of status.** During the entire consultation process and including the filing of the license application under the Federal Power Act, the state agencies shall inform in writing all members of the public that have indicated an interest in the particular licensing process of the status of that process, including all requirements that the agencies may be placing upon the license applicant. That information shall be provided no less than once every 4 months.

[1989, c. 453, §2 (NEW) .]

3. **Public comment.** State agencies shall provide meaningful opportunities for public comment on the plans, studies, terms and conditions to be recommended by the agencies for inclusion in the license.

[1989, c. 453, §2 (NEW) .]

4. **Release of public information.** All information submitted to the agencies by the applicants for a license under the Federal Power Act constitutes a public record pursuant to Title 1, section 402, unless such information is otherwise exempted from public disclosure by state law. Release of this information to members of the public is governed by Title 1, section 408-A.

[2011, c. 662, §24 (AMD) .]

SECTION HISTORY
1989, c. 453, §2 (NEW). 2011, c. 655, Pt. MM, §22 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 662, §24 (AMD).

Subarticle 2: RIGHTS AND LIABILITIES

§651. MILLDAMS AND CANALS

Any man may on his own land erect and maintain a watermill and dams to raise water for working it, upon and across any stream not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding one mile in length, and thereby divert from its natural channel the water of any stream not navigable, upon the terms and conditions and subject to the regulations hereinafter expressed.

§652. --DIVERSION OF WATER

Any person, authorized to erect and maintain a watermill and dams on a stream not navigable and to divert the water of such stream from its natural channel by a canal not exceeding one mile in length for the purpose of propelling mills or machinery under section 651, may so divert such waters without said limitation to one mile, provided he is the owner of the land on which the canal is to be located or has the consent of the owners thereof, and provided he is the owner of all riparian rights on said stream between the point of diversion and the point at which the waters are returned to the stream, upon the terms and conditions, and subject to the regulations under this chapter. Under this section, "canal" shall include excavations in the ground and closed flumes, penstocks, pipelines and other appropriate means of conveying water from the point of diversion to the point of return to the stream.

§653. --INJURY TO EXISTING MILL OR CANAL

No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream; nor to the injury of any mill site, on which a mill or milldam has been lawfully erected and used, unless the right to maintain a mill thereon has been lost or defeated.

§654. --RESTRICTIONS AS TO HEIGHT AND DURATION

The height to which the water may be raised, and the length of time during which it may be kept up in each year, and the quantity of water that may be diverted by such canal, may be restricted and regulated by the verdict of a jury, or report of commissioners, as is provided.

§655. --DAMAGES FOR FLOWING OR DIVERSION; LIMITATIONS

Any person whose lands are damaged by being flowed by a milldam, or by the diversion of the water by such canal, may obtain compensation for the injury, by complaint to the Superior Court in the county where any part of the lands are; but no compensation shall be awarded for damages sustained more than 3 years before the institution of the complaint.

§656. CRANBERRY CULTURE

When dams are erected and maintained on streams not navigable, for the purposes of cranberry culture, and lands are flowed thereby and injured by such flowage, the owners thereof shall proceed for the recovery of damages for such flowage in the same manner as in case of flowage by dams erected and maintained for mill purposes.

§657. ICE CUTTING AND HARVESTING

In order to create ponds for the cutting and harvesting of ice for the market, any persons or corporations may erect and maintain, on their own land, dams on streams not navigable or floatable, but emptying into tidewaters navigable in the winter, and may flow the lands above during November, December, January, February, March and April; but they shall draw off the water to its natural state by the 20th day of May yearly. If any lands are injured by such flowing, the owners thereof have the same remedies as in case of lands flowed by dams erected and maintained for mill purposes; but no right is granted by this section or section 656 to flow any milldam or any mill privilege improved or unimproved. This section shall not be construed as authorizing any persons or corporations to cut ice on any pond created as provided over any area the soil of which such persons or corporations do not own or lease or possess as tenants at will, or by reason of a valid agreement with the owner or lessee or tenant thereof when said owner or lessee is not the State and the pond is not a great pond.

§658. TIMBER REMOVAL ON FLOWED LANDS

When any person or corporation shall have decided to erect a dam across a nonnavigable stream under this chapter or under special authority granted by the Legislature, and shall have filed the specifications required by Title 35, section 11, and it appears that standing timber or other property of value upon the land intended to be flowed will constitute a menace to the safety of such person or corporation or to persons or property upon and along the banks of said stream below the intended location of said dam, the Superior Court shall have jurisdiction, upon complaint of such person or corporation, to authorize said plaintiff to remove and sell such timber or other property and to order the payment to the owner thereof of the gross proceeds of such sale and such further sum, if any, as said court shall deem just. Said court shall require the plaintiff to furnish security for such payment and for an additional penalty not less than double the amount to be received from such sale and shall include in its decree a condition that such additional sum shall be paid to said owner as damages if the dam is not completed and the land flowed within a time to be therein specified. Such time may be extended for good cause shown.

§659. --DAMAGES

Damages caused by flowage of lands from which timber or other property shall have been removed under section 658 shall be assessed as though there had been no severance, and the amount paid for such timber or other property with interest to the date of the judgment shall be credited thereon, provided the owner of the land shall have the right to elect whether his damages shall be assessed for flowage as of the time of taking or of flowing.

Subarticle 3: ACTION FOR DAMAGES

§701. COMPLAINT

The complaint shall contain such a description of the land flowed or injured, and such a statement of the damage, that the record of the case shall show the matter heard and determined in the action.

§702. --SERVICE

The complaint shall be filed and service made as in other actions.

§703. DEFENSES

The owner or occupant of such mill or canal may answer that the plaintiff has no right, title or estate in the lands alleged to be injured; or that he has a right to maintain such dam, and flow the lands, or divert the water for an agreed price, or without any compensation; or any other matter, which may show that the plaintiff cannot maintain the action; but he shall not answer that the land described is not injured by such dam or canal.

§704. TRIAL; COSTS

When any such answer is filed and an issue in fact or in law is joined, it shall be decided as similar issues are decided at common law. If judgment is for the defendant, he shall recover his costs.

§705. APPOINTMENT OF COMMISSIONERS; APPRAISAL OF DAMAGES

If the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objection to the proceedings, the court shall appoint 3 or more disinterested commissioners of the same county, who shall go upon and examine the premises and make a true and faithful appraisement, under oath, of the yearly damages, if any, done to the plaintiff by the flowing of his lands or the diversion of the water described in the complaint, and determine how far the same is necessary, and ascertain and report for what portion of the year such lands ought not to be flowed, or water diverted, or what quantity of water shall be diverted. They shall ascertain, determine and report what sum in gross would be a reasonable compensation for all the damages, if any, occasioned by the use of such dam, and for the right of maintaining and using the same forever, estimated according to the height of the dam and flashboards as then existing. If within 10 days after said report is presented to the court, the owners of said dam or mills elect to pay the damages in gross, the court, where the judgment is entered, shall fix the time in which said damages shall be paid, and if not paid within that time, the owners of the dam or mills lose all benefit of their election, and the annual damages shall stand as the judgment of the court, and, except as otherwise provided, all proceedings shall be in conformity with the other provisions of this chapter.

§706. ASSESSMENT IN GROSS

In any case where annual damages have been determined by a judgment of the court, the owners of the dam or mills may apply to the court by a new complaint, to have the damages assessed in gross, and commissioners may be appointed as in other cases to ascertain, determine and report the damages in gross, and like proceedings shall then be had as are provided in sections 705 and 707.

§707. PAYMENT IN GROSS; BAR

If the damages in gross are paid within the time fixed, the judgment is a bar to any further complaint so long as the dam and flashboards remain at the same height, but if thereafter either is raised, a new complaint may be made by the owner of the lands flowed for any additional damages caused thereby, and the proceedings in said new complaint shall be as hereinbefore prescribed.

§708. COMMISSIONERS' REPORT FOR JURY

If either party requests that a jury may be impaneled to try the cause, the report of the commissioners shall, under the direction of the court, be given in evidence to the jury; but evidence shall not be admitted to contradict it, unless misconduct, partiality or unfaithfulness on the part of some commissioner is shown.

§709. ACCEPTANCE OF COMMISSIONERS' REPORT

If neither party requests a trial by jury, the report of the commissioners may be accepted by the court and judgment rendered thereon.

§710. VERDICT OR REPORT BARS FUTURE ACTION

The verdict of the jury or the report of the commissioners so accepted is a bar to any action brought for such damages. The owner or occupant shall not flow the lands nor divert the water during any portion of the period when prohibited, nor divert the water beyond the quantity allowed by the commissioners or jury.

§711. YEARLY DAMAGES

Such verdict or accepted report of the commissioners, and judgment thereon, shall be the measure of the yearly damages, until the owner or occupant of the lands or the owner or occupant of the mill or canal, on a new complaint to the court and by proceedings as in the former case, obtains an increase or decrease of such damages.

§712. --SECURITY FOR

When any person whose lands are so flowed or from whose lands the water is so diverted files his complaint for ascertaining or increasing his damages, or brings a civil action as provided in section 713, and moves the court to direct the owner or occupant of such mill or canal to give security for the payment of the annual damages, and the court so orders, the owner or occupant refusing or neglecting to give such security shall have no benefit of this chapter; but is liable to be sued for the damages occasioned by such flowing in a civil action.

§713. ACTION FOR UNPAID DAMAGES; LIEN

The party entitled to such annual compensation may maintain a civil action therefor against any person who owns or occupies said mill, or canal and mills supplied thereby, when the action is brought; and shall therein recover the whole sum due and unpaid, with costs; and shall have a lien for such compensation, from the time of the institution of the original complaint, on the mill and milldam, or on the canal and the mill supplied thereby, with the appurtenances and the land under and adjoining them and used therewith, for any sum due not more than 3 years before the commencement of the complaint.

§714. EXECUTION SALE OF LAND AND MILL

The execution on such judgment, if not paid, may at any time within 30 days be levied on the premises subject to the lien. The officer may sell the same at public auction, or so much thereof in common with the residue as is necessary to satisfy the execution, proceeding in giving notice of such sale as in selling an equity of redemption on execution. Such sale is effectual against all persons claiming the premises by any title which accrued within the time covered by the lien.

§715. --REDEMPTION

Any person entitled to the premises may redeem them within one year after the sale by paying to the purchaser, or the person holding under him, the sum paid therefor, with interest at the rate of 12%, deducting therefrom any rents and profits received by such purchaser, or person holding under him; and may have the same process to compel the purchaser to account as he might have had against a purchaser of an equity of redemption.

§716. NEW COMPLAINTS

When either party is dissatisfied with the annual compensation established, a new complaint may be filed, and proceedings had and conducted substantially as in case of an original complaint.

§717. --RESTRICTIONS

No new complaint shall be brought until one month after the payment of the preceding year is due and one month after notice to the other party. The other party may within that time make an offer or tender as is provided.

§718. --OFFER OF INCREASED COMPENSATION

The owner of the mill, dam or canal may within said month offer in writing to the owner of the land injured, an increase of compensation for the future. If the owner of the land does not agree to accept it, but brings a new complaint for the purpose of increasing it, he recovers no costs unless he obtains an increase greater than the offer.

§719. --OFFER TO ACCEPT LESS COMPENSATION

The owner of the land injured may within said month offer in writing to the owner of the mill, dam or canal to accept a reduced compensation for the future. If the owner of the mill, dam or canal declines to pay it, and brings a new complaint to obtain a reduction, he shall recover no costs, unless such compensation is reduced to a sum less than was offered.

§720. TENANTS MAY MAKE OFFERS

Such offers may be made by or to the tenants or occupants of the land, and of the mill and dam, or canal, in like manner and with like effect as if made by or to the owners; but no agreements founded thereon bind the owners, unless made by their consent.

§721. COMMON LAW REMEDY LIMITED

No action shall be sustained at common law for the recovery of damages occasioned by the overflowing of lands or for the diversion of the water as before mentioned, except in the cases provided in this chapter, to enforce the payment of damages after they have been ascertained by process of complaint.

§722. DOUBLE DAMAGES IF RESTRICTIONS VIOLATED

If, after judgment, the restrictions imposed by the report of the commissioners or finding of the jury respecting the flowing or diverting of the waters are violated, the party injured thereby may recover of the wrongdoers double damages for his injury in a civil action.

§723. AGREEMENT OF PARTIES BINDING, IF RECORDED

When an annual compensation, upon the acceptance by one party of an offer made by the other, is established and signed by the owners of the mill, dam or canal, and of the land, and recorded in the office of the clerk of the court in which the former judgment was rendered, with a reference on the record to the former judgment, and to the book where the agreement is recorded, such agreement is as binding as a verdict and judgment on a new complaint.

§724. JUDGMENT NO BAR TO NEW COMPLAINT

A judgment against a plaintiff as not entitled to any compensation is no bar to a new complaint for damages, arising after the former verdict, and for compensation for damages subsequently sustained.

§725. TENDER OF DAMAGES

In case of an original complaint, the defendant may, with the same advantages to himself, tender and bring money into court, or if the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objections to the proceedings, the defendant may, in writing entered of record with its date, offer to be defaulted for a specific sum for the yearly damages or a sum in gross as reasonable compensation for all damages, as in an action at common law. If either is accepted, the judgment has the same effect as if rendered on a verdict. If not accepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties, or the judgment to be rendered except

the costs. If the plaintiff fails to recover a sum greater than the sum tendered or offered, he recovers such costs only as accrued before the offer, and the defendant recovers costs accrued after that time, and his judgment for costs may be set off against the plaintiff's judgment for damages and costs.

§726. NO ABATEMENT BY DEATH

No complaint for so flowing lands or diverting water abates by the death of any party thereto; but it may be prosecuted or defended by the surviving plaintiffs or defendants, or the executors or administrators of the deceased.

§727. IF COMPLAINT ABATES, RIGHTS PRESERVED BY NEW COMPLAINT

If such complaint is abated or defeated for want of form, or if, after a verdict for the plaintiff, judgment is reversed, he may bring a new complaint at any time within one year thereafter and thereon recover the damages sustained during the 3 years preceding the institution of the first complaint, or at any time afterwards.

§728. COMPENSATION OF COMMISSIONERS; COSTS

The court shall award a suitable compensation to be paid to the commissioners, and taxed and recovered by the prevailing party. The prevailing party recovers costs, except where it is otherwise expressly provided.

Article 2: PROTECTION OF WAYS FROM OVERFLOW

§771. FLOWAGE RIGHTS NOT AFFECTED

Nothing in sections 772 to 776 affects any right of flowage or damage therefor.

§772. PETITION TO RAISE WAYS AND ENLARGE WATER VENTS

When the owners of mills carried by the water of a stream, or the owners of water power for operating mills, find or apprehend that the necessary head of water for working or reservoir purposes cannot be obtained, or when their existing rights in respect to the same cannot be exercised without overflowing some highway or town way, they may petition the county commissioners for permission to raise such ways and to enlarge the water vent thereof. Such commissioners shall appoint a time and place for a hearing on the petition and give notice thereof to all parties interested as provided in Title 23, section 2052, and such notice may be proved in the manner therein provided.

§773. PROCEEDINGS OF COMMISSIONERS

On the day appointed, the county commissioners shall meet, examine the premises described in the petition and hear the parties present, and thereupon they shall determine whether said ways shall be raised and the water vents enlarged and to what extent, and shall prescribe the manner in which it shall be done, and what portion of the expenses thereof and the costs of the hearing shall be borne by the petitioners, and what portion, if any, by the town where the way is located.

§774. ALTERATIONS TO BE MADE

If the decision is in favor of the plaintiffs, said commissioners shall direct the town, in writing, to make the alterations prescribed and fix the time within which the same shall be done, and if not done within the time fixed, the same may be done by the plaintiffs. Whether by the town or by the plaintiffs, it shall be done in a faithful manner and to the acceptance of the commissioners. Whichever party makes said alterations has a claim upon the other for the proportion fixed by the commissioners for said other party to pay, and if it is not paid within 30 days after its approval by said commissioners and a demand therefor, it may be recovered in a civil action.

§775. COSTS

If the decision of the county commissioners is against the plaintiffs, they shall pay the costs of the hearing, taxed as in other cases before county commissioners.

§776. APPEALS

Any party aggrieved may appeal from the decision of said commissioners in the same manner and subject to the same conditions as in case of highways.

Article 3: INSPECTION OF DAMS AND RESERVOIRS

§811. APPOINTMENT OF ENGINEER; DUTIES

(REPEALED)

SECTION HISTORY
1975, c. 771, §422 (AMD). 1977, c. 684, §1 (RPR). 1983, c. 417, §2 (RP).

§812. CORRECTION OF UNSAFE CONDITIONS

(REPEALED)

SECTION HISTORY
1983, c. 417, §3 (RP).

§813. COMPENSATION OF ENGINEER

(REPEALED)

SECTION HISTORY
1977, c. 684, §2 (RPR). 1983, c. 417, §4 (RP).

§814. UTILIZATION OF OTHER STATE AGENCY RESOURCES

(REPEALED)

SECTION HISTORY
1977, c. 684, §3 (NEW). 1983, c. 417, §5 (RP).

Article 3-A: DAM REGISTRATION AND ABANDONMENT HEADING: PL 1989, C. 545, §2 (RPR)

§815. SHORT TITLE

This article shall be known and may be cited as the "Maine Dam Registration, Abandonment and Water Level Act." [1989, c. 545, §3 (AMD).]

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 545, §3 (AMD).

§815-A. REPORT ON TRANSFER OF FUNCTIONS

(REPEALED)

SECTION HISTORY
1991, c. 528, §E37 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §E37 (NEW). 1993, c. 370, §3 (RP).

§816. LEGISLATIVE FINDINGS AND PURPOSE

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 545, §§4-6 (AMD). 1993, c. 370, §4 (RP).

§817. DEFINITIONS

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 417, §6 (NEW).]

1. **Board.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §191 (RP) .]

2. **Commissioner.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §191 (RP) .]

3. **Dam.** "Dam" means any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, which impounds or diverts a river, stream or great pond and which is 2 feet or more in height and has an impounding capacity at maximum water storage elevation of 15 acre-feet or more. Any such artificial barrier constructed solely for the purpose of impounding water to allow timber to be floated downstream in a logging operation shall not be considered a dam for the purposes of this article, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this article.

[1987, c. 118, §1 (AMD) .]

4. **Department.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §191 (RP) .]

5. **Height.** "Height" means, in reference to a dam, the vertical distance in feet from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum capable water storage elevation.

[1983, c. 417, §6 (NEW) .]

6. **Littoral proprietor.** "Littoral proprietor" means an owner or lessee of property on the shore of a lake impounded by a particular dam.

[1983, c. 417, §6 (NEW) .]

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

[1983, c. 417, §6 (NEW) .]

8. **Public safety.**

[1989, c. 545, §7 (RP) .]

9. **Riparian proprietor.** "Riparian proprietor" means an owner or lessee of property on the bank of a river or stream or shore of a pond or other small body of water impounded by a particular dam.

[1983, c. 417, §6 (NEW) .]

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 118, §1 (AMD). 1989, c. 545, §7 (AMD). 1989, c. 890, §§A40,B191 (AMD).

§818. MISCELLANEOUS

1. **Other laws.** Except as specifically provided in this Article, nothing in this Article shall be construed as relieving any person from duties, responsibilities or liabilities imposed by any other statute, regulation, municipal ordinance or any rule of law.

[1983, c. 417, §6 (NEW) .]

2. **Rights of others.** Except as specifically provided in this Article, nothing in this Article shall be construed as denying any person any rights he may have under any other statute, regulation, municipal ordinance or any rule of law.

[1983, c. 417, §6 (NEW) .]

3. **Other powers.** No provision of this article may be construed as limiting the powers of the Maine Emergency Management Agency under Title 37-B, chapter 24.

[2001, c. 460, §4 (AMD) .]

4. **Damages.** No action may be brought against the State, the board, the commissioner or their agents or employees for the recovery of damages caused by any order of the board or commissioner or by the partial or total failure of any dam or through the operation of any dam upon the ground that the State, the board, the commissioner or their agents or employees are liable by virtue of any order or determination of the board or commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §192 (AMD) .]

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 370, §23 (AMD). 1987, c. 402, §A204 (AMD). 1987, c. 769, §A180 (AMD). 1989, c. 890, §§A40,B192 (AMD). 2001, c. 460, §4 (AMD).

Subarticle 1: INSPECTION HEADING: PL 1989, C. 545, §8 (RP)

§820. JURISDICTION

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§821. INSPECTION OF DAMS

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 118, §2 (AMD). 1989, c. 545, §8 (RP).

§822. INSPECTION PETITION AND ORDER

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§823. FORMAL INSPECTION AND HEARING; DECISION

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 118, §§3-6 (AMD). 1989, c. 545, §8 (RP).

§824. INFORMAL INSPECTION

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 118, §§7,8 (AMD). 1989, c. 545, §8 (RP).

§825. ACCESS AND NOTIFICATION

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 118, §9 (RPR). 1989, c. 545, §8 (RP).

§826. REIMBURSEMENT FOR INSPECTION EXPENSES

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§827. UTILIZATION OF OTHER STATE AGENCY RESOURCES

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§828. REGULATIONS

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§829. TRANSITIONAL PROVISIONS

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

Subarticle 2: REGISTRATION

§830. REGISTRATION OF OWNERSHIP

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 118, §10 (AMD). 1989, c. 890, §§A40,B193, 194 (AMD). 1991, c. 528, §§E38,39 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§E38,39 (AMD). 1993, c. 370, §5 (RP).

§831. NOTICE OF TRANSFER OR DESTRUCTION

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 890, §§A40,B195 (AMD). 1993, c. 370, §6 (RP).

Subarticle 3: ABANDONMENT

§835. ABANDONMENT

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1993, c. 370, §7 (RP).

§836. AUTHORIZED ABANDONMENT

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1993, c. 370, §7 (RP).

§837. AWARDS OF NEW OWNERSHIP

(REPEALED)

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 737, §§C92,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 890, §§A40,B196 (AMD). 1993, c. 370, §8 (RP).

Subarticle 4: WATER LEVELS

§840. ESTABLISHMENT OF WATER LEVELS

1. **Power.** The commissioner may on the commissioner's own motion and shall, at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is not:

A. Operating with a license or exemption issued by the Federal Energy Regulatory Commission or determined by the Federal Energy Regulatory Commission to be subject to the jurisdiction of that commission; [1995, c. 630, §2 (AMD).]

B. [1995, c. 630, §2 (RP).]

C. [1995, c. 630, §2 (RP).]

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 489-E; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams; [2011, c. 653, §25 (AMD); 2011, c. 653, §33 (AFF).]

E. A dam regulated by one or more municipalities by ordinance or interlocal agreement pursuant to Title 30-A, chapter 187, subchapter VI; or [1995, c. 630, §2 (AMD).]

F. Regulated by the International Joint Commission. [1995, c. 630, §2 (NEW).]

Notwithstanding the provisions of this subsection, after an order establishing a water level regime or minimum flow requirement has been issued pursuant to this section or former Title 12, section 304, the commissioner is not required to hold a hearing to establish a new water level regime or minimum flow requirement for the same body of water in response to a petition from littoral or riparian proprietors unless the commissioner determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in subsection 4 since the order was issued.

[2011, c. 653, §25 (AMD); 2011, c. 653, §33 (AFF) .]

2. **Notice.** The commissioner shall provide written notice of any hearing held pursuant to this section to the owner, lessee or person in control, if known, of any dam on the body of water and to any petitioner who has petitioned for a hearing with respect to the body of water. The commissioner shall give public notice of the hearing under Title 5, section 9052 and shall also file notice of the hearing in the municipal office of any municipality and in the clerk's office of any county in which the body of water is located.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §198 (AMD) .]

3. **Conduct of hearing.** The hearing shall follow the procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV and the procedures specified in this section.

[1983, c. 417, §6 (NEW) .]

4. **Evidence.** At the hearing, the commissioner shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water. The testimony is limited to:

A. The water levels necessary to maintain the public rights of access to and use of the water for navigation, fishing, fowling, recreation and other lawful public uses; [1983, c. 417, §6 (NEW).]

B. The water levels necessary to protect the safety of the littoral or riparian proprietors and the public; [1983, c. 417, §6 (NEW).]

C. The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality; [1989, c. 323, §2 (AMD).]

D. The water levels necessary to prevent the excessive erosion of shorelines; [1983, c. 417, §6 (NEW).]

E. The water levels necessary to accommodate precipitation and run off of waters; [1983, c. 417, §6 (NEW).]

F. The water levels necessary to maintain public and private water supplies; [1983, c. 417, §6 (NEW).]

G. The water levels and flows necessary for any ongoing use of the dam to generate or to enhance the downstream generation of hydroelectric or hydromechanical power; and [1983, c. 417, §6 (NEW).]

H. The water levels necessary to provide flows from any dam on the body of water to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water. [1983, c. 417, §6 (NEW).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §199 (AMD) .]

5. **Order.** Based on the evidence solicited at the hearing, the commissioner shall make written findings and issue an order to the owner, lessee or person in control of the dam establishing a water level regime for the body of water impounded by the dam and, if applicable, minimum flow requirements for the dam. The order must, insofar as practical, require the maintenance of a stable water level, but must include provision for variations in water level to permit sufficient drawdown of the body to accommodate precipitation and runoff of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The commissioner shall deliver a copy of the order to the owner, lessee or person in control of the dam, the municipal officers of any municipality in which the dam or the body of water it impounds is located and each petitioner, if any, and shall file a copy of the order in the registry of deeds in the county where the dam is located.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §200 (AMD) .]

6. **Appeal.** The commissioner's order may be appealed to the board. The appeal is governed by the provisions of section 341-D, subsection 4.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §201 (NEW) .]

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 118, §11 (AMD). 1987, c. 402, §A205 (AMD). 1989, c. 323, §§1-3 (AMD). 1989, c. 569, §1 (AMD). 1989, c. 890, §§A40, B197-201 (AMD). 1993, c. 370, §§9, 10 (AMD). 1995, c. 630, §2 (AMD). 1999, c. 243, §20 (AMD). 2011, c. 653, §25 (AMD). 2011, c. 653, §33 (AFF).

§841. MAINTENANCE OF DAMS

1. **Prohibition.** After issuance of an order under section 840, subsection 5, establishing a water level regime for any body of water, no owner, lessee or person in control of any dam impounding the body of water, nor any subsequent transferee, may operate or maintain the dam or cause or permit the dam to be operated or maintained in any manner that will cause the level of water to be higher or lower than that permitted by order of the board or commissioner or to otherwise violate the terms of the order of the board or commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §202 (AMD) .]

2. **Exception.** An owner, lessee or person in control of a dam may not be in violation of subsection 1 when the water level fluctuation not permitted by the order was caused by unforeseeable and unpredictable meteorological conditions or operating failures of the dam or any associated equipment or by valid order of federal, state or local authorities, including an order issued pursuant to Title 37-B, section 1114, subsection 2,

and when the person could not have avoided the fluctuation by promptly undertaking all reasonably available steps to regulate water flow through or over any dam under the person's control. The burden of proof is on the owner, lessee or person in control of the dam to demonstrate the applicability of this subsection.

[2001, c. 460, §5 (AMD) .]

3. **Enforcement.** The commissioner or any littoral or riparian proprietor may commence an action to enjoin the violation of any provision of this subarticle. The commissioner may enforce any order issued under section 840, subsection 5 or subsection 6 by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order.

The violation of any order issued under section 840, subsection 5 or subsection 6, is punishable by a forfeiture of not less than $100 and not more than $10,000. Each day of violation is considered a separate offense.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §202 (AMD) .]

4. **Unregistered dam.**

[1993, c. 370, §11 (RP) .]

5. **Appeal.** Any person aggrieved by an order of the board or commissioner under section 840, subsection 5 or 6 may appeal to the Superior Court under Title 5, chapter 375, subchapter VII.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §202 (AMD) .]

SECTION HISTORY
1983, c. 417, §6 (NEW). 1987, c. 118, §12 (AMD). 1989, c. 890, §§A40,B202 (AMD). 1993, c. 370, §11 (AMD). 2001, c. 460, §5 (AMD).

§842. TRANSITION PROVISION

All orders of the State Soil and Water Conservation Commission or the Commissioner of Agriculture, Food and Rural Resources issued under former Title 12, section 304 continue in effect and must be enforced by the commissioner until they expire or are rescinded or amended under this subarticle. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §203 (AMD).]

SECTION HISTORY
1983, c. 417, §6 (NEW). 1989, c. 890, §§A40,B203 (AMD).

§843. MUNICIPAL AUTHORITY

The commissioner shall review an ordinance submitted pursuant to Title 30-A, chapter 187, subchapter VI for consistency with this article. If the commissioner determines that the ordinance includes all substantive provisions of this article and includes all provisions required by Title 30-A, chapter 187, subchapter VI, the commissioner shall approve that municipality for authority to establish water level regimes and minimum flow requirements for impoundments and dams. [1993, c. 370, §12 (NEW).]

SECTION HISTORY
1993, c. 370, §12 (NEW).

§844. DAM REPAIR AND RECONSTRUCTION FUND

(REPEALED)

SECTION HISTORY
1999, c. 782, §1 (NEW). 2001, c. 460, §6 (RP).

Article 4: MILLS AND THEIR REPAIR

§851. MEETING OF MILL OWNERS; CALL; OBJECT

When an owner of a mill or of the dam necessary for working the mill thinks it necessary to rebuild or repair it in whole or in part, the owner may apply in writing to a notary public in the county where the mill is situated, or if partly in 2 counties, to a notary public in either, to call a meeting of the owners, stating the object, time and place of the meeting. The notary may issue a warrant for the purpose, directed to the owner, which must be published in some newspaper printed in the county, if any, 3 weeks successively, the last publication to be not less than 10 nor more than 30 days before the meeting; or a true copy of the warrant may be delivered to each of said owners or left at the owner's last known address; and either notice is binding on all the owners. [1995, c. 227, §4 (AMD).]

SECTION HISTORY
1995, c. 227, §4 (AMD).

§852. OWNERS OF 50% OR MORE MAY REPAIR OR REBUILD

At such meeting, whether all the owners attend or not, the owners in interest of at least 1/2 of such mill or dam may rebuild or repair so far as to make them serviceable; and shall be reimbursed out of said mill or its profits what they advanced therefor beyond their proportions, with interest in the meantime.

§853. REIMBURSEMENT

If they are not reimbursed by the profits of the mill or paid by the other owners within 6 months after the work is completed, they may charge 1% a month on the amount advanced, from the end of 6 months until so reimbursed. If a delinquent owner dies or alienates his interest in the premises, the advancing owners have a continuing lien thereon for reimbursement. No special contract made by the owners respecting the building or repair of such mill or dam is hereby affected.

§854. MINORS AND PERSONS WITH QUALIFIED INTERESTS

Where any part of such mill or dam at the time of meeting and notice is owned by minors, tenants by curtesy, in tail, for life or years, or by mortgagor or mortgagee, the guardians of such minors, such tenant, mortgagor or mortgagee shall be deemed, for the purposes of sections 851 to 892, the proprietors thereof, and shall be notified, vote and contribute accordingly. All advances so made by them, if not paid, may be recovered in a civil action, with interest.

Article 5: GRIST MILLS

§891. SCALES FOR WEIGHING GRAIN; ORDER OF GRINDING

The owner or occupant of every grist mill shall keep scales and weights therein to weigh corn, grain and meal, when required. He shall well and sufficiently grind as required, according to the nature, capacity and condition of his mill, all grain brought to his mill for that purpose and in the order in which it shall be received. For neglecting or refusing to weigh the same when required, or failing to grind the same in the order received, or for taking more than lawful toll, he commits a civil violation for which a forfeiture of not less than $10 nor more than $50 shall be adjudged for each violation. This section shall not be so construed as to preclude the right of any owner or occupant of any mill to enter into any mutual agreement with any customer or customers as to the order in which the grain of such customers shall be received and ground, made at the time said customer or customers shall bring his or their grain to the mill for the purpose of being ground. [1977, c. 696, §346 (AMD).]

SECTION HISTORY
1977, c. 696, §346 (AMD).

§892. TOLLS

The toll for grinding, cleansing and bolting all kinds of grain shall not exceed 1/16 part thereof.

Article 6: RELEASE FROM DAM OWNERSHIP AND WATER LEVEL MAINTENANCE HEADING: PL 1995, C. 630, §3 (NEW)

§901. PETITION FOR RELEASE; PUBLIC NOTICE

1. **Petition.** The owner of a dam that is not licensed or exempted from licensure by the Federal Energy Regulatory Commission may petition the department to initiate proceedings for release from dam ownership or water-level maintenance under this article. The petition must include the following information:

A. The name, address and phone number of the dam owner; [1995, c. 630, §3 (NEW).]

B. The location of the dam; [1995, c. 630, §3 (NEW).]

C. A plan of the dam and brief descriptions of the condition of the dam and recent operation of the dam; and [1995, c. 630, §3 (NEW).]

D. Any other reasonable information the department determines necessary to implement this article. [1995, c. 630, §3 (NEW).]

The department shall notify the owner within 15 days of receipt of the petition if the department determines that the petition does not comply with the requirements of this section. If notice is not sent within 15 days, the petition is deemed to comply.

[1995, c. 630, §3 (NEW) .]

2. **Public notice.** Not more than 30 days before filing a petition, the dam owner shall publish notice of intent to file a petition under this article at least once in a newspaper circulated in the area in which the dam and impoundment are located. The dam owner shall notify by certified mail the persons listed in section 902, subsection 3, paragraphs B, C and D. The dam owner shall notify abutting property owners as provided in subsection 3. The dam owner shall also make a good faith effort to notify local, regional and statewide private organizations interested in fisheries, wildlife, conservation, recreation and environmental issues whose interests may be affected by the dam.

[1995, c. 630, §3 (NEW) .]

3. **Notice to property owners.** The dam owner shall send notice of the intent to file a petition by first class mail to persons who own property abutting the dam site, water impounded by the dam or waterways immediately downstream from the dam. If the dam owner chooses to meet the obligation to consult with property owners by holding a public meeting, as described in section 902, subsection 1, the dam owner shall include notice of the public meeting in the notice provided pursuant to this subsection.

[1995, c. 630, §3 (NEW) .]

The dam owner may request that a municipality send the required notice, but the dam owner is responsible for providing the notice if the municipality fails to do so. At the request of a dam owner, a municipality shall send notice of a petition filed under this article by first class mail to persons who own property in that municipality and who must be notified as provided in this subsection. The dam owner shall provide a sufficient number of copies of the notice to the municipality and shall reimburse the municipality for all costs incurred in providing the notice. County commissioners and tribal governments have the same obligation as municipalities under this subsection to send notice to persons who own property within their respective jurisdictions. [1995, c. 630, §3 (NEW).]

SECTION HISTORY
1995, c. 630, §3 (NEW).

§902. CONSULTATION PROCESS

1. **Consultation required.** Within 180 days of filing a petition pursuant to section 901, a dam owner shall consult with the persons and entities listed in subsection 3 to determine whether any of them wish to assume ownership of the dam. During consultation with each person or group of persons, the owner shall explain the process set forth in this article and shall inform the person or group that the department may issue an order requiring release of the water impounded by the dam if a new owner is not located. A dam owner may meet the obligation to consult with property owners by holding a public meeting and consulting with the persons who appear at that meeting, as long as notice has been sent to each property owner as required in section 901.

[1995, c. 630, §3 (NEW) .]

1-A. **Extension of consultation period.** The consultation period under subsection 1 must be extended for an additional 180 days if:

The consultation period under subsection 1 may not be extended for more than 180 days regardless of the number of applications for extension under this subsection.

A. A municipality in which the dam or impoundment is located applies to the department for an extension and demonstrates that the municipality needs additional consultation time to facilitate an agreement for municipal ownership of the dam; or [1997, c. 789, §1 (NEW); 1997, c. 789, §5 (AFF).]

B. The dam owner applies to the department for an extension. [1997, c. 789, §1 (NEW); 1997, c. 789, §5 (AFF).]

[2013, c. 2, §48 (COR) .]

2. **Timing of consultation.** Consultation prior to the filing of a petition meets the requirements of subsection 1 only if the dam owner, during the consultation, disclosed an intent to file a petition under this article and provided the information required in subsection 1.

[1995, c. 630, §3 (NEW) .]

3. **Parties to consultation.** The following persons must be consulted as provided in subsection 1:

A. Individuals and groups of persons, such as lake associations, who own property abutting the dam site, the water impounded by the dam or the waterway immediately downstream from the dam; [1995, c. 630, §3 (NEW).]

B. The Commissioner of Inland Fisheries and Wildlife, the Commissioner of Agriculture, Conservation and Forestry and the Director of the Maine Emergency Management Agency; [1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §6 (REV).]

C. The municipal officers of any municipality and the county commissioners of any unorganized area in which the dam or impoundment is located; and [1995, c. 630, §3 (NEW).]

D. Representatives of the tribal governments of Indian tribes or nations in whose territory a dam or impoundment is located. [1995, c. 630, §3 (NEW).]

[1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §6 (REV) .]

4. **Report on notice compliance.** The dam owner shall file a report with the department within 180 days of filing a petition that includes:

A. Evidence that the owner complied with the notice requirements set forth in section 901; and [1997, c. 789, §2 (AMD); 1997, c. 789, §5 (AFF).]

B. Names and addresses of persons notified under section 901. [1997, c. 789, §2 (AMD); 1997, c. 789, §5 (AFF).]

C. [1997, c. 789, §5 (AFF); 1997, c. 789, §2 (RP).]

[1997, c. 789, §2 (AMD); 1997, c. 789, §5 (AFF) .]

4-A. **Report on consultation process.** The dam owner shall file a report with the department within 180 days of filing a petition or before the conclusion of an extension to the consultation period granted pursuant to subsection 1-A that includes:

A. Names and addresses of parties consulted in accordance with this section; and [1997, c. 789, §3 (NEW); 1997, c. 789, §5 (AFF).]

B. The results of the consultations and whether a new owner has been located. [1997, c. 789, §3 (NEW); 1997, c. 789, §5 (AFF).]

[1997, c. 2, §64 (COR) .]

5. **Evaluation of report.** If the department determines, after reviewing the report, that the dam owner has not complied with the requirements of section 901 or this section, the department shall allow the dam owner a reasonable period of time to correct the deficiency. The department shall reject the petition if:

A. The deficiency has not been corrected within the specified time period; or [1995, c. 630, §3 (NEW).]

B. The department finds that a person was willing to assume ownership of the dam but the dam owner refused to transfer the property because that person refused to pay compensation, other than costs, for the transfer. [1995, c. 630, §3 (NEW).]

[1995, c. 630, §3 (NEW) .]

SECTION HISTORY
1995, c. 630, §3 (NEW). RR 1997, c. 2, §64 (COR). 1997, c. 789, §§1-3 (AMD). 1997, c. 789, §5 (AFF). 2011, c. 657, Pt. W, §6 (REV). RR 2013, c. 2, §48 (COR).

§903. ASSESSMENT OF PUBLIC VALUE OF DAM

1. **Notification of agencies.** If a new owner was not located during the consultation process and the department has not rejected the petition, the department shall immediately notify the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry and the Maine Emergency Management Agency that an assessment of public value for the dam may be required.

[1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

2. **Evaluation of fisheries and wildlife value.** Within 60 days of receiving notice under subsection 1, the Department of Inland Fisheries and Wildlife shall review the following factors and determine whether the best interest of the public requires that department to assume ownership of the dam:

A. The cost of maintaining the dam; [1995, c. 630, §3 (NEW).]

B. The value to fisheries and wildlife of maintaining the dam; and [1995, c. 630, §3 (NEW).]

C. The value to fisheries and wildlife of releasing water from the dam. [1995, c. 630, §3 (NEW).]

The Department of Inland Fisheries and Wildlife shall notify the department of its determination. If the Department of Inland Fisheries and Wildlife determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer the dam to the Department of Inland Fisheries and Wildlife within a reasonable period of time. If the Department of Inland Fisheries and Wildlife determines that it will not assume ownership, the department shall notify the Department of Agriculture, Conservation and Forestry.

[1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

3. **Evaluation of public recreational value.** Within 60 days of receiving notice under subsection 2, the Department of Agriculture, Conservation and Forestry shall review the following factors and determine whether the best interest of the public requires that department to assume ownership of the dam:

A. The cost of maintaining the dam; [1995, c. 630, §3 (NEW).]

B. The value to public recreation, conservation and public use of maintaining the dam; and [1995, c. 630, §3 (NEW).]

C. The value to public recreation, conservation and public use of releasing water from the dam. [1995, c. 630, §3 (NEW).]

The Department of Agriculture, Conservation and Forestry shall notify the department of its determination. If the Department of Agriculture, Conservation and Forestry determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer the property to the Department of Agriculture, Conservation and Forestry within a reasonable period of time. If the Department of Agriculture, Conservation and Forestry determines that it will not assume ownership of the dam, the department shall notify the Maine Emergency Management Agency.

[1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

4. **Evaluation of public safety value.** Within 60 days of receipt of notice under subsection 3, the Maine Emergency Management Agency shall review the following factors and determine whether the best interest of the public requires that agency to assume ownership of the dam:

A. The cost of maintaining the dam; [1995, c. 630, §3 (NEW).]

B. The value to public safety, particularly flood protection, of maintaining the dam; and [1995, c. 630, §3 (NEW).]

C. The value to public safety, particularly flood protection, of releasing water from the dam. [1995, c. 630, §3 (NEW).]

The Maine Emergency Management Agency shall notify the department of its determination. If that agency determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer ownership of the dam to the Maine Emergency Management Agency within a reasonable period of time.

[1995, c. 630, §3 (NEW) .]

SECTION HISTORY
1995, c. 630, §3 (NEW). 2011, c. 657, Pt. W, §5 (REV).

§904. NOTICE OF FAILURE TO LOCATE NEW OWNER

If a new owner has not been located through the process set forth in sections 902 and 903, the department shall provide notice that a new owner for the dam has not been located and that the department intends to issue an order requiring the dam owner to release water from the dam in accordance with section 905. Notice must be sent by certified mail to each municipality in which the dam and impoundment are

located, to county commissioners when the dam and impoundment are located in unorganized territory and to tribal governments when the dam and impoundment are located on tribal territory. The department shall also publish notice of its intent to issue the order at least once in a newspaper circulated in the area in which the dam and impoundment are located. [1995, c. 630, §3 (NEW).]

SECTION HISTORY
1995, c. 630, §3 (NEW).

§905. ORDER FOR RELEASE OF WATER

1. **Order.** Not earlier than 30 days after providing notice as required in section 904, the department shall issue an order to the dam owner to release water from the dam in a manner that minimizes the impact of the release, including requirements for mitigation as appropriate. If the department receives a petition requesting additional time to negotiate assumption of ownership of the dam and the dam owner agrees, the department may delay issuance of the order for an additional period agreed to by the dam owner and the petitioners.

[1995, c. 630, §3 (NEW) .]

2. **Impact of order.** An order issued under this article does not supersede any property right granted by deed or other legal instrument. An order issued under this article supersedes an order issued under section 840.

[1995, c. 630, §3 (NEW) .]

SECTION HISTORY
1995, c. 630, §3 (NEW).

§906. PROPERTY TRANSFER PROVISIONS

1. **Compensation.** A dam owner is not prohibited from requesting compensation for the transfer of a dam pursuant to this article. The department may not issue a water release order pursuant to section 905 to a dam owner who has refused to transfer the dam to a person willing to assume ownership of the dam because that person refused to compensate the dam owner for the property. The department may not refuse to issue the order if the dam owner requested only payment or a share in payment of the costs of transfer.

[1995, c. 630, §3 (NEW) .]

2. **Property rights transferred.** When a dam is transferred pursuant to this article, the dam owner shall transfer all property rights necessary to maintain and operate the dam, to the extent owned by the dam owner. Those property rights include title to the dam and land under the dam, title to equipment and other personal property normally located at the dam site, flowage rights and access rights.

[1995, c. 630, §3 (NEW) .]

SECTION HISTORY
1995, c. 630, §3 (NEW).

§907. RIGHT TO WITHDRAW PETITION

A dam owner may at any time withdraw a petition filed under this article. [1995, c. 630, §3 (NEW).]

SECTION HISTORY
1995, c. 630, §3 (NEW).

§908. MUNICIPAL ACTIONS ON DAM OWNERSHIP

The municipal legislative body, as defined in Title 30-A, section 2001, of any municipality notified pursuant to section 901, subsection 2 must consider and act on the issue of dam ownership at a public meeting. The meeting must be held no later than 60 days after the municipal officers receive notice under section 901. County commissioners notified under section 901 must also hold a public meeting to act on the issue of dam ownership not later than 60 days after receiving notification. [1995, c. 630, §3 (NEW).]

SECTION HISTORY
1995, c. 630, §3 (NEW).

§909. TECHNICAL ASSISTANCE

To the extent existing resources are available, when one or more municipalities seek ownership of a dam, the Department of Agriculture, Conservation and Forestry may provide grants and technical assistance to the participating municipality or municipalities or to regional planning organizations. [2011, c. 655, Pt. JJ, §34 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY
1997, c. 789, §4 (NEW). 1997, c. 789, §5 (AFF). 2011, c. 655, Pt. JJ, §34 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

Subchapter 2: WATER STORAGE RESERVOIRS

§931. CREATION; RIGHT TO FLOW LAND; DAMAGES

Any person, firm or corporation which may be entitled to the rights and benefits provided for in this chapter is authorized and empowered to build, maintain and operate dams and other necessary works and structures, including side dams, embankments, ditches and drains, on lands owned or leased by them for the purpose of creating and maintaining water storage reservoirs or basins; to raise the level of the waters in such storage reservoirs or basins by augmenting the supply of stored water from sources other than the natural drainage area by means of pumping or otherwise; to retain and discharge said stored water; to build, maintain and operate pipes, conduits, penstocks, tunnels and canals for the purpose of augmenting and discharging said stored water for use by such persons, firms or corporations for working their water mill or mills. Such persons, firms or corporations are authorized and empowered to flow such lands as may be necessary to carry out the purposes of this section, and damages caused by the flowing of such lands by means of said dams, other works and structures shall be ascertained and determined in the manner as prescribed in this chapter.

§932. EMINENT DOMAIN; ASSESSMENT OF DAMAGES

Any person, firm or corporation authorized and empowered to build, maintain and operate pipes, conduits, penstocks, tunnels and canals under section 931 is further authorized and empowered to exercise the right of eminent domain by taking and holding as for public uses in the manner and subject to the limitations prescribed in Title 35-A, section 6502, such lands and rights-of-way as such person, firm or corporation may require for such purposes when the water which will be stored, retained and discharged through the use of such pipes, conduits, penstocks, tunnels and canals will be devoted to public uses. All proceedings relating to damages caused by the building, maintaining and operating of said pipes, conduits, penstocks, tunnels and canals shall be ascertained and determined in the same manner as prescribed in Title 35-A, sections 6503 to 6512. [1987, c. 141, Pt. B, §37 (AMD).]

SECTION HISTORY
1987, c. 141, §B37 (AMD).

§933. AUTHORIZATION REQUIRED

Any person, firm or corporation authorized and empowered to augment stored water by pumping or otherwise under section 931 and acquire by eminent domain for public uses, lands and rights-of-way for pipes, conduits, penstocks, tunnels and canals under section 932 is authorized and empowered to exercise the rights and benefits under this chapter but only when such person, firm or corporation shall have received the necessary authority by legislative Act.

Chapter 6: SACO RIVER CORRIDOR

§951. PURPOSE

The Legislature finds that the Saco, Ossipee and Little Ossipee Rivers are largely unspoiled by intensive or poorly planned commercial, industrial or residential development; that existing water quality on the inland portions of these rivers is extremely high; that these rivers and their associated wetlands constitute an important present and future source of drinking water; that they support large and diverse aquatic populations; and that they are heavily used for fishing, swimming, canoeing, camping and other forms of outdoor recreation. [1979, c. 459, §1 (NEW).]

The Legislature finds that the wetlands associated with these rivers constitute important water storage areas; that they moderate the flow of these rivers in time of flood and drought; that they replenish the groundwater; and that they provide nutrients and essential habitat for numerous species of fish, migratory birds and other forms of wildlife. [1979, c. 459, §1 (NEW).]

The Legislature finds that the periodic flooding of these rivers contributes to the fertility of the adjacent lands; that the unrestricted flow of water within the floodway in the upper portions of these rivers is an essential factor in limiting the severity of flooding in the lower portions of these rivers; and that because the floodplains are largely undeveloped, the flooding which now occurs results in relatively little loss of life, personal injury and damage to property. [1979, c. 459, §1 (NEW).]

The Legislature finds that these rivers and their adjacent lands possess outstanding scenic and aesthetic qualities and that certain areas along these rivers are of outstanding scenic, historic, archaeological, scientific and educational importance. [1979, c. 459, §1 (NEW).]

The Legislature finds that the towns along these rivers are experiencing rapid population growth and that the rivers themselves are subject to increasing development pressures which threaten to destroy the quality of these rivers and the character of the adjacent lands. [1979, c. 459, §1 (NEW).]

In view of the dangers of intensive and poorly planned development, it is the purpose of this chapter to preserve existing water quality, prevent the diminution of water supplies, to control erosion, to protect fish and wildlife populations, to prevent undue extremes of flood and drought, to limit the loss of life and damage to property from periodic floods; to preserve the scenic, rural and unspoiled character of the lands adjacent to these rivers; to prevent obstructions to navigation; to prevent overcrowding; to avoid the mixture of incompatible uses; to protect those areas of exceptional scenic, historic, archaeological, scientific and educational importance; and to protect the public health, safety and general welfare by creating the Saco River Corridor, established in section 953, and by regulating the use of land and water within this area. [1989, c. 503, Pt. B, §177 (AMD).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1983, c. 812, §293 (AMD). 1989, c. 503, §B177 (AMD).

§952. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 459, §1 (NEW).]

1. **Accepted road.** "Accepted road" means a state, county or town road which is under the control of state, county or municipal authorities and maintained at public expense.

[1979, c. 459, §1 (NEW) .]

2. **Accessory use or structure.** "Accessory use or structure" means a use or structure of a nature customarily incidental and subordinate to a principal use or structure.

[1979, c. 459, §1 (NEW) .]

3. **Automobile graveyard.** "Automobile graveyard" means a yard, field or parcel of land used as a place of storage for 3 or more unserviceable, discarded, worn out or junked motor vehicles.

[1979, c. 459, §1 (NEW) .]

4. **Billboard.** "Billboard" means a sign, structure or surface, or combination thereof, used for advertising purposes exceeding 15 square feet in area.

[1979, c. 459, §1 (NEW) .]

5. **Bog.** "Bog" means a periodically or continually wet, spongy area exceeding 1,000 square feet in area with soil composed mainly of decayed vegetable matter.

[1979, c. 459, §1 (NEW) .]

6. **Building.** "Building" means any structure, regardless of the materials of which it is constructed, which has a roof or partial roof supported by columns or walls, used or intended to be used for the habitation, enclosure or shelter of persons or animals or to provide uses which include, but are not limited to, working, office, display, sales, storage or parking space.

[1979, c. 459, §1 (NEW) .]

7. **Development.** "Development" means the carrying out of any significant earthmoving, grading, dredging, filling, building, construction or mining operation; the deposit of refuse or solid or liquid wastes on a parcel of land other than agricultural utilization of animal wastes; the making of any material change in noise levels, thermal conditions or emissions of waste material; the commencement or change in the location of advertising; or the alteration of a shore, bank or floodplain of an estuary, river or pond.

[1979, c. 459, §1 (NEW) .]

8. **District.** "District" means a specified area of land or water within the corridor, delineated on the district boundary map, within which certain regulations and requirements apply under this chapter.

[1979, c. 459, §1 (NEW) .]

9. **100-year floodplain.** "100-year floodplain" means any land adjacent to the Saco River, Ossipee River or the Little Ossipee River which is of lower elevation than the profiles of the 100-year flood established for that location by the United States Army Corps of Engineers, or by other state or federal agency, or which was actually covered by flood waters in the flood of March, 1936. Where the location of the boundary of the 100-year floodplain is at issue under this chapter, the district boundary map adopted by the commission shall be prima facie evidence of the location of the boundary.

[1979, c. 459, §1 (NEW) .]

10. **Home occupation or enterprise.** "Home occupation or enterprise" means an occupation, enterprise or profession which is carried on in a dwelling unit or accessory structure by a person residing in the dwelling unit, incidental and secondary to the use of the dwelling unit for residential purposes, which conforms to the following performance standards:

A. Not more than 2 full-time employees or the equivalent thereof not living on the premises shall be employed in the home occupation or enterprise; [1979, c. 459, §1 (NEW).]

B. All exterior signs and displays shall comply with the performance standards enacted by or established pursuant to this chapter; and [1979, c. 459, §1 (NEW).]

C. There shall be no nuisance, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation generated which is incompatible with the character of the area in which the home occupation or enterprise is located. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

11. **Junkyard.** "Junkyard" means a yard, field or other parcel of land used as a place for storage for:

A. Discarded, worn-out or junked plumbing and heating supplies or household appliances and furniture; [1979, c. 459, §1 (NEW).]

B. Discarded scrap and junked lumber; [1979, c. 459, §1 (NEW).]

C. Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubbish, debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and [1979, c. 459, §1 (NEW).]

D. Garbage dumps, waste dumps and sanitary fill. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

12. **Marsh.** "Marsh" means a periodically wet or continually flooded land area exceeding 1,000 square feet with the surface not deeply submerged, covered dominantly with sedges, cattails, rushes or other hydrophytic plants.

[1979, c. 459, §1 (NEW) .]

13. **Mean high waterline.** "Mean high waterline" means the average high tide level.

[1979, c. 459, §1 (NEW) .]

14. **Normal high water line.** "Normal high water line" means the line on the shore or bank of the fresh-water portion of a river at the point or elevation where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. Where the location of the normal high water line is at issue under this chapter, the district boundary map adopted by the commission shall be prima facie evidence of its location.

[1979, c. 459, §1 (NEW) .]

15. **Public right-of-way.** "Public right-of-way" is an improved roadway maintained for passage by motor vehicles in which the owner of fee does not control the right of passage.

[1995, c. 171, §1 (AMD) .]

15-A. **Service drop.** "Service drop" means any utility line extension that does not cross or run beneath any portion of a water body as long as:

A. In the case of electric service:

(1) The placement of wires or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and

(2) The total length of the extension is less than 1,000 feet; or [1995, c. 171, §2 (NEW).]

B. In the case of telephone service:

(1) The extension, regardless of length, is made by the installation of telephone wires to existing utility poles; or

(2) The extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length. [1995, c. 171, §2 (NEW).]

[1995, c. 171, §2 (NEW) .]

16. **Structure.** "Structure" means any object of a significant nature constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location or in the ground, which may include, but is not limited to, buildings, mobile homes, walls, fences, billboards, signs, piers and floats.

[1979, c. 459, §1 (NEW) .]

17. **Swamp.** "Swamp" means a periodically or continually wet area exceeding 1,000 square feet in area which supports tree growth.

[1979, c. 459, §1 (NEW) .]

17-A. **Tributary stream.** "Tributary stream" means a channel between defined banks and associated flood plain wetlands. A channel is created by the action of surface water and has 2 or more of the following characteristics.

A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5 series topographic map or, if not available, a 15-minute series topographic map. [1995, c. 171, §2 (NEW).]

B. It contains or is known to contain water flowing continuously for a period of at least 3 months of the year in most years. [1995, c. 171, §2 (NEW).]

C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water. [1995, c. 171, §2 (NEW).]

D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed. [1995, c. 171, §2 (NEW).]

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation. [1995, c. 171, §2 (NEW).]

"Tributary stream" does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining storm water, nor does it mean a grassy swale.

[1995, c. 171, §2 (NEW) .]

18. **Wetlands.** "Wetlands" means marshes, bogs, swamps and other areas exceeding 1,000 square feet, periodically covered by water which exhibit predominantly aquatic vegetation.

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1995, c. 171, §§1,2 (AMD).

§953. SACO RIVER CORRIDOR ESTABLISHED

There is hereby created the Saco River Corridor, herein referred to as the "corridor," which includes the Saco River from the landward side of the rock jetty in Saco Bay to the New Hampshire border; the Ossipee River from its confluence with the Saco River to the New Hampshire border; and the Little Ossipee River from its confluence with the Saco River to the New Hampshire border at Balch Pond. [1995, c. 171, §3 (AMD).]

The corridor also includes the lands adjacent to these rivers to a distance of 500 feet as measured on a horizontal plane from the normal or mean high water line of these rivers or to the edge of the 100-year floodplain if that extends beyond 500 feet, up to a maximum of 1,000 feet. [1995, c. 171, §3 (AMD).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1995, c. 171, §3 (AMD).

§954. CREATION OF THE SACO RIVER CORRIDOR COMMISSION

To carry out the purpose stated in section 951, the Saco River Corridor Commission, as established by Title 5, section 12004-G, subsection 13, shall hereafter in this chapter be called the "commission." The commission is charged with implementing this chapter within the Saco River Corridor and shall have and exercise all the powers and authorities necessary to carry out the purposes of this chapter and the powers and authorities granted herein. The commission shall consist of one member and one alternate from each municipality whose jurisdiction includes lands or bodies of water encompassed by the Saco River Corridor. Members and alternates shall not be personally liable for the official acts of the commission. [1989, c. 503, Pt. B, §178 (AMD).]

Appointments to the commission shall be made by the municipal officers of each municipality who may consult with the planning board of that municipality. The initial members and alternates shall be appointed within 30 days of the effective date of this chapter. Members of the commission and alternates shall serve staggered 3-year terms. The term of office of the initial members and alternates shall be determined by lot with 1/3 of the initial members and alternates selected respectively for one, 2 and 3-year terms. The member and alternate from the same municipality shall serve the same term. [1979, c. 459, §1 (NEW).]

Appointed and elected officials of the municipalities with lands within the corridor shall be eligible to serve as members of the commission, and such service shall not be considered a conflict of interest. The members shall be sworn to the faithful performance of their duties as such by a dedimus justice and 7 members or alternates qualified to vote shall constitute a quorum for the transaction of business. [1979, c. 459, §1 (NEW).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1983, c. 812, §294 (AMD). 1989, c. 503, §B178 (AMD).

§954-A. OFFICERS AND MEETINGS

The commission shall elect annually, from its own membership, a chair and secretary and such other officers as it deems necessary. Meetings must be held at the call of the chair or at the call of more than 1/2 of the membership. The meetings must be held no less frequently than 8 times a year. The minutes of all proceedings of the commission are a public record available and on file in the office of the commission. Members of the commission must be compensated according to the provisions of Title 5, chapter 379. [2013, c. 2, §49 (COR).]

Alternate members shall be allowed to participate in all proceedings of the commission, but shall vote only in the absence of the regular member from the municipality which they represent. Public hearings conducted under the authority of this chapter may be held by a single member, alternate or hearing officer designated by the commission. [1979, c. 459, §1 (NEW).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1983, c. 812, §295 (AMD). RR 2013, c. 2, §49 (COR).

§954-B. COMMISSION BUDGET; FINANCING AND EXECUTIVE DIRECTOR

The commission shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make such agreements in respect to the administration of such funds, not inconsistent with this chapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The commission may contract with municipal, state and federal governments or their agencies to assist in the carrying out of any of its assigned tasks. The commission is authorized to employ an executive director who shall be the principal administrative, operational and executive employee of the commission. The executive director shall attend all meetings of the commission and be permitted to participate fully, but shall not be a voting member of the commission. The executive director, with the approval of the commission, may hire whatever competent professional personnel and other staff as may be necessary and he may obtain office space, goods and services as required. [1979, c. 459, §1 (NEW).]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§954-C. RULE-MAKING POWERS

1. The commission shall have the power, after notice and public hearing, to adopt such rules and regulations governing its procedures as it deems necessary to carry out the purposes of this chapter. The rules and regulations may cover but shall not be limited to:

A. The form and content of applications; [1979, c. 459, §1 (NEW).]

B. The conduct of meetings and hearings; [1979, c. 459, §1 (NEW).]

C. The determination of parties to hearings; [1979, c. 459, §1 (NEW).]

D. The provision, form and content of both public notice and notice to individuals, groups and property owners affected by proposed action of the commission; [1979, c. 459, §1 (NEW).]

E. The issuance and revocation of permits and certificates of compliance; [1979, c. 459, §1 (NEW).]

F. The issuance of decisions and findings of facts; [1979, c. 459, §1 (NEW).]

G. The adoption, amendment and interpretation of district boundaries; [1979, c. 459, §1 (NEW).]

H. The amendment and revision of the comprehensive plan; [1979, c. 459, §1 (NEW).]

I. The adoption and amendment of a schedule of fees; [1979, c. 459, §1 (NEW).]

J. The adoption and amendment of additional performance standards for permitted uses under section 962-A; and [1979, c. 459, §1 (NEW).]

K. The grant or denial of variances. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

2. In adopting rules and regulations under this section, the commission shall consider, in addition to the other requirements set forth in this chapter, the following factors:

A. Expense and facility of administration; [1977, c. 459, §1 (NEW).]

B. Convenience to landowners and individuals affected; [1977, c. 459, §1 (NEW).]

C. Encouragement of public participation; and [1977, c. 459, §1 (NEW).]

D. Cooperation with municipal and state officials. [1977, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§954-D. ADDITIONAL POWERS AND DUTIES

1. **-- additional.** In order to implement this chapter, the commission may, in addition to the powers and duties otherwise authorized by this chapter:

A. Adopt an official seal; [1979, c. 459, §1 (NEW).]

B. Compel attendance of witnesses and require production of evidence; [1979, c. 459, §1 (NEW).]

C. Designate or request municipal, state or federal agencies to receive applications, provide assistance, make investigations and submit recommendations; [1979, c. 459, §1 (NEW).]

D. Conduct joint hearings with municipal officers or other appropriate state or local agencies where joint approval may be required; and [1979, c. 459, §1 (NEW).]

E. Sue and be sued in its own name, plead and be impleaded. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§955. ACQUISITION OF PROPERTY INTERESTS

The commission may acquire conservation easements or other interest in real estate in the name of the State by gift, purchase, grant, bequest, devise or lease for any of its purposes and may convey administration thereof to any appropriate agency. [1979, c. 459, §1 (NEW).]

A conservation easement under this section may be a development right, covenant or other contractual right, including a conveyance with conditions or with limitations or reversions, as may be desirable to conserve and properly utilize open spaces and other land and water areas in the corridor. [1979, c. 459, §1 (NEW).]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§956. THE COMPREHENSIVE PLAN

1. **Guide for boundaries.** The comprehensive plan submitted to the 106th Legislature by the Saco River Environmental Advisory Committee must be used as a guide by the planning boards of the municipalities within the corridor in making recommendations for district boundaries and by the commission in establishing final boundaries. The comprehensive plan may not be regarded as a final and complete design for the future of the land and water areas within the corridor, but as the basis of a continuing planning process to be carried out by the commission in conjunction with local officials, regional planning districts, councils of government and the Department of Agriculture, Conservation and Forestry.

[2011, c. 655, Pt. JJ, §35 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

2. **Prerequisites to amendment or revision.** The commission shall not amend or revise the comprehensive plan, unless:

A. The proposed amendment or revision has been submitted to the Southern Maine Regional Planning Commission, the Greater Portland Council of Governments and other appropriate agencies, which shall forward their comments and recommendations, if any, to the commission within 30 days; [1979, c. 663, §233 (NEW).]

B. The proposed amendment or revision has been submitted to the Department of Agriculture, Conservation and Forestry, which shall forward its comments and recommendations, if any, to the commission within 30 days; and [2011, c. 655, Pt. JJ, §36 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

C. The commission has considered all the comments. [1979, c. 663, §233 (NEW).]

[2011, c. 655, Pt. JJ, §36 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

3. **Basis for amendment or revision.** The commission shall have the authority, after notice and public hearing, to revise, expand or amend the comprehensive plan on the basis of new information, improved professional techniques or changing conditions in the corridor.

[1979, c. 663, §233 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1979, c. 663, §233 (RPR). 2011, c. 655, Pt. JJ, §§35, 36 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

§957. USE DISTRICTS AND CLASSIFICATIONS

1. **Classification.** The land and water area within the Saco River Corridor shall be classified by the commission according to the following land and water use districts:

A. Resource protection; [1979, c. 459, §1 (NEW).]

B. Limited residential; and [1979, c. 459, §1 (NEW).]

C. General development. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

2. **Use.** Within each of these districts, the possible uses of land and water shall be divided into the following 3 categories:

A. Uses for which no permit from the commission is required; [1979, c. 459, §1 (NEW).]

B. Uses allowed by permit; and [1979, c. 459, §1 (NEW).]

C. Prohibited uses. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§957-A. RESOURCE PROTECTION DISTRICT

1. **Areas to be included.** The Resource Protection District shall include the following areas:

A. Wetlands, swamps, marshes and bogs; [1979, c. 459, §1 (NEW).]

B. Areas where the entire width of the corridor on one or both sides of the river is within the 100-year floodplain; [1979, c. 459, §1 (NEW).]

C. Land in private ownership designated for inclusion within this district by the owner thereof and accepted by the commission because of its importance as a fish and wildlife habitat or its educational, scientific, scenic, historic or archaeological value, or its open space value; [1979, c. 459, §1 (NEW).]

D. Land held in federal, state and municipal ownership which is designated for inclusion within this district by the controlling state, local or federal agency or board and accepted by the commission because of its importance as a fish and wildlife habitat or its educational, scientific, scenic, historic or archaeological value, or its open space value; [1979, c. 459, §1 (NEW).]

E. Land subject to easements or other restrictions that limit permissible uses to those allowed within this district; [1995, c. 171, §4 (AMD).]

F. Areas of importance as a fish or wildlife habitat or containing exceptional educational, scientific, scenic, historic or archaeological resources, which are nominated in writing to the commission by a municipal or state agency and approved by the commission after public hearing in the municipality within which the area is located.

(1) Areas of importance as fish and wildlife habitat shall be included within the Resource Protection District upon a finding by the commission that all of the following requirements are met:

(a) The area is of importance to a specific species of fish, migratory birds or other wildlife which inhabits the Saco River Corridor;

(b) The maintenance and preservation of the populations of such species will promote the public welfare; and

(c) More intensive development would result in the total or partial loss of the wildlife resources to be protected.

(2) Areas of exceptional scenic importance shall be included within the Resource Protection District upon a finding by the commission that all of the following requirements are met:

(a) The area is of exceptional scenic value because of distinct and clearly identifiable geological formations, vegetation or other natural features, such as bluffs, cliffs, rapids, falls, rock out-croppings or islands;

(b) The natural features are visible from the river or from an accepted road during the months of June through September;

(c) Preservation of the scenic value of the area will promote the public welfare; and

(d) More intensive development would result in the total or partial loss of the scenic value of the area.

(3) Areas of exceptional historic importance shall be included within the Resource Protection District only upon a finding by the commission that all of the following requirements are met:

(a) The area to be included is associated with persons or events of national, state or local historic significance;

(b) The area to be included, or the persons or events associated with the area, have been described or alluded to in historic documents, state or local histories, historic novels or other published materials;

(c) Protection of the historic values of the area will contribute to public understanding and appreciation of the history of the Saco River Valley and its people; and

(d) More intensive development would result in the total or partial loss of the historic value of the area.

(4) Areas of exceptional archaeological importance shall be included within the Resource Protection District upon a finding by the commission that all of the following requirements are met:

(a) The area to be included is one of exceptional importance as a source of fossils or prehistoric Indian remains;

(b) The protection of the area would promote the public welfare by increasing public understanding and appreciation of the past of the Saco River Valley and its inhabitants; and

(c) More intensive development would result in the total or partial loss or inaccessibility of such fossils or Indian remains.

(5) Areas of exceptional scientific and educational importance shall be included within the Resource Protection District only upon a finding by the commission that all of the following requirements are met:

(a) The area contains rare or unusual flora, fauna or other natural features of scientific or educational importance;

(b) That protection of the area will promote scientific and educational purposes; and

(c) More intensive development would result in the total or partial destruction of the educational or scientific value of the area; and [1995, c. 171, §5 (AMD).]

G. Areas of 2 or more contiguous acres with sustained slopes of 20% or greater. [1995, c. 171, §6 (NEW).]

[1995, c. 171, §§4-6 (AMD) .]

2. **Uses for which no permit from the commission is required.** Uses within the Resource Protection District for which no permit from the commission is required shall include:

A. Open space uses which do not involve development including erosion and flood control, parks, game management, harvesting of cranberries and wild crops, tent camping, picnic areas, fishing, hunting, and other forms of outdoor recreation compatible with the purposes of this district; [1979, c. 459, §1 (NEW).]

B. Piers, docks and floats in compliance with state and federal requirements and applicable performance standards; [1979, c. 459, §1 (NEW).]

C. Forestry, agriculture, horticultural and aquacultural uses not involving development; and [1979, c. 459, §1 (NEW).]

D. Maintenance, reconstruction or relocation of existing public ways or bridges. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

3. **Uses allowed by permit.** Uses within the Resource Protection District which may be allowed by permit shall include:

A. Structures related, necessary and accessory to the uses for which no permit is required; [1979, c. 459, §1 (NEW).]

B. Dredging, filling or alteration of wetlands related, necessary and accessory to permitted uses; [1979, c. 459, §1 (NEW).]

C. Any fill or deposit of material related, necessary and accessory to permitted uses; [1979, c. 459, §1 (NEW).]

D. Sand, gravel and topsoil (loam) excavations; [1979, c. 459, §1 (NEW).]

E. Necessary expansion or enlargement of nonconforming uses; and [1979, c. 459, §1 (NEW).]

F. Reconstruction of nonconforming structures damaged or destroyed by casualty. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

4. **Prohibited uses.** Prohibited uses within the Resource Protection District shall include:

A. Structures designed for human habitation; [1979, c. 459, §1 (NEW).]

B. Buildings not related, necessary and accessory to uses for which no permit is required; [1979, c. 459, §1 (NEW).]

C. Any fill or deposit of materials, or dredging or alteration of wetlands, not permitted as accessory to uses allowed within the district; [1979, c. 459, §1 (NEW).]

D. Billboards; [1979, c. 459, §1 (NEW).]

E. Commercial uses other than those undertaken and permitted pursuant to subsections 2 and 3; [1979, c. 459, §1 (NEW).]

F. Industrial or manufacturing uses; [1979, c. 459, §1 (NEW).]

G. Dumping or disposing of any liquid or solid wastes other than agricultural utilization of animal wastes; and [1979, c. 459, §1 (NEW).]

H. Uses prohibited in the Limited Residential or General Development District. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1995, c. 171, §§4-6 (AMD).

§957-B. LIMITED RESIDENTIAL DISTRICT

1. **Areas to be included.** The Limited Residential District shall include lands within the corridor which may be suitable for development, but which are not necessary for the growth of areas of intensive development. The Limited Residential District shall serve as the residuary district and shall include all areas within the corridor which are not included in the Resource Protection or General Development Districts.

[1979, c. 459, §1 (NEW) .]

2. **Uses for which no permit from the commission is required.** Uses for which no permit from the commission is required within the Limited Residential District shall include those uses for which no permit from the commission is required within the Resource Protection District.

[1979, c. 459, §1 (NEW) .]

3. **Uses allowed by permit.** Uses within the Limited Residential District which may be allowed by permit shall include:

A. Uses allowed by permit within the Resource Protection District; [1979, c. 459, §1 (NEW).]

B. Roads; [1979, c. 459, §1 (NEW).]

C. Commercial establishments related, necessary and accessory to uses allowed without permit, except as prohibited by subsection 4; [1979, c. 459, §1 (NEW).]

D. Home occupations or enterprises; [1979, c. 459, §1 (NEW).]

E. Single-family residences and accessory structures meeting all of the following performance standards:

(1) The minimum lot frontage on the river measured at the normal or mean high water line is 100 feet;

(2) The minimum setback of any building is 100 feet from the normal or mean high water line of the river and is 75 feet from the normal or mean high water line of any tributary stream;

(3) The combined river frontage and setback of any building is not less than 500 feet;

(4) The structures and fill do not encroach on the 100-year floodplain;

(5) Where there is an accepted road or public right-of-way, as of March 19, 1974, within 500 feet of the normal or mean high water mark of the river with different land ownership on either side of the road or public right-of-way, the landowner on the far side of the road or public right-of-way from the river has an aggregate of setback from the river and frontage on the far side of the road or public right-of-way equal to 500 feet;

(6) Where there is a recorded subdivision, as of March 19, 1974, "frontage," for the purposes of determining compliance with this section, means lot frontage on the side of the lot nearest to and most nearly parallel to the river; and

(7) Where a landowner, as of March 19, 1974, owns a lot abutting land owned by a public utility, and the public utility land lies between the abutting landowner's lot and the river, "frontage," for the purpose of determining compliance with this section, means the frontage on the side of the lot abutting that public utility land that is nearest to and most nearly parallel to the river; [1995, c. 171, §7 (AMD).]

F. Libraries and firehouses; [1979, c. 459, §1 (NEW).]

G. Public utility structures; [1979, c. 459, §1 (NEW).]

H. Necessary expansion or enlargement of nonconforming uses; and [1979, c. 459, §1 (NEW).]

I. Reconstruction of nonconforming structures damaged or destroyed by casualty. [1979, c. 459, §1 (NEW).]

[1995, c. 171, §7 (AMD) .]

4. **Prohibited uses.** Prohibited uses within the Limited Residential District shall include:

A. Hotels, motels, mobile home parks and trailer courts; [1979, c. 459, §1 (NEW).]

B. Restaurants, cafeterias or other commercial establishments involved in the preparation or sale of food or other beverages; [1979, c. 459, §1 (NEW).]

C. Commercial uses other than those undertaken and permitted pursuant to subsections 2 and 3; [1979, c. 459, §1 (NEW).]

D. Any fill or deposit of materials, or dredging or alteration of wetlands, not permitted as accessory to uses allowed within this district; [1979, c. 459, §1 (NEW).]

E. Manufacturing and industrial uses; [1979, c. 459, §1 (NEW).]

F. Hospitals and clinics; [1979, c. 459, §1 (NEW).]

G. Billboards; and [1979, c. 459, §1 (NEW).]

H. All uses prohibited in the General Development District. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1995, c. 171, §7 (AMD).

§957-C. GENERAL DEVELOPMENT DISTRICT

1. **Areas to be included.** The General Development District shall include those areas within the corridor which exhibit a clearly defined pattern of intensive residential, commercial or industrial development and such reserve growth areas as may be deemed necessary by the commission after considering whether or not:

A. There is suitable area outside the corridor which could adequately accommodate the anticipated growth of the area of intensive development; [1979, c. 459, §1 (NEW).]

B. The growth of the area of intensive development within the corridor is both necessary and desirable; [1979, c. 459, §1 (NEW).]

C. The reserve growth area qualifies for inclusion in the Resource Protection District; [1979, c. 459, §1 (NEW).]

D. The reserve growth area is suitable for the uses permitted within this district; [1979, c. 459, §1 (NEW).]

E. The uses permitted in this district within the reserve growth area would result in water quality degradation; and [1979, c. 459, §1 (NEW).]

F. The uses permitted in this district within the reserve growth area would unreasonably interfere with the fish or wildlife habitat or educational, scenic, scientific, historic or archaeological values of those areas eligible for inclusion within the Resource Protection District. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

2. **Uses for which no permit from the commission is required.** Uses and accessory structures within the General Development District for which no permit from the commission is required include:

A. Uses for which no permit from the commission is required within the Resource Protection District; and [1995, c. 171, §8 (AMD).]

B. [1995, c. 171, §8 (RP).]

C. [1995, c. 171, §8 (RP).]

D. Home occupations or enterprises. [1995, c. 171, §8 (AMD).]

E. [1995, c. 171, §8 (RP).]

F. [1995, c. 171, §8 (RP).]

G. [1995, c. 171, §8 (RP).]

H. [1995, c. 171, §8 (RP).]

I. [1995, c. 171, §8 (RP).]

J. [1995, c. 171, §8 (RP).]

K. [1995, c. 171, §8 (RP).]

L. [1995, c. 171, §8 (RP).]

M. [1995, c. 171, §8 (RP).]

N. [1995, c. 171, §8 (RP).]

O. [1995, c. 171, §8 (RP).]

P. [1995, c. 171, §8 (RP).]

[1995, c. 171, §8 (AMD) .]

3. **Uses allowed by permit.** Uses allowed within the General Development District by permit only include:

A. Manufacturing and industrial uses; [1979, c. 459, §1 (NEW).]

B. Sand, gravel and topsoil (loam) excavations; [1979, c. 459, §1 (NEW).]

C. Dredging, filling or other alteration of wetlands; [1979, c. 459, §1 (NEW).]

D. Any fill or deposit of material in excess of 100 cubic yards; [1979, c. 459, §1 (NEW).]

E. Oil or petroleum storage facilities; [1979, c. 459, §1 (NEW).]

F. Processing plants; [1995, c. 171, §8 (AMD).]

G. Airports; [1995, c. 171, §8 (AMD).]

H. Roads; [1995, c. 171, §8 (NEW).]

I. Single-family residences; [1995, c. 171, §8 (NEW).]

J. Multi-unit residential dwellings; [1995, c. 171, §8 (NEW).]

K. Restaurants and cafeterias; [1995, c. 171, §8 (NEW).]

L. Retail commercial establishments, such as stores, supermarkets and pharmacies; [1995, c. 171, §8 (NEW).]

M. Municipal buildings; [1995, c. 171, §8 (NEW).]

N. Schools; [1995, c. 171, §8 (NEW).]

O. Hospitals and clinics; [1995, c. 171, §8 (NEW).]

P. Funeral homes; [1995, c. 171, §8 (NEW).]

Q. Warehouses; [1995, c. 171, §8 (NEW).]

R. Churches; [1995, c. 171, §8 (NEW).]

S. Libraries; and [1995, c. 171, §8 (NEW).]

T. Public utility structures except for service drops. [1995, c. 171, §8 (NEW).]

[1995, c. 171, §8 (AMD) .]

4. **Prohibited uses.** Prohibited uses within the General Development District shall include:

A. Dumping or disposing of any liquid or solid wastes other than agricultural uses of animal wastes and sanitary wastes in accordance with all federal, state and municipal requirements; [1979, c. 459, §1 (NEW).]

B. Auto graveyards; [1979, c. 459, §1 (NEW).]

C. Junkyards; [1979, c. 459, §1 (NEW).]

D. Extractive uses of mining other than sand, gravel and topsoil (loam) excavations allowed by permit; [1979, c. 459, §1 (NEW).]

E. Oil refineries; and [1979, c. 459, §1 (NEW).]

F. Smelting operations. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1995, c. 171, §8 (AMD).

§957-D. OMITTED USES

1. **Omitted uses.** Uses not specifically mentioned or covered by any general category in the enumeration of permitted and prohibited uses for each district shall be deemed prohibited unless allowed by special permit upon a showing by the applicant that the soils are suitable for the proposed use and that it will not unreasonably interfere with the use and enjoyment of their property by adjacent landowners or involve any significant:

A. Degradation of air and water quality; [1979, c. 459, §1 (NEW).]

B. Harmful alteration of wetlands; [1979, c. 459, §1 (NEW).]

C. Increase in erosion or sedimentation; [1979, c. 459, §1 (NEW).]

D. Danger of increased flood damage; [1979, c. 459, §1 (NEW).]

E. Obstruction of flood flow; [1979, c. 459, §1 (NEW).]

F. Damage to fish and wildlife habitat; [1979, c. 459, §1 (NEW).]

G. Despoliation of the scenic, rural and open space character of the corridor; [1979, c. 459, §1 (NEW).]

H. Overcrowding; [1979, c. 459, §1 (NEW).]

I. Excessive noise; [1979, c. 459, §1 (NEW).]

J. Obstruction to navigation; or [1979, c. 459, §1 (NEW).]

K. Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

The burden of proof shall be upon the applicant to show entitlement to a permit under this section. [1979, c. 459, §1 (NEW).]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§958. EXISTING USES

Any existing building or structure or use of a building or structure lawful March 19, 1974, or on the date of any subsequent amendment of this chapter or of any regulation adopted hereunder, may continue although such a use of a structure does not conform to this chapter or the regulations adopted hereunder. Any existing building or structure may be repaired, maintained and improved, but an existing building, structure or nonconforming use may be extended, expanded or enlarged only by permit from the commission. A nonconforming use, other than a single family residential use, that is discontinued for any reason for a period of one year is deemed abandoned and may not be resumed thereafter except in compliance with the requirements of this chapter. [1995, c. 171, §9 (AMD).]

If, as a result of flood, fire or other casualty, the value of a nonconforming building or structure is reduced by more than 75%, it may be rebuilt and the nonconforming use housed therein may be continued only by permit from the commission. If a nonconforming building or structure is decreased in value less than 75% by flood, fire or other casualty, it may be rebuilt in substantially the same location and in the same size without a permit from the commission, even though it would otherwise violate the requirements of this chapter, provided that the rebuilding shall be commenced within 12 months of the casualty. [1979, c. 459, §1 (NEW).]

If 2 or more contiguous lots or portions thereof are in single ownership on or after March 19, 1974, and if all or part of the lots do not meet the criteria of lot width, area, frontage or other measures required under this chapter or if a building thereon could not meet the aggregate requirements established by this chapter, the lots involved shall be considered to be one parcel for the purposes of this chapter. [1979, c. 459, §1 (NEW).]

To avoid undue hardship, nothing in this chapter may be deemed to require a change in the design, construction or intended use of any building or structure with respect to which substantial construction was legally carried out prior to March 19, 1974 or the effective date of any amendment to this chapter. An intended use within the meaning of this section is any use for which such a building or structure is designed as evidenced by the construction or by plans or specifications in existence as of March 19, 1974 or, in the case of any intended use affected by any amendment to this chapter, construction, plans or specifications in existence on the effective date of that amendment. [1995, c. 171, §9 (AMD).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1995, c. 171, §9 (AMD).

§959. PERMITS REQUIRED

Except as otherwise provided in this chapter, after March 19, 1974, a person may not engage in any use of land or water for which a permit is required under this chapter without first obtaining a permit from the commission and complying with all federal, state and municipal regulations. [1995, c. 171, §10 (AMD).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1995, c. 171, §10 (AMD).

§959-A. REQUIREMENTS FOR GRANTING PERMITS

1. **Permits.** The commission shall grant permits for uses allowed under this chapter upon a showing by the applicant that the soils are suitable for the proposed use and that it will be in compliance with all applicable performance standards and requirements established under this chapter. The commission shall also find that the proposed use will not involve any unreasonable:

A. Degradation of air and water quality; [1979, c. 459, §1 (NEW).]

B. Harmful alteration of wetlands; [1979, c. 459, §1 (NEW).]

C. Increase in erosion or sedimentation; [1979, c. 459, §1 (NEW).]

D. Danger of increased flood damage; [1979, c. 459, §1 (NEW).]

E. Obstruction of flood flow; [1979, c. 459, §1 (NEW).]

F. Damage to fish and wildlife habitat; [1979, c. 459, §1 (NEW).]

G. Despoliation of the scenic, rural and open space character of the corridor; [1979, c. 459, §1 (NEW).]

H. Overcrowding; [1979, c. 459, §1 (NEW).]

I. Excessive noise; [1979, c. 459, §1 (NEW).]

J. Obstructions to navigation; or [1979, c. 459, §1 (NEW).]

K. Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [1979, c. 459, §1 (NEW).]

The burden of proof shall be upon the applicant to show entitlement to a permit under this section, but if the applicant makes the requisite showing, a permit shall be issued by the commission.

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§959-B. PERMITS WITH CONDITIONS

Permits granted under this chapter may be made subject to such reasonable conditions concerning setback, location, spacing, size of structure or development, type of construction, time of completion, landscaping, retention of trees, screening, reclamation, erosion control, noise level, quantity and quality of discharge, sewage disposal and manner and method of operation, as the commission deems necessary to avoid the dangers enumerated in section 959-A. For the purpose of enforcement, permits issued by the commission and conditions thereof shall be considered as orders of the commission. [1979, c. 459, §1 (NEW).]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§960. DISTRICT BOUNDARY MAPS

Maps showing district boundaries within the Saco River Corridor shall be kept in the office of the commission and the maps or conformed copies of them shall be available for public inspection during normal business hours. Copies of those portions of such maps including the area of each municipality shall be furnished by the commission to the municipal officers thereof and shall be available for public inspection at the office of the town clerk or at the town office. [1979, c. 459, §1 (NEW).]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§961. RELATION TO MUNICIPAL, STATE AND FEDERAL REGULATIONS

Nothing in this chapter prevents municipal, state or federal authorities from adopting and administering more stringent requirements regarding performance standards or permitted uses within use districts established by the commission or within districts overlapping the districts established pursuant to this chapter. Where there is a conflict between a provision adopted under this chapter and any other municipal, state or federal requirement applicable to the same land or water areas within the corridor, the more restrictive provision takes precedence. All performance standards, rules and regulations proposed for hearing by the commission must be submitted to the Commissioner of Environmental Protection, the Department of Agriculture, Conservation and Forestry, the Greater Portland Council of Governments and the Southern Maine Regional Planning Commission at least 7 days prior to the hearing for review and comment. The commission may not adopt any rule establishing air or water quality standards within the corridor in conflict with the rules of the Department of Environmental Protection without the prior approval of the Board of Environmental Protection. [2011, c. 655, Pt. JJ, §37 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1989, c. 890, §§A40,B204 (AMD). 2011, c. 655, Pt. JJ, §37 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

§962. GENERAL PERFORMANCE STANDARDS

1. **Standards.** Unless otherwise specified, the following performance standards shall be applicable to all uses of land and water areas within the corridor, whether or not a permit is required from the commission.

A. No building may be located closer to the Ossipee, Little Ossipee or Saco rivers than 100 feet from the normal or mean high water line, nor may any building in the Limited Residential or Resource Protection Districts be located less than 30 feet from any accepted road. Within the Resource Protection and Limited Residential Districts there may be no construction or placement of residential structures within the 100-year floodplain. [1995, c. 171, §11 (AMD).]

B. Within the Resource Protection District or Limited Residential District no part of a septic system or other system of underground sewage disposal shall be located within the 100-year floodplain. [1979, c. 459, §1 (NEW).]

C. On the Ossipee and Little Ossipee Rivers and fresh-water portions of the Saco River:

(1) No privately-owned pier, dock or float shall extend more than 10% of the width of the river at any time or extend into the water more than 10 feet perpendicular to the shore, whichever is less; and

(2) All piers, docks or floats shall be temporary and capable of seasonal removal. [1979, c. 459, §1 (NEW).]

D. Agriculture.

(1) All agriculture practices must be in conformance with existing state and federal laws and regulations relating to the use of insecticides, herbicides, fertilizers and cleaning agents, and with state and federal laws and regulations to the placement of disposal of wastes in waterways or on the banks thereof.

(2) Where soil is tilled, an untilled buffer strip of natural vegetation must be retained between the tilled ground and the normal or mean high water line of the river. The width of this strip must be a minimum of 25 feet, measured directly from the normal or mean high water line of the river.

(3) Newly created fields and tillage and grazing operations must be set back from the normal or mean high water line at least 75 feet. [1995, c. 171, §11 (AMD).]

E. [1995, c. 171, §12 (RP).]

E-1. Within a strip extending 100 feet inland from the normal or mean high water line, there may be no cleared opening or openings, except for approved construction, and a well-distributed stand of vegetation must be retained. Selective cutting of no more than 40% of the trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period, provided that a well-distributed stand of trees and other natural vegetation remains. [1995, c. 171, §13 (NEW).]

F. The following standards govern timber harvesting within 250 feet of the normal or mean high water line of any water body within the corridor.

(1) Harvesting operations must be conducted in such a manner that a well-distributed stand of trees is retained.

(2) In any stand, harvesting may remove not more than 40% of the volume of trees 6 inches in diameter and larger, measured at 4 1/2 feet above ground level in any 10-year period.

(3) No significant accumulation of slash may be left within 50 feet of the normal or mean high water line of any water body within the corridor. At distances greater than 50 feet from the normal or mean high water line of such water bodies extending to the limits of the corridor, all slash must be disposed of in such a manner that it lies on the ground and no part thereof extends more than 4 feet above the ground.

(4) Harvesting operations must be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision must be made to prevent soil erosion and sedimentation of surface waters. [1995, c. 171, §14 (AMD).]

G. The minimum lot size for each residential dwelling unit is 40,000 square feet and the minimum lot size for any principal commercial structure is 60,000 square feet. [1995, c. 171, §15 (NEW).]

H. Principal or accessory structures and expansions of existing structures that are permitted in the Resource Protection and Limited Residential Districts may not exceed 35 feet in height. This paragraph does not apply to structures such as transmission towers, windmills, antennas and similar structures having no floor area. [1995, c. 171, §15 (NEW).]

[1995, c. 171, §§11-15 (AMD) .]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1995, c. 171, §§11-15 (AMD).

§962-A. ADDITIONAL PERFORMANCE STANDARDS

The commission, after notice and public hearing, may establish such additional performance standards as it deems necessary to carry out the purposes of this chapter, provided that such standards are consistent with the standards established in section 962. [1977, c. 459, §1 (NEW).]

1. **Standards.** In establishing additional performance standards under this section for any permitted use, the commission shall endeavor to develop standards which will assure that the uses under consideration will be located on suitable soils and will not result in unreasonable:

A. Degradation of air and water quality; [1979, c. 459, §1 (NEW).]

B. Harmful alteration of wetlands; [1979, c. 459, §1 (NEW).]

C. Increase in erosion or sedimentation; [1979, c. 459, §1 (NEW).]

D. Obstruction of flood flow; [1979, c. 459, §1 (NEW).]

E. Destruction of fish and wildlife habitat; [1979, c. 459, §1 (NEW).]

F. Despoliation of the scenic, rural and open space character of the corridor; [1979, c. 459, §1 (NEW).]

G. Overuse of the rivers for recreation; [1979, c. 459, §1 (NEW).]

H. Overcrowding; [1979, c. 459, §1 (NEW).]

I. Excessive noise; [1979, c. 459, §1 (NEW).]

J. Obstruction to navigation; or [1979, c. 459, §1 (NEW).]

K. Interference with the educational, scenic, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§962-B. AMENDMENTS TO DISTRICT BOUNDARIES AND PERFORMANCE STANDARDS

The commission may initiate, and any municipal agency, an organization qualified under section § 966-A or any property owner or lessee may petition for a change in the boundary of any land use district or for amendments to any additional performance standard adopted pursuant to section 962-A. [1979, c. 459, §1 (NEW).]

No change in a district boundary shall be approved unless substantial evidence shows that the area is better suited for uses other than those permitted in the district in which it is situated, or changes in conditions have made the present classification unreasonable. [1979, c. 459, §1 (NEW).]

No amendment to performance standards shall be approved unless substantial evidence shows that: [1979, c. 459, §1 (NEW).]

1. **Conditions not in evidence.** Conditions exist which were not evident when the performance standard was adopted;

[1979, c. 459, §1 (NEW) .]

2. **Purpose not served.** The performance standard does not serve the purpose of this chapter; or

[1979, c. 459, §1 (NEW) .]

3. **Amendment preferable.** The amendment would better fulfill the purpose of this chapter.

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§963. VARIANCE FROM PERFORMANCE STANDARDS

1. **Variance.** A relaxation of the performance standards enacted by this chapter or adopted pursuant thereto may be granted by the commission, after notice and public hearing, upon a finding by the commission that the following provisions are met:

A. Application of the performance standard to the land or water area in question will result in undue hardship to the applicant, provided that hardship to the applicant, provided that hardship shall not be construed to include:

(1) Any hardship attributable to any act, course of conduct or failure to act of the applicant or his predecessor in interest beginning with the owner of record on the effective date of this chapter or of a performance standard adopted pursuant thereto from which a variance is sought; or

(2) Any hardship that is not unique to the petitioner's land; [1979, c. 459, §1 (NEW).]

B. The variance, if granted, will not subvert the intent of this chapter as stated in section 951 or as manifested in the standards from which a variance is sought; and [1979, c. 459, §1 (NEW).]

C. The proposed use, if a variance is granted, will not unreasonably interfere with the use and enjoyment of their lands by adjacent landowners, or result in any unreasonable:

(1) Degradation of air and water quality;

(2) Harmful alteration of wetlands;

(3) Increase in erosion or sedimentation;

(4) Danger of increased flood damage;

(5) Obstruction of flood flow;

(6) Damage to fish and wildlife habitat;

(7) Despoliation of the scenic, rural and open space character of the corridor;

(8) Overcrowding;

(9) Excessive noise;

(10) Obstructions to navigation; or

(11) Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [1977, c. 459, §1 (NEW).]

No variance shall be granted because of other nonconforming uses within a district or because of similar uses in an adjoining district. The burden of proof shall be on the applicant to show entitlement to a variance under this section. The owner of a building lot of record which is wholly within the corridor on March 19, 1974, shall be entitled to a variance for a single family residence which may be granted by the commission without public hearing. Any variance granted by the commission may be granted subject to such reasonable conditions concerning matters enumerated in section 959-B as the commission finds necessary to avoid the dangers enumerated in section 957-D. For the purposes of enforcement, variances granted hereunder and the conditions thereto shall be treated as orders of the commission.

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§963-A. SPECIAL USE VARIANCE

1. **No variance where prohibited.** No variance shall be granted in order to permit a use within a district in which such use is expressly prohibited, except in accordance with this section. A special use variance may be granted, after notice and public hearing, to permit a single family dwelling within the Resource Protection District upon a finding by the commission that the grant of such a special use variance is necessary to avoid undue hardship to the applicant, provided that hardship shall not be construed to include:

A. Any hardship attributable to any act, course of conduct or failure to act of the applicant or his predecessor in interest, beginning with the owner of record on March 19, 1974; or [1979, c. 459, §1 (NEW).]

B. Any hardship that is not unique to the petitioner's land. [1979, c. 459, §1 (NEW).]

A special use variance under this section may be granted by the commission only in cases where such a variance is necessary to avoid a deprivation of property in violation of the Constitution of Maine, Article I, Section 6, a taking of private property without compensation in violation of the Constitution of Maine, Article I, Section 21, a violation of due process clause of the 14th Amendment of the Constitution of the United States, or a violation of other applicable state or federal constitutional provisions.

The owner of a building lot of record which is wholly within the corridor on March 19, 1974, shall be entitled to a variance for a single family residence which may be granted by the commission without public hearing. Any variance granted by the commission may be granted subject to such reasonable conditions concerning matters enumerated in section 959-B as the commission finds necessary to avoid the dangers enumerated in section 957-D. For purposes of enforcement, special use variances granted hereunder and the conditions thereto shall be treated as orders of the commission.

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY

1979, c. 459, §1 (NEW).

§964. CERTIFICATE OF COMPLIANCE

It shall be unlawful to use or occupy, or permit the use or occupancy of, any land, structure or part of any land or structure created, erected, changed, converted or wholly or partly altered or enlarged in its use or structural form, which use or structure requires a permit under this chapter unless the permit requirements and conditions of approval have been met. [1985, c. 481, Pt. A, §96 (RPR).]

For the purposes of inspection and to assure compliance with this chapter and any standards, rules and orders issued by the commission pursuant to this chapter, commission members, staff, consultant personnel and designated municipal officials may conduct such investigations, examinations, tests and site evaluations as necessary to verify compliance with any permits or variances issued by the commission. [1985, c. 481, Pt. A, §96 (RPR).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1985, c. 481, §A96 (RPR).

§965. FEES

The commission may establish reasonable fees for permit applications, variance applications and certificates of compliance. The funds derived from the collection of such fees shall be retained by the commission. The commission may also establish a reasonable schedule of fees for providing copies of this chapter, maps of district boundaries, the comprehensive plan, copies of rules and regulations, performance standards, official publications or other materials which may be requested by the public. The fees for any such materials shall be retained by the commission and used to defray the expense of printing, copying, mailing or otherwise providing such materials to the public. [1983, c. 819, Pt. A, §65 (AMD).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1983, c. 819, §A65 (AMD).

§966. PARTIES TO PROCEEDINGS

The parties to any proceeding before the commission may include the applicant, if any, any landowner whose lands will be directly affected by the proposed action of the commission, any landowner whose lands are adjacent to, directly across the river from, or within 500 feet of lands to be directly affected, any municipality or agency thereof whose jurisdiction includes lands or bodies of water to be directly affected and any citizens' group or organization qualified under section 966-A. [1979, c. 459, §1 (NEW).]

Nothing in this section may be construed so as to limit the right of any member of the public to appear or be heard at any public hearing of the commission, subject only to such reasonable rules and regulations as the commission may establish. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §205 (AMD).]

SECTION HISTORY
1979, c. 459, §1 (NEW). 1989, c. 890, §§A40,B205 (AMD).

§966-A. CITIZENS' GROUPS OR ORGANIZATIONS

1. **Participation.** A citizens' group or organization may participate in all hearings held by the commission, request and receive notices, bring judicial proceedings and exercise all other rights of parties to proceedings before the commission, provided that the group or organization is designated as qualified by an order of the commission under this section.

[1979, c. 459, §1 (NEW) .]

2. **Organizations qualified.** The commission shall issue an order designating a citizens' group or organization as qualified under this section if it finds that:

A. The group or organization has filed an application showing:

(1) That is has significant and definable interest in the Saco, Ossipee or Little Ossipee Rivers and their adjacent lands; and

(2) That it has at least 50 members in the municipalities whose lands comprise the Saco River Corridor or at least 15 members in a municipality which will be directly affected by a proposed action of the commission. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

3. **Contents.** Every application for designation as a qualified organization under this section shall contain the name and address of a representative or office for the receipt of notices and other communications and the names and addresses of the organization's officers, directors and members.

[1979, c. 459, §1 (NEW) .]

4. **Time period.** The commission may establish a period of time after which qualifications under this section will expire unless renewed, and in such cases shall give notice of the necessity for renewal not less than one month prior to the expiration date.

[1979, c. 459, §1 (NEW) .]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§967. ENFORCEMENT, INSPECTION AND PENALTIES FOR VIOLATIONS

1. **Effect of standards, rules and orders.** Standards, rules and orders issued by the commission pursuant to this chapter have the force and effect of law.

[2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Conformance required.** A person may not undertake development except in conformance with this chapter and the standards, rules and orders issued by the commission pursuant to this chapter. Real estate or personal property may not exist or be used in violation of this chapter or the standards, rules and orders issued by the commission pursuant to this chapter.

[2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Ensuring compliance; access.** For the purposes of inspection and to ensure compliance with this chapter and standards, rules and orders issued by the commission pursuant to this chapter, commission members, staff, consultant personnel and designated municipal officials may conduct such investigations, examinations, tests and site evaluations determined necessary to verify information presented to the commission and may obtain access to any lands and structures subject to this chapter.

[2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

4. **Violations.** A person who violates a provision of this chapter or of standards, rules and orders issued by the commission pursuant to this chapter commits a civil violation for which a fine of not more than $100 for each day of the violation may be adjudged. In addition, the person's permit, certificate of compliance or variance issued by the commission is subject to revocation.

[2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

5. **Falsification.** A person who intentionally or knowingly falsifies a statement to the commission commits a civil violation for which a fine of not more than $1,000 may be adjudged. In addition, the person's permit, certificate of compliance or variance granted by the commission in reliance on such statement must be revoked.

[2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

6. **Additional remedies.** In addition to enforcing any other penalties provided, either the commission or the Attorney General may institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate a violation of this chapter or the standards, rules and orders issued by the commission pursuant to this chapter.

[2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

7. **Commission's status.** Subject to written approval of the Attorney General as provided in Title 5, section 191 and within the limits of the commission's budget, the commission may retain private counsel for the conduct of commission meetings and hearings and advice on other legal matters.

[2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1979, c. 459, §1 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §W8 (RPR).

§968. APPEALS TO SUPERIOR COURT

Except where otherwise specified by statute, any party or person aggrieved by any order or decision of the commission, in regard to any matter upon which there was a hearing before the commission and of which a record of said hearing is available, may, within 30 days after notice of the filing of such order or decision, appeal therefrom to the Superior Court by filing a notice of appeal stating the points of appeal. Notice of the appeal shall be ordered by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the commission. The court's review shall be limited to questions of law and to whether the commission acted regularly and within the scope of its authority and the commission's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse or remand the commission's decision for further proceedings. Appeals from all other orders or decisions of the commission, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B. [1979, c. 459, §1 (NEW).]

SECTION HISTORY
1979, c. 459, §1 (NEW).

§969. SACO RIVER CORRIDOR FUND

1. **Fund established.** The Saco River Corridor Fund, referred to in this section as the "fund," is established as a nonlapsing dedicated, interest-bearing account. All charges collected pursuant to this section must be deposited into the fund. All interest earned by the account accrues to the fund. Any balance remaining in the fund at the end of the fiscal year does not lapse but is carried forward into subsequent fiscal years.

[1997, c. 330, §1 (NEW) .]

2. **Fund purpose.** The purpose of the fund is to preserve existing water quality and prevent the deterioration of water supplies in the Saco River, the Ossipee River and the Little Ossipee River within the Saco River Corridor, as created in section 953, by partially underwriting the administration and operation of the Saco River Corridor Commission, as established by Title 5, section 12004-G, subsection 13.

[1997, c. 330, §1 (NEW) .]

3. **Assessment on the sale of water.** For purposes of funding its activities, the commission shall impose a fee of 1% on the sale of water and fire protection services by a water utility that draws water either from the Saco River or from a groundwater source under the influence of the Saco River, as determined by the Department of Human Sercices, for sale and distribution to its customers. The fee must be levied on the rates of the water utility as authorized by the Public Utilities Commission to be charged for services provided by the utility. "Water utility" has the same meaning as the term is defined in Title 35-A, section 102, subsection 22.

The fee must be collected by the water utility and remitted quarterly to the commission. Notwithstanding any limitations set forth in Title 35-A regarding a water utility's right to increase its charges to its customers, a water utility with sales subject to this subsection is authorized to increase its overall charges for the purpose of collecting the fee set forth in this subsection.

Each water utility may retain a portion of the total fees collected equivalent to the utility's administrative costs incurred in the collection and remission of the fees, not to exceed 2% of the total fees collected. For purposes of the Public Utilities Commission's rate-making authority, costs actually incurred by the utility associated with the collection and remission of the fees for the fund are considered just and reasonable for rate-making purposes.

The commission shall adopt rules that are reasonably necessary to carry out the purposes of this section pursuant to section 954-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 330, §1 (NEW) .]

4. **Reporting requirements.** The commission shall submit a report by February 1, 1998 and each subsequent year to the joint standing committees of the Legislature having jurisdiction over natural resources matters, energy and utilities matters and appropriations and financial affairs, identifying the amount collected and how the fund was disbursed by the commission.

[2007, c. 651, §22 (AMD) .]

5. **Additional sources of revenue.** The commission shall study usage within the Saco River Corridor for the purpose of identifying additional management needs and funding sources. The commission shall take all steps necessary to obtain revenue from these funding sources to ensure that assessments on the sale of water are not the sole source of revenue for the fund.

[1997, c. 330, §1 (NEW) .]

SECTION HISTORY
1997, c. 330, §1 (NEW). 2007, c. 651, §22 (AMD).

Chapter 7: FLOATING TIMBER

§971. CONVERSION

Whoever takes, carries away or otherwise converts to his own use, without the consent of the owner, any log suitable to be sawed or cut into the boards, clapboards, shingles, joists or other lumber, or any mast or spar the property of another, whether the owner is known or unknown, lying in any river, pond, bay, stream or inlet, or on or near the bank or shore thereof, or cuts out, alters or destroys any mark made thereon, without the consent of the owner and with intent to claim the same, forfeits for every such log, mast or spar, $20, to be recovered on complaint; 1/2 for the State and 1/2 for the complainant.

§972. CONVERSION AS LARCENY

(REPEALED)

SECTION HISTORY
2003, c. 452, §X2 (AFF). 2003, c. 452, §W9 (RP).

§973. PRESUMPTIONS; DOUBLE DAMAGES

In prosecutions under section 971 if a log, mast or spar is found in the possession of the accused partly destroyed, partly sawed or manufactured, or with the marks cut out or altered, not being that person's property, it is presumptive evidence of that person's guilt. The burden of proof is then on that person. Whoever is guilty of the offense described in section 971 is liable to the owner, in a civil action, for double the value of the log, mast or spar so dealt with. [2003, c. 2, §118 (COR).]

SECTION HISTORY
RR 2003, c. 2, §118 (COR).

§974. RIGHT OF OWNER TO SEARCH FOR LOST LOGS

The owner of such logs, masts or spars may at any time, by himself or his agent, enter in a peaceable manner upon any mill, mill-brow, boom or raft of logs or other timber in search of such lost property. Whoever willfully prevents or obstructs such search forfeits for each offense not less than $20 nor more than $50, to the person by whom or on whose account such entry was claimed, to be recovered in a civil action.

§975. INTERMIXED LOGS AND TIMBER; LIEN FOR EXPENSES; LIBEL

Any person whose timber in any waters of the State is so intermixed with the logs, masts or spars of another that it cannot be conveniently separated for the purpose of being floated to the market or place of manufacture may drive all timber with which his own is so intermixed toward such market or place, when no special and different provision is made by law for driving it; and is entitled to a reasonable compensation from the owner, to be recovered after demand therefor on said owner or agent, if known, in a civil action. He has a prior lien thereon until 30 days after it arrives at its place of destination to enable him to attach it. If the owner cannot be ascertained, the property may be libeled according to law and enough of it disposed of to defray the expenses thereof, the amount to be determined by the court hearing the libel.

§976. LOGS OR TIMBER LODGED ON BANKS; FORFEITURE; ADVERTISEMENT

Logs or other timber carried by freshets or otherwise lodged upon lands adjoining any waters are forfeited to the owner or occupant thereof, after they have so remained for 2 years, if such lands during that time were improved; otherwise, after 6 years; provided such owner or occupant, within one year after the

same were found so lodged, advertises, as nearly as practicable, the number of pieces of timber, the time when lodged, together with the marks thereon and the place where found, 3 weeks successively in some newspaper in the county, if any, otherwise in the state paper.

§977. OWNER MAY REMOVE ON TENDER OF DAMAGES; DAMAGES FOR LANDOWNER

The owner of said timber may enter on said land and remove it at any time before forfeiture, having previously tendered to the owner or occupant thereof a reasonable compensation for all damages occasioned by the lodging, remaining or removal of said timber and the expense of advertising it; but if the timber is removed by the owner, or otherwise, without such tender, the owner of the land may recover, in a civil action, the damages aforesaid.

§978. CONVERSION OF RAILROAD SLEEPERS, SHIP KNEES OR CEDAR LUMBER; DOUBLE DAMAGES

Whoever willfully and fraudulently takes, carries away or otherwise converts to his own use any railroad sleeper, knee or other ship timber or cedar for shingles or other purposes, the property of another, whether known or not, without his consent, lying in any river, stream, pond, bay or inlet, or on or near the shore thereof; or cuts out, alters or destroys any mark thereon, forfeits $10 for each offense, to be recovered and appropriated as provided in section 971; and is liable to the owner in double the amount thereof in a civil action. Such owner has all the rights and is subject to all the liabilities provided for the owner of logs, masts and spars in sections 973 to 979.

§979. SACO RIVER OR TRIBUTARIES

If any boom on the Saco River, or any of the waters connected therewith, is so placed or constructed as to prevent the free and usual passage of timber down the river, the owner or occupant thereof, at his own expense, shall release and turn out the timber so detained, when requested to do so by the owner thereof, if it can be done with safety. If, for 2 days after request, he neglects or refuses to do so, he is liable to the owner of the timber in a civil action for all damages by him sustained.

Chapter 8: ST. CROIX INTERNATIONAL WATERWAY COMMISSION

§991. FINDINGS AND PURPOSE

The Legislature finds that the St. Croix River for its entire length, including Grand Lake and Spednick Lake, forms a common international boundary between the United States and Canada; and that the management of the waterway and the use of adjacent lands is of special concern to the State and the Province of New Brunswick. [1987, c. 470, §2 (NEW).]

The Legislature finds that the State shares an important cultural, social and economic heritage with the Province of New Brunswick, that northern and eastern Maine's economies are interdependent with that of the Province of New Brunswick and that careful efforts to promote tourism and development can have shared benefits for citizens of both regions. [1987, c. 470, §2 (NEW).]

The Legislature finds that the St. Croix River was identified as one of the State's most outstanding river stretches in the former Department of Conservation's 1982 Maine Rivers Study and is specifically designated for protection in Title 12, section 405. [2013, c. 405, Pt. D, §18 (AMD).]

The Legislature recognizes that industrial use of the river system and adjacent forest land has been the mainstay of the region's economy for generations and that such continued use should be encouraged. [1987, c. 470, §2 (NEW).]

The Legislature finds that the St. Croix River and lakes system provides an outstanding recreational fishery, including fishing opportunities for Atlantic salmon, and that the adjacent lands provide habitat for various species of wildlife, including the bald eagle and osprey. [1987, c. 470, §2 (NEW).]

The Legislature finds that the diverse landscape features and natural resources provide the visitor with opportunities for boating, canoeing, hiking, bird watching, camping, swimming, picnicking, ice fishing, hunting, snowmobiling and cross-country skiing, among other activities; and that the river and forest lands along its shores provide hydropower and the raw materials for a forest products industry offering quality employment opportunities to people of the State. [1987, c. 470, §2 (NEW).]

The Legislature further finds that the thoughtful development of opportunities to appreciate and use these resource features can provide increased development of tourism and employment, while protecting the very resources attracting people to the area; and to shepherd the resources carefully and effectively, while promoting the tourism potential of the area, requires joint planning, development and management of the area by the State and the Province of New Brunswick. [1987, c. 470, §2 (NEW).]

The Legislature further finds that the St. Croix River Joint Advisory Commission, an international commission formed by the Governor of the State and the Premier of the Province of New Brunswick, in July 1986, to study the need for coordinated planning and management of the St. Croix River, recommended, in November 1986, the formation of a permanent 8-member commission, to be known as the St. Croix International Waterway Commission, composed of 4 representatives from Maine and 4 from the Province of New Brunswick, to develop a plan to coordinate planning and management of the uses and resources of the St. Croix Waterway. [1987, c. 470, §2 (NEW).]

In view of the need for coordination of joint planning, development and management of the waterway by the State, the Province of New Brunswick and the affected private interests and the recommendation of the St. Croix River Joint Advisory Commission that Maine participate in a permanent commission, which shall be known as the St. Croix International Waterway Commission, and the fact that the Governor of the State and the Premier of the Province of New Brunswick have signed a Memorandum of Understanding, which is the basis of this chapter and describes the composition, powers, authorities and boundaries of the commission, the participation of the State on the commission is hereby authorized and the necessary funds to support the State's participation shall be appropriated to the commission. [1987, c. 470, §2 (NEW).]

SECTION HISTORY
1987, c. 470, §2 (NEW). 2013, c. 405, Pt. D, §18 (AMD).

§992. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 470, §2 (NEW).]

1. **Commission.** "Commission" means the St. Croix International Waterway Commission.

[1987, c. 470, §2 (NEW) .]

2. **Memorandum of Understanding.** "Memorandum of Understanding" means the Memorandum of Understanding Between the State of Maine of the United States and the Province of New Brunswick of Canada Regarding the St. Croix International Waterway, signed by the Governor of the State and the Premier of the Province of New Brunswick in November 1986.

[1987, c. 470, §2 (NEW) .]

3. **Waterway.** "Waterway" means the St. Croix River, including the Chiputneticook Lakes.

[1987, c. 470, §2 (NEW) .]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§993. ST. CROIX INTERNATIONAL WATERWAY BOUNDARIES ESTABLISHED

The boundaries for the St. Croix International Waterway shall be on the Maine side, commencing 250 feet from the high watermark at the northern end of the bridge over Lewis Cove in Perry, Maine; thence by a straight line in a northeasterly direction toward the easternmost point of Navy Island to the International Boundary; thence in a northerly direction along the International Boundary to the monument on Monument Brook; thence southerly along the United States side of Monument Brook 250 feet from the high watermark continuing southward along Monument Brook to North Lake and southward along the shores of North Lake, The Thoroughfare, Grand Lake, Mud Lake and Spednick Lake; and thence southerly 250 feet above the high watermark along the United States side of the St. Croix River to the place of beginning being 250 feet from the high watermark at the northern end of the bridge over Lewis Cove in Perry, Maine; and shall be established on the New Brunswick side, by the Province of New Brunswick by their own action, commencing 200 feet from the high watermark at the southernmost point of St. Andrews; thence by a straight line in a southerly direction to the easternmost point of Navy Island, also known as St. Andrews Island; thence by a straight line in a southwesterly direction toward the northern end of the bridge over Lewis Cove in Perry, Maine, to the International Boundary; thence in a northerly direction along the International Boundary to the monument on Monument Brook; thence southerly along the Canadian side of Monument Brook 200 feet from the high watermark to the point where the Monument Brook empties into North Lake; thence easterly along the northern shore of North Lake 200 feet above the high watermark to Highway 122; thence easterly along Highway 122 to Canterbury; thence southerly along the Canadian Pacific Railway line to McAdam; thence westerly along Route 4 to the International Boundary between St. Croix and Vanceboro; thence southerly 200 feet above the high watermark along the Canadian side of St. Croix River and maintaining this 200 feet above the high watermark around Oak Bay and Waweig Bay to the place of beginning being 200 feet from the high watermark at the southernmost point of St. Andrews. [1987, c. 470, §2 (NEW).]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§994. CREATION OF ST. CROIX INTERNATIONAL WATERWAY COMMISSION

To carry out the purposes of this chapter, there is created the St. Croix International Waterway Commission. The objectives of the commission are, to the extent permitted by the laws of the United States and Canada, to: [1987, c. 470, §2 (NEW).]

1. **Encourage wise use.** Encourage continued wise use of the river system and adjacent lands for maximum economic benefit of the people of the region;

[1987, c. 470, §2 (NEW) .]

2. **Protect recreational resources.** Protect and coordinate the management of an increasingly valuable natural and recreational resource for current and future usage;

[1987, c. 470, §2 (NEW) .]

3. **Encourage back country experience.** Encourage and maintain a high quality back country recreational and educational experience for users of the resource;

[1987, c. 470, §2 (NEW) .]

4. **Encourage tourism.** Encourage tourism, based on identified themes, with resultant economic benefits to the region;

[1987, c. 470, §2 (NEW) .]

5. **Promote heritage.** Protect and promote awareness of human heritage resources, including both Indian and early European;

[1987, c. 470, §2 (NEW) .]

6. **Coordinate shared resource.** Ensure coordination in the planning and management of a shared resource;

[1987, c. 470, §2 (NEW) .]

7. **Ensure fair use.** Establish the mechanisms and processes to be used to ensure fair representation of all user groups, thereby minimizing conflicts; and

[1987, c. 470, §2 (NEW) .]

8. **Obtain optimal benefits.** Obtain optimal benefits from recreational and educational use of the resource, while recognizing the historic and current economic importance of the forest resource, including its management and commercial utilization.

[1987, c. 470, §2 (NEW) .]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§995. MEMBERS AND ORGANIZATION

1. **Membership; terms; quorum.** The commission shall consist of 8 members, of whom 4 shall be appointed by the Premier of the Province of New Brunswick and 4 appointed by the Governor of the State. Initially, 4 of the members shall be appointed for a one-year term and 4 members shall be appointed for

2-year terms, so that members may not all reach the end of their terms at the same time. Thereafter, all members shall be appointed for a term of 2 years and may be eligible for reappointment. Representatives of the governments of the United States and Canada shall be invited as observers by the Governor of the State and the Premier of New Brunswick, respectively. Representatives from the governments of the United States and Canada shall not be counted for purposes of determining a quorum. Alternates may be appointed for each member of the commission in the same manner as the members. The commission shall elect 2 co-chairmen, one of Canadian nationality and one of United States nationality from among its members, each of whom shall hold office for a term of 2 years. A quorum shall consist of at least 6 members of the commission or their alternates, including, at all times 3 Canadian and 3 United States members. The commission shall reach its decisions on all issues by consensus. When failing to reach consensus, the commission shall refer the issue for resolution to both the Governor of the State and the Premier of the Province of New Brunswick for their joint consideration.

[1987, c. 470, §2 (NEW) .]

2. **Executive director.** The commission shall appoint an executive director. The executive director shall serve as the principal staff to the commission and shall be responsible for preparation of the commission's agendas, meeting minutes, the commission's plans for management of the St. Croix International Waterway, public participation in the planning process, supervision of other commission staff and other duties as the commission may specify. The first executive director of the commission shall be nominated jointly by the State and the Province of New Brunswick and approved by the commission and shall serve for a period of 3 years in an office within a community along the St. Croix River. At the end of this initial 3-year term, the commission shall evaluate the performance of the executive director and submit their evaluation with recommended action to the State and the Province of New Brunswick. The State and the Province of New Brunswick shall each designate a staff person from their respective governments to serve as a principal liaison and facilitator for requests made by the executive director in the conduct of the planning and management efforts for the St. Croix International Waterway Commission.

[1987, c. 470, §2 (NEW) .]

3. **Meetings.** The commission shall hold at least 2 meetings every calendar year and shall submit an annual report to the Governor of the State and the Premier of the Province of New Brunswick on or before March 31st of each year, along with an audit statement of the financial operations of the commission. The commission shall permit inspection of its records by the accounting agencies of both governments. The commission may employ both Canadian and United States citizens. Their employment shall be subject to the relevant United States and Canadian laws.

[1987, c. 470, §2 (NEW) .]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§996. AUTHORITY

The commission may, to the extent permitted by the laws of the United States and Canada: [1987, c. 470, §2 (NEW).]

1. **Develop plan; cooperation with landowners.** Direct the development of the recreational and resource management plan in cooperation with landowners;

[1987, c. 470, §2 (NEW) .]

2. **Establish committees.** Establish working committees to conduct the planning and recommend the management strategies to the commission for the uses and resources of concern;

[1987, c. 470, §2 (NEW) .]

3. **Implement plans.** Seek to implement plans, through working agreements established among the line departments of the State, the Province of New Brunswick, where appropriate, and, to the extent possible, the United States Government, the Government of Canada and private landowners;

[1987, c. 470, §2 (NEW) .]

4. **Cooperate.** Cooperate with private entrepreneurs and landowners;

[1987, c. 470, §2 (NEW) .]

5. **Provide for involvement and education.** Provide a formal channel for public involvement and education on the planning and management efforts; and

[1987, c. 470, §2 (NEW) .]

6. **Encourage adherence to the plan.** Encourage that the area is managed according to the adopted plan, in cooperation with all interested parties, until the plan is modified or until enabling legislation is repealed by either the State or the Province of New Brunswick.

[1987, c. 470, §2 (NEW) .]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§997. POWERS

The commission shall, subject to the applicable laws of the governments of the United States and Canada, have all the powers and capacity necessary or appropriate for the purpose of performing its functions, including, but not limited to, the following powers and capacity to: [1987, c. 470, §2 (NEW).]

1. **Contract.** Enter into contracts;

[1987, c. 470, §2 (NEW) .]

2. **Staff.** Appoint staff and fix the terms and conditions of their employment and remuneration;

[1987, c. 470, §2 (NEW) .]

3. **Executive director.** Appoint an executive director who shall serve as the principal staff to the commission and who shall be responsible for preparation of the commission's agendas, meeting minutes, the commission plan for management of the St. Croix International Waterway, public participation in the planning process, supervision of staff and other duties as the commission may specify;

[1987, c. 470, §2 (NEW) .]

4. **Property.** Acquire and dispose of personal and real property;

[1987, c. 470, §2 (NEW) .]

5. **Joint projects.** Cooperate or engage in joint projects with local municipalities or other authorities for the improvement, development or maintenance of property;

[1987, c. 470, §2 (NEW) .]

6. **Budget.** Prepare an annual budget that specifies the expenditures that the commission may make in the forthcoming fiscal year; and

[1987, c. 470, §2 (NEW) .]

7. **Funding.** Seek appropriations from the State and the Province of New Brunswick and accept funding from the Governments of the United States and Canada to carry out the purposes set out in sections 991 and 994 and to accept donations, bequests or devises intended for furthering the functions of the commission and to use those donations, bequests or devises as may be provided in the terms of the donations, bequests or devises.

[1987, c. 470, §2 (NEW) .]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§998. COMMISSION OPERATING PROCEDURES

1. **Shared costs.** The State and the Province of New Brunswick shall share the costs of developing and managing the St. Croix International Waterway Commission. To the extent feasible, the commission may seek to enter into arrangements with agencies of Canada and the United States to provide necessary services as the commission may request.

[1987, c. 470, §2 (NEW) .]

2. **Committees.** There shall be 4 working committees: Land use; recreation; fisheries and wildlife; and nonrecreational uses, established to undertake the planning and to oversee the management of the uses and resources in the waterway area. The committees shall be staffed by personnel from line agencies of the State and the Province of New Brunswick. The working committees may appoint subcommittees as needed.

[1987, c. 470, §2 (NEW) .]

3. **Ex officio members; committee functions; plans.** The working committees may invite elected community representatives, representatives from federal agencies, private citizens, members of citizen organizations and representatives from private sector commercial interests to serve on the committee in an ex officio capacity. Each committee shall prepare a preliminary plan designed to optimize the management of the uses or resources for which it has responsibility. These plans shall be submitted to the executive director of the commission who shall work with the committees to resolve conflicts and to integrate the plans into a unified management plan that is in accord with the objectives set forth in section 994 or as may be further spelled out by the commission. The executive director shall solicit public comments on the plan in both the State and the Province of New Brunswick. The executive director shall work with the working committees to revise, if necessary, the plan before presenting it to the commission for final adoption. The commission shall formally adopt the plan by consensus. The commission shall reassess the recreational and resource management plan at least once in every 4 years and shall submit its assessment, with any recommendations, to the State and the Province of New Brunswick.

[1987, c. 470, §2 (NEW) .]

4. **Budget.** The commission shall submit annually to the State and the Provincial Government of New Brunswick a budget covering total anticipated expenditures to be financed from all sources and shall conduct its operations in accordance with the budget as approved by the State and the Province of New Brunswick.

[1987, c. 470, §2 (NEW) .]

5. **Regulation and enforcement.** Authority to regulate development and usage of the water and shorelands of the St. Croix River, Grand Lake and Spednick Lake rests with the State and Provincial Governments, their respective federal governments and, for matters affecting international jurisdiction, the International Joint Commission. In cases where regulatory authority is inadequately defined, the commission shall recommend measures to assure that authority is vested with the appropriate departments and they shall take action to facilitate assumption of the needed authority. It shall be the responsibility of the line departments to enforce regulations in the area. All initiatives from line departments which impact upon the area shall be referred to the appropriate working committee and that committee shall advise the commission if the initiative is consistent with the goals of the adopted plan.

[1987, c. 470, §2 (NEW) .]

6. **Committee powers.** The committees shall exercise powers and functions of the commission which are delegated to them by the commission and shall submit, at each meeting of the commission, minutes of their proceedings since the last preceding meeting of the commission. The working committees may appoint subcommittees as needed. The commission may appoint other committees as it considers necessary or desirable for the administration of the adopted plans.

[1987, c. 470, §2 (NEW) .]

7. **Compensation.** The commissioners shall receive no remuneration from the commission. They may be paid by the commission a housing and meals per diem and be reimbursed for actual travel expenses incurred in the conduct of the commission business. These amounts shall be determined as provided by Title 3, section 2.

[1987, c. 470, §2 (NEW) .]

8. **Dissolution.** Upon dissolution of the commission, any net assets must be distributed for charitable purposes within the meaning of the Internal Revenue Code, Section 501 (c)(3).

[1991, c. 8, (NEW) .]

SECTION HISTORY
1987, c. 470, §2 (NEW). 1991, c. 8, (AMD).

§999. TIMETABLE FOR COMPLETION OF COMMISSION PLAN

The commission shall develop a management plan for the St. Croix International Waterway within 18 months of the first meeting of the commission. The necessary management agreements to implement the plan shall be formulated and signed by the participating management agencies prior to commission approval of the plan and shall be considered part of the plan. [1987, c. 470, §2 (NEW).]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§1000. FIRST MEETING OF COMMISSION

The first meeting of the commission shall be called by the Governor of the State and shall be held in Calais, Maine. The Premier of the Province of New Brunswick has agreed, in the Memorandum of Understanding, to designate a person to serve as the temporary chairman of the commission at its first meeting until the commission nominates from among its members and approves by consensus co-chairmen. [1987, c. 470, §2 (NEW).]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§1001. COMMISSION AND WORKING COMMITTEE MEMBERS, INVITEES AND OBSERVERS

Members of the commission and its various working committees may include, without limitation, representatives of federal, state and local governmental entities, state and local conservation groups, local commerce and industry, private citizens and landowners in the waterway area, local fish and wildlife groups and representatives of any other groups with legitimate interests in the management of the waterway. [1987, c. 470, §2 (NEW).]

SECTION HISTORY
1987, c. 470, §2 (NEW).

§1002. LEGISLATIVE REVIEW

The joint standing committee of the Legislature having jurisdiction on audit and program review shall review the commission on or before January 1, 1996, and present its recommendations for amendment or repeal of this chapter to the Legislature. [1987, c. 470, §2 (NEW).]

SECTION HISTORY
1987, c. 470, §2 (NEW).

Chapter 9: WHARVES AND FISH WEIRS

§1021. DEFINITIONS

The words "fish weir" mentioned in this chapter are defined to be a fixed structure erected and maintained during part of each fishing season in the tidewater, constructed of at least 25 spiling or stakes fastened together by binders, surrounded by brush, lath racks or netting, forming the catch pound into which fish are led or guided by one or more fixed leaders constructed of spiling or stakes not more than 20 feet apart and at least 100 feet long, fastened together by binders surrounded by lath racks, brush or netting and from which catch pound they cannot readily escape.

§1022. LICENSE TO BUILD OR EXTEND; APPLICATION

Any person intending to build or extend any wharf, fish weir or trap in tidewaters, within the limits of any city or town, shall apply in writing to the municipal officers of the city or town, stating the location of the weir, the boundaries of the cove in which the weir will be constructed as identified on a map prepared by the Commissioner of Marine Resources, limits and boundaries, as nearly as may be, of the intended erection or extension, and asking license for the intended erection or extension. The applicant must notify all parties that may be directly affected by the proposed construction. Upon receiving an application, the officers shall give at least 3 days' public notice of the application in a newspaper, published in the town, or, if there is no newspaper published in the town, in a newspaper published within the county, and shall designate in the notice a day and time on which they or their designee will meet on or near the premises described, to examine the same and hear all parties interested. If, following such examination and hearing of all parties interested, the officers decide that such erection or extension would not be an obstruction to navigation or injury to the rights of others, and determine to allow the same, they shall issue a license under their hands to the applicant, authorizing the applicant to make such an erection or extension, and to maintain the same within the limits mentioned in such license. The applicant for license to build or extend a fish weir or trap shall first give bond to the town, with sureties, in the sum of $5,000, conditioned that upon the termination of such license the applicant removes all stakes and brush from the location therein described. The municipal officers shall, within 10 days after the date of hearing, give written notice by mail of their decision to all parties interested. Any person aggrieved by the decision of the municipal officers, in either granting or refusing to grant a license as provided, may appeal to the Superior Court within 10 days after the mailing of such written notice. The court shall set a time and place for hearing and give notice thereof in the same manner as provided for a hearing before the municipal officers. The decision of the court must be communicated to the appellant and to the municipal officers of the town in which the proposed wharf, weir or trap is to be located. This decision is binding on the municipal officers, who shall issue a license, if so directed by the decision of the court, within 3 days after the decision has been communicated to them. If the appeal is sustained by the court in whole or in part, the appellant will have costs against the appellee. If the appeal is not so sustained, the appellee will have costs against the appellant. If any owner to whom a license has been issued or the owner's heirs or assigns fail to remove all stakes and brush within a period of one year after the termination of the license, as provided in section 1023, any person can remove the same without charge against the owner or the owner's heirs or assigns. [2011, c. 559, Pt. A, §36 (AMD).]

In the case of islands not within the jurisdiction of any town all powers of municipal officers to issue licenses to build weirs are conferred upon the owner or owners of such islands. If said owner or owners are unable to agree as to the issuance of a license they shall submit the question of such issuance to the Commissioner of Marine Resources, who shall, after a hearing at which all parties may be represented, decide as to the issuance of such license. [1973, c. 513, §22 (AMD).]

In the case of waters adjacent to unorganized or deorganized territory that is not an island, the Commissioner of Marine Resources shall have the powers of municipal officers to issue licenses under this section. Notwithstanding the provisions of this section governing procedures, the Commissioner of Marine Resources shall review the application and hold a hearing as if this were a lease application under Title 12, section 6072, subsections 5 and 6. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §207 (AMD).]

Any licenses issued under this chapter shall constitute an approval and determination by the issuer thereof that the licensed wharf or weir constructed and operated within the limits imposed by such license does not adversely affect nor impair the interests of the issuer in such area, including navigation and the rights of private citizens in the area. Such license does not confer any right, title or interest in submerged or intertidal lands owned by the State. [1975, c. 287, §2 (NEW).]

SECTION HISTORY
1973, c. 513, §22 (AMD). 1975, c. 287, §2 (AMD). 1979, c. 631, §2 (AMD). 1983, c. 731, §4 (AMD). 1989, c. 890, §§A40,B206, 207 (AMD). 1999, c. 215, §1 (AMD). 2011, c. 559, Pt. A, §36 (AMD).

§1023. EXPIRATION OF LICENSE

The license for the building or extension of a fish weir or trap issued under section 1022 or any right or privilege granted by the Legislature for the building or extension of any such fish weir or trap shall terminate and become void unless the weir or trap is built within one year from the date of the license or the granting of that right or privilege and maintained in good faith for the duration of the license. [1985, c. 97, §1 (RPR).]

The weir shall be considered to be maintained in good faith if the following conditions are met: [1985, c. 97, §1 (NEW).]

1. **Annual license fee; bond coverage.** The licensee shall pay his annual license fee and submit proof of the required bond coverage extending at least one year beyond the current license year;

[1985, c. 97, §1 (NEW) .]

2. **Inspection and repair.** The licensee shall inspect and repair all stakes and brush of the weir structure so as to maintain it in condition to receive netting when fishing conditions warrant; and

[1985, c. 97, §1 (NEW) .]

3. **Report.** The licensee shall complete these actions by July 15th of each year and shall report that completion to the Commissioner of Marine Resources and to the municipality within 7 days of that date on forms provided by the commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §208 (AMD) .]

Satisfaction of these conditions shall be necessary but not sufficient to retain the weir's protected fishing zone as provided by Title 12, section 6525-A, subsections 1 and 5. [1985, c. 97, §1 (NEW).]

The Commissioner of Marine Resources shall, by December 31st each year, report to the municipality the name of the licensed owner and location of each weir and whether the weir was maintained in good faith in that year. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §209 (AMD).]

SECTION HISTORY
1983, c. 731, §5 (AMD). 1985, c. 97, §1 (RPR). 1989, c. 890, §§A40,B208, 209 (AMD).

§1024. WATERS BETWEEN 2 TOWNS

In any river or tidewater lying between 2 towns or cities, no such wharf or fish weir described in sections 1022 and 1023 shall be erected without the consent of the municipal officers of both. In no case shall any wharf be extended beyond any wharf lines heretofore legally established.

§1025. RECORDING OF DOCUMENTS; COMPENSATION TO OFFICERS

The application provided for in section 1022, with the notice and proceedings thereon and the license granted, must be recorded in the town and a copy provided to the Commissioner of Marine Resources by the applicant. Reasonable compensation must be paid by the applicant to the municipal officers for their services and expenses and to the clerk for recording, and if license is granted, $5 additional must be paid by the applicant to the town. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §210 (AMD).]

SECTION HISTORY
1983, c. 731, §5 (AMD). 1989, c. 890, §§A40,B210 (AMD).

§1026. EXTENSION OF HERRING WEIRS AND WHARVES; SHORE OWNER'S CONSENT

No fish weir, trap or wharf shall be extended, erected or maintained except in accordance with this chapter. No fish weir, trap or wharf shall be erected or maintained in tidewaters below low-water mark in front of the shore or flats of another without the owner's consent, under a penalty of $50 for each offense, to be recovered in a civil action by the owner of said shore or flats. This chapter applies to all herring weirs and traps, but does not apply to other weirs or traps, the materials of which are chiefly removed annually, provided such weirs or traps do not obstruct navigation nor interfere with the rights of others. This section shall not affect any wharves so erected or maintained on the 21st day of April, 1901.

§1027. EXEMPTIONS

Weir fishing for alewives is exempt from the provisions of this chapter. [1985, c. 97, §2 (NEW).]

SECTION HISTORY
1985, c. 97, §2 (NEW).

Chapter 10: STANDARD SEWER DISTRICT ENABLING ACT

Subchapter 1: GENERAL PROVISIONS

§1031. SHORT TITLE

This chapter may be known and cited as "the Standard Sewer District Enabling Act." [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1032. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [2013, c. 555, §6 (NEW).]

1. **Charter.** "Charter" means a private and special law or series of private and special laws that establishes a sewer district and defines its responsibilities and authorities.

[2013, c. 555, §6 (NEW) .]

2. **Rates.** "Rates" means a rate, toll, rent, assessment, supplemental charge or other lawful charge established by a sewer district pursuant to its charter.

[2013, c. 555, §6 (NEW) .]

3. **Sewer district.** "Sewer district" means a district, including a multipurpose district and standard district, created by a private and special law of the State whose purposes include collection, interception and treatment of sewerage. Except as otherwise provided in this chapter or other applicable law, "sewer district" does not include a district whose sewerage activities are confined to interception and treatment.

[2013, c. 555, §6 (NEW) .]

4. **Standard district.** "Standard district" means a sewer district that is formed and chartered by a private and special law in conformance with this chapter.

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1033. SCOPE AND APPLICATION

The provisions of this chapter apply as follows. [2013, c. 555, §6 (NEW).]

1. **Applicable to all sewer districts.** Except as otherwise provided in the statutory provisions listed in this subsection or in subsection 6, the following provisions are incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with the following provisions is void.

A. Section 1036, subsection 7; [2013, c. 555, §6 (NEW).]

B. Section 1037; [2013, c. 555, §6 (NEW).]

C. Section 1040; [2013, c. 555, §6 (NEW).]

D. Section 1042; [2013, c. 555, §6 (NEW).]

E. Section 1045; [2013, c. 555, §6 (NEW).]

F. Section 1046, subsection 1 and subsection 4; [2013, c. 555, §6 (NEW).]

G. Section 1048, subsection 1, paragraph B and subsection 5; and [2013, c. 555, §6 (NEW).]

H. Section 1051. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

2. **Mandatory provisions from former chapter 12.** The following provisions apply to all sewer districts:

A. Section 1038; [2013, c. 555, §6 (NEW).]

B. Section 1049; [2013, c. 555, §6 (NEW).]

C. Section 1050; [2013, c. 555, §6 (NEW).]

D. Section 1054; and [2013, c. 555, §6 (NEW).]

E. Section 1055. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

3. **Standard provisions.** Except as provided in subsections 1 and 2 or other express provisions of this chapter, the provisions of this chapter do not apply to a sewer district unless the charter of that district incorporates those provisions.

[2013, c. 555, §6 (NEW) .]

4. **Mandatory provisions.** Provisions governing the following aspects of a standard district are not included in this chapter and must be otherwise specified in a standard district charter:

A. The corporate name of the standard district; [2013, c. 555, §6 (NEW).]

B. The territorial limits of the standard district; [2013, c. 555, §6 (NEW).]

C. The number of trustees of the standard district, which in accordance with section 1036 may not be less than 3; [2013, c. 555, §6 (NEW).]

D. The appointing authority responsible for appointing or the method of electing the first board of trustees; [2013, c. 555, §6 (NEW).]

E. The terms of the trustees who are elected or appointed subsequent to the first board. Terms of the first board are determined pursuant to section 1036, subsection 4; [2013, c. 555, §6 (NEW).]

F. Whether the trustees, subsequent to the first board, are appointed or elected; and [2013, c. 555, §6 (NEW).]

G. The procedures for the local referendum on the creation of the standard district. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

5. **Optional provisions.** A standard district charter may include provisions relating to the following:

A. Special qualifications of trustees; [2013, c. 555, §6 (NEW).]

B. Election of trustees by other than at-large elections as provided in section 1036, subsection 1. Any provision for election of trustees by other than at-large elections must establish voting districts in conformance with the judicial principle of one person, one vote; [2013, c. 555, §6 (NEW).]

C. Additional purposes and powers of the standard district, such as authority to buy out an existing sewer company or to provide water or other utility services; [2013, c. 555, §6 (NEW).]

D. Areas outside the standard district's territory in which the standard district is authorized to provide sewer services or accept sewage or septage; [2013, c. 555, §6 (NEW).]

E. Areas outside the standard district's territory in which the standard district is authorized to locate facilities; [2013, c. 555, §6 (NEW).]

F. Notwithstanding section 1053, a specific debt limit; [2013, c. 555, §6 (NEW).]

G. Towns with which the standard district is authorized to contract to provide sewer service; and [2013, c. 555, §6 (NEW).]

H. Any other provisions or duties necessary to accomplish the legislative purposes for creating the standard district. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

6. **Limited sewer districts; exception.** Except as otherwise provided in this subsection or other applicable law, a sewer district whose sewerage collection activities are limited to collection performed pursuant to a contract with one or more municipalities is exempt from the requirements of this chapter. The sewerage collection activities may include the ownership, maintenance or operation of the collection facilities but not the fixing of rate schedules for their use. If the sewer district owns the collection facilities used under the contract, the sewer district is subject to the requirements of section 1042.

[2013, c. 555, §6 (NEW) .]

7. **Guidelines for modified charters.** As determined appropriate by the Legislature, a standard district charter may include provisions that differ from the provisions in this chapter.

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1034. EXEMPTION FROM TAXATION

A standard district is a public municipal corporation within the meaning of Title 36, section 651 and the property of the district is exempt from taxation to the extent provided in that section. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1035. LEGISLATIVE AMENDMENT OF CHARTERS

Prior to acting on a proposed sewer district charter amendment, the joint standing committee of the Legislature having jurisdiction over energy and utility matters shall request written comments from the municipalities that lie in whole or in part within the sewer district. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

Subchapter 2: GOVERNANCE

§1036. TRUSTEES

All of the affairs of a standard district must be managed by a board of trustees whose members must be residents of the standard district. The number of trustees must be specified in the standard district's charter and may not be less than 3. After selection of the first board, each trustee is nominated and elected or appointed as provided in the charter creating the standard district and in accordance with subsection 1 or 2, as applicable. If the charter does not indicate whether trustees are appointed or elected, after the selection of the first board the trustees must be elected in accordance with subsection 1. [2013, c. 555, §6 (NEW).]

1. **Nominations and elections; vacancies.** Nominations and elections of trustees must be conducted in accordance with the laws relating to municipal elections in Title 30-A, chapter 121, and all elections must be conducted by secret ballot in accordance with Title 30-A, section 2528.

When the term of office of a trustee expires, the trustee's successor is elected at large by a plurality vote of the voters of the standard district. For the purpose of election, a special election must be called and held on the date established by the trustees. The election must be called by the trustees of the standard district in the same manner as town meetings are called and, for this purpose, the trustees are vested with the powers of municipal officers. A vacancy is filled in the same manner for the unexpired term by a special election called by the trustees of the standard district.

The trustees shall acquire a complete list of all the registered voters residing in the standard district. The trustees may acquire this list or portions of the list from the registrar of any town within the standard district. The town may charge a fee for providing the list. The list acquired by the trustees governs the eligibility of a voter. Voters who reside outside the territorial limits of the standard district, as defined in its charter, are not eligible voters. All warrants issued for elections by the trustees must show that only the voters residing within the territorial limits of the standard district are entitled to vote.

[2013, c. 555, §6 (NEW) .]

2. **Appointments.** If the charter creating a standard district specifies that the trustees are appointed, the appointments must be made as provided in the charter.

[2013, c. 555, §6 (NEW) .]

3. **Eligibility requirements.** When a trustee ceases to be a resident of a standard district, the trustee shall vacate the office of trustee and the vacancy is filled as provided in subsections 1 or 2, as applicable. All trustees are eligible for reelection or reappointment, but a person who is a municipal officer, as defined in Title 30-A, section 2001, subsection 10, of any town located, in whole or in part, within the standard district is not eligible for appointment, nomination or election as a trustee of that standard district.

[2013, c. 555, §6 (NEW) .]

4. **First board.** The first board is appointed or elected as provided in the charter creating the standard district. At the first meeting, the initial trustees shall determine by agreement or, failing to agree, shall determine by lot the term of office of each trustee. The terms of the trustees must be determined in accordance with the following table.

Total number of trustees	1 year	2 years	3 years
3	1	1	1
4	1	1	2
5	1	2	2
6	2	2	2
7	2	2	3
8	2	3	3
9	3	3	3

10	3	3	4
11	3	4	4
12	4	4	4
13	4	4	5
14	4	5	5
15	5	5	5

The trustees shall enter on their records the determination made. Vacancies are filled pursuant to subsection 1 or 2, as applicable.

At the first meeting, the trustees shall organize by electing from among their members a chair and a clerk, by adopting a corporate seal and by electing a treasurer who may or may not be a trustee.

[2013, c. 555, §6 (NEW) .]

5. **Organization; conduct of business.** Within one week after each annual appointment or election, the trustees of a standard district shall meet for the purpose of electing a chair, treasurer and clerk in accordance with subsection 4 to serve for the ensuing year and until their successors are elected or appointed and qualified. The trustees, from time to time, may choose and employ and fix the compensation of any other necessary officers and agents, who serve at the pleasure of the trustees. The treasurer shall furnish bond in the sum and with sureties approved by the trustees. The standard district shall pay the cost of the bond.

The trustees may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the standard district and perform other acts within the powers delegated by law to the trustees.

The trustees must be sworn to the faithful performances of their duties including the duties of a member who serves as clerk or clerk pro tem. The trustees shall publish an annual report that includes a report of the treasurer.

Business of the standard district must be conducted in accordance with the applicable provisions of the Freedom of Access Act.

[2013, c. 555, §6 (NEW) .]

6. **Decisions of the board.** All decisions of the board of trustees must be made by a majority of those present and voting, except that a vote to approve the issuing of any bond, note or other evidence of indebtedness payable within a period of more than 12 months after the date of issuance must be approved by a majority of the entire board. A quorum of the board of trustees consists of the total number of authorized trustees divided by 2 and, if necessary to obtain a whole number, the resulting number rounded up to the next whole number.

Trustees are subject to the conflict of interest provisions of Title 30-A, section 2605.

[2013, c. 555, §6 (NEW) .]

7. **Trustees compensation; applicable to all sewer districts.** The trustees of a sewer district receive compensation as recommended by the trustees and approved by majority vote of the municipal officers in municipalities representing a majority of the population within the sewer district, including compensation for any duties they perform as officers as well as for their duties as trustees. Certification of the vote must be recorded with the Secretary of State and recorded in the bylaws. Compensation for duties as trustees must be based on an amount specified in the bylaws for each meeting actually attended plus reimbursement for travel and expenses, with the total not to exceed a specific amount as specified in the bylaws. Compensation schedules in effect on January 1, 2013 continue in effect until changed.

This subsection is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this subsection is void, unless the sewer district's charter expressly references this subsection or former section 1252, subsection 5 and specifically provides that this subsection or former section 1252, subsection 5 does not apply.

[2013, c. 555, §6 (NEW) .]

8. **Trustees retirement; applicable to all sewer districts.** A person who has not been a trustee of a sewer district prior to January 1, 1987, or who is not a full-time employee, is not eligible to become a member of the Maine Public Employees Retirement System as a result of the person's selection as a trustee.

This subsection is deemed to be incorporated into the private and special laws governing sewer districts, and any part of a sewer district charter not in conformity with this subsection is void, unless the sewer district's charter expressly references this subsection or former section 1252, subsection 6 and specifically provides that this subsection or former section 1252, subsection 6 does not apply.

[2013, c. 2, §50 (COR) .]

9. **Expenses.** The trustees of a standard district may obtain an office and incur necessary expenses.

[2013, c. 555, §6 (NEW) .]

10. **Recall.** A trustee may be recalled under the following provisions.

A. The eligible voters of a standard district may petition for the recall of any trustee after the first year of the term for which the trustee is elected by filing a petition with the municipal clerk, or the county commissioners in the case of unorganized territory, demanding the recall of the trustee. A trustee may be subject to recall for misfeasance, malfeasance or nonfeasance in office. The petition must be signed by eligible voters of that portion of the standard district that that trustee represents equal to at least 25% of the vote cast for the office of Governor at the last gubernatorial election within that portion of the standard district. The recall petition must state the reason for which removal is sought. [2013, c. 555, §6 (NEW).]

B. Within 3 days after the petition is offered for filing, the official with whom the petition is left shall determine by careful examination whether the petition is sufficient and so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate must state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, the petition must again be carefully examined to determine sufficiency and a certificate stating the findings must be attached. Immediately upon finding an original or amended petition sufficient, the official shall file the petition and call a special election to be held not less than 40 days nor more than 45 days from the filing date. The official shall notify the trustee against whom the recall petition is filed of the special election. [2013, c. 555, §6 (NEW).]

C. The trustee against whom the recall petition is filed must be a candidate at the special election without nomination, unless the trustee resigns within 10 days after the original filing of the petition. There may not be a primary. Candidates for the office may be nominated under the usual procedure of nomination for a primary election by filing nomination papers, not later than 5 p.m., 4 weeks preceding the election and have their names placed on the ballot at the special election. [2013, c. 555, §6 (NEW).]

D. The trustee against whom a recall petition has been filed shall continue to perform the duties of the trustee's office until the result of the special election is officially declared. The person receiving the highest number of votes at the special election is declared elected for the remainder of the term. If the incumbent receives the highest number of votes, the incumbent continues in office. If another receives the highest number of votes, that person succeeds the incumbent, if that person qualifies, within 10 days after receiving notification. [2013, c. 555, §6 (NEW).]

E. After one recall petition and special election, no further recall petition may be filed against the same trustee during the term for which the trustee was elected. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
RR 2013, c. 2, §50 (COR). 2013, c. 555, §6 (NEW).

§1037. COORDINATION WITH MUNICIPAL PLANNING; APPLICABLE TO ALL SEWER DISTRICTS

The following provisions facilitate coordination of municipal planning and sewer extension planning. [2013, c. 555, §6 (NEW).]

1. **Growth management.** The trustees of a sewer district shall cooperate with municipal officials in the development of municipal growth management and other land use plans and ordinances.

[2013, c. 555, §6 (NEW) .]

2. **Development that affects the district.** Municipal officers shall cooperate with the trustees of a sewer district during the consideration of development applications that may affect the operations of the sewer district.

[2013, c. 555, §6 (NEW) .]

This section is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this section is void, unless the sewer district's charter expressly references this section or former section 1252, subsection 9 and specifically provides that this section or former section 1252, subsection 9 does not apply. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1038. REORGANIZATION AS SANITARY DISTRICTS

A sewer district existing on January 1, 2013 may, but is not required to, reorganize as a sanitary district under the Maine Sanitary District Enabling Act by referendum in accordance with section 1101, subsection 1-A. The referendum may be initiated by the voters or by a majority of the trustees. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

Subchapter 3: POWERS

§1039. POWERS

Except as otherwise provided by law, for the purposes of its incorporation, a standard district may locate, construct and maintain pipes, drains, sewers, conduits, treatment plants, pumping stations and other necessary structures and equipment for the collection, interception and treatment of sewerage, commercial and industrial waste and storm and surface water for the health, welfare, comfort and convenience of the inhabitants of the standard district. [2013, c. 555, §6 (NEW).]

All incidental powers, rights and privileges necessary to accomplish the objectives of this chapter are granted to a standard district. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1040. RIGHT OF EMINENT DOMAIN; APPLICABLE TO ALL SEWER DISTRICTS

The authority and procedures for the exercise of eminent domain by a sewer district must conform to sections 1152, 1152-A, 1153 and 1154. In addition, a sewer district may not take by right of eminent domain any of the property or facilities of any other public utility used or acquired for future use by the owner of the public utility in the performance of a public duty, unless expressly authorized by a special Act of the Legislature. [2013, c. 555, §6 (NEW).]

This section is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this section is void, unless the sewer district's charter expressly references this section or former section 1252, subsection 2 and specifically provides that this subsection or former section 1252, subsection 2 does not apply. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1041. CROSSING OTHER PUBLIC UTILITIES AND RAILROAD CORPORATIONS

If a standard district, in constructing, maintaining or replacing any of its facilities, must cross property of another public utility or railroad corporation, the standard district must obtain the consent of the other public utility or railroad corporation and undertake the work in accordance with conditions established by agreement. If, within 30 days after requesting consent, the standard district fails to reach an agreement with the public utility or railroad corporation the standard district may petition as follows. [2013, c. 555, §6 (NEW).]

1. **Public utility.** In the case of crossing property of a public utility, the standard district may petition the Public Utilities Commission to determine the time, place and manner of crossing. All work done on the property of the public utility must be done under the supervision and to the satisfaction of the public utility or as prescribed by the Public Utilities Commission.

[2013, c. 555, §6 (NEW) .]

2. **Railroad corporation.** In the case of crossing the property of a railroad corporation, the standard district may petition the Department of Transportation to determine the time, place and manner of crossing. All work done on the property of the railroad corporation must be done under the supervision and to the satisfaction of the railroad corporation or as prescribed by the Department of Transportation.

[2013, c. 555, §6 (NEW) .]

All work under this section must be done at the expense of the standard district. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1042. SEWER EXTENSIONS; APPLICABLE TO ALL SEWER DISTRICTS

Sewer extensions are governed by this section. [2013, c. 555, §6 (NEW).]

1. **Written assurance from municipality.** A sewer district may not construct any sewer extension unless it acquires from the municipal officers or the designee of the municipal officers of any municipality through which the sewer extension will pass written assurance that:

A. Any development, lot or unit intended to be served by the sewer extension is in conformity with any adopted municipal plans and ordinances regulating land use; and [2013, c. 555, §6 (NEW).]

B. The sewer extension is consistent with adopted municipal plans and ordinances regulating land use. [2013, c. 555, §6 (NEW).]

If the municipal officers fail to issue a response to a written request from a sewer district for written assurance within 45 calendar days of receiving the request in writing, the written assurance is deemed granted.

Not less than 7 days prior to the meeting at which the trustees will take final action on whether to proceed with the extension, the trustees of the sewer district shall publish notice of the proposed extension in a newspaper having a general circulation that includes all municipalities through which the sewer extension will pass.

[2013, c. 555, §6 (NEW) .]

2. **Review of municipal decision; applicable to all sewer districts.** For an intermunicipal sewer extension, when written assurance is denied by municipal officers pursuant to subsection 1, an aggrieved party may appeal, within 15 days of the decision, to the Department of Agriculture, Conservation and Forestry for a review of the municipal officers' decision. Notwithstanding Title 5, chapter 375, subchapter 4, the following procedures apply to the review by the Department of Agriculture, Conservation and Forestry.

A. The Department of Agriculture, Conservation and Forestry may request any additional information from the sewer district, the municipality or the department. All information requested must be submitted within 30 days of the request, unless an extension is granted by the Department of Agriculture, Conservation and Forestry. [2013, c. 555, §6 (NEW).]

B. Within a reasonable time, the Department of Agriculture, Conservation and Forestry shall hold a hearing. The Department of Agriculture, Conservation and Forestry shall give at least 7 days' written notice of the hearing to the sewer district, the municipality and the party that requested the hearing. The hearing is informal and the Department of Agriculture, Conservation and Forestry may receive any information it considers necessary. [2013, c. 555, §6 (NEW).]

C. Within 15 days of the hearing and within 60 days of the request for review, the Department of Agriculture, Conservation and Forestry shall make a decision that must include findings of fact on whether the sewer extension proposal is inconsistent with adopted municipal plans and ordinances regulating land use. The decision of the Department of Agriculture, Conservation and Forestry constitutes final agency action. [2013, c. 555, §6 (NEW).]

D. Notwithstanding section 1, if the Department of Agriculture, Conservation and Forestry determines that the sewer extension proposal is not inconsistent with adopted municipal plans and ordinances regulating land use, the Department of Agriculture, Conservation and Forestry shall issue written assurance that the proposal is consistent with adopted municipal plans and ordinances regulating land use and the sewer district may construct the sewer extension. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

This section is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this section is void, unless the sewer district's charter expressly references this section or former section 1252, subsection 7 and specifically provides that this subsection or former section 1252, subsection 7 does not apply. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1043. CONDITIONS FOR CARRYING OUT WORK

When a standard district enters, digs up or excavates any public way or other land to lay or maintain its sewers, drains or pipes, constructing manholes or catch basins or other appurtenances or for any other purpose, the work must be done expeditiously. On completion of the work the standard district shall restore the public way or land to its condition prior to such work or to a condition equally good. If the work is being undertaken in a municipality and could potentially endanger travel on a public way, the municipal officers of the municipality in which the work is being done may order a temporary closing of the public way and of any intersecting way. Upon request of the standard district, the public way must remain closed to public travel until the municipal officers of the unit of local government determines the public way is restored to a condition safe for traffic. If the work is being undertaken in an unorganized territory and could potentially endanger travel on a public way, the commissioners of the county where the public way is located may order a temporary closing of the public way and of any intersecting way. Upon request of the standard district, the public way must remain closed to public travel until the county commissioners determine the public way is restored to a condition safe for traffic. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1044. CONTRACTS

A standard district, through its trustees, in order to carry out the purposes of its incorporation, may contract with a person, standard district, utility or corporation or with a municipality, the State or other governmental entity whether located inside or outside the boundaries of the standard district. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1045. LEASE OF PROPERTY; APPLICABLE TO ALL SEWER DISTRICTS

A sewer district may enter into a lease and leaseback transaction with respect to some or all of its real or personal property, other than land, and may take all other necessary action, including, but not limited to, the granting of mortgages and liens, to effectuate the transaction. For purposes of this section, "lease" includes a lease of any length, including leases that may be defined as sales for income tax purposes. [2013, c. 555, §6 (NEW).]

This section is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this section is void, unless the sewer district's charter expressly references this section or former section 1252, subsection 10 and specifically provides that this subsection or former section 1252, subsection 10 does not apply. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1046. ENFORCEMENT

Sewer districts have enforcement powers as specified in this section. [2013, c. 555, §6 (NEW).]

1. **Violation of standards by an industrial user; applicable to all sewer districts.** A sewer district may seek in a civil action injunctive relief from an industrial user that violates a pretreatment standard or requirement, administered by the sewer district. The sewer district may seek a civil penalty of up to $1,000 per day for each violation by an industrial user of a pretreatment standard or requirement.

This subsection is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this subsection is void, unless the sewer district's charter expressly references this subsection or former section 1252, subsection 8 and specifically provides that this subsection or former section 1252, subsection 8 does not apply.

[2013, c. 555, §6 (NEW) .]

2. **Injury to property of standard districts.** A person may not place, discharge or leave any offensive or injurious matter or material on or in the conduits, catch basins or receptacles of a standard district formed under this chapter contrary to its regulations or knowingly injure any conduit, pipe, reservoir, flush tank, catch basin, manhole, outlet, engine, pump or other property held, owned or used by the standard district.

A person who violates this subsection is liable to pay twice the amount of the damages to the standard district to be recovered in any proper action and is subject to a civil penalty not to exceed $2,500 for each violation, payable to the standard district. The civil penalty is recoverable in a civil action.

[2013, c. 555, §6 (NEW) .]

3. **Required connection.** Except as provided in subsection 4, upon receiving a request from a standard district to connect a building located in the territory of the standard district that is accessible to a sewer or drain of the standard district and that is intended for human habitation or occupancy or that has facilities for discharge or disposal of waste water or commercial or industrial waste, the owner of that building shall arrange to have the building connected through a sanitary sewer or drainage system to the standard district's accessible sewer or drain in the most direct manner possible. If feasible, each building requiring connection must have its own separate connection. The connection must be completed within 90 days of the receipt by the owner of the request, or within any extended period requested by the owner and agreed to by the trustees. For purposes of this subsection, "owner" includes the owners of record or any person against whom property taxes on the building are assessed.

A person who receives a notice in accordance with this subsection to connect to a building and fails to connect to the building in accordance with this subsection is subject to a civil penalty not to exceed $2,500, payable to the standard district. This penalty is recoverable in a civil action.

[2013, c. 555, §6 (NEW) .]

4. **Connections not required; applicable to all sewer districts.** An existing building that is already served by a private sewer system is not required to connect with a sewer or drain of a sewer district as long as the private sewer or drainage system functions in a satisfactory and sanitary manner and does not violate applicable law or ordinance applicable to the connection with a sewer or drain or a sewer district or any applicable requirements of the state plumbing code, as determined by the municipal plumbing inspector or the municipal plumbing inspector's alternate, or, in the event that both are trustees or employees of the sewer district, the Department of Health and Human Services, Division of Health Engineering.

This subsection is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this subsection is void, unless the sewer district's charter expressly references this subsection or former section 1252, subsection 3 and specifically provides that this subsection or former section 1252, subsection 3 does not apply.

[2013, c. 555, §6 (NEW) .]

5. **Permissive connection.** A person not otherwise required to connect a private sewer into a sewer of a standard district may connect to the standard district's sewer if that person obtains a permit from the standard district and pays any charges required by this subsection. The clerk of the standard district shall record the permit in the records of the standard district.

A. If construction of the standard district's sewer is complete at the proposed point of entry of the private sewer and the standard district has established an entrance charge for entry at that location, the person seeking to connect the private sewer at that location shall pay the entrance charge before the connection is undertaken. [2013, c. 555, §6 (NEW).]

B. If the standard district's sewer is under construction and not completed at the point of the proposed entry of the private sewer, the person seeking to connect the private sewer at that location is not required to pay an entrance charge. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1047. INSPECTION OF SEWERS

The officers or agents of a standard district have free access to all premises served by the standard district's sewers, at all reasonable hours, for inspection of plumbing and sewage fixtures, to ascertain the quality and quantity of sewage discharged and the manner of discharge, and to enforce this chapter and the rules prescribed by the trustees of the standard district. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

Subchapter 4: RATES AND FEES

§1048. RATES AND FEES

A person, firm and corporation, whether public, private or municipal, shall pay to the treasurer of a standard district the rates established by the trustees for the sewer or drainage service used or available with respect to their real estate as long as those rates are consistent with this section. [2013, c. 555, §6 (NEW).]

1. **Uniform rates.** Rates must be uniform within a standard district whenever the cost to the standard district of installation and maintenance of sewers or their appurtenances and the cost of service is substantially uniform, except that:

A. A standard district may establish a higher rate in sections where, for any reason, the cost to the standard district of construction and maintenance, or the cost of service, exceeds the average as long as the higher rates are uniform throughout the sections where the rates apply; and [2013, c. 555, §6 (NEW).]

B. Trustees may reduce the impact fee or connection fee, as those terms are defined in Title 30-A, section 5061, for sewer service to newly constructed affordable housing in accordance with Title 30-A, chapter 202-A.

This paragraph is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this paragraph is void, unless the sewer district's charter expressly references this paragraph or former section 1252, subsection 12 and specifically provides that this paragraph or former section 1252, subsection 12 does not apply. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

2. **Multidistrict rates.** Notwithstanding any other provision of law, a standard district that shares, supplies or contracts for services with another district shall establish rates mutually agreeable to the trustees of each participating district.

[2013, c. 555, §6 (NEW) .]

3. **Readiness to serve.** A standard district's rates may include readiness to serve rates charged against owners of real estate abutting or accessible but not connected to sewers or drains of the standard district, whether or not the real estate is improved.

[2013, c. 555, §6 (NEW) .]

4. **Interest on late payments.** A standard district may charge and collect interest on delinquent accounts at a rate not to exceed the highest lawful rate set by the Treasurer of State for municipal taxes.

[2013, c. 555, §6 (NEW) .]

5. **Adoption of rate schedule.** Prior to the adoption of a new rate schedule, the trustees shall hold a public hearing regarding the proposed rate schedule. The trustees shall publish the proposed rates and notice of the hearing not less than once in a newspaper having a general circulation in the district not less than 7 days prior to the hearing. The standard district shall mail to each ratepayer a notice of the public hearing and the proposed rate at least 14 days prior to the hearing.

This subsection is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this subsection is void, unless the sewer district's charter expressly references this subsection or former section 1252, subsection 1 and specifically provides that this subsection or former section 1252, subsection 1 does not apply.

[2013, c. 555, §6 (NEW) .]

6. **Revenue from rates.** Rates established by the trustees in accordance with this chapter must be fixed and adjusted so as to produce in aggregate revenue at least sufficient, together with any other revenues, to:

A. Pay the current expenses of operating and maintaining the sewerage, drainage and treatment system of the standard district; [2013, c. 555, §6 (NEW).]

B. Pay the principal of, premium, if any, and interest on all bonds and notes issued by the standard district under this chapter as they become due and payable; [2013, c. 2, §51 (COR).]

C. Create and maintain reserves as may be required by any trust agreement or resolution securing bonds and notes; [2013, c. 555, §6 (NEW).]

D. Provide funds for paying the cost of all necessary repairs, replacements and renewals of the sewerage, drainage and treatment systems of the standard district; and [2013, c. 555, §6 (NEW).]

E. Pay or provide for all amounts that the standard district may be obligated to pay or provide for by law or contract, including any resolution or contract with or benefit of the holders of its bonds and notes. [2013, c. 555, §6 (NEW).]

[2013, c. 2, §51 (COR) .]

7. **Rates in an unorganized territory.** If a standard district encompasses unorganized territory, rates applicable to real estate in that unorganized territory must be charged against the person or entity in possession of the real estate.

[2013, c. 555, §6 (NEW) .]

8. **Civil action for unpaid rates.** If rates under this section are not paid, and a standard district does not collect unpaid rates as a qualified sewer district under section 1050, then the standard district may maintain a civil action against the person who has not paid rates for the amount of the unpaid rates plus 10% interest.

[2013, c. 555, §6 (NEW) .]

9. **Disconnection of water service for nonpayment of sewer services.** If a standard district is part of a multidistrict utility that is a consumer-owned water utility, the utility may disconnect water service for failure to pay for sewer service in accordance with Title 35-A, section 6111-C.

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
RR 2013, c. 2, §51 (COR). 2013, c. 555, §6 (NEW).

§1049. WAIVER OF SEWER DISTRICT LIEN FORECLOSURE

A sewer district, including but not limited to a qualified sewer district subject to section 1050, may use the following provisions to waive a lien foreclosure. [2013, c. 555, §6 (NEW).]

1. **Waiver.** The treasurer of a sewer district, including a qualified sewer district, when authorized by the trustees of the sewer district, may waive the foreclosure of a sewer district lien mortgage created pursuant to the sewer district's charter by recording in the registry of deeds a waiver of foreclosure before the period for the right of redemption from the lien mortgage has expired. The lien mortgage remains in full effect after the recording of a waiver. Other methods established by law for the collection of any unpaid rate are not affected by the filing of a waiver under this section.

[2013, c. 555, §6 (NEW) .]

2. **Form.** The waiver of foreclosure under subsection 1 must be substantially in the following form.

The foreclosure of the sewer lien mortgage on real estate for charges against.....(NAME) to.....(NAME OF SEWER DISTRICT) dated.....and recorded in the.....County Registry of Deeds in Book....., Page..... is hereby waived.

The form must be dated, signed by the treasurer of the sewer district and notarized. A copy of the form must be provided to the party named on the lien mortgage and each record holder of a mortgage on the real estate.

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1050. QUALIFIED SEWER DISTRICTS; COLLECTION OF UNPAID RATES

The provisions of this section apply only to a qualified sewer district. [2013, c. 555, §6 (NEW).]

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

A. "Eligible sewer district" means a sewer district whose charter does not establish, or authorize the district to establish, a lien on real estate served by the district. [2013, c. 555, §6 (NEW).]

B. "Qualified sewer district" means an eligible sewer district that has satisfied the requirements of subsection 4; or a standard district unless this section is expressly excluded from the standard district's charter. [2013, c. 555, §6 (NEW).]

C. "Real estate" means an identified parcel of land and its improvements, if any, including, but not limited to, a mobile home. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

2. **Lien.** There is a lien on real estate served or benefited by the sewers of the qualified sewer district to secure the payment of the qualified sewer district's rates. The lien established under this section takes precedence over all other claims on such real estate, except claims for taxes.

[2013, c. 555, §6 (NEW) .]

3. **Collection.** The treasurer of the qualified sewer district may collect rates and all rates must be committed to the treasurer. The treasurer may, after demand for payment, sue in the name of the qualified sewer district in a civil action in any court of competent jurisdiction for any rates remaining unpaid. In addition to other methods established by law for the collection of rates and without waiver of the right to sue for the collection of rates, the lien created under subsection 2 may be enforced in the following manner.

A. When rates have been committed to the treasurer of the qualified sewer district for collection, the treasurer may, after the expiration of 3 months and within one year after the date when the rates became due and payable, give to the owner of the real estate served, leave at the owner's last and usual place of abode or send by certified mail, return receipt requested, to the owner's last known address a notice in writing signed by the treasurer or bearing the treasurer's facsimile signature, stating the amount of the rates due, describing the real estate upon which the lien is claimed and stating that a lien is claimed on the real estate to secure the payment of the rates and demanding the payment of the rates within 30 days after service or mailing, with $1 added to the demanded rate for the treasurer and an additional fee to cover mailing the notice by certified mail, return receipt requested. The notice must contain a statement that the qualified sewer district is willing to arrange installment payments of the outstanding debt. [2013, c. 555, §6 (NEW).]

B. After the expiration of 30 days and within one year after giving notice pursuant to paragraph A, the treasurer of the qualified sewer district shall record in the registry of deeds of the county in which the property of the person is located a certificate signed by the treasurer setting forth the amount of the rates due, describing the real estate on which the lien is claimed and stating that a lien is claimed on the real estate to secure payment of the rates and that a notice and demand for payment has been given or made in accordance with this section and stating further that the rates remain unpaid. At the time of the recording of the certificate in the registry of deeds, the treasurer shall file in the office of the qualified sewer district a true copy of the certificate and shall mail a true copy of the certificate by certified mail, return receipt requested, to each record holder of any mortgage on the real estate, addressed to the record holder at the record holder's last and usual place of abode. [2013, c. 555, §6 (NEW).]

C. The filing of the certificate in the registry of deeds creates a mortgage held by the qualified sewer district on the real estate described in the certificate that has priority over all other mortgages, liens, attachments and encumbrances of any nature, except liens, attachments and claims for taxes, and gives to the qualified sewer district all the rights usually possessed by mortgagees, except that the qualified sewer district as mortgagee does not have any right to possession of that real estate until the right of redemption has expired. [2013, c. 555, §6 (NEW).]

D. If the mortgage created under paragraph C, together with interest and costs, has not been paid within 18 months after the date of filing the certificate in the registry of deeds in accordance with paragraph B, the mortgage is foreclosed and the right of redemption expires. The filing of the certificate in the registry of deeds is sufficient notice of the existence of the mortgage. In the event that the rate, with interest and

costs, is paid within the period of redemption, the treasurer of the qualified sewer district shall discharge the mortgage in the same manner as provided for discharge of real estate mortgages. [2013, c. 555, §6 (NEW).]

E. The owner of the real estate shall pay the sum of the fees for receiving, recording and indexing the lien, or its discharge, as established by Title 33, section 751, plus $13, plus all certified mail, return receipt requested, fees. [2013, c. 555, §6 (NEW).]

F. Not more than 45 days or less than 30 days before the foreclosing date of the mortgage created under paragraph C, the treasurer of the qualified sewer district shall notify the party named on the mortgage and each record holder of a mortgage on the real estate in a writing signed by the treasurer or bearing the treasurer's facsimile signature and left at the holder's last and usual place of abode or sent by certified mail, return receipt requested, to the holder's last known address of the impending automatic foreclosure and indicating the exact date of foreclosure. For sending this notice, the qualified sewer district is entitled to receive $3 plus all certified mail, return receipt requested, fees, which must be added to and become a part of the amount due under paragraph E. If notice is not given in the time period specified in this paragraph, the person not receiving timely notice has up to 30 days after the treasurer provides notice as specified in this paragraph in which to redeem the mortgage. The notice of impending automatic foreclosure must be substantially in the following form:

STATE OF MAINE
..... SEWER DISTRICT
NOTICE OF IMPENDING AUTOMATIC FORECLOSURE
SEWER LIEN
M.R.S.A., Title 38, section 1050
IMPORTANT: DO NOT DISREGARD THIS NOTICE
YOU WILL LOSE YOUR PROPERTY UNLESS
YOU PAY THE CHARGES, COSTS AND INTEREST FOR WHICH
A LIEN ON YOUR PROPERTY HAS BEEN CREATED BY THE
..... SEWER DISTRICT.

TO: .....

IF THE LIEN FORECLOSES,
THE ..... SEWER DISTRICT WILL OWN
YOUR PROPERTY, SUBJECT ONLY TO
MUNICIPAL TAX LIENS.
.....
District Treasurer

[2013, c. 555, §6 (NEW).]

G. The qualified sewer district shall pay the treasurer $1 for the notice, $1 for filing the lien certificate and the amount paid for certified mail, return receipt requested, fees. The fees for recording the lien certificate must be paid by the qualified sewer district to the register of deeds. [2013, c. 555, §6 (NEW).]

H. A discharge of the certificate given after the right of redemption has expired, which discharge has been recorded in the registry of deeds for more than one year, terminates all title of the qualified sewer district derived from that certificate or any other recorded certificate for which the right of redemption expired 10 years or more prior to the foreclosure date of this discharge lien, unless the qualified sewer district has conveyed any interest based upon the title acquired from any of the affected liens. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

4. **Adoption; referendum.** An eligible sewer district may become a qualified sewer district in accordance with this subsection. The trustees of the eligible sewer district shall submit a proposal to become a qualified sewer district for approval in a districtwide referendum. The referendum must be called, advertised and conducted according to the law relating to municipal elections in Title 30-A, chapter 121, except the registrar of voters is not required to prepare or the clerk to post a new list of voters. The referendum may be held outside the territory of the eligible sewer district if the usual voting place for persons located within the district is located outside the territory of the district. For the purpose of registering voters, the registrar of voters must be in session on the regular work day preceding the election. The question presented must conform to the following form:

> "Do you favor authorizing the (insert name of eligible sewer district) to become a qualified sewer district, allowing the district to exercise the lien authority established in the Maine Revised Statutes, Title 38, section 1050 with respect to unpaid rates?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion on the question.

The results must be declared by the trustees and entered upon the eligible sewer district's records. Due certificate of the results must be filed by the clerk with the Secretary of State.

The eligible sewer district becomes a qualified sewer district under this section only upon acceptance of the question by a majority of the legal voters within the eligible sewer district voting at the referendum. Failure of approval by the majority of voters voting at the referendum does not prevent subsequent referenda from being held for the same purpose. The costs of referenda are borne by the eligible sewer district.

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1051. LANDLORD ACCESS TO TENANT BILL PAYMENT INFORMATION; APPLICABLE TO ALL SEWER DISTRICTS

If a tenant is billed for sewer service provided to property rented by the tenant and nonpayment for the service may result in a lien against the property, the sewer district shall provide to the landlord or the landlord’s agent, on request of the landlord or the landlord's agent, the current status of the tenant’s account, including any amounts due or overdue. [2013, c. 555, §6 (NEW).]

This section is deemed to be incorporated into the private and special laws governing a sewer district, and any part of a sewer district charter not in conformity with this section is void, unless the sewer district's charter expressly references this section or former section 1252, subsection 11 and specifically provides that this subsection or former section 1252, subsection 11 does not apply. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

Subchapter 5: BONDS, INVESTMENT AND DEBT LIMIT

§1052. AUTHORIZED TO RECEIVE GOVERNMENT AID, BORROW MONEY AND ISSUE BONDS AND NOTES

A standard district is authorized to receive government aid, borrow money and issue bonds and notes in accordance with this section. [2013, c. 555, §6 (NEW).]

1. **Authorization of bonds.** A standard district may provide by resolution of its board of trustees, without district vote, for the borrowing of money and the issuance from time to time of bonds for any of its corporate purposes, including, but not limited to:

A. Paying and refunding its indebtedness; [2013, c. 555, §6 (NEW).]

B. Paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities, whether incurred by the standard district or any municipality within the standard district or any person residing in unorganized territory encompassed by the standard district. The standard district may reimburse any municipality within the standard district or any person residing in unorganized territory encompassed by the standard district for any expenses incurred or paid by the municipality or person; [2013, c. 555, §6 (NEW).]

C. Paying costs directly or indirectly associated with acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating sewage and treatment plants or systems and making renewals, additions, extensions and improvements to the same and to cover interest payments during the period of construction and for any period after construction as the trustees may determine; [2013, c. 555, §6 (NEW).]

D. Providing reserves for debt service, repairs and replacements or other capital or current expenses as may be required by a trust agreement or resolution securing bonds; and [2013, c. 555, §6 (NEW).]

E. Any combination of these purposes. [2013, c. 555, §6 (NEW).]

Bonds may be issued under this section as general obligations of the standard district or as special obligations payable solely from particular funds. The principal of, premium, if any, and interest on all bonds are payable solely from the funds provided for that purpose from revenues. For purposes of this section, "revenues" means and includes the proceeds of bonds, all revenues, rates, fees, entrance charges, assessments, rents and other receipts derived by the standard district from the operation of its sewer system and other properties, including, but not limited to, investment earnings and the proceeds of insurance, condemnation, sale or other disposition of properties. All bonds issued by a standard district under this section are legal obligations of the standard district, and a standard district whose charter includes this section is declared to be a quasi-municipal corporation within the meaning of Title 30-A, section 5701. Bonds may be issued under this section without obtaining the consent of any commission, board, bureau or agency of the State or of any municipality encompassed by the district and without any other proceedings or the happening of other conditions other than those proceedings or conditions that are specifically required by the standard district's charter or other applicable law. Bonds issued under this section do not constitute a debt or liability of the State or of any municipality encompassed by the standard district or a pledge of the faith and credit of the State or any such municipality, but the bonds are payable solely from the funds provided for that purpose, and a statement to that effect must be recited on the face of the bonds.

[2013, c. 555, §6 (NEW) .]

2. Notes. A standard district may provide by resolution of its trustees, without district vote, for the issuance from time to time of notes in anticipation of bonds authorized under this section and of notes in anticipation of the revenues to be collected or received in any year or in anticipation of the receipt of federal or state grants or other aid. The issue of these notes is governed by the applicable provisions of this chapter relating to the issue of bonds, except that notes in anticipation of revenue must mature no later than one year from their respective dates and notes issued in anticipation of federal or state grants or other aid and renewals of grants or aids must mature no later than the expected date of receipt of those grants or aid. Notes in anticipation of revenue issued to mature less than one year from their dates may be renewed from time to time by the issue of other notes, except that the period from the date of an original note to the maturity of any note issued to renew or pay the original note or the interest on a note may not exceed one year.

A standard district is authorized and empowered to enter into agreements with the State or the United States, or any agency of either, or any municipality, corporation, commission or board authorized to grant or loan money to or otherwise assist in the financing of projects of the type that that district is authorized to carry out and to accept grants and borrow money from any government, agency, municipality, corporation, commission or board as may be necessary or desirable to accomplish the purposes of the standard district.

[2013, c. 555, §6 (NEW) .]

3. **Maturity; interest; form; temporary bonds.** The bonds issued under this section must be dated, must mature at such time or times not exceeding 40 years from their date or dates and must bear interest at such rate or rates as may be determined by the trustees, and may be made redeemable before maturity, at the option of the standard district, at the price or prices and under the terms and conditions as fixed by the trustees prior to the issuance of the bonds. The trustees shall determine the form of the bonds, including any interest coupons to be attached to the bonds, and the manner of execution of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company inside or outside the State. Bonds must be executed in the name of the standard district by the manual or facsimile signature of the officer or officers as authorized in the resolution to execute the bonds, but at least one signature on each bond must be a manual signature. Coupons, if any, attached to the bonds must be executed with the facsimile signature of the officer or officers of the standard district designated in the resolution. In case any officer, whose signature or a facsimile of whose signature appears on any bonds or coupons, ceases to be such officer before the delivery of the bonds, the signature or its facsimile is valid and sufficient for all purposes as if the officer had remained in office until the delivery.

Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under this section, all bonds issued under this section are negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form, or both, as the trustees may determine, and provision may be made for the registration of any coupon bonds as to principal alone and as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The trustees may sell bonds, either at public or private sale and for the price as they determine to be for the best interests of the standard district. The proceeds of the bonds of each issue must be used solely for the purpose for which those bonds have been authorized and must be disbursed in the manner and under the restrictions, if any, that the trustees provide, in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds. The resolution providing for the issuance of bonds and any trust agreement securing the bonds may contain limitations upon the issuance of additional bonds as the trustees determine proper, and these additional bonds must be issued under such restrictions and limitations prescribed by that resolution or trust agreement. Prior to the preparation of definitive bonds, the trustees may, under the same restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery. The trustees may provide for the replacement of any bond that is mutilated, destroyed or lost.

[2013, c. 555, §6 (NEW) .]

4. **Pledges and covenants; trust agreement.** In the discretion of the trustees of a standard district, each or any issue of bonds may be secured by a trust agreement by and between the standard district and a corporate trustee, which may be any trust company located within or outside the State.

A. The resolution authorizing the issuance of the bonds or the trust agreement may pledge or assign, in whole or in part, the revenues and other money held or to be received by the standard district and any accounts and contract or other rights to receive the revenues of the money, whether then existing or coming into existence and whether then held or acquired by the standard district, and the proceeds of the revenues or the money, but may not convey or mortgage the sewer system or any other properties of the standard district. The resolution may also contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including, but not limited to, covenants setting forth the duties of the standard district and the trustees in relation to the acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of its sewer system or any of its other properties, the fixing and revising of rates, fees and charges, the application of the proceeds of bonds, the custody, safeguarding and application of revenues, defining defaults and providing for remedies in the event of defaults that may include the acceleration of maturities, the establishment of reserves and the making and amending of contracts. The resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition, the resolution or trust agreement may contain such other provisions as the trustees determine reasonable and proper for the security of the

bondholders. All expenses incurred in carrying out the resolution or trust agreement may be treated as a part of the cost of operation. The pledge by any resolution or trust agreement is valid and binding and is deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made. All revenues, money, rights and proceeds so pledged and received by the standard district are immediately subject to the lien of the pledge without any physical delivery or segregation of the revenues and proceeds or further action under the Uniform Commercial Code or otherwise, and the lien of the pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the standard district irrespective of whether those parties have notice of the lien. [2013, c. 555, §6 (NEW).]

B. The resolution authorizing the issuance of bonds under this section or any trust agreement securing those bonds may provide that all or a sufficient amount of revenues, after providing for the payment of the cost of repair, maintenance and operation and reserves as may be provided in the resolution or trust agreement, must be set aside at regular intervals as provided in the resolution or trust agreement and deposited in a fund for the payment of the interest on and the principal of bonds issued under this section as the interest and principle become due and for the redemption price or purchase price of bonds retired by call or purchase. The use and disposition of money of the fund are subject to any regulations provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds and, except as may otherwise be provided in the resolution or trust agreement, the fund must be a fund for the benefit of all bonds without distinction or priority of one over another. [2013, c. 555, §6 (NEW).]

[2013, c. 555, §6 (NEW) .]

5. **Trust funds.** Notwithstanding any other law, all funds received pursuant to the authority of a standard district's charter are trust funds, to be held and applied solely as provided in the charter of the standard district. The resolution authorizing the issuance of bonds or the trust agreement securing the bonds must provide that any officer to whom, or bank, trust company or other fiscal agent to which, the funds are paid must act as trustee of the funds and must hold and apply the funds for the purposes of the standard district in accordance with its charter, subject to any regulations as may be provided in the resolution or trust agreement or as may be required by the charter of the standard district.

[2013, c. 555, §6 (NEW) .]

6. **Remedies.** A holder of bonds issued under this section or of any of the coupons appertaining to the bonds, and the trustee under a trust agreement, except to the extent the rights given may be restricted by the resolution authorizing the issuance of those bonds or trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of a receiver to take possession and control of the properties of the standard district, protect and enforce all rights under the laws of the State, including this section, or under the resolution or trust agreement. A holder of bonds issued under this section or of any of the coupons appertaining to the bonds and the trustee under a trust agreement may enforce and compel the performance of all duties required by the standard district charter or by the resolution or trust agreement to be performed by the standard district or by any officer of the standard district, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by the standard district.

[2013, c. 555, §6 (NEW) .]

7. **Refunding bonds.** A standard district by resolution of its board of trustees, without district vote, may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. The refunding bonds may be issued at a time prior to the maturity or redemption of the refunded bonds that the board of trustees determines to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium, any interest accrued or to accrue to the date of payment of the bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded and any reserves for debt service or

other capital or current expenses from the proceeds of the refunding bonds that may be required by a trust agreement or resolution securing bonds. The issue of refunding bonds, the maturities and other details of those bonds, the security for those bonds, the rights of the holders and the rights, duties and obligations of the standard district in respect to those bonds are governed by the applicable provisions of the standard district charter relating to the issue of bonds other than refunding bonds.

[2013, c. 555, §6 (NEW) .]

8. **Tax exemption.** All bonds, notes or other evidences of indebtedness issued under the standard district's charter and the transfer of and the income from those bonds, notes or other evidences of indebtedness, including any profit made on the sale, are exempt from taxation in the State.

[2013, c. 555, §6 (NEW) .]

9. **Bonds declared legal investments.** Bonds and notes issued by a standard district under this section are securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, retirement funds and other persons carrying on a banking business, and all other persons authorized to invest in bonds or other obligations of the State may properly and legally invest funds, including capital in their control or belonging to them. The bonds and notes are securities that may properly and legally be deposited with and received by any state, municipal or public officer, or any agency or political subdivision of the State, for any purpose for which the deposit of bonds or other obligations of the State is authorized by law.

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1053. DEBT LIMIT; APPROVAL BY VOTERS OF A STANDARD DISTRICT

1. **Debt limit proposed.** Prior to issuing on behalf of a standard district any bond, note or other evidence of indebtedness payable within a period of more than 12 months after the date of issuance, the trustees shall propose a debt limit for the standard district that the trustees must submit for approval in a districtwide referendum. The referendum must be called, advertised and conducted according to the law relating to municipal elections in Title 30-A, chapter 121, except the standard district's registrar of voters is not required to prepare or the clerk to post a new list of voters. The referendum may be held outside the territory of the standard district if the usual voting place for persons located in the standard district is located outside the territory of the standard district. For the purpose of registering voters, the registrar of voters must be in session on the regular workday preceding the election. The question presented must be in substantially the following form:

"Do you favor establishing the debt limit of the (insert name of standard district) at (insert amount)?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion on the question.

[2013, c. 555, §6 (NEW) .]

2. **Results declared.** The results of the referendum held under subsection 1 must be declared by the trustees and entered upon the standard district's records. Due certificate of the results must be filed by the clerk with the Secretary of State.

[2013, c. 555, §6 (NEW) .]

3. **Effective date.** A debt limit proposal becomes effective upon its acceptance by a majority of the legal voters within the standard district voting at the referendum. Failure of approval by the majority of voters voting at the referendum does not prevent subsequent referenda from being held for the same purpose. The costs of referenda are borne by the standard district.

[2013, c. 555, §6 (NEW) .]

4. **Total debt.** Trustees may not issue any bond, note or other evidence of indebtedness payable within a period of more than 12 months after the date of issuance unless the total amount of the debt issued by the trustees is no more than the amount approved by referendum under this section.

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1054. AUTHORITY TO INCREASE DEBT LIMITS; SEWER DISTRICTS

1. **Debt limit.** Notwithstanding any provision of a sewer district's charter to the contrary, a sewer district may increase its debt limit by referendum in accordance with this section. A sewer district is not required to use the procedure provided by this section and may seek to increase its debt limit by any other lawful means, including pursuant to any other means described in the sewer district's charter or by seeking legislative amendment to its charter.

[2013, c. 555, §6 (NEW) .]

2. **Referendum.** If a sewer district chooses to increase its debt limit pursuant to this section, the governing body of the sewer district shall propose a new debt limit and submit the proposal for approval at a districtwide referendum. The referendum must be called, advertised and conducted according to the law relating to municipal elections in Title 30-A, chapter 121, except the registrar of voters is not required to prepare or the clerk to post a new list of voters. The referendum may be held outside the territory of the sewer district if the usual voting place for persons located within the sewer district is located outside the territory of the sewer district. For the purpose of registering voters, the registrar of voters must be in session on the regular work day preceding the election. The question presented must conform to the following:

> "Do you favor changing the debt limit of the (insert name of sewer district) from (insert current debt limit) to (insert proposed debt limit)?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion on the question.

The results must be declared by the governing body of the sewer district and entered upon the sewer district's records. Due certificate of results must be filed by the clerk with the Secretary of State.

[2013, c. 555, §6 (NEW) .]

3. **Approval.** A debt limit proposal becomes effective upon its acceptance by a majority of the legal voters within the sewer district voting at the referendum. Failure of approval by the majority of legal voters voting at the referendum does not prevent subsequent referenda from being held for the same purpose. The cost of referenda are borne by the sewer district.

[2013, c. 555, §6 (NEW) .]

SECTION HISTORY
2013, c. 555, §6 (NEW).

§1055. MUTUAL FUNDS; SEWER DISTRICTS

A sewer district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the term of any instrument creating the funds does not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to, and not in limitation of, any power of a sewer district to invest its funds. [2013, c. 555, §6 (NEW).]

SECTION HISTORY
2013, c. 555, §6 (NEW).

Chapter 11: SANITARY DISTRICTS

Subchapter 1: GENERAL PROVISIONS

§1061. SHORT TITLE

This chapter shall be known and may be cited as the Maine Sanitary District Enabling Act. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1062. DECLARATION OF POLICY

It is declared to be the policy of the State to encourage the development of sanitary districts consisting of: [1971, c. 400, §1 (RPR).]

1. **Municipality.** A municipality;

[1971, c. 400, §1 (RPR) .]

2. **Municipalities.** Two or more municipalities;

[1971, c. 400, §1 (RPR) .]

3. **-- sections.** A section or sections of sufficient size of a municipality or 2 or more municipalities;

[1971, c. 400, §1 (RPR) .]

4. **Unorganized territory.** A sufficient number of persons residing in unorganized territory; or

[1971, c. 400, §1 (RPR) .]

5. **Combination.** Any combination of the foregoing, so that said districts may economically construct and operate sewage systems so as to assist in the abatement of the pollution of public streams, lakes and inland and ocean waters and enhance the public health, safety and welfare of the citizens of the State.

[1971, c. 400, §1 (RPR) .]

A sanitary district may only be formed where the Board of Environmental Protection finds that there is a need throughout a part or all of the territory embraced within the proposed district for the accomplishment of the purpose of providing an adequate, efficient system and means of collecting, conveying, pumping, treating and disposing of domestic sewage and industrial wastes within the proposed district and that such purposes can be effectively accomplished therein on an equitable basis by a sanitary district if created and that the creation and maintenance of such a district will be administratively feasible and in furtherance of the public health, safety and welfare. [1981, c. 466, §1 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §1 (AMD). 1969, c. 431, §9 (AMD). 1971, c. 400, §1 (RPR). 1971, c. 618, §12 (AMD). 1981, c. 466, §1 (AMD).

§1063. PURPOSE

The purpose of each sanitary district formed under this chapter shall be to construct, maintain, operate and provide a system of sewerage, sewage and commercial and industrial waste disposal and sewage treatment and of storm and surface water drainage, for public purposes and for the health, welfare, comfort and convenience of the inhabitants of the district. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1064. EXEMPTION FROM TAXATION

The property, both real and personal, rights and franchises of any sanitary district formed under this chapter shall be forever exempt from taxation. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1065. POWERS EXERCISED ACCORDING TO GENERAL LAWS

(REPEALED)

SECTION HISTORY
1965, c. 310, (NEW). 1975, c. 461, §1 (RP).

§1066. PROVISIONS SUPPLEMENTAL TO OTHER LAW

This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1067. REIMBURSEMENT OF COSTS TO MUNICIPALITIES

Any municipality or municipalities which fall within a sanitary district formed under this Act shall be entitled to reimbursement from said sanitary district when the sanitary district is in a position to reimburse said costs. The term "costs" as used in this section shall include but shall not be limited to the following cost of preparation of an engineering study or studies; legal costs with relation to the application and presentation of any application for the formation of a sanitary district; other engineering costs that may not be included in a study; costs for financial advice; administrative expense and such other expense as may be necessary or incident to the action of any municipality under this Act. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1068. LEASE OF PROPERTY BY SANITARY DISTRICT

Nothing in this chapter is intended to limit the authority of a sanitary district to enter into a lease and leaseback transaction with respect to some or all of its real or personal property, other than land, and to take all other action necessary or desirable, including, but not limited to, the granting of mortgages and liens, to effectuate the transaction. For purposes of this section, "lease" includes a lease of any length, including leases that may be defined as sales for income tax purposes. [2003, c. 267, §2 (NEW).]

SECTION HISTORY

2003, c. 267, §2 (NEW).

Subchapter 2: ORGANIZATION

§1101. FORMATION

The formation of a sanitary district is accomplished as follows. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §211 (AMD).]

1. **Application.** The municipal officers of the municipality or municipalities, or portions thereof, or the residents of unorganized territory, that desire to form a sanitary district shall file an application with the Board of Environmental Protection on a form or forms to be prepared by the commissioner, setting forth the name or names of the municipality or municipalities, or portions thereof, or, in the case of residents of unorganized territory, the names of the residents, that propose to be included in a proposed district, and shall furnish other data as the board may determine necessary and proper. The application must contain, but is not limited to, a description of the territory of the proposed district, the name proposed for the district which must include the words "Sanitary District," a statement showing the existence in the territory of the conditions requisite for the creation of a sanitary district as prescribed in section 1062. A copy of an engineering study or studies must be filed with the application.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §212 (AMD) .]

1-A. **Application by referendum.** Residents of a municipality or municipalities, or portions thereof, that desire to form a sanitary district may petition the municipal officers to file an application for a sanitary district with the Board of Environmental Protection. The petition shall contain a description of the territory of the proposed district.

Upon receipt of a written petition signed by at least 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in that proposed district, the municipal officers shall submit the question to the voters of the proposed district at the next general, primary or special election within the proposed district. The referendum question shall read as follows:

> "Shall the municipal officers representing the proposed sanitary district, consisting of (describe the territory of the proposed district), file an application for a sanitary district with the Board of Environmental Protection on behalf of the residents of the proposed district?"

If the referendum question is approved by a majority of the legal voters voting at the election, provided that the total number of votes cast for and against the referendum question equaled or exceeded 20% of the total number of votes cast in the proposed district in the last gubernatorial election, the municipal officers representing the residents of the proposed sanitary district shall file an application for that proposed district in accordance with subsection 1.

[1981, c. 466, §2 (NEW) .]

2. **Public hearing.** Upon receipt of the application, the Board of Environmental Protection shall cause a public hearing to be held thereon, in one of the municipalities within the proposed district, or, in the case of an application made solely by residents of unorganized territory, at some convenient place within the boundaries of the proposed district.

[1977, c. 300, §50 (AMD) .]

3. **Approval of application.** After the public hearing on the evidence received at the hearing, the board shall make findings of fact and conclusions thereon and determine of record whether or not the conditions requisite for the creation of a sanitary district exist in the territory described in the application. If the board finds that those conditions do exist, it shall issue an order approving the proposed district as conforming

to the requirements of this chapter and designating the name of the proposed district. The commissioner shall give notice to the municipal officers within the municipality or municipalities involved, and where unorganized territory is involved, to the persons signing the application mentioned in subsection 1 and to the commissioners of the county wherein the unorganized territory is located, of a date, time and place of a meeting of the municipal officers of the municipality or municipalities involved, and, where unorganized territory is involved, a joint meeting of all the persons signing the application mentioned in subsection 1 and of the commissioners of the county in which the unorganized territory is located. The notice must be in writing and sent by registered or certified mail, return receipt requested, to the addresses shown on the application mentioned in subsection 1 and, in the case of county commissioners, to the addresses of the county commissioners obtained from the county clerk. A return receipt properly endorsed is evidence of the receipt of notice. The notice must be mailed at least 10 days prior to the date set for the meeting.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §212 (AMD) .]

4. **Denial of application.** If the board after a public hearing determines that the creation of a sanitary district in the territory described in the application is not warranted for any reason, it shall make findings of fact and conclusions thereon and enter an order denying its approval. The board shall give notice of the denial by mailing certified copies of the decision and order to the municipal officers of the municipality or municipalities involved, and, where unorganized territory is involved, to the persons signing the application mentioned in subsection 1 and to the commissioners of the county in which the unorganized territory is located. No application for the creation of a sanitary district, consisting of exactly the same territory, may be entertained within one year after the date of the issuance of an order denying approval of the formation of the sanitary district, but this provision does not preclude action on an application for the creation of a sanitary district embracing all or part of the territory described in the original application, provided that another municipality or fewer municipalities, or other or fewer sections thereof are involved, or that a different area of unorganized territory is involved, or, in the case of an application made solely by residents of unorganized territory, that an allegation of change in circumstances from those existing on the date of the previous application must be furnished to the commissioner with the resubmitted application.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §212 (AMD) .]

5. **Appeal.**

[1977, c. 300, §51 (RP) .]

6. **Joint meeting.** The persons to whom the notice described in subsection 3 is directed shall meet at the time and place appointed. In the case where more than one municipality or where unorganized territory is involved, they shall organize by electing a chair and a secretary. No action may be taken at this meeting unless at the time of convening thereof there are present at least 1/2 of the total number of municipal officers eligible to attend and participate at the meeting, and, where the proposed district includes or is composed solely of unorganized territory, at least 2/3 of the persons signing the application mentioned in subsection 1 and at least 2 commissioners of the county wherein such unorganized territory is located, other than to report to the Commissioner of Environmental Protection that a quorum was not present and to request the commissioner to issue a new notice for another meeting. The purpose of the meeting is to determine a fair and equitable number of trustees, subject to section 1104, to be elected by and to represent each participating municipality, or in the case of unorganized territory, the residents of the territory within the bounds of the proposed district. When a decision has been reached on the number of trustees and the number to represent each municipality or the residents of the unorganized territory within the bounds of the proposed district, subject to the limitations provided, this decision must be reduced to writing by the secretary and must be approved by a 2/3 vote of those present. Where 2 or more municipalities are or unorganized territory is involved, the vote so reduced to writing and the record of the meeting must be signed by the chair and attested

by the secretary and filed with the commissioner. In cases where a single municipality is involved, a copy of the vote of the municipal officers duly attested by the clerk of the municipality must be filed with the commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §212 (AMD) .]

7. **Submission.** When the record of the municipality or the record of the joint meeting, when municipalities are or unorganized territory is involved, has been received by the Commissioner of Environmental Protection and found by the commissioner to be in order, the commissioner shall order the question of the formation of the proposed sanitary district and other questions relating thereto to be submitted to the legal voters residing within the portion of the municipality, municipalities or unorganized territory that falls within the proposed sanitary district. The order must be directed to the municipal officers of the municipality or municipalities that propose to form said sanitary district, and, when the proposed sanitary district includes or is composed solely of unorganized territory, to the commissioners of the county in which the unorganized territory is located, directing them to forthwith call town meetings, city elections or a meeting of the residents of the unorganized territory within the bounds of the proposed sanitary district, as the case may be, for the purpose of voting in favor of or in opposition to each of the following articles or questions, as they may apply, in substantially the following form:

A. To see if the town (or city) of (name of town or city) will vote to incorporate as a sanitary district to be called (name) Sanitary District; [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §212 (AMD).]

B. To see if the residents of the following described section of the town (or city) of (name of town or city) will vote to incorporate as a sanitary district to be called (name) Sanitary District: (legal description of the bounds of section to be included); [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §212 (AMD).]

C. To see if the residents of the (following described section of) (name of town or city) (unorganized territory) will vote to join with the residents of the (following described section of) (name of town or city) (unorganized territory) to incorporate as a sanitary district to be called (name) Sanitary District: (legal description of the bounds of the proposed sanitary district, except when district is to be composed of entire municipalities); [1991, c. 548, Pt. A, §30 (AMD).]

D. To see if the inhabitants of the following described section of that unorganized territory known as Township (number), Range (number) will vote to incorporate as a sanitary district to be called (name) Sanitary District: (legal description of the bounds of the proposed sanitary district); [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §212 (AMD).]

E. To see if the residents of (the above described section of) (name of town or city) will vote to approve the total number of trustees and the allocation of representation among the municipalities (and included section of unorganized territory) on the board of trustees as determined by the municipal officers (and the persons representing the included area of unorganized territory) and listed as follows.

The total number of trustees will be (number) and the residents of (the above described section of) (town or city) are entitled to (number) trustees (and the residents of the above described section of unorganized territory are entitled to (number) trustees); and [1991, c. 548, Pt. A, §30 (AMD).]

F. To choose (number) trustees to represent the residents of (the above described section) of (town or city) (unorganized territory) on the board of trustees of the (name) Sanitary District. [1971, c. 400, §2 (RPR).]

At any such town meeting, city election or election by the residents of the proposed sanitary district, trustees must be chosen to represent the municipality or the unorganized territory within the proposed sanitary district in the manner provided in section 1105.

[1991, c. 548, Pt. A, §30 (AMD) .]

SECTION HISTORY

1965, c. 310, (NEW). 1967, c. 431, §9. 1967, c. 524, §2 (AMD). 1971, c. 400, §2 (RPR). 1971, c. 618, §12 (AMD). 1977, c. 300, §§50,51 (AMD). 1981, c. 466, §2 (AMD). 1989, c. 890, §§A40,B211, 212 (AMD). 1991, c. 548, §§A30,31 (AMD).

§1101-A. FEES

The commissioner may establish reasonable application fees for processing applications for the formation of districts under this chapter or chapter 11-A. The commissioner shall place these fees into a nonlapsing dedicated revenue account, and funds from the account may be used by the department or the board only to pay costs associated with processing applications for the formation of districts under this chapter or chapter 11-A. [2005, c. 556, §3 (NEW).]

SECTION HISTORY
2005, c. 556, §3 (NEW).

§1102. APPROVAL AND ORGANIZATION

When the residents of the municipality, or each municipality, where more than one is involved, or of the unorganized territory within the proposed sanitary district, have voted upon the formation of a proposed sanitary district and all of the other questions submitted therewith, the clerk of each of the municipalities, and, where the proposed district includes unorganized territory, the county clerk, shall make a return to the Commissioner of Environmental Protection in such form as the commissioner shall determine. If the commissioner finds from the returns that a majority of the residents within each of the municipalities involved, and, where the proposed district includes unorganized territory, that a majority of the residents of the unorganized territory within the proposed sanitary district, voting on each of the articles and questions submitted to them, have voted in the affirmative, and they have elected the necessary trustees and the names thereof to represent each municipality, or the residents of the unorganized territory within the proposed sanitary district, and that all other steps in the formation of the proposed sanitary district are in order and in conformity with law, the commissioner shall make a finding to that effect and record the same upon the department's records. The commissioner shall, immediately after making these findings, issue a certificate of organization in the name of the sanitary district in such form as the commission shall determine. The original certificate must be delivered to the trustees on the day that they are directed to organize and a copy of the certificate duly attested by the commissioner must be filed and recorded in the Office of the Secretary of State. The issuance of a certificate by the commissioner is conclusive evidence of the lawful organization of the sanitary district. The sanitary district is not operative until the date set by the commissioner under section 1106. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §213 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §3 (AMD). 1969, c. 431, §9 (AMD). 1971, c. 400, §3 (RPR). 1971, c. 618, §12 (AMD). 1973, c. 537, §43 (AMD). 1989, c. 890, §§A40,B213 (AMD).

§1103. TRANSFER OF PROPERTY AND ASSETS

When the territory of a municipality falls within a sanitary district which has been issued its certificate of organization and has assumed the management and control of the operation of the sewage facilities within its territorial limits, the trustees of said sanitary district shall determine what sewer property or properties including treatment plants owned by any municipality within said sanitary district shall be necessary to carry on the functions of the sanitary district and shall request in writing that the municipal officers of any municipality within said sanitary district convey the title to such sewer property to such sanitary district and said municipal officers shall make such conveyance without payment of consideration. [1965, c. 310, (NEW).]

SECTION HISTORY

1965, c. 310, (NEW).

§1104. TRUSTEES

1. **Authorization.** All the affairs of a sanitary district are managed by an elected board of trustees which consists of not less than 3 trustees, or not less than 5 trustees in sanitary districts involving more than one municipality or one or more municipalities and residents of an unorganized territory. The exact number of trustees is determined in accordance with section 1101. A sanitary district may alter the number of trustees by submitting the proposed alteration to the voters in the same manner as provided in section 1101, subsection 7. No municipality or unorganized territory within any sanitary district may have less than one trustee. A quorum of the trustees may conduct the affairs of the district even if there is a vacancy on the board of trustees.

In the case of a sanitary district whose territory does not extend beyond the boundaries of a single municipality and whose territory encompasses less than the entire area of the municipality, all trustees must be residents of the municipality and a majority of the trustees must be residents within the district. A trustee who ceases to qualify for the office of trustee as a result of the application of this subsection shall vacate the office of trustee and the vacancy must be filled as provided in section 1105.

[1999, c. 299, §1 (AMD) .]

2. **Recall.** Trustees may be recalled under the following provisions.

A. The qualified electors of the sanitary district may petition for the recall of any trustee after the first year of the term for which the trustee is elected by filing a petition with the municipal clerk, or the county commissioners in the case of unorganized territory, demanding the recall of the trustee. A trustee may be subject to recall for misfeasance, malfeasance or nonfeasance in office. The petition shall be signed by electors of the political subdivision which that trustee represents equal to at least 25% of the vote cast for the office of Governor at the last gubernatorial election within the political subdivision of the trustee being recalled. The recall petition shall state the reason for which removal is sought. [1981, c. 466, §3 (NEW).]

B. Within 3 days after the petition is offered for filing, the official with whom the petition is left shall determine by careful examination whether the petition is sufficient and so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, it shall again be carefully examined to determine sufficiency and a certificate stating the findings shall be attached. Immediately upon finding an original or amended petition sufficient, the official shall file the petition and call a special election to be held not less than 40 days nor more than 45 days from the filing date. The official shall notify the trustee, against whom the recall petition is filed, of the special election. [1981, c. 466, §3 (NEW).]

C. The trustee against whom the recall petition is filed shall be a candidate at the special election without nomination, unless he resigns within 10 days after the original filing of the petition. There shall be no primary. Candidates for the office may be nominated under the usual procedure of nomination for a primary election by filing nomination papers, not later than 5 p.m., 4 weeks preceding the election and have their names placed on the ballot at the special election. [1981, c. 466, §3 (NEW).]

D. The official against whom a recall petition has been filed shall continue to perform the duties of his office until the result of the special election is officially declared. The person receiving the highest number of votes at the special election shall be declared elected for the remainder of the term. If the incumbent receives the highest number of votes, he shall continue in office. If another receives the highest number of votes, he shall succeed the incumbent, if he qualifies, within 10 days after receiving notification. [1981, c. 466, §3 (NEW).]

E. After one recall petition and special election, no further recall petition may be filed against the same official during the term for which he was elected. [1981, c. 466, §3 (NEW).]

[1981, c. 466, §3 (NEW) .]

3. **Trustees retirement.** Persons who have not been trustees prior to January 1, 1987, and who are not full-time employees, shall not be eligible to become members of the Maine Public Employees Retirement System as a result of their selection as trustees.

[1987, c. 256, §46 (RPR); 2007, c. 58, §3 (REV) .]

SECTION HISTORY
1965, c. 310, (NEW). 1981, c. 466, §3 (RPR). 1987, c. 256, §46 (AMD). 1999, c. 299, §1 (AMD). 2007, c. 58, §3 (REV).

§1105. ELECTION OF TRUSTEES

Trustees shall be nominated and elected in the same manner as municipal officers are nominated and elected under Title 30-A, or in accordance with a municipal charter, whichever is applicable; or, in the case of unorganized territory, in accordance with the procedure for the organization of larger townships set forth in Title 30-A, section 7001, subsection 2. Upon receipt of the names of all the trustees, the Commissioner of Environmental Protection shall set a time, place and date for the first meeting of the trustees, notice thereof to be given to the trustees by certified or registered mail, return receipt requested, mailed at least 10 days prior to the date set for the meeting, to determine the length of their terms. The terms are determined by lot in accordance with the following table:

TERM			
Total number of Trustees	1 year	2 years	3 years
5	1	2	2
6	2	2	2
7	2	2	3
8	2	3	3
9	3	3	3
10	3	3	4
11	3	4	4
12	4	4	4
13	4	4	5
14	4	5	5
15	5	5	5
16	5	5	6
17	5	6	6
18	6	6	6

The trustees shall enter on their records the determination so made. The trustees shall serve their terms as determined at the organizational meeting, except that trustees representing a municipality shall serve an additional period until the next regular election of the municipality, and thereafter those trustees' terms of office date from the time of each regular municipal election; and except that trustees representing residents of unorganized territory shall serve until an election to fill the vacancy caused by the expiration of their terms is called by the county commissioners; and those commissioners shall call the election in the same manner as is provided for the initial election of trustees and on a date closely following the date upon which those terms expire.

[1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §214 (AMD).]

In the case of a sanitary district whose territory does not extend beyond the boundaries of a single municipality and whose territory encompasses less than the entire area of the municipality, when the term of office of a trustee expires, the trustee's successor must be elected at large by a plurality vote of the voters within the territory of the district. [1999, c. 299, §2 (NEW).]

They shall organize by election from their own members a chairman, a vice-chairman, a treasurer and a clerk and choose and employ and fix the compensation of such other necessary officers and agents who shall serve at their pleasure, and they shall adopt a corporate seal. Prior to the election of said officers each trustee shall be sworn to the faithful performance of his duties. [1967, c. 524, §4 (AMD).]

The trustees may from time to time adopt, establish and amend by bylaws consistent with the laws of the State of Maine, and necessary for their own convenience and the proper management of the affairs of the district and perform any other acts within the powers delegated to them by law. [1965, c. 310, (NEW).]

After the original organizational meeting the trustees shall meet annually at a time determined by their bylaws for the purpose of electing from among the members a chairman, vice-chairman, treasurer and clerk to serve until the next annual election and until their successors are elected and qualified. The treasurer shall furnish bond in such sum and with such sureties as the trustees shall approve, the cost thereof to be paid by the district. The chairman, vice-chairman, treasurer and clerk may receive such compensation for serving in these capacities as the trustees shall determine. This compensation shall be in addition to the compensation payable to them as trustees. The trustees shall make and publish an annual report including a report of the treasurer. [1967, c. 524, §4 (AMD).]

At the expiration of the terms so determined the vacancy shall be filled for a term of 3 years and the trustees shall notify the municipal officers of the municipalities within the sanitary district before the annual town meeting or before the regular city election if a city falls within the sanitary district; or, in the case of unorganized territory, the trustees shall notify the commissioners of the county wherein the unorganized territory, encompassed by the sanitary district, is located, of the fact that a vacancy will occur so that the municipal officers in these municipalities or the county commissioners, as the case may be, may provide for the election of a trustee or trustees to fill the vacancy that will occur. All trustees shall serve until their successors are elected and qualified. The trustees shall receive compensation as recommended by them and approved by majority vote of the municipal officers in municipalities representing a majority of the population within the district, including compensation for any duties they perform as officers as well as for their duties as trustees. Certification thereof shall be recorded with the Secretary of State and recorded in the bylaws. Their compensation for duties as trustees shall be on the basis of such specific amount as may be specified in the bylaws, each meeting actually attended and reimbursement for travel and expenses, with the total not to exceed such specific amount as may be specified in the bylaws. Compensation schedules in effect in January 1, 1982, shall continue in effect until changed. [1981, c. 466, §4 (AMD).]

When a vacancy on the board of trustees occurs by reason of death, resignation or otherwise, the municipal officers of the municipality that the trustee represented shall fill the vacancy by electing a trustee from the municipality to serve until the municipality shall fill the vacancy at its next annual town meeting or next regular city election. In the case of a vacancy in the office of a trustee representing unorganized territory, the commissioners of the county wherein such unorganized territory is located shall fill the vacancy by electing a trustee from such unorganized territory and resident within the boundaries of the sanitary district until the next election of trustees is held. The person so chosen shall serve until his successor is elected and qualified. In case any member of the board of trustees shall remove from the municipality that he represents, or, in the case of a trustee representing unorganized territory, in case such trustee shall remove without the boundaries of the sanitary district, a vacancy shall be declared to exist by the board of trustees, and the municipal officers or the county commissioners, as the case may be, shall thereafter choose another trustee as provided. [1967, c. 524, §4 (AMD).]

No member of the board of trustees shall be employed for compensation as an employee or in any other capacity by the sanitary district of which he is a trustee, except as provided. [1967, c. 524, §4 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §4 (AMD). 1969, c. 431, §9 (AMD). 1971, c. 618, §12 (AMD). 1981, c. 466, §4 (AMD). 1987, c. 737, §§C93,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 104, Pt. C, §§8, 10 (AMD). 1989, c. 890, §§A40,B214 (AMD). 1989, c. 890, Pt. A, §40 (AFF). 1989, c. 890, Pt. B, §214 (AMD). 1999, c. 299, §2 (AMD).

§1106. OPERATIONAL DATE OF SANITARY DISTRICTS

Notwithstanding the prior issuance of a certificate of organization, a sanitary district is not in operation and may not exercise any of its powers granted in this chapter until the date set by the Commissioner of Environmental Protection as provided in section 1105. On that date, the sanitary district becomes operative and the trustees shall assume the management and control of the operation of all of the public sewers, storm and surface water drains, treatment plants and related structures within the sanitary district, and the municipalities and residents of unorganized territory within the sanitary district on and after the operational date have no responsibility for the operation or control of the public sewers and storm and surface water drains and treatment plants within their respective jurisdictions other than to pay for services rendered to the municipality or residents by the sanitary district. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §215 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §5 (AMD). 1969, c. 431, §9 (AMD). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A40,B215 (AMD).

Subchapter 3: POWERS

§1151. POWERS

Each sanitary district formed under this chapter shall have the power, within the district, within the territory of any adjoining municipality, and within any adjoining unorganized territory, to lay pipes, drains, sewers and conduits, and to take up, repair and maintain the same or to contract for the same to be done, in, along and through any public or private ways and public grounds, and in, along and through lands of any person or corporation, to and into tidal waters, rivers, watercourses and treatment works or to or into any drain or sewer now or hereafter built which empties into tidal waters, rivers, watercourses and treatment works, the discharge therefrom to be at such points consistent with the requirements of public health as shall be found convenient and reasonable for said district and the flow of existing watercourses; to construct and maintain treatment works, pumping stations, basins, reservoirs, flush tanks and such other appliances for collecting, holding, purifying, distributing and disposing of sewage matter and commercial and industrial waste and of storm and surface water, all as may be necessary or proper; and in general, do any or all other things necessary or incidental to accomplish the purposes of the district. [1967, c. 524, §6 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §6 (AMD).

§1151-A. ENFORCEMENT POWER

A sanitary district may seek in a civil action injunctive relief from an industrial user that violates any pretreatment standard or requirement administered by the district. The district may seek a civil penalty of up to $1,000 a day for each violation by an industrial user of a pretreatment standard or requirement. [1991, c. 213, §1 (NEW).]

SECTION HISTORY
1991, c. 213, §1 (NEW).

§1152. RIGHT OF EMINENT DOMAIN

Each sanitary district formed under this chapter is authorized and empowered to acquire and hold real and personal property necessary or convenient for its purposes, and is granted the right of eminent domain, and for such purposes is authorized to take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, as for public uses any land, real estate, easements or interest therein, and any sewers, drains or conduits and any sewer or drainage rights necessary for constructing, establishing, maintaining and operating sewers, drains, reservoirs, flush tanks, manholes, catch basins, treatment works, pumping stations and other appliances and property used or useful for collecting, holding, purifying, distributing and disposing of sewage matter and commercial and industrial waste and surface and waste waters. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1152-A. PROCEDURE IN EXERCISE OF RIGHT OF EMINENT DOMAIN

The right of eminent domain granted in section 1152 may only be exercised after complying with the following procedures. [1981, c. 466, §5 (NEW).]

1. **Notice to owner.** The district shall provide notice to the owner as follows.

A. The owner or owners of record shall be notified as follows:

(1) The determination of the trustees that they will exercise the right of eminent domain;

(2) A description and scale map of the land or easement to be taken;

(3) The final amount offered for the land or easement to be taken, based on the fair value, as estimated by the district; and

(4) Notice of the time and place of the hearing provided in subsection 3. [1981, c. 466, §5 (NEW).]

B. Notice may be made:

(1) By personal service in hand by an officer duly qualified to serve civil process in this State; or

(2) By certified mail, return receipt requested, to his last known address. [1981, c. 466, §5 (NEW).]

C. Alternate notice. If the owner or owners are not known or if they cannot be notified by personal service or certified mail, notice may be given by publication in the same manner as provided in subsection 3. [1981, c. 466, §5 (NEW).]

[1981, c. 466, §5 (NEW) .]

2. **Notice to tenant.** Notice shall be made to any tenants in the same manner as for the owner.

[1981, c. 466, §5 (NEW) .]

3. **Hearing.** The trustees shall hold a public hearing on the advisability of the proposed exercise of the right of the eminent domain. Notice of the hearing shall be made by publication in a newspaper of general circulation in the area of the taking and shall be given once a week for 2 successive weeks, the last publication to be at least 2 weeks prior to the time appointed in the hearing. The hearing notice shall include:

A. The time and place of the hearing; [1981, c. 466, §5 (NEW).]

B. A description of the land or easement taken; and [1981, c. 466, §5 (NEW).]

C. The owners, if known. [1981, c. 466, §5 (NEW).]

[1981, c. 466, §5 (NEW) .]

SECTION HISTORY
1981, c. 466, §5 (NEW).

§1153. CONDEMNATION PROCEEDINGS

Each sanitary district formed under this chapter, in exercising from time to time the right of eminent domain conferred upon it by section 1152, shall file in the office of the county commissioners of the county in which the property to be taken is located and cause to be recorded in the registry of deeds in said county plans of the location of all lands, real estate, easements or interest therein, and sewers, drains or conduits and any sewer or drainage rights to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason any such district fails to acquire property which it is authorized to take and which is described in such location, or if the location so recorded is defective and uncertain, it may, at any time, correct and perfect such location and file a new description thereof; and in such case any such district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and any such district shall not be liable for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of 10 days from such filing, whereupon possession may be had of all said lands, real estate, easements or interests therein and other property and rights as aforesaid to be taken, but title thereto shall not vest in the district until payment therefor. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1154. APPEAL

If any person sustaining damages by any taking by a sanitary district under section 1153 shall not agree with such district upon the sum to be paid therefor, either party, upon petition to the county commissioners of the county in which the property is located, may have said damages assessed by them; the procedure and all subsequent proceedings and right of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways by the county commissioners, except only:

0.

A. Title to the lands, real estate, easements or interests therein and other property and rights to be taken shall not vest in the district until payment to the owner of the amount awarded therefor or, if such payment is refused upon tender, until tender thereof to the Treasurer of the County in which lands and interests are located, for escrow at interest for the benefit of the owner pending final determination of the amount to which the owner is entitled; and [1983, c. 444, (NEW).]

B. In the event of an appeal of the amount awarded as damages for such taking.

(1) The petition for assessment of damages shall be filed with the clerk of the county commissioners, by either party, within 30 days following the filing and recording of plans of the location of all the property, facilities and rights taken; and

(2) If the return of the county commissioners has not been made within 120 days following the filing of the petition for assessment, the county commissioners shall be conclusively presumed to have confirmed the award of damages by the district and either party may, within 30 days following that 120 day period, appeal the amount of the damages awarded by the district to the Superior Court. [1983, c. 444, (NEW).]

[1983, c. 444, (AMD) .]

SECTION HISTORY
1965, c. 310, (NEW). 1983, c. 444, (AMD).

§1155. CROSSING OTHER PUBLIC UTILITIES

If any sewer line of any sanitary district formed under this chapter crosses the property or line of any other public utility, unless consent is given by such other public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by such district, the Public Utilities Commission shall determine the place, manner and conditions of such crossing; and all work on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district. If any sewer line of any sanitary district as provided above crosses the property or line of any railroad corporation, the procedure shall be the same as stated in the preceding sentence, except that the Department of Transportation shall be substituted for the Public Utilities Commission. Nothing herein contained shall be construed as authorizing any such sanitary district to take by right of eminent domain any of the property or facilities of any other public utility used, or acquired for future use by the owner thereof, in the performance of a public duty unless expressly authorized by special Act of the Legislature. [1981, c. 469, §61 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1981, c. 469, §61 (AMD).

§1156. ENTRY OF PRIVATE SEWER

Any person may enter his private sewer into any sewer of a sanitary district formed under this chapter while the same is under construction and before completion of such sewer at the point of entry, on obtaining a permit in writing from the trustees of the district; but after the sewer is completed to the point of entry and an entrance charge established on that location, no person shall enter his private sewer into such sewer until he has paid the entrance charge and obtained a permit in writing from the trustees. All such permits shall be recorded by the clerk of the district in its records before the same are issued. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1157. CONTRACTS FOR DISPOSAL OF SEWAGE

Any sanitary district formed under this chapter is authorized to contract with persons, corporations, districts and other municipalities, both inside and outside the boundaries of the district, and with the State of Maine and the United States Government or any agency of either, to provide for disposal of sewage and commercial and industrial waste and storm and surface water through the district's system and through the system of any such person, corporation, district or other municipality; and every other district and municipality of the State of Maine is authorized to contract with such sanitary district for the collection, distribution, treatment and disposal of sewage and commercial and industrial waste and storm and surface water, and for said purposes any such municipality may raise money as for other municipal charges. [1965, c. 310, (NEW).]

SECTION HISTORY

1965, c. 310, (NEW).

§1158. CONDITIONS FOR CARRYING OUT WORK

When any sanitary district formed under this chapter shall enter, dig up or excavate any public way or other land for the purpose of laying its sewers, drains or pipes, constructing manholes or catch basins or their appurtenances, or maintaining the same, or for any other purpose, the work shall be done expeditiously, and on completion of the work the district shall restore said way or land to the condition it was in prior to such work, or to a condition equally as good. Whenever the character of the work is such as to endanger travel on any public way, the municipal officers of the municipality in which the work is being done, or, if such work is being done in unorganized territory, the commissioners of the county wherein such unorganized territory is located, may order a temporary closing of such way, and of any intersecting way, upon request of said district, and the way shall remain closed to public travel until such municipal officers or county commissioners, as the case may be, deem it restored to a condition safe for traffic. [1967, c. 524, §7 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §7 (AMD).

§1159. INSPECTION OF SEWERS

The officers or agents of each sanitary district formed under this chapter shall have free access to all premises served by its sewers, at all reasonable hours, for inspection of plumbing and sewage fixtures, to ascertain the quality and quantity of sewage discharged and the manner of discharge, and to enforce this chapter and the rules and regulations prescribed by the trustees of the district. [1979, c. 541, Pt. A, §273.]

SECTION HISTORY
1965, c. 310, (NEW). 1979, c. 541, §A273 (AMD).

§1160. CONNECTION OF PRIVATE SEWERS

Every building in a sanitary district formed under this chapter intended for human habitation or occupancy or with facilities for discharge or disposal of waste water or commercial or industrial waste, which is accessible to a sewer or drain of such district, shall have a sanitary sewer or drainage system which shall be caused to be connected with such sewer or drain of the district by the owner or person against whom taxes on the premises are assessed, in the most direct manner possible, within 90 days after receiving request therefor from the district, or within such further time as the trustees of the district may grant, and, if feasible, with a separate connection for each such building. Existing buildings which are already served by a private sewer or drainage system shall not be required to connect with any sewer or drain of the district so long as the private sewer or drainage system functions in a satisfactory and sanitary manner, and does not violate any law or ordinance applicable thereto or any applicable requirement of the State of Maine Plumbing Code, as determined by the municipal plumbing inspector, his alternate, or, in the event that both are trustees or employees of the district, the Division of Health Engineering. A building shall be deemed to be accessible to a sewer or drain of the district for the purposes of this section if such building, or any private sewer or drain directly or indirectly connected thereto or carrying waste water or commercial or industrial waste therefrom, shall at any point be or come within 200 feet of a sewer or drain of the district; provided that nothing in this section shall require the owner of any such building to acquire any real property or easement therein for the sole purpose of making such connection. [1985, c. 612, §18 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1981, c. 466, §§6,7 (AMD). 1985, c. 612, §18 (AMD).

§1161. INJURY TO PROPERTY OF DISTRICTS

Any person who shall place, discharge or leave any offensive or injurious matter or material on or in the conduits, catch basins or receptacles of any sanitary district formed under this chapter contrary to its regulations, or shall knowingly injure any conduit, pipe, reservoir, flush tank, catch basin, manhole, outlet, engine, pump or other property held, owned or used by that district shall be liable to pay twice the amount of the damages to the district, to be recovered in any proper action; and that person and any person who violates section 1159 and 1160 shall be guilty of a Class E crime. [1977, c. 696, §347 (RPR).]

SECTION HISTORY
1965, c. 310, (NEW). 1977, c. 696, §347 (RPR).

§1162. EXPANSION OF SANITARY DISTRICT BOUNDARIES

A sanitary district may expand the boundaries of the sanitary district in the same manner as is provided for the formation of the sanitary district in section 1101. [1981, c. 466, §8 (NEW).]

SECTION HISTORY
1981, c. 466, §8 (NEW).

§1163. SEWER EXTENSIONS

1. **Assurance.** A sanitary district may not construct any sewer extension unless it acquires from the municipal officers or the designee of the municipal officers of any municipality through which the sewer extension will pass written assurance that:

A. Any development, lot or unit intended to be served by the sewer extension is in conformity with any adopted municipal plans and ordinances regulating land use; and [1995, c. 636, §1 (RPR).]

B. The sewer extension is consistent with adopted municipal plans and ordinances regulating land use. [1995, c. 636, §1 (RPR).]

If the municipal officers fail to issue a response to a written request from a district for written assurance within 45 calendar days of receiving the request in writing, the written assurance is deemed granted.

Not less than 7 days prior to the meeting at which the trustees will take final action on whether to proceed with the extension, the trustees of the district shall publish notice of the proposed extension in a newspaper having a general circulation that includes all municipalities through which the sewer extension will pass.

[1995, c. 636, §1 (RPR) .]

2. **Appeal.** For an intermunicipal sewer extension, when written assurance is denied by municipal officers pursuant to subsection 1, an aggrieved party may appeal, within 15 days of the decision, to the Department of Agriculture, Conservation and Forestry for a review of the municipal officers' decision. Notwithstanding Title 5, chapter 375, subchapter 4, the following procedures apply to the review by the Department of Agriculture, Conservation and Forestry.

A. The Department of Agriculture, Conservation and Forestry may request any additional information from the sanitary district, the municipality or the department. All information requested by the Department of Agriculture, Conservation and Forestry must be submitted within 30 days of the request, unless an extension is granted by the Department of Agriculture, Conservation and Forestry. [2011, c. 655, Pt. JJ, §38 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

B. Within a reasonable time, the Department of Agriculture, Conservation and Forestry shall hold a hearing. The Department of Agriculture, Conservation and Forestry shall give at least 7 days' written notice of the hearing to the sanitary district, the municipality and the party that requested the hearing.

The hearing is informal and the Department of Agriculture, Conservation and Forestry may receive any information it considers necessary. [2011, c. 655, Pt. JJ, §38 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

C. Within 15 days of the hearing and within 60 days of the request for review, the Department of Agriculture, Conservation and Forestry shall make a decision that must include findings of fact on whether the sewer extension proposal is inconsistent with adopted municipal plans and ordinances regulating land use. The decision of the Department of Agriculture, Conservation and Forestry constitutes final agency action. [2011, c. 655, Pt. JJ, §38 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

D. Notwithstanding subsection 1, if the Department of Agriculture, Conservation and Forestry determines that the sewer extension proposal is not inconsistent with adopted municipal plans and ordinances regulating land use, the Department of Agriculture, Conservation and Forestry shall issue written assurance that the proposal is consistent with adopted municipal plans and ordinances regulating land use, and the sanitary district may construct the sewer extension. [2011, c. 655, Pt. JJ, §38 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

[2011, c. 655, Pt. JJ, §38 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY
1981, c. 466, §9 (NEW). 1993, c. 721, §H1 (AFF). 1993, c. 721, §B3 (RPR). 1995, c. 636, §1 (RPR). 2011, c. 655, Pt. JJ, §38 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

§1163-A. COORDINATION WITH MUNICIPAL PLANNING

To facilitate coordination of municipal planning and sewer extension planning: [1993, c. 721, Pt. B, §4 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]

1. **Sanitary districts.** The trustees of a sanitary district shall cooperate with municipal officials in the development of municipal growth management and other land use plans and ordinances; and

[1993, c. 721, Pt. B, §4 (NEW); 1993, c. 721, Pt. H, §1 (AFF) .]

2. **Municipalities.** Municipal officers shall cooperate with the trustees of a sanitary district during the consideration of development applications that may affect the operations of the district.

[1993, c. 721, Pt. B, §4 (NEW); 1993, c. 721, Pt. H, §1 (AFF) .]

SECTION HISTORY
1993, c. 721, §B4 (NEW). 1993, c. 721, §H1 (AFF).

§1164. MUTUAL FUNDS

A sanitary district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the terms of any instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise,

of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to, and not in limitation of, any power of a sanitary district to invest its funds. [1993, c. 651, §7 (NEW).]

SECTION HISTORY
1993, c. 651, §7 (NEW).

Subchapter 4: BONDS, RATES AND ASSESSMENTS

§1201. BONDS AND NOTES

1. **Authorization of bonds.** Any sanitary district formed under this chapter may provide by resolution of its board of trustees, without district vote, except as provided in subsection 10, for the borrowing of money and the issuance from time to time of bonds for any of its corporate purposes, including, but not limited to:

A. Paying and refunding its indebtedness; [1979, c. 696, §1 (NEW).]

B. Paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities, whether incurred by the district or any municipality therein or any person residing in unorganized territory encompassed by the district, the district being authorized to reimburse any municipality therein or any person residing in unorganized territory encompassed by the district for any such expenses incurred or paid by it or him; [1979, c. 696, §1 (NEW).]

C. Paying costs directly or indirectly associated with acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating sewage and treatment plants, or systems, and making renewals, additions, extensions and improvements to the same, and to cover interest payments during the period of construction and for such period thereafter as the trustees may determine; [1985, c. 506, Pt. B, §35 (AMD).]

D. Providing such reserves for debt service, repairs and replacements or other capital or current expenses as may be required by a trust agreement or resolution securing bonds; and [1979, c. 696, §1 (NEW).]

E. Any combination of these purposes. [1979, c. 696, §1 (NEW).]

Bonds may be issued under this chapter as general obligations of the district or as special obligations payable solely from particular funds. The principal of, premium, if any, and interest on all bonds shall be payable solely from the funds provided for that purpose from revenues. For purposes of this chapter, the term "revenues" means and includes the proceeds of bonds, all revenues, rates, fees, entrance charges, assessments, rents and other receipts derived by the district from the operation of its sewer system and other properties, including, but not limited to, investment earnings and the proceeds of insurance, condemnation, sale or other disposition of properties. All bonds issued by a district under this chapter shall be legal obligations of the district, and all districts formed under this chapter are declared to be quasi-municipal corporations within the meaning of Title 30-A, section 5701. Bonds may be issued under this chapter without obtaining the consent of any commission, board, bureau or agency of the State or of any municipality encompassed by the district, and without any other proceedings or the happening of other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter. Bonds issued under this chapter do not constitute a debt or liability of the State or of any municipality encompassed by the district or a pledge of the faith and credit of the State or any such municipality, but the bonds shall be payable solely from the funds provided for that purpose, and a statement to that effect shall be recited on the face of the bonds.

[1987, c. 737, Pt. C, §§94, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. **Notes.** Any sanitary district formed under this chapter may also provide by resolution of its board of trustees, without district vote, for the issuance from time to time of notes in anticipation of bonds authorized under this chapter and of notes in anticipation of the revenues to be collected or received in any year or in anticipation of the receipt of federal or state grants or other aid. The issue of these notes shall be governed

by the applicable provisions of this chapter relating to the issue of bonds, provided that notes in anticipation of revenue must mature no later than one year from their respective dates and notes issued in anticipation of federal or state grants or other aid and renewals thereof must mature no later than the expected date of receipt of those grants or aid. Notes in anticipation of revenue issued to mature less than one year from their dates may be renewed from time to time by the issue of other notes, provided that the period from the date of an original note to the maturity of any note issued to renew or pay the same or the interest thereon may not exceed one year.

Any such district is authorized and empowered to enter into agreements with the State or the United States, or any agency of either, or any municipality, corporation, commission or board authorized to grant or loan money to or otherwise assist in the financing of projects of the type which that district is authorized to carry out, and to accept grants and borrow money from any such government, agency, municipality, corporation, commission or board as may be necessary or desirable to accomplish the purposes of the district.

[1979, c. 696, §1 (NEW) .]

3. **Maturity; interest; form; temporary bonds.** The bonds issued under this chapter shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates as may be determined by the board of trustees, and may be made redeemable before maturity, at the option of the district, at such price or prices and under such terms and conditions as may be fixed by the board of trustees prior to the issuance of the bonds. The board of trustees shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. Bonds shall be executed in the name of the district by the manual or facsimile signature of such officer or officers as may be authorized in the resolution to execute the bonds, but at least one signature on each bond shall be a manual signature. Coupons, if any, attached to the bonds shall be executed with the facsimile signature of the officer or officers of the district designated in the resolution. In case any officer, whose signature or a fascimile of whose signature appears on any bonds or coupons, ceases to be such officer before the delivery of the bonds, the signature or its facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until the delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form, or both, as the board of trustees may determine, and provision may be made for the registration of any coupon bonds as to principal alone and as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board of trustees may sell such bonds in such manner, either at public or private sale, and for such price as they may determine to be for the best interests of the district. The proceeds of the bonds of each issue shall be used solely for the purpose for which those bonds have been authorized, and shall be disbursed in such manner and under such restrictions, if any, as the board of trustees may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds. The resolution providing for the issuance of bonds, and any trust agreement securing the bonds, may contain such limitations upon the issuance of additional bonds as the board of trustees may deem proper, and these additional bonds shall be issued under such restrictions and limitations as may be prescribed by that resolution or trust agreement. Prior to the preparation of definitive bonds, the board of trustees may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery. The board of trustees may provide for the replacement of any bond which is mutilated, destroyed or lost.

[1979, c. 696, §1 (NEW) .]

4. **Pledges and covenants, trust agreement.** In the discretion of the board of trustees of any district, each or any issue of bonds may be secured by a trust agreement by and between the district and a corporate trustee, which may be any trust company within or without the State.

The resolution authorizing the issuance of the bonds or the trust agreement may pledge or assign, in whole or in part, the revenues and other moneys held or to be received by the district and any accounts and contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the district, and the proceeds thereof, but may not convey or mortgage the sewer system or any other properties of the district. The resolution may also contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, but not limited to, covenants setting forth the duties of the district and the board of trustees in relation to the acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of its sewer system or any of its other properties, the fixing and revising of rates, fees and charges, the application of the proceeds of bonds, the custody, safeguarding and application of revenues, defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities, the establishment of reserves and the making and amending of contracts. The resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition, the resolution or trust agreement may contain such other provisions as the board of trustees may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the resolution or trust agreement may be treated as a part of the cost of operation. The pledge by any such resolution or trust agreement is valid and binding and is deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made. All revenues, moneys, rights and proceeds so pledged and thereafter received by the district are immediately subject to the lien of the pledge without any physical delivery or segregation thereof or further action under the Uniform Commercial Code or otherwise, and the lien of the pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district irrespective of whether those parties have notice thereof.

The resolution authorizing the issuance of bonds under this chapter, or any trust agreement securing those bonds, may provide that all or a sufficient amount of revenues, after providing for the payment of the cost of repair, maintenance and operation and reserves therefor as may be provided in the resolution or trust agreement, must be set aside at such regular intervals as may be provided in the resolution or trust agreement and deposited in the credit of a fund for the payment of the interest on and the principal of bonds issued under this chapter as the same become due, and the redemption price or purchase price of bonds retired by call or purchase. The use and disposition of moneys to the credit of the fund are subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds and, except as may otherwise be provided in the resolution or trust agreement, the fund is a fund for the benefit of all bonds without distinction or priority of one over another.

[2013, c. 2, §52 (COR) .]

5. **Trust funds.** Notwithstanding any other law, all moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds or the trust agreement securing the bonds shall provide that any officer to whom, or bank, trust company or other fiscal agent to which, those moneys shall be paid shall act as trustee of those moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as may be provided in the resolution or trust agreement or as may be required by this chapter.

[1979, c. 696, §1 (NEW) .]

6. **Remedies.** Any holder of bonds issued under this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights given may be restricted by the resolution authorizing the issuance of those bonds or trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of a receiver to take possession and control of the properties of the district, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the

performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the district or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by the district.

[1979, c. 696, §1 (NEW) .]

7. **Refunding bonds.** Any sanitary district formed under this chapter by resolution of its board of trustees, without district vote, may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. The refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the board of trustees deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by a trust agreement or resolution securing bonds. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the district in respect of the same shall be governed by the applicable provisions of this chapter relating to the issue of bonds other than refunding bonds.

[1979, c. 696, §1 (NEW) .]

8. **Tax exemption.** All bonds, notes or other evidences of indebtedness issued under this chapter, and their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the State.

[1979, c. 696, §1 (NEW) .]

9. **Bonds declared legal investments.** Bonds and notes issued by any district under this chapter are made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, retirement funds and other persons carrying on a banking business, and all other persons who are now or may hereafter be, authorized to invest in bonds or other obligations of the State, may properly and legally invest funds, including capital in their control or belonging to them. The bonds and notes are made securities which may properly and legally be deposited with and received by any state, municipal or public officer, or any agency or political subdivision of the State, for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

[1979, c. 696, §1 (NEW) .]

10. **Certain bond issues; notice; special meeting; vote.** In the event that the trustees vote to authorize bonds or notes, for any of the corporate purposes of a sanitary district, excluding notes payable within one year, notes in anticipation of bonds authorized pursuant to this section, or notes in anticipation of the revenues to be collected or received in any year or notes in anticipation of the receipt of approved federal or state grants, the authorized amount of which, singly or in the aggregate included in any one financing, is $150,000 or more, the trustees shall call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the purpose and the amount of debt so authorized. Notice of the special district meeting, stating the approximate amount of the debt and the purpose for which it is being issued, shall be published not less than 7 full days prior to the date of the meeting in a newspaper having

general circulation in the district and shall be mailed to each ratepayer in the district not later than the date of the publication. No debt may be incurred under the vote of the trustees until the expiration of 7 full days following the date of the special district meeting.

[1983, c. 684, (RPR) .]

Except for debt to fund that part of any project which has been approved for grant financing by the State Government or Federal Government to meet the requirements of the United States Clean Water Act, United States Code, Title 33, Section 1251 et seq., including any related facilities not eligible for that financing but essential to the operation of the approved project as an integral system, for debts in excess of the amount specified in this section, the following petition and referendum procedure shall apply. If, on or before the 7th day following the date of the special district meeting a petition signed by at least 5%, but not less than 50, of the registered voters of the district is filed with the clerk of the district requesting reference of the vote of the trustees to referendum, the clerk of the district shall call and hold a special election of the voters of the district for the purpose of submitting to referendum vote a question of approving the vote of the trustees. The vote of the trustees shall be suspended until it has received approval by vote of a majority of the voters of the district voting on the question at the special election. [1983, c. 684, (RPR).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §8 (AMD). 1975, c. 461, §2 (AMD). 1979, c. 696, §1 (RPR). 1981, c. 466, §§10,11,14 (AMD). 1983, c. 684, (AMD). 1985, c. 506, §B35 (AMD). 1987, c. 737, §§C94,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). RR 2013, c. 2, §52 (COR).

§1202. RATES

All persons, firms and corporations, whether public, private or municipal, shall pay to the treasurer of any district formed under this chapter the rates, tolls, rents, entrance charges and other lawful charges established by the trustees for the sewer or drainage service used or available with respect to their real estate, which rates shall include rates for such district's readiness to serve charged against owners of real estate, abutting on or accessible to, sewers or drains of the district, but not actually connected thereto, whether or not such real estate is improved. In this subchapter, the words "other lawful charges" or "other charges" shall include, but not be limited to, interest on delinquent accounts at a rate not to exceed the highest lawful rate set by the Treasurer of State for municipal taxes. [1977, c. 696, §348 (AMD).]

Rates, tolls, rents and entrance charges shall be uniform within such district, whenever the cost to the district of installation and maintenance of sewers or their appurtenances and the cost of service is substantially uniform; but nothing shall preclude the district, from establishing a higher rate, toll, rent or entrance charge than the regular rates, tolls, rents and entrance charges in sections where, for any reason, the cost to the district of construction and maintenance, or the cost of service, exceeds the average, but such higher rates, tolls, rents and entrance charges shall be uniform throughout the sections where they apply. [1975, c. 461, §3 (AMD).]

Prior to the adoption of a new rate schedule, the trustees shall hold a public hearing regarding the proposed rate schedule. The trustees shall publish the proposed rates and notice of the hearing not less than once in a newspaper having a general circulation in the district not less than 7 days prior to the hearing. The district shall mail to each ratepayer a notice of the public hearing and the proposed new rate at least 14 days prior to the hearing. [1981, c. 466, §12 (NEW).]

Notwithstanding any other provision of law, districts which share, supply or contract for services with another district shall establish rates, tolls, rents and entrance charges mutually agreeable to the trustees of each participating district. [1975, c. 461, §3-A (NEW).]

The sewer rates, tolls, rents, entrance charges, assessments and other lawful charges established by the board of trustees in accordance with this chapter shall be so fixed and adjusted in respect of the aggregate thereof so as to produce revenue at least sufficient, together with any other moneys available therefor, to: [1979, c. 696, §2 (RPR).]

1. **Current operating expenses.** Pay the current expenses of operating and maintaining the sewerage, drainage and treatment system of the district;

[1979, c. 696, §3 (RPR) .]

2. **Payment of interest and principal.** Pay the principal of, premium, if any, and interest on all bonds and notes issued by the district under this chapter as the same become due and payable;

[1979, c. 696, §3 (RPR) .]

3. **Sinking fund for retirement of obligations.** Create and maintain such reserves as may be required by any trust agreement or resolution securing bonds and notes;

[1979, c. 696, §3 (RPR) .]

4. **Repairs, replacements and renewals.** Provide funds for paying the cost of all necessary repairs, replacements and renewals of the sewerage, drainage and treatment systems of the district; and

[1979, c. 696, §3 (RPR) .]

5. **Payment of obligations.** Pay or provide for any and all amounts which the district may be obligated to pay or provide for by law or contract, including any resolution or contract with or for the benefit of the holders of its bonds and notes.

[1979, c. 696, §4 (NEW) .]

In the case of a sanitary district encompassing unorganized territory, such rates, tolls, rents, entrance charges and other lawful charges as may be applicable to real estate in such unorganized territory shall be charged against the party in possession thereof. [1967, c. 524, §9 (NEW).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §9 (AMD). 1975, c. 461, §§3,3-A (AMD). 1977, c. 696, §348 (AMD). 1979, c. 696, §§2-4 (AMD). 1981, c. 466, §12 (AMD).

§1202-A. IMPACT FEES AND CONNECTION FEES; AFFORDABLE HOUSING

Notwithstanding section 1202, the trustees may reduce the impact fee or connection fee, as those terms are defined in Title 30-A, section 5061, for sewer service to newly constructed affordable housing in accordance with Title 30-A, chapter 202-A. [2007, c. 174, §4 (NEW).]

SECTION HISTORY
2007, c. 174, §4 (NEW).

§1203. ASSESSMENTS

When any sanitary district formed under this chapter has constructed and completed a common sewer, the trustees may, if they so determine, in order to defray a portion of the expense thereof, determine what lots or parcels of land are benefited by such sewer, and estimate and assess upon such lots and parcels of land, and against the owner thereof, or person in possession or against whom taxes thereon are assessed, whether

said person to whom the assessment is so made shall be the owner, tenant, lessee or agent, and whether the same is occupied or not, except that in the case of a sanitary district encompassing unorganized territory, such assessments made on lots or parcels of land in such unorganized territory shall be made by the trustees against the party in possession thereof, such sum not exceeding such benefit as they may deem just and equitable towards defraying the expense of constructing and completing such sewer, together with such sewage disposal units and appurtenances as may be necessary, the whole of such assessments not to exceed 1/2 of the cost of such sewer and sewage disposal units. The trustees shall file with the clerk of the district the location of such sewer and sewage disposal unit, with a profile description of the same, and a statement of the amount assessed upon each lot or parcel of land so assessed, a description of each lot or parcel, and the name of the owner of such lots or parcels of land or person against whom said assessment shall be made, and the clerk of such district shall record the same in a book kept for that purpose, and within 10 days after such filing, each person so assessed shall be notified of such assessment by having an authentic copy of said assessment, with an order of notice signed by the clerk of said district, stating the time and place for a hearing upon the subject matter of said assessments, given to each person so assessed or left at his usual place of abode in said district; if he has no place of abode in said district, then such notice shall be given or left at the abode of his tenant or lessee if he has one in said district; if he has no such tenant or lessee in said district, then by posting said notice in some conspicuous place in the vicinity of the lot or parcel of land so assessed, at least 30 days before said hearing, or such notice may be given by publishing the same once a week for 3 successive weeks in any newspaper of general circulation in said district, the first publication to be at least 30 days before said hearing; a return made upon a copy of such notice by any constable in any municipality within the district or by any sheriff or deputy sheriff or the production of the newspaper containing such notice shall be conclusive evidence that said notice has been given, and upon such hearing the trustees shall have power to revise, increase or diminish any of such assessments, and all such revisions, increases or diminutions shall be in writing and recorded by the clerk of the district. [1967, c. 524, §10 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1967, c. 524, §10 (AMD).

§1204. APPEAL ON ASSESSMENT

Any person aggrieved by the decision of said trustees as it relates to any assessment for sewer construction under section 1203 shall have the same rights of appeal as are provided in the case of laying out of town ways. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1205. LIEN FOR UNPAID ASSESSMENTS

All assessments made under section 1203 shall create a lien upon each and every lot or parcel of land so assessed and the buildings upon the same, which lien shall take effect when the trustees file with the clerk of the district the completed assessment, and shall continue for one year thereafter. Within 10 days after the date of hearing on said assessment the clerk of the district shall make out a list of all such assessments, the amount of each, and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said district. If said assessments are not paid within 3 months from the date thereof, the treasurer may bring a civil action for the collection of said assessment in the name of the district against the person against whom said assessment is made and for the enforcement of said lien. The complaint in such action shall contain a statement of such assessment, a description of the real estate against which the assessment is made, and an allegation that a lien is claimed on said real estate to secure the payment of the assessment. If no service is made upon the defendant or it shall appear that any other persons are interested in such real estate, the court shall order such further notice of such action as appears proper, and shall allow such other persons to become parties thereto. If it shall appear upon trial of such action that such assessment was legally made against said real estate, and is unpaid, and that there is an existing lien on said real estate for the payment of such assessment, judgment shall be rendered for such assessment, interest and costs of

suit against the defendants and against the real estate upon which the assessment was made, and execution shall issue thereon to be enforced by sale of such estate in the manner provided for a sale on execution of real estate attached on original process; provided that in making said sale the officer shall follow the procedure in selling and conveying, and there shall be the same rights of redemption, as provided in Title 36, section 941. [1979, c. 541, Pt. A, §274 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1979, c. 541, §A274 (AMD).

§1206. CIVIL ACTION FOR UNPAID ASSESSMENTS

If assessments under section 1203 are not paid, and any such district does not proceed to collect unpaid assessments by proceedings as prescribed in section 1205, or does not collect or is in any manner delayed or defeated in collecting such assessments by proceedings under section 1205, then the district in its name may maintain a civil action against the party so assessed for the amount of said assessment, as for money paid, laid out and expended, in any court of competent jurisdiction, and in such action may recover the amount of such assessment with 10% interest on the same from the date of said assessment and costs. [1979, c. 541, Pt. A, §275 (AMD).]

SECTION HISTORY
1965, c. 310, (NEW). 1979, c. 541, §A275 (AMD).

§1207. ASSESSMENT PAID BY PERSONS OTHER THAN OWNER

When any assessment under section 1203 shall be paid by any person against whom such assessment has been made, who is not the owner of such lot or parcel of land, then the person so paying the same shall have a lien upon such lot or parcel of land with the buildings thereon for the amount of said assessment so paid by said person, and incidental charges, which lien shall continue for one year and which lien may be enforced in a civil action for money paid, laid out and expended, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots under Title 10. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1207-A. LANDLORD ACCESS TO TENANT BILL PAYMENT INFORMATION

If a tenant is billed for sewer service provided to property rented by the tenant and nonpayment for the service may result in a lien against the property, the sanitary district shall provide to the landlord or the landlord's agent, on request of the landlord or the landlord's agent, the current status of the tenant's account, including any amounts due or overdue. [2005, c. 306, §3 (NEW).]

SECTION HISTORY
2005, c. 306, §3 (NEW).

§1208. COLLECTION OF UNPAID RATES

There shall be a lien on real estate served or benefited by the sewers of any district formed under this chapter to secure the payment of rates established and due under section 1202 which shall take precedence over all other claims on such real estate, excepting only claims for taxes. [1965, c. 310, (NEW).]

The treasurer of the district has full and complete authority and power to collect the rates, tolls, rents and other charges established under section 1202 and the rate, toll, rent or other charge must be committed to the treasurer. The treasurer may, after demand for payment, sue in the name of the district in a civil action for any rate, toll, rent or other charge remaining unpaid in any court of competent jurisdiction. In addition to other methods established by law for the collection of rates, tolls, rents and other charges, and without waiver of the

right to sue for the rate, toll, rent or other charge, the lien created may be enforced in the following manner. The treasurer, when a rate, toll, rent or other charge has been committed to the treasurer for collection, may, after the expiration of 3 months and within one year after the date when the rate, toll, rent or other charge became due and payable, give to the owner of the real estate served, or leave at the owner's last and usual place of abode, or send by certified mail, return receipt requested, to the owner's last known address, a notice in writing signed by the treasurer or bearing the treasurer's facsimile signature, stating the amount of that rate, toll, rent or other charge, describing the real estate upon which the lien is claimed and stating that a lien is claimed on the real estate to secure the payment of the rate, toll, rent or other charge and demanding the payment of the rate, toll, rent or other charge within 30 days after service or mailing, with $1 for the treasurer for mailing the notice together with the certified mail, return receipt requested, fee. The notice must contain a statement that the district is willing to arrange installment payments of the outstanding debt. For the purpose of this section, a mobile home is defined as real estate. After the expiration of a period of 30 days and within one year thereafter, the treasurer shall record in the registry of deeds of the county in which the property of such person is located a certificate signed by the treasurer or bearing the treasurer's facsimile signature setting forth the amount of such rate, toll, rent or other charge, describing the real estate on which the lien is claimed, and stating that a lien is claimed on the real estate to secure payment of the rate, toll, rent or other charge and that a notice and demand for payment of the rate, toll, rent or other charge has been given or made in accordance with this section and stating further that such rate, toll, rent or other charge remains unpaid. At the time of the recording of any such certificate in the registry of deeds as provided, the treasurer shall file in the office of the district a true copy of such certificate and shall mail a true copy of the certificate by certified mail, return receipt requested, to each record holder of any mortgage on the real estate, addressed to such record holder at the record holder's last and usual place of abode. [2011, c. 104, §3 (AMD).]

The filing of the certificate in the registry of deeds creates a mortgage on the underlying real estate to the district that has priority over all other mortgages, liens, attachments and encumbrances of any nature, except liens, attachments and claims for taxes, and gives to the district all the rights usually possessed by mortgagees, except that the district as mortgagee does not have any right to possession of the real estate until the right of redemption has expired. If the mortgage, together with interest and costs, has not been paid within 18 months after the date of filing of the certificate in the registry of deeds, the mortgage is deemed to be foreclosed and the right of redemption to have expired. The filing of the certificate in the registry of deeds is sufficient notice of the existence of the mortgage created in this paragraph. If the rate, toll, rent or other charge, with interest and costs, is paid within the period of redemption, the treasurer of the district shall discharge the mortgage in the same manner as for the discharge of tax lien mortgages pursuant to Title 36, section 943. [2011, c. 104, §4 (AMD).]

The costs to be paid by the owner of the real estate served shall be the sum of the fees for receiving, recording and indexing the lien, or its discharge, as established by Title 33, section 751, subsection 12, plus $13, plus all certified mail, return receipt requested, fees. [1987, c. 29, §2 (NEW).]

The treasurer of the district shall notify the party named on the sewer lien mortgage and each record holder of a mortgage on the real estate not more than 45 days or less than 30 days before the foreclosing date of the sewer lien mortgage, in a writing signed by the treasurer or bearing the treasurer's facsimile signature and left at the holder's last and usual place of abode or sent by certified mail, return receipt requested, to the holder's last known address, of the impending automatic foreclosure and indicating the exact date of foreclosure. For sending this notice, the district is entitled to receive $3 plus all certified mail, return receipt requested, fees. These costs must be added to and become a part of the amount due. If notice is not given in the time period specified in this paragraph to the party named on the sewer lien mortgage or to any record holder of a mortgage, the person not receiving timely notice may redeem the sewer lien mortgage until 30 days after the treasurer does provide notice in the manner specified in this paragraph. Beginning with liens created after October 30, 2001, the notice of impending automatic foreclosure must be substantially in the following form:

STATE OF MAINE
_____ SANITARY DISTRICT
NOTICE OF IMPENDING AUTOMATIC FORECLOSURE
SEWER LIEN

Title 38, M.R.S.A., section 1208
IMPORTANT: DO NOT DISREGARD THIS NOTICE
YOU WILL LOSE YOUR PROPERTY UNLESS
YOU PAY THE CHARGES, COSTS AND INTEREST FOR WHICH
A LIEN ON YOUR PROPERTY HAS BEEN CREATED BY THE
_____ SANITARY DISTRICT.

TO:_____

You are the party named on the Sewer Lien Certificate filed on _____, 20__ and recorded in Book _____, Page _____ in the _____ County Registry of Deeds. This _____ Sanitary District filing created a sewer lien mortgage on the real estate described in the Sewer Lien Certificate.

On _____, 20__, the sewer lien mortgage will be foreclosed and your right to redeem the mortgage and recover your property by paying the district's charges and interest that are owed will expire.

IF THE LIEN FORECLOSES,
THE _____ SANITARY DISTRICT WILL OWN
YOUR PROPERTY, SUBJECT ONLY TO
MUNICIPAL TAX LIENS.

If you can not pay the outstanding charges, costs and interest that are the subject of this notice or the subject of installment payment arrangements that you have made with the district, please contact me immediately to discuss this notice.

_____
District Treasurer

[2001, c. 319, §2 (NEW).]

The district shall pay the treasurer $1 for the notice, $1 for filing the lien certificate and the amount paid for certified mail, return receipt requested, fees. The fees for recording the lien certificate shall be paid by the district to the register of deeds. [1987, c. 29, §2 (NEW).]

A discharge of the certificate given after the right of redemption has expired, which discharge has been recorded in the registry of deeds for more than one year, terminates all title of the sewer district derived from that certificate or any other recorded certificate for which the right of redemption expired 10 years or more prior to the foreclosure date of this discharge lien, unless the sewer district has conveyed any interest based upon the title acquired from any of the affected liens. [1995, c. 21, §1 (NEW); 1995, c. 21, §2 (AFF).]

SECTION HISTORY
1965, c. 310, (NEW). 1975, c. 770, §213 (AMD). 1977, c. 630, §§10,11 (AMD). 1977, c. 696, §389 (AMD). 1979, c. 541, §A276 (AMD). 1981, c. 183, §§1,2 (AMD). 1987, c. 29, §§1,2 (AMD). 1987, c. 548, (AMD). 1995, c. 21, §1 (AMD). 1995, c. 21, §2 (AFF). 2001, c. 319, §2 (NEW). 2001, c. 319, §§1,2 (AMD). 2011, c. 104, §§3, 4 (AMD).

§1208-A. WAIVER OF AUTOMATIC FORECLOSURE OF LIEN MORTGAGE

1. **Waiver of sanitary district lien foreclosure.** The treasurer of a district, when authorized by the trustees of the district, may waive the foreclosure of a sanitary district lien mortgage created under section 1208 by recording in the registry of deeds a waiver of foreclosure before the period for the right of

redemption from the sanitary district lien mortgage has expired. The sanitary district lien mortgage remains in full effect after the recording of a waiver. Other methods established by law for the collection of any unpaid rate, toll, rent or other charges are not affected by the filing of a waiver under this section.

[2009, c. 490, §2 (NEW) .]

2. **Form.** The waiver of foreclosure under subsection 1 must be substantially in the following form:

STATE OF MAINE .....SANITARY DISTRICT
WAIVER OF AUTOMATIC FORECLOSURE
OF SEWER LIEN
Title 38, M.R.S.A., section 1208-A

The foreclosure of the sewer lien mortgage on real estate for charges against .....(NAME) to ..... (NAME OF SANITARY DISTRICT) dated ..... and recorded in the ..... County Registry of Deeds in Book ....., Page ..... is hereby waived.

The form must be dated, signed by the treasurer of the district and notarized. A copy of the form must be provided to the party named on the sanitary district lien mortgage and each record holder of a mortgage on the real estate.

[2009, c. 490, §2 (NEW) .]

SECTION HISTORY
2009, c. 490, §2 (NEW).

§1209. SUPPLEMENTARY CHARGES

Any sanitary district formed under this chapter shall be authorized to impose charges, in addition to any other assessments now lawfully imposed by general law, for the use of sewers, sewer systems and treatment works, and the trustees may adopt such rules and regulations as may be necessary or convenient to carry out the purposes of such district. All incidental powers, rights and privileges necessary to the accomplishment of the purposes of the district are granted to the district and its trustees, including the right of its trustees to determine when and where sewerage and treatment facilities and disposal units are needed and when and where the same shall be constructed. [1965, c. 310, (NEW).]

SECTION HISTORY
1965, c. 310, (NEW).

§1210. COMPETITIVE BIDDING

Any contract in excess of $2,000 between a sanitary district, whether formed under this chapter or by private and special Act of the Legislature, and a contractor for the construction of facilities located on private property for the exclusive use of a private individual and for which the private individual is required to pay the total cost directly to the sanitary district, shall be awarded by a system of competitive bidding. Unless there are valid reasons to the contrary, the contracts shall be awarded to the lowest responsible bidder. [1973, c. 476, §2 (NEW).]

SECTION HISTORY
1973, c. 476, §2 (NEW).

Chapter 11-A: COMMUNITY SANITARY DISTRICTS

§1231. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 556, §4 (NEW).]

1. **Cluster development.** "Cluster development" has the same meaning as in Title 30-A, section 4301, subsection 1-A.

[2005, c. 556, §4 (NEW) .]

2. **Community sanitary district.** "Community sanitary district" or "district" means a district formed under this chapter to manage one or more subsurface wastewater collection, treatment and disposal systems to accommodate residential development as a means of facilitating compact growth patterns, including cluster developments.

[2005, c. 556, §4 (NEW) .]

SECTION HISTORY
2005, c. 556, §4 (NEW).

§1232. FORMATION; EXPANSION

A community sanitary district is formed in the same manner as a sanitary district under chapter 11, except that the board may not approve an application pursuant to section 1101, subsection 3 unless the board finds that: [2005, c. 556, §4 (NEW).]

1. **Facilitate compact growth.** Creation of the district will facilitate cluster developments or other compact growth patterns;

[2005, c. 556, §4 (NEW) .]

2. **Adequate and efficient.** The district will provide for the creation of an adequate and efficient means of collecting, conveying, pumping, treating and disposing of domestic sewage within the proposed district; and

[2005, c. 556, §4 (NEW) .]

3. **Feasibility and public interest.** Creation and maintenance of a wastewater collection, treatment and disposal system by the district will be administratively feasible and promote the public health, safety and welfare.

[2005, c. 556, §4 (NEW) .]

The boundaries of a community sanitary district may be expanded in accordance with section 1162. [2005, c. 556, §4 (NEW).]

SECTION HISTORY
2005, c. 556, §4 (NEW).

§1233. MUNICIPAL SYSTEM; TRANSFER OF ASSETS TO DISTRICT

A municipality that, pursuant to Title 30-A, section 5403, subsection 14 or any other authority, including home rule authority, has constructed a sewer system that is composed of one or more subsurface wastewater collection, treatment and disposal systems shall, after the establishment of a district pursuant to this section to serve the area where that sewer system is located, sell, transfer and convey to the district by appropriate instruments, and the district shall acquire, all properties, assets, rights and privileges identified by the municipality as related to that sewer system in consideration of the assumption by the district of any outstanding debts, obligations and liabilities identified by the municipality as related to that sewer system, including, without limitation, any outstanding notes or bonds identified by the municipality as related to that sewer system that are due on or after the date of the transfer of the sewer system. If any debts, obligations, notes or bonds identified by the municipality are not assumable, the district is obligated for their repayment. The municipality shall identify to the board in the application submitted pursuant to section 1101 all properties, assets, rights, privileges, debts, obligations and liabilities related to the sewer system that are required to be transferred to or assumed by the district under this section. [2005, c. 556, §4 (NEW).]

The municipality and the district by mutual agreement may arrange for the transfer of any other assets or liabilities that the municipality and the district determine necessary or appropriate to allow the district efficiently and effectively to carry out its purposes under this chapter. [2005, c. 556, §4 (NEW).]

SECTION HISTORY
2005, c. 556, §4 (NEW).

§1234. POWERS

Except as provided in this section, a community sanitary district has the powers, privileges and duties and is subject to the requirements and restrictions of a sanitary district under chapter 11. [2005, c. 556, §4 (NEW).]

1. **Powers.** A community sanitary district may, within the district, construct, operate and maintain one or more subsurface wastewater disposal systems in accordance with rules adopted pursuant to Title 22, section 42, subsection 3 and applicable municipal ordinances. A district may contract for necessary and appropriate services, including, but not limited to, pumping and disposal services, and do any or all other things necessary or incidental to accomplish the purposes of the district.

[2005, c. 556, §4 (NEW) .]

2. **Limited purposes.** A community sanitary district may exercise powers granted under this chapter only for the limited purpose of providing subsurface wastewater collection, treatment and disposal services to accommodate residential development.

A. A community sanitary district may not provide services to nonresidential users. [2005, c. 556, §4 (NEW).]

B. The provisions of section 1160 apply only to residential buildings. [2005, c. 556, §4 (NEW).]

[2005, c. 556, §4 (NEW) .]

3. **Certain powers not available.** The following provisions relating to sanitary districts do not apply to a district formed under this chapter:

A. Section 1103, relating to transfer of municipal property and assets; [2005, c. 556, §4 (NEW).]

B. Section 1151, relating to certain sanitary district powers; [2005, c. 556, §4 (NEW).]

C. Section 1151-A, relating to certain enforcement powers; [2005, c. 556, §4 (NEW).]

D. Sections 1152, 1152-A, 1153 and 1154, relating to powers of eminent domain; and [2005, c. 556, §4 (NEW).]

E. Section 1157, relating to certain contracting powers. [2005, c. 556, §4 (NEW).]

[2005, c. 556, §4 (NEW) .]

SECTION HISTORY
2005, c. 556, §4 (NEW).

Chapter 12: SEWER DISTRICTS

§1251. DEFINITIONS

(REPEALED)

SECTION HISTORY
1981, c. 466, §13 (NEW). 1981, c. 628, (AMD). 2013, c. 555, §7 (RP).

§1252. ADDITIONS TO PRIVATE AND SPECIAL LAWS

(REPEALED)

SECTION HISTORY
1981, c. 466, §13 (NEW). 1983, c. 480, §A69 (AMD). 1985, c. 506, §§B36,37 (AMD). 1987, c. 256, §47 (AMD). 1991, c. 213, §§2,3 (AMD). 1993, c. 721, §§B5,6 (AMD). 1993, c. 721, §H1 (AFF). 1995, c. 636, §2 (AMD). 2003, c. 267, §3 (AMD). 2005, c. 306, §4 (AMD). 2007, c. 58, §3 (REV). 2007, c. 174, §5 (AMD). 2011, c. 655, Pt. JJ, §39 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2013, c. 555, §7 (RP).

§1253. GOVERNANCE OF SEWER DISTRICTS

(REPEALED)

SECTION HISTORY
1981, c. 466, §13 (NEW). 1987, c. 490, §C17 (AMD). 2013, c. 555, §7 (RP).

§1254. EFFECTIVE DATE

(REPEALED)

SECTION HISTORY
1981, c. 466, §13 (NEW). 2013, c. 555, §7 (RP).

§1255. MUTUAL FUNDS

(REPEALED)

SECTION HISTORY
1993, c. 651, §8 (NEW). 2013, c. 555, §7 (RP).

§1256. SEWER DISTRICTS; AUTHORITY TO INCREASE DEBT LIMITS

(REPEALED)

SECTION HISTORY
2005, c. 192, §3 (NEW). 2013, c. 555, §7 (RP).

§1257. WAIVER OF SEWER DISTRICT LIEN FORECLOSURE

(REPEALED)

SECTION HISTORY

2009, c. 490, §3 (NEW). 2013, c. 555, §7 (RP).

§1258. QUALIFIED SEWER DISTRICTS; COLLECTION OF UNPAID RATES *(REPEALED)*

SECTION HISTORY
2011, c. 26, §1 (NEW). 2013, c. 555, §7 (RP).

Chapter 12-A: ASBESTOS

§1271. FINDINGS AND PURPOSE

The Legislature finds that the presence of friable and potentially friable asbestos in public and private buildings is a public health hazard; that State Government and local government agencies are conducting major abatement programs; that it is critical to the safe conduct of all asbestos abatement activities such as monitoring, design, analysis, training, identification, encapsulation, removal, handling and disposal activities that trained and qualified personnel from the public and private sectors be employed; and that work practice standards for asbestos abatement activities must be established and enforced to ensure protection of the public health. [1993, c. 355, §25 (AMD).]

The purpose of this chapter is to provide a flexible means by which the State, acting through the Department of Environmental Protection, may ensure that those engaged in the management and abatement of friable asbestos-containing materials are properly trained, supervised and directed to protect the public health. [1991, c. 473, §1 (AMD).]

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 1991, c. 473, §1 (AMD). 1993, c. 355, §25 (AMD).

§1272. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 448, §1-C (NEW).]

1. **Asbestos.** "Asbestos" means a group of naturally occurring minerals that separate into fibers of high tensile strength and are resistant to heat, wear and chemicals, including, but not limited to, chrysotile, amosite, crocidolite, actinolite, tremolite and anthophylite and any of these minerals that have been chemically treated or altered.

[1987, c. 448, §1-C (NEW) .]

2. **Asbestos abatement activity.** "Asbestos abatement activity" means activity involving the removal, demolition, enclosure, repair, encapsulation, handling, transportation or disposal of asbestos-containing materials in an amount greater than 3 square feet or 3 linear feet. "Asbestos abatement activity" includes associated activities such as design, monitoring, analysis and inspection of any asbestos-containing material in an amount greater than 3 square feet or 3 linear feet, and conducting training for persons seeking a state certificate or license.

[2009, c. 374, §3 (AMD) .]

3. **Asbestos abatement contractor.** "Asbestos abatement contractor" means a business entity that engages in, or intends to engage in, asbestos abatement activities as a business service on property that it does not own and that employs or involves one or more asbestos abatement project supervisors, asbestos abatement design consultants, asbestos air monitors or asbestos inspectors for asbestos abatement activities.

[1991, c. 473, §3 (AMD) .]

4. **Asbestos abatement design consultant.** "Asbestos abatement design consultant" means an individual engaged in preparing and supervising the implementation of facility plans for the removal or abatement of asbestos. These activities include, but are not limited to, the performance of air quality and bulk sampling; advising building owners, contractors and project supervisors on health impacts of asbestos

abatement activities; and supervising the conduct of training courses. This category of specialists includes, but is not limited to, engineers, architects, health professionals, industrial hygienists, private consultants or other individuals involved in asbestos risk assessment or regulatory activities.

[1993, c. 355, §27 (AMD) .]

5. **Asbestos abatement project supervisor.** "Asbestos abatement project supervisor" means an individual with responsibility for the supervision of asbestos abatement activities. Those persons include, but are not limited to, abatement project supervisors employed by contractors, in-house asbestos abatement units, employees of governmental or public entities who coordinate or directly supervise asbestos abatement activities performed by public schools, governmental or other public employees in a school district, governmental or other public buildings and project supervisors employed as consultants to monitor and direct abatement contractors.

[1993, c. 355, §28 (AMD) .]

6. **Asbestos abatement worker.** "Asbestos abatement worker" means an individual engaging in any asbestos abatement activity for any employer.

[1993, c. 355, §29 (AMD) .]

6-A. **Asbestos air monitor.** "Asbestos air monitor" means a person responsible for applying applicable rules and standards at a specific location by monitoring procedures during asbestos abatement activities in order to protect the public health from the hazards associated with exposure to asbestos.

[1991, c. 473, §4 (NEW) .]

6-B. **Asbestos analytical laboratory.** "Asbestos analytical laboratory" means a public or private entity that scientifically analyzes samples of solids, liquids or gases to determine the presence and concentration of asbestos fibers.

[1991, c. 473, §4 (NEW) .]

6-C. **Asbestos air analyst.** "Asbestos air analyst" means an individual engaging in the analysis of air samples for fiber count including, but not limited to asbestos fibers.

[1993, c. 355, §30 (NEW) .]

6-D. **Asbestos bulk analyst.** "Asbestos bulk analyst" means an individual engaging in the analysis of bulk samples for asbestos or other material composition.

[1993, c. 355, §30 (NEW) .]

7. **Asbestos-containing material.** "Asbestos-containing material" means any material containing asbestos in quantities equal to or greater than 1% by volume.

[1991, c. 473, §5 (AMD) .]

8. **Asbestos evaluation specialist.**

[1991, c. 473, §6 (RP) .]

8-A. **Asbestos consultant.** "Asbestos consultant" means a business entity that engages in, or intends to engage in, the design, inspection or monitoring of asbestos abatement activities.

[1993, c. 355, §31 (AMD) .]

8-B. **Asbestos inspector.** "Asbestos inspector" means an individual whose activities include, but are not limited to, collecting bulk samples and assessing the potential for exposure associated with the presence of asbestos-containing material.

[1993, c. 355, §31 (AMD) .]

8-C. **Asbestos professional.** "Asbestos professional" means an individual certified by the commissioner to engage in asbestos abatement activities, including, but not limited to, an asbestos abatement worker, an asbestos abatement project supervisor, an asbestos air monitor, an asbestos inspector, an asbestos abatement design consultant, an asbestos air analyst, an asbestos bulk analyst and an asbestos management planner.

[1993, c. 355, §31 (AMD) .]

8-D. **Asbestos management planner.** "Asbestos management planner" means a person who assesses hazards associated with the presence and condition of asbestos-containing materials in schools and who develops a response action plan based upon the assessment.

[1993, c. 355, §32 (NEW) .]

9. **Business entity.** "Business entity" means a partnership, firm, association, corporation, sole proprietorship or other business concern.

[1987, c. 448, §1-C (NEW) .]

10. **Certificate.** "Certificate" means a document issued to an individual by the commissioner affirming that an individual has successfully completed the training and other requirements set forth in this chapter to qualify as an asbestos professional.

[1993, c. 355, §33 (AMD) .]

11. **Commissioner.**

[1989, c. 630, §2 (RP); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §217 (RP) .]

12. **Employee.** "Employee" means an individual who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit, to engage in any employment.

[1993, c. 355, §34 (AMD) .]

13. **Friable.** "Friable" means materials that, when dry, have the potential to readily release asbestos fibers when crumbled, pulverized, handled, deteriorated or subjected to mechanical, physical or chemical processes. It also means potentially friable material that has deteriorated or has been or will be processed to the extent that, when dry, it may readily release asbestos fibers.

[1993, c. 355, §35 (AMD) .]

14. **In-house asbestos abatement unit.**

[1989, c. 325, §3 (RP) .]

14-A. **In-house asbestos abatement unit.** "In-house asbestos abatement unit" means the unit of a business or public entity that engages in, or intends to engage in, asbestos abatement activities or projects solely within the confines of property owned or leased by the entity and that employs one or more asbestos abatement supervisors for asbestos abatement activities.

[1989, c. 630, §3 (NEW) .]

15. **License.** "License" means a document issued by the commissioner to a business entity or public entity affirming that the entity has met the requirements set forth in this chapter to engage in asbestos abatement activities including, but not limited to, asbestos abatement contractor, in-house asbestos abatement unit, asbestos consultant, asbestos analytical laboratory and training provider.

[1993, c. 355, §36 (AMD) .]

15-A. **Owner or operator.** "Owner or operator" means a person who owns, leases, operates, controls or supervises an asbestos abatement activity within a building, structure or facility.

[1993, c. 355, §37 (AMD) .]

16. **Person.** "Person" means any individual, business entity, governmental body or other public or private entity.

[1987, c. 448, §1-C (NEW) .]

17. **Public entity.** "Public entity" means the State, any of its political subdivisions or any agency or instrumentality of either.

[1987, c. 448, §1-C (NEW) .]

18. **Training provider.** "Training provider" means a person providing training that is necessary to fulfill certification or licensing requirements under this chapter.

[1993, c. 355, §38 (NEW) .]

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 1989, c. 325, §§1-3 (AMD). 1989, c. 630, §§1-4 (AMD). 1989, c. 890, §§A40,B216- 218 (AMD). 1991, c. 473, §§2-10 (AMD). 1993, c. 355, §§26-38 (AMD). 2009, c. 374, §3 (AMD).

§1273. PROHIBITIONS

Unless otherwise provided in this section: [1987, c. 448, §1-C (NEW).]

1. **License or certificate required.** No person or owner or operator may engage in any asbestos abatement activities in the State, unless licensed or certified pursuant to this chapter; and

[1993, c. 355, §39 (AMD) .]

2. **Notification required.** A person, owner or operator may not engage in any asbestos abatement activity over 3 linear feet or 3 square feet of asbestos-containing material unless that person, owner or operator notifies the commissioner in writing. This notification must be postmarked at least 10 calendar days before or delivered to the department at least 5 working days prior to beginning any on-site work,

including on-site preparation work. The department may approve a reduction in the number of days required for notification on a case-by-case basis when unforeseeable circumstances or compliance with standard notification procedures may cause a threat to the environment or human health.

[2009, c. 374, §4 (AMD) .]

3. **In-house abatement units.**

[1989, c. 325, §4 (RP) .]

4. **Exemption.** Asbestos abatement activities related to disposal undertaken at licensed asbestos disposal sites are exempt from the requirements of this section.

[2005, c. 52, §1 (AMD) .]

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 1989, c. 325, §§4,5 (AMD). 1991, c. 473, §§11,12 (AMD). 1993, c. 355, §39 (AMD). 1993, c. 355, §40 (AMD). 2001, c. 626, §17 (AMD). 2005, c. 52, §1 (AMD). 2009, c. 374, §4 (AMD).

§1274. LICENSING AND CERTIFICATION

(REPEALED)

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 1989, c. 325, §6 (AMD). 1989, c. 630, §5 (AMD). 1989, c. 890, §§A40,B219 (AMD). 1991, c. 473, §13 (RP).

§1274-A. CERTIFICATION AND LICENSING REQUIREMENTS

The board may adopt and amend rules necessary to govern the licensing of business or public entities including but not limited to asbestos abatement contractors, in-house asbestos abatement units, asbestos consultants, asbestos analytical laboratory and training providers; and the certification of asbestos professionals undertaking asbestos abatement activities. [1993, c. 355, §41 (AMD).]

SECTION HISTORY
1991, c. 473, §14 (NEW). 1993, c. 355, §41 (AMD).

§1275. APPROVAL OF TRAINING COURSES

The board, after consultation with the Commissioner of Administrative and Financial Services and the Commissioner of Labor, shall develop rules establishing criteria and procedures for the approval of training courses and examinations that ensure the qualifications of applicants for certification as required in this chapter. The board shall adopt these rules in accordance with Title 5, chapter 375, subchapter II. [1993, c. 355, §42 (AMD).]

1. **Course requirements.** To qualify for approval, a training course must contain a combination of class instruction, practical application and public health procedures of a length and content that to the satisfaction of the commissioner must ensure adequate training for the level and type of responsibility for each named certification category.

[1993, c. 355, §42 (AMD) .]

2. **Instructors.** All courses certified under this section must be conducted by instructors whose training and experience is determined by the commissioner to be appropriate for the subject matter being taught and the level of certification category for which the course is designed. All courses must be designed and conducted under the guidance of an asbestos abatement design consultant.

[1993, c. 355, §42 (AMD) .]

3. **Transition.** Training courses conducted by, and instructors employed by, a firm with in-house asbestos abatement units contracting for asbestos removal with the Federal Government are considered certified under this section pending review for certification if the firm has submitted to the commissioner by March 1, 1990, a training course that meets training requirements set forth in this chapter.

[1991, c. 473, §15 (AMD) .]

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 1989, c. 630, §§6,7 (AMD). 1991, c. 473, §15 (AMD). 1993, c. 355, §42 (AMD).

§1276. RECIPROCITY AGREEMENT

The commissioner may develop reciprocity agreements with other states when the states have established licensing and certification requirements that are at least as stringent as those set forth in this chapter. [1987, c. 448, §1-C (NEW).]

SECTION HISTORY
1987, c. 448, §§1-C (NEW).

§1277. SUPPORT SERVICES

The Department of Administrative and Financial Services shall provide supporting services to the commissioner for the implementation of this chapter, including: [2007, c. 466, Pt. A, §71 (AMD).]

1. **Training records.** Maintenance of training records for employees of public and private entities intending to undertake asbestos abatement activities in the State;

[1987, c. 448, §1-C (NEW) .]

2. **Evaluation of applications.** Assistance in the evaluation of applications for licensing or certification for compliance with this chapter and subsequent rules, upon request of the commissioner; and

[1991, c. 473, §16 (AMD) .]

3. **Evaluation of training programs.** Evaluation, development and management of training programs which are appropriate for applicants attempting to comply with the provisions of this chapter and subsequent rules.

[1991, c. 473, §16 (AMD) .]

4. **Maintenance of project records.**

[1991, c. 473, §17 (RP) .]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 890, §§A40,B220 (AMD). 1991, c. 473, §§16,17 (AMD). 2007, c. 466, Pt. A, §71 (AMD).

§1278. FEES

1. **Fees established.**

[2009, c. 374, §5 (RP) .]

1-A. **License and certification fees.** Fees for each license and certification category are established under section 352. The fees must be paid upon application and annually thereafter.

[2009, c. 374, §6 (NEW) .]

2. **Notification fees.** Notification of asbestos abatement activities pursuant to section 1273, subsection 2 must be accompanied by the notification fee established under section 352 unless the activity occurs in single-unit residential buildings. Notification fees are based on the total linear or square feet of asbestos-containing material involved in the activity.

A. [2009, c. 374, §7 (RP).]

[2009, c. 374, §7 (AMD) .]

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 1989, c. 630, §§8,9 (AMD). 1991, c. 473, §18 (AMD). 1993, c. 355, §§43,44 (AMD). 2009, c. 374, §§5-7 (AMD).

§1279. RENEWAL

Each license or certificate issued under this chapter expires one year after the date of issue. Licensees or certificate holders may apply to the commissioner for the renewal of a license or certificate. No renewal may be granted if the application is received more than 2 years following expiration of the previously issued license or certificate. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §221 (AMD).]

To qualify for renewal of a license or certificate, the applicant shall submit: [1987, c. 448, §1-C (NEW).]

1. **Fee.** The appropriate fee as prescribed in section 1278;

[1987, c. 448, §1-C (NEW) .]

2. **Training.** Evidence of completion of any continuing education or training that may be required by rules promulgated by the board; and

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §222 (AMD) .]

3. **Disclosure.** A signed statement disclosing any violations of asbestos abatement standards for which the applicant may have been cited by a regulatory agency of the Federal Government or the State. If no citations were received during the previous year, that fact shall be stated. The disclosure shall include evidence that all penalties and fees assessed to the applicant are paid in full.

[1987, c. 448, §1-C (NEW) .]

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 1989, c. 890, §§A40,B221, 222 (AMD).

§1280. STANDARD OF ACCEPTABLE WORK PRACTICE

The board shall adopt rules that establish criteria and procedures of acceptable work practices for licensees and certificate holders and persons exempt from licensing and certification requirements under section 1273, subsection 4 engaged in the following asbestos abatement activities. [1993, c. 355, §45 (AMD).]

1. **Removal; demolition; encapsulation; enclosure; repair; handling; transportation; analysis; disposal; storage; design; monitoring; or inspection.** For any asbestos activity that involves more than 3 linear feet or 3 square feet of friable asbestos-containing material, the board shall consider the following:

A. Proper work practices for the removal of asbestos-containing materials; [1987, c. 448, §1-C (NEW).]

B. Proper work practices for the encapsulation of asbestos-containing materials; [1987, c. 448, §1-C (NEW).]

C. Proper work practices for enclosure of asbestos-containing materials; [1987, c. 448, §1-C (NEW).]

D. Proper work practices for the demolition of a structure or position of a structure which contains structural members or components of or covered by asbestos-containing materials; [1987, c. 448, §1-C (NEW).]

E. Proper work practices for the storage, transport and disposal of asbestos-containing materials; [1991, c. 473, §20 (AMD).]

F. Administrative penalties and cessation of operations to ensure compliance with this subsection; [1991, c. 473, §20 (AMD).]

G. Air monitoring, bulk and air sample analysis and criteria governing public access to sites where asbestos abatement activity has occurred; and [1991, c. 473, §20 (NEW).]

H. Asbestos abatement, monitoring, inspection, design and analysis activities. [1991, c. 473, §20 (NEW).]

In adopting these rules, the board shall consider cost-effective methods and alternatives that do not sacrifice public or worker health or safety.

[1993, c. 355, §45 (AMD) .]

2. **Other activities.** For any asbestos project not subject to the specific considerations of subsection 1, reasonable precautions to prevent the release of asbestos to the environment shall be made. At a minimum, the following precautions shall be considered:

A. Construction of adequate barriers to contain asbestos fibers released within the work area; [1987, c. 448, §1-C (NEW).]

B. Wetting of all asbestos-containing material prior to removal and during collection; [1987, c. 448, §1-C (NEW).]

C. Use of high efficiency particulate air vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue; [1987, c. 448, §1-C (NEW).]

D. Containing waste in appropriately labeled impermeable containers; and [1987, c. 448, §1-C (NEW).]

E. Proper storage, transfer and disposal to an approved landfill facility in a manner that does not release fibers into the air. [1987, c. 448, §1-C (NEW).]

[1987, c. 448, §1-C (NEW) .]

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 1989, c. 890, §§A40,B223, 224 (AMD). 1991, c. 473, §§19,20 (AMD). 1993, c. 355, §45 (AMD).

§1281. EMERGENCY PROVISIONS

In an emergency that results from a sudden, unexpected event that is not a planned asbestos abatement project, including the emergency repair, installation, removal or servicing of heating equipment in single-unit residential buildings by persons licensed by the Maine Fuel Board under Title 32, chapter 139, the commissioner may waive the requirements for a license or certificate under this chapter. For the purposes of this section, emergency includes a sudden unexpected event that, if not immediately attended to, presents a safety or health hazard; operations necessitated by nonroutine failures of equipment or to protect equipment from damage; and actions of fire and emergency medical personnel pursuant to duties within their official capacities. Any person who performs an asbestos abatement activity, which activity would normally require notification pursuant to section 1273, subsection 2, under emergency conditions, shall notify the commissioner by phone within one working day and in writing within 3 days after performance of that activity. [2009, c. 344, Pt. D, §13 (AMD); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
1987, c. 448, §§1-C (NEW). 2005, c. 52, §2 (AMD). 2009, c. 344, Pt. D, §13 (AMD). 2009, c. 344, Pt. E, §2 (AFF).

§1282. STANDARDS OF CONDUCT

The Board of Environmental Protection shall promulgate rules which establish standards of acceptable professional conduct for licensees and certificate holders engaged in asbestos abatement activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee or certificate holder, the suspension or revocation of a license or certificate or the denial of the renewal of a license or certificate. [1987, c. 448, §1-C (NEW).]

SECTION HISTORY
1987, c. 448, §§1-C (NEW).

§1283. INTERIM PROCEDURES

In developing a program to implement this chapter, the commissioner shall provide for interim licensing and certification procedures to ensure a transition period of not less than 180 days before the application of the requirements established in this chapter. [1987, c. 448, §1-C (NEW).]

SECTION HISTORY
1987, c. 448, §§1-C (NEW).

§1284. ASSISTANCE FROM OTHER DEPARTMENTS

The Commissioner of Administration, the Commissioner of Labor and the Commissioner of Health and Human Services shall assist the Commissioner of Environmental Protection in the enforcement of the licensing and certification requirements of this chapter. [1987, c. 448, §1-C (NEW); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 2003, c. 689, §B7 (REV).

Chapter 12-B: LEAD ABATEMENT

§1291. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 375, §14 (NEW).]

1. **Abatement.** "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. "Abatement" includes, but is not limited to:

A. The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and [1997, c. 375, §14 (NEW).]

B. All preparation, cleanup and post-abatement clearance testing activities associated with such measures. [1997, c. 375, §14 (NEW).]

"Abatement" does not include renovation and remodeling as defined in subsection 26.

For the purpose of this subsection, "permanently" means for at least 20 years.

[1997, c. 375, §14 (NEW) .]

2. **Accredited training program.** "Accredited training program" means a training program that has been accredited by the State pursuant to rules adopted in accordance with this chapter.

[1997, c. 375, §14 (NEW) .]

3. **Business entity.** "Business entity" means a partnership, firm, association, corporation, sole proprietorship or other business concern.

[1997, c. 375, §14 (NEW) .]

4. **Certificate.** "Certificate" means a document issued to an individual by the commissioner affirming that the individual has successfully completed the training and other requirements set forth in this chapter to qualify as a lead professional.

[1997, c. 375, §14 (NEW) .]

5. **Commercial building.** "Commercial building" means any building used primarily for commercial or industrial activity that is generally not open to the public or occupied or visited by children, including, but not limited to, warehouses, factories, storage facilities, aircraft hangars, garages and wholesale distribution facilities.

[1997, c. 375, §14 (NEW) .]

6. **Commissioner.** "Commissioner" means the Commissioner of Environmental Protection.

[1997, c. 375, §14 (NEW) .]

7. **Department.** "Department" means the Department of Environmental Protection.

[1997, c. 375, §14 (NEW) .]

8. **Design consultant.** "Design consultant" means an individual engaged in preparing and supervising the implementation of plans for the removal or abatement of lead-based paint. These activities include, but are not limited to, design, inspection or monitoring of lead abatement activities; and advising building owners, contractors and project supervisors regarding lead abatement activities.

[1997, c. 375, §14 (NEW) .]

9. **Employee.** "Employee" means an individual who may be permitted, required or directed by an employer, in consideration of direct or indirect gain or profit, to engage in any employment.

[1997, c. 375, §14 (NEW) .]

10. **In-house lead abatement unit.** "In-house lead abatement unit" means the unit of a business or public entity that engages in or intends to engage in lead abatement activities or projects solely within the confines of property owned or leased by the entity and that employs one or more lead abatement supervisors for lead abatement activities.

[1997, c. 375, §14 (NEW) .]

11. **Inspection.**

[1997, c. 624, §9 (RP) .]

12. **Interim controls.** "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment and operation of management and resident education programs.

[1997, c. 375, §14 (NEW) .]

13. **Lead abatement contractor.** "Lead abatement contractor" means a business entity that engages in or intends to engage in lead abatement activities as a business service and that employs or involves one or more project supervisors for lead abatement activities.

[1997, c. 375, §14 (NEW) .]

14. **Lead abatement professional.** "Lead abatement professional" means an individual certified by the commissioner to engage in lead-based paint activities, including, but not limited to, a lead abatement worker, a lead abatement project supervisor, a lead inspector, a lead abatement design consultant and a lead risk assessor.

[1997, c. 375, §14 (NEW) .]

15. **Lead abatement worker.** "Lead abatement worker" means an individual engaging in any lead abatement activity for any employer.

[1997, c. 375, §14 (NEW) .]

16. **Lead-based paint.** "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

[1997, c. 375, §14 (NEW) .]

17. **Lead-based paint activities.** "Lead-based paint activities" means inspection, risk assessment, lead abatement design, lead abatement and services related to lead-based paint such as lead screening, lead determination and deleading.

[1997, c. 624, §10 (AMD) .]

17-A. **Lead determination.** "Lead determination" means an inspection of a limited portion of a building for the purpose of identifying the presence of lead-based paint.

[1997, c. 624, §11 (NEW) .]

17-B. **Lead hazard.** "Lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated water or lead-based paint that is in poor condition.

[1997, c. 624, §11 (NEW) .]

17-C. **Lead inspection.** "Lead inspection" means a surface-by-surface assessment to determine the presence of lead-based paint.

[1999, c. 334, §9 (AMD) .]

18. **Lead inspector.** "Lead inspector" means an individual who conducts lead inspections and lead determinations.

[1997, c. 624, §12 (AMD) .]

19. **Lead-poisoned.** "Lead-poisoned" means having a confirmed elevated level of blood lead that is injurious, as defined in rules adopted by the Department of Health and Human Services.

[1997, c. 375, §14 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

19-A. **Lead-safe.** "Lead-safe" means premises do not contain lead at a level or in a condition that constitutes an environmental hazard, according to rules adopted pursuant to section 1295.

[2007, c. 628, Pt. B, §1 (NEW) .]

20. **License.** "License" means a document issued by the commissioner to a business entity or public entity, including, but not limited to, a lead abatement contractor, an in-house lead abatement unit or a lead training provider, affirming that the entity has met the requirements set forth in this chapter to engage in lead-based paint activities.

[1997, c. 375, §14 (NEW) .]

21. **Owner or operator.** "Owner" or "operator" means a person who owns, leases, operates, controls or supervises a lead abatement activity within a building, structure or facility.

[1997, c. 375, §14 (NEW) .]

22. **Person.** "Person" means any individual, business entity, governmental body or other public or private entity.

[1997, c. 375, §14 (NEW) .]

23. **Project supervisor.** "Project supervisor" means an individual with responsibility for the supervision of lead abatement activities. "Project supervisor" includes, but is not limited to, an abatement project supervisor employed by a contractor or by an in-house lead abatement unit.

[1997, c. 375, §14 (NEW) .]

23-A. **Property owner.** "Property owner" means a person, firm, corporation, guardian, conservator, trustee, executor, legal representative or registered agent who alone or jointly and severally with others owns, holds or controls the whole or any part of the freehold or leasehold interest to any property, with or without actual possession.

[2007, c. 628, Pt. B, §2 (NEW) .]

24. **Public building.** "Public building" means any building constructed before 1978, except residences and child care facilities, that is generally open to the public or occupied or visited by children, including, but not limited to, schools, day care centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers and government buildings.

[1997, c. 375, §14 (NEW) .]

25. **Public entity.** "Public entity" means the State, any of its political subdivisions or any agency or instrumentality of either.

[1997, c. 375, §14 (NEW) .]

26. **Renovation and remodeling.** "Renovation and remodeling" means the replacement or reconstruction of any part of a residence in which the primary intent is to repair, restore or remodel a given structure, which may incidentally result in the reduction of lead-based paint hazards.

[1997, c. 375, §14 (NEW) .]

26-A. **Residential dwelling.** "Residential dwelling" means a room or group of rooms that form a single independent habitable unit for permanent occupation by one or more individuals that has facilities with permanent provisions for living, sleeping, eating, cooking and sanitation, including common areas and appurtenant structures. "Residential dwelling" does not include:

A. An area not used for living, sleeping, eating, cooking or sanitation, such as an unfinished basement, that is not readily accessible to children under 6 years of age; [2007, c. 628, Pt. B, §3 (NEW).]

B. A unit within a hotel, motel or seasonal or temporary lodging facility unless the unit is occupied by one or more children under 6 years of age for a period exceeding 30 days; [2007, c. 628, Pt. B, §3 (NEW).]

C. An area that is secured and inaccessible to occupants; [2007, c. 628, Pt. B, §3 (NEW).]

D. Housing for the elderly, or a dwelling unit designated exclusively for adults with disabilities. This exemption does not apply if a child under 6 years of age resides or is expected to reside in the dwelling unit or visit the dwelling unit on a regular basis; or [2007, c. 628, Pt. B, §3 (NEW).]

E. An unoccupied dwelling unit that is to be demolished, as long as the dwelling unit remains unoccupied until demolition. [2007, c. 628, Pt. B, §3 (NEW).]

[2007, c. 628, Pt. B, §3 (NEW) .]

27. **Risk assessment.** "Risk assessment" means the on-site assessment to determine the existence, nature, severity and location of lead hazards and the provision of a written report explaining the results of the assessment and the options for reducing lead hazards.

[1997, c. 624, §13 (AMD) .]

28. **Risk assessor.** "Risk assessor" means an individual who has been trained to conduct risk assessments as well as lead inspections.

[1997, c. 375, §14 (NEW) .]

29. **Superstructure.** "Superstructure" means a large steel or other industrial structure, including, but not limited to bridges or water towers.

[1997, c. 375, §14 (NEW) .]

30. **Training manager.** "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

[1997, c. 375, §14 (NEW) .]

31. **Training provider.** "Training provider" means a person providing training that is necessary to fulfill certification or licensing requirements under this chapter.

[1997, c. 375, §14 (NEW) .]

SECTION HISTORY
1997, c. 375, §14 (NEW). 1997, c. 624, §§9-13 (AMD). 1999, c. 334, §9 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 628, Pt. B, §§1-3 (AMD).

§1292. PROHIBITIONS

1. **License or certificate required for residential lead-based paint activities.** A person may not engage in any residential lead-based paint activities in the State unless licensed or certified pursuant to this chapter.

[1997, c. 375, §14 (NEW) .]

2. **License or certificate required for lead-based paint activities in public buildings, commercial buildings and superstructures.** After the effective date of rules adopted by the department pursuant to section 1295 for licensing and certification to conduct lead-based paint activities in public buildings, commercial buildings and superstructures, a person may not engage in any lead-based paint activities in the State unless licensed or certified pursuant to this chapter.

[1997, c. 375, §14 (NEW) .]

3. **Notification required.** A person may not engage in any residential lead abatement activity unless that person notifies the commissioner in writing at least 5 working days before beginning any on-site work, including on-site preparation work, that has the potential to create lead dust. After the effective date of rules adopted by the department pursuant to section 1295 for notification of lead abatement activities in public buildings, commercial buildings and superstructures, a person may not engage in those lead abatement activities unless the person notifies the commissioner in writing at least 5 working days before beginning any on-site work, including on-site preparation work, that has the potential to create lead dust.

[1997, c. 375, §14 (NEW) .]

4. **Work practices.** All residential lead-based paint activities must be conducted in accordance with work practice standards adopted by rule pursuant to this chapter. After the effective date of rules adopted by the department pursuant to section 1295 for work practices pertaining to lead-based paint activities in public buildings, commercial buildings and superstructures, those lead-based paint activities must be conducted in accordance with the applicable work practice standards adopted by rule.

[1997, c. 375, §14 (NEW) .]

5. **Exemption.** A person who is 18 years of age or older need not obtain licensing and certification to perform lead abatement activities within a residential dwelling unit that the person owns and personally occupies, as long as a child residing in the dwelling unit has not been identified as lead-poisoned. A person 18 years of age or older who owns and personally occupies a dwelling unit in which a resident child has been identified as lead-poisoned need not obtain licensing and certification to perform abatement activities within that dwelling unit, as long as the person completes any training required by the Department of Health and Human Services.

[1997, c. 624, §14 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1997, c. 375, §14 (NEW). 1997, c. 624, §14 (AMD). 2003, c. 689, §B6 (REV).

§1293. CERTIFICATION, LICENSING AND ACCREDITATION REQUIREMENTS

1. **Certification and licensing.** The board shall adopt and amend rules necessary to govern the licensing of business or public entities, including, but not limited to, lead abatement contractors and in-house lead abatement units, the accreditation of lead training providers and the certification of lead abatement professionals.

[1997, c. 375, §14 (NEW) .]

2. **Approval of training courses.** The board shall adopt and amend rules establishing criteria and procedures for the approval of training courses and examinations that ensure the qualifications of applicants for certification as required in this chapter. These rules are routine, technical rules in accordance with Title 5, chapter 375, subchapter II-A. To ensure a smooth transition period before the adoption of accreditation rules in conformance with the requirements of this chapter, the commissioner shall provide for interim accreditation of training providers by establishing procedures in accordance with 40 Code of Federal Regulations, Part 745, Subpart L, Section 745.228.

To qualify for approval, a training course must contain a combination of class instruction, practical application and public health procedures of a length and content that ensure adequate training for the level and type of responsibility for each named certification category.

Courses certified under this section must be conducted by instructors whose training and experience are determined by the commissioner to be appropriate for the subject matter being taught and the level of certification category for which the course is designed. Courses must be designed and conducted under the guidance of a training manager.

[1997, c. 375, §14 (NEW) .]

3. **Renewal.** A license or certificate issued under this chapter expires one year after the date of issue. A licensee or certificate holder may apply to the commissioner for the renewal of a license or certificate. A renewal may not be granted if the application is received more than 2 years following expiration of the previously issued license or certificate.

To qualify for renewal of a license or certificate, the applicant must submit:

A. The appropriate fees as prescribed by rule pursuant to section 1295; [1997, c. 375, §14 (NEW).]

B. Evidence of completion of any continuing education or training that may be required by rules adopted by the board; and [1997, c. 375, §14 (NEW).]

C. A signed statement disclosing any violations of lead abatement standards for which the applicant may have been cited by a regulatory agency of the Federal Government or the State. If no citations were received during the previous year, that fact must be stated. The disclosure must include evidence that all penalties and fees assessed to the applicant are paid in full. [1997, c. 375, §14 (NEW).]

[1997, c. 375, §14 (NEW) .]

SECTION HISTORY
1997, c. 375, §14 (NEW).

§1294. RECIPROCITY AGREEMENT

The commissioner may develop reciprocity agreements with other states and with federally recognized tribes when the states and tribes have established licensing and certification and accreditation requirements that are at least as stringent as those set forth in this chapter. [1997, c. 375, §14 (NEW).]

SECTION HISTORY
1997, c. 375, §14 (NEW).

§1295. RULES

The department shall adopt and amend rules to carry out the purposes of this chapter and to ensure that state law relating to lead-based paint activities satisfies minimum requirements of federal law in all respects. In adopting the rules, the department shall consult the regulations of the United States Department of Labor, Occupational Safety and Health Administration to ensure that the rules minimize duplicative requirements. The rules are routine, technical rules in accordance with Title 5, chapter 375, subchapter II-A and may address, but are not limited to, the following: [1997, c. 375, §14 (NEW).]

1. **Licenses and certification.** Licensing lead abatement contractors and in-house lead abatement units, and certification of lead abatement professionals;

[1997, c. 375, §14 (NEW) .]

2. **Training programs.** Accreditation of training providers offering courses for lead abatement professionals and in lead awareness for homeowners and for contractors involved in renovation, remodeling and painting;

[1997, c. 375, §14 (NEW) .]

3. **Standards of acceptable work practices.** Criteria and procedures of acceptable work practices for licensees and certificate holders and for persons exempt from licensing and certification requirements;

[1997, c. 375, §14 (NEW) .]

4. **Standards of conduct.** Standards of acceptable professional conduct for licensees and certificate holders engaged in lead-based paint activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee or certificate holder, the suspension or revocation of a license or certificate or the denial of the renewal of a license or certificate; and

[1997, c. 375, §14 (NEW) .]

5. **Fees.** Establishing fees for notifications and annual fees for each license and certification category. The fees must be deposited in the Maine Environmental Protection Fund.

[1997, c. 375, §14 (NEW) .]

SECTION HISTORY
1997, c. 375, §14 (NEW).

§1296. EMERGENCY PROVISIONS

A person engaged in any renovation, remodeling, maintenance or repair project involving lead-based paint not subject to the licensing and certification requirements of this chapter shall take reasonable precautions to prevent the release of lead to the environment, including the cleanup, removal and appropriate disposal of all visible lead-based paint debris generated by the project. Activities that may result in the release of lead to the environment include, but are not limited to, removal of lead paint by using open-flame burning or torching, machine sanding or grinding without high-efficiency particulate exhaust control, uncontained hydro blasting or high-pressure washing, abrasive blasting or sandblasting without containment and high-efficiency particulate exhaust control and using heat guns operated above 1,100 degrees Fahrenheit. If the commissioner finds, after investigation, that any location at which lead dust, lead chips or other lead-contaminated wastes are or were handled or otherwise came to be located may create a danger to public health or the safety of any person or to the environment, the commissioner may order the person responsible for the lead dust, lead chips or lead-contaminated waste to cease the activity immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger. The commissioner may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution. [2001, c. 576, §1 (AMD).]

An order issued under this section must contain findings of fact describing, insofar as possible, the site of the activity and the danger to the public health or safety. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §25 (AMD).]

The person to whom the order is directed shall comply immediately and 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 hold the hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order within 15 working days after receipt of the application. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is 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 is 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. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §25 (AMD).]

A person who fails without sufficient cause to undertake abatement or remedial action promptly in accordance with an order issued pursuant to this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action. [1997, c. 375, §14 (NEW).]

The commissioner may initiate enforcement action under section 347-A in lieu of issuing an order under this section. [2009, c. 501, §13 (NEW).]

The Attorney General may commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established pursuant to section 349. [1997, c. 375, §14 (NEW).]

SECTION HISTORY

1997, c. 375, §14 (NEW). 2001, c. 576, §1 (AMD). 2005, c. 330, §25 (AMD). 2009, c. 501, §13 (AMD).

§1297. ASSISTANCE FROM OTHER DEPARTMENTS

The Commissioner of Administrative and Financial Services, the Commissioner of Labor and the Commissioner of Health and Human Services shall assist the commissioner in the enforcement of the licensing and certification requirements of this chapter. [1997, c. 375, §14 (NEW); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY
1997, c. 375, §14 (NEW). 2003, c. 689, §B7 (REV).

§1298. REGISTRY OF LEASED LEAD-SAFE RESIDENTIAL DWELLINGS

1. **Registry.** The department shall maintain a registry of leased residential dwellings built before 1978 that are lead-safe as designated by the property owners in accordance with subsection 2.

[2007, c. 628, Pt. B, §4 (NEW) .]

2. **Designation as lead-safe.** A leased residential dwelling may be designated as lead-safe for the purposes of this section if the property owner has submitted to the department an application for the property to be placed on the registry created under subsection 1. Submission of an application to the registry is voluntary on the part of the property owner.

[2007, c. 628, Pt. B, §4 (NEW) .]

3. **Application.** The application under subsection 2 must be submitted together with a report by a lead inspector that indicates that the leased residential dwelling has been tested for the presence of lead-based paint and lead-contaminated dust or a report by a lead dust sampling technician that indicates the leased residential dwelling has been tested for lead-contaminated dust. The report must indicate that the dwelling meets the requirements for inclusion on the registry in accordance with the standards and procedures established by the department.

[2009, c. 501, §14 (AMD) .]

SECTION HISTORY
2007, c. 628, Pt. B, §4 (NEW). 2009, c. 501, §14 (AMD).

Chapter 13: WASTE MANAGEMENT

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1987, C. 517, §4 (RPR)

§1301. SHORT TITLE

This chapter shall be known and may be cited as the "Maine Hazardous Waste, Septage and Solid Waste Management Act." [1979, c. 383, §1 (AMD).]

SECTION HISTORY
1973, c. 387, (NEW). 1979, c. 383, §1 (AMD).

§1302. DECLARATION OF POLICY

For the purposes of this chapter and chapter 24, the Legislature finds and declares it to be the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution, to establish a coordinated statewide waste reduction, recycling and management program. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature finds and declares that it is the policy of the State to pursue and implement an integrated approach to hazardous and solid waste management, which shall be based on the following priorities: reduction of waste generated at the source, including both the amount and toxicity of waste; waste reuse; waste recycling; waste composting; waste processing which reduces the volume of waste needing disposal, including waste-to-energy technology; and land disposal. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature finds that it is in the best interests of the State to prefer waste management options with lower health and environmental risk and to ensure that such options are neither foreclosed nor limited by the State's commitment to disposal methods. The Legislature declares that it is in the public interest to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature finds that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource. At the same time, new technologies and industrial developments are making recycling and reuse of waste an increasingly viable and economically attractive option which carries minimal risk to the State and the environment and an option which allows the conservation of the State's limited disposal capacity. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature further finds that needed municipal waste recycling and disposal facilities have not been developed in a timely and environmentally sound manner because of diffused responsibility for municipal waste planning, processing and disposal among numerous and overlapping units of local government. The Legislature also finds that direct state action is needed to assist municipalities in separating, collecting, recycling and disposing of solid waste, and that sound environmental policy and economics of scale dictate a preference for public solid waste management planning and implementation on a regional and state level. [1989, c. 585, Pt. E, §2 (RPR).]

The Legislature finally declares that the provisions of this chapter shall be construed liberally to address the findings and accomplish the policies in this section. [1989, c. 585, Pt. E, §2 (RPR).]

SECTION HISTORY
1973, c. 387, (NEW). 1979, c. 383, §1 (AMD). 1983, c. 342, §1 (AMD). 1987, c. 517, §5 (RPR). 1989, c. 585, §E2 (RPR).

§1303. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 387, (NEW). 1977, c. 78, §208 (AMD). 1979, c. 383, §2 (RPR). 1979, c. 663, §§234,235 (AMD). 1979, c. 699, §§3-8 (AMD). 1981, c. 430, §§1-5 (AMD). 1981, c. 470, §A170 (AMD). 1981, c. 478, §§1,2 (AMD). 1981, c. 528, §1 (AMD). 1983, c. 342, §§2,3 (AMD). 1983, c. 432, §§1-3 (AMD). 1983, c. 743, §15 (AMD). 1985, c. 822, §§2,3 (AMD). 1987, c. 517, §6 (AMD). 1987, c. 769, §A181 (AMD). 1987, c. 787, §16 (AMD). 1989, c. 124, §1 (AMD). 1989, c. 585, §E3 (RP).

§1303-A. HAZARDOUS WASTE; ADDITIONAL RULE-MAKING AUTHORITY

(REPEALED)

SECTION HISTORY
1979, c. 699, §9 (NEW). 1981, c. 430, §6 (RPR). 1983, c. 395, §1 (AMD). 1983, c. 432, §4 (AMD). 1983, c. 467, §1 (AMD). 1983, c. 666, (AMD). 1983, c. 816, §B21 (AMD). 1985, c. 506, §A81 (AMD). 1987, c. 517, §7 (RP).

§1303-B. WASTE OIL DEALERS; RULE-MAKING AUTHORITY

(REPEALED)

SECTION HISTORY
1983, c. 342, §4 (NEW). 1987, c. 517, §8 (RP).

§1303-C. DEFINITIONS

As used in this chapter or in chapter 24, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 878, Pt. H, §7 (AMD).]

1. **Agency.**

[1995, c. 656, Pt. A, §19 (RP) .]

1-A. **Biomedical waste.** "Biomedical waste" means waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible human host could result in disease or that may contain cytotoxic chemicals used in medical treatment.

[1989, c. 869, Pt. A, §3 (NEW); 1989, c. 869, Pt. A, §21 (AFF) .]

1-B. **Bypass.**

[2005, c. 612, §1 (NEW); T. 38, §1303-C, sub-§1-B (RP) .]

1-C. **Bypass.** "Bypass" means any solid waste that is destined for disposal, processing or beneficial use at a solid waste facility but that cannot be disposed of, processed or beneficially used at that facility because of the facility's malfunction, insufficient capacity, inability to process or burn, downtime or any other comparable reason.

[2007, c. 338, §1 (NEW); 2007, c. 338, §5 (AFF); 2007, c. 414, §1 (NEW) .]

2. **Board.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §225 (RP) .]

2-A. **Class I liquid.** "Class I liquid" means any liquid having a flash point below 100° Fahrenheit.

[1995, c. 573, §1 (NEW) .]

2-B. **Class II liquid.** "Class II liquid" means any liquid having a flash point at or above 100° Fahrenheit and below 140° Fahrenheit.

[1995, c. 573, §1 (NEW) .]

3. **Closing reserve fund.** "Closing reserve fund" means a fund created for the purpose of financing the closing and maintenance after closing of a waste facility.

[1989, c. 585, Pt. E, §4 (NEW) .]

4. **Commercial hazardous waste facility.** "Commercial hazardous waste facility" means:

A. A waste facility that handles hazardous wastes generated off the site of the facility; or [1989, c. 585, Pt. E, §4 (NEW).]

B. A facility that, in the handling of a waste generated off the site, generates hazardous waste. [1989, c. 585, Pt. E, §4 (NEW).]

[1989, c. 585, Pt. E, §4 (NEW) .]

5. **Commercial landfill facility.** "Commercial landfill facility" means a commercial solid waste facility that is used for the burial of solid waste.

[1989, c. 585, Pt. E, §4 (NEW) .]

6. **Commercial solid waste disposal facility.** "Commercial solid waste disposal facility" means a solid waste disposal facility except as follows:

A. [2007, c. 338, §5 (AFF); 2007, c. 338, §2 (RP).]

A-1. [2005, c. 612, §2 (NEW); T. 38, §1303-C, sub-§6, ¶A-1 (RP).]

A-2. A solid waste facility that is owned by a public waste disposal corporation under section 1304-B, subsection 5:

(1) As long as the public waste disposal corporation controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless the commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; [2007, c. 338, §2 (NEW); 2007, c. 338, §5 (AFF).]

B. [2007, c. 338, §5 (AFF); 2007, c. 338, §2 (RP).]

B-1. [2005, c. 612, §2 (NEW); T. 38, §1303-C, sub-§6, ¶B-1 (RP).]

B-2. A solid waste facility that is owned by a municipality under section 1305:

(1) As long as the municipality controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless:

(a) The commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; and

(b) Acceptance of waste that is not generated within the State is approved by a majority of the voters of the municipality by referendum election; [2007, c. 338, §2 (NEW); 2007, c. 338, §5 (AFF).]

C. [2007, c. 338, §5 (AFF); 2007, c. 338, §2 (RP).]

C-1. [2005, c. 612, §2 (NEW); T. 38, §1303-C, sub-§6, ¶C-1 (RP).]

C-2. A solid waste facility that is owned by a refuse disposal district under chapter 17:

(1) As long as the refuse disposal district controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless the commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; [2007, c. 338, §2 (NEW); 2007, c. 338, §5 (AFF).]

D. Beginning January 1, 2007, a solid waste facility owned and controlled by the Department of Administrative and Financial Services, Bureau of General Services under chapter 24; [2011, c. 655, Pt. GG, §7 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

D-1. [2005, c. 612, §2 (NEW); T. 38, §1303-C, sub-§6, ¶D-1 (RP).]

E. A solid waste facility owned and controlled by a single entity that:

(1) Generates at least 85% of the solid waste disposed of at a facility, except that the facility may accept from other sources, on a nonprofit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis; or

(2) Is an owner of a manufacturing facility that has, since January 1, 2006, generated at least 85% of the solid waste disposed of at the solid waste facility, except that one or more integrated industrial processes of the manufacturing facility are no longer in common ownership, and those integrated industrial processes will continue to generate waste that will continue to be disposed of at the solid waste facility. This exemption only applies if the source and type of waste disposed of at the solid waste facility remains the same as that previously disposed of by the single entity.

For the purposes of this paragraph, "single entity" means an individual, partnership, corporation or limited liability corporation that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph.

For purposes of this paragraph, "integrated industrial processes" means manufacturing processes, equipment or components, including, but not limited to, energy generating facilities, that when used in combination produce one or more manufactured products for sale; or [2011, c. 206, §20 (RPR).]

F. A private corporation that accepts material-separated, refuse-derived fuel as a supplemental fuel and does not burn waste other than its own. [1999, c. 525, §1 (NEW).]

For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste whether generated within the State or outside of the State if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.

[2011, c. 655, Pt. GG, §7 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

7. **Commercial waste facility.**

[1999, c. 525, §2 (RP) .]

8. **Construction and demolition debris.** "Construction and demolition debris" means debris resulting from construction, remodeling, repair, and demolition of structures. It excludes asbestos and other special wastes.

[1989, c. 585, Pt. E, §4 (NEW) .]

9. **Contingency reserve fund.** "Contingency reserve fund" means a fund maintained for the purpose of meeting unexpected contingencies in the operation of a waste facility.

[1989, c. 585, Pt. E, §4 (NEW) .]

10. **Conveyance.** "Conveyance" means any aircraft, watercraft, vehicle or other machine used for transportation on land, water or in the air.

[1989, c. 585, Pt. E, §4 (NEW) .]

11. **Department.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §225 (RP) .]

12. **Disposal.** "Disposal" means the discharge, deposit, dumping, spilling, leaking or placing of hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage into or on land, air or water and the incineration of solid waste, refuse-derived fuel, sludge or septage so that the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage or a constituent of the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage may enter the environment or be emitted into the air, or discharged into waters, including ground waters.

[1993, c. 732, Pt. A, §7 (AMD) .]

13. **Generation.** "Generation" means the act or process of producing hazardous, biomedical or solid waste, waste oil, sludge or septage.

[1991, c. 72, §1 (AMD) .]

13-A. **Generator.**

[1991, c. 520, §4 (RP) .]

14. **Handle.** "Handle" means to store, transfer, collect, separate, salvage, process, recycle, reduce, recover, incinerate, dispose of or treat.

[1989, c. 585, Pt. E, §4 (NEW) .]

15. **Hazardous waste.** "Hazardous waste" means a waste substance or material, in any physical state, designated as hazardous by the board under section 1319-O. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or part or constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

[1989, c. 585, Pt. E, §4 (NEW) .]

15-A. **Hazardous waste incinerator.** "Hazardous waste incinerator" means an enclosed device using controlled flame combustion to thermally break down hazardous waste.

[1989, c. 794, §2 (NEW) .]

15-B. **Host community.** "Host community" means any town, township or city that is the geographic site of a solid waste disposal facility or any immediately contiguous town, township or city if such town, township or city can demonstrate to the department that it incurs a direct financial impact related to any necessary development or maintenance of infrastructure or to any necessary provision of services as a result of the location or operation of that solid waste disposal facility.

[2007, c. 406, §1 (NEW) .]

16. **Incineration facility.** "Incineration facility" means a facility where municipal solid waste or refuse-derived fuel is disposed of through combustion, including combustion for the generation of heat, steam or electricity.

[1989, c. 585, Pt. E, §4 (NEW) .]

17. **Inert fill.** "Inert fill" means clean soil material, rocks, bricks, and cured concrete, which are not mixed with other waste, and which are not derived from an ore mining activity.

[1989, c. 585, Pt. E, §4 (NEW) .]

18. **Land clearing debris.** "Land clearing debris" means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material and rocks.

[1989, c. 585, Pt. E, §4 (NEW) .]

19. **Manifest.** "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transport.

[1989, c. 585, Pt. E, §4 (NEW) .]

19-A. **Material-separated, refuse-derived fuel.** "Material-separated, refuse-derived fuel" means a binder-enhanced, pelletized, solid fuel product made from the combustible fraction of a municipal solid waste stream that has been processed to remove the recyclable material before combustion. The product may not contain more than 6% by weight of plastic, metal, glass or food waste. In addition, the production of material-separated, refuse-derived fuel may not exceed 40% by weight of the total municipal solid waste stream from which it was derived.

[1991, c. 220, §9 (NEW) .]

19-B. **Primary sand and gravel recharge area.** "Primary sand and gravel recharge area" has the same meaning as in section 562-A, subsection 16-B.

[1993, c. 383, §33 (NEW) .]

19-C. **Office.**

[2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 655, Pt. GG, §8 (RP) .]

20. **Recyclable.** "Recyclable" means possessing physical and economic characteristics that allow a material to be recycled.

[1989, c. 585, Pt. E, §4 (NEW) .]

21. **Recycle.** "Recycle" means to recover, separate, collect and reprocess waste materials for sale or reuse other than use as a fuel for the generation of heat, steam or electricity.

[1993, c. 1, §131 (COR) .]

22. **Recycling.** "Recycling" means the collection, separation, recovery and sale or reuse of materials that would otherwise be disposed of or processed as waste or the mechanized separation and treatment of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.

[1989, c. 585, Pt. E, §4 (NEW) .]

23. **Refuse-derived fuel.** "Refuse-derived fuel" means municipal solid waste which has been processed prior to combustion to increase the heat input value of the waste.

[1989, c. 585, Pt. E, §4 (NEW) .]

24. **Regional association.** "Regional association" means 2 or more municipalities that have formed a relationship to manage the solid waste generated within the participating municipalities and for which those municipalities are responsible. The relationship must be formed by one or more of the following methods:

A. Creation of a refuse disposal district under chapter 17; [1989, c. 869, Pt. A, §5 (NEW).]

B. Creation of a nonprofit corporation that consists exclusively of municipalities and is organized under Title 13, chapter 81 or Title 13-B, for the purpose, among other permissible purposes, of owning, constructing or operating a solid waste disposal facility, including a public waste disposal corporation under section 1304-B, or whose members contract for the disposal of solid waste with a solid waste disposal facility, including, but not limited to, a qualifying facility as defined in Title 35-A, section 3303; [1997, c. 602, §1 (AMD); 1997, c. 602, §3 (AFF).]

C. Creation of a joint exercise of powers agreement under Title 30-A, chapter 115; or [1989, c. 869, Pt. A, §5 (NEW).]

D. Contractual commitment. [1989, c. 869, Pt. A, §5 (NEW).]

For the purposes of this chapter, a regional association and the entities described in paragraphs B and C may include counties and quasi-municipal corporations as members provided the counties or quasi-municipal corporations, when acting by themselves within their own jurisdictions, are capable of exercising all of the powers of the regional association.

[1997, c. 602, §1 (AMD); 1997, c. 602, §3 (AFF) .]

25. **Residue.** "Residue" means waste remaining after the handling, processing, incineration or recycling of solid waste including, without limitation, front end waste and ash from incineration facilities.

[1989, c. 869, Pt. A, §5 (AMD) .]

25-A. **Responsible party.** For the purposes of subchapter II-A only, "responsible party" means any or all of the following persons:

A. The owner or operator of an uncontrolled tire stockpile; and [1991, c. 517, Pt. A, §1 (NEW).]

B. Any person who owned or operated an uncontrolled tire stockpile from the time any tire arrived at that stockpile. [1991, c. 517, Pt. A, §1 (NEW).]

[1991, c. 517, Pt. A, §1 (NEW) .]

26. **Resource recovery.** For the purposes of section 1304-B only, "resource recovery" means the recovery of materials or substances that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

[1989, c. 585, Pt. E, §4 (NEW) .]

27. **Septage.** "Septage" means waste, refuse, effluent, sludge and any other materials from septic tanks, cesspools or any other similar facilities.

[1989, c. 585, Pt. E, §4 (NEW) .]

27-A. **Significant ground water aquifer.** "Significant ground water aquifer" has the same meaning as in section 562-A, subsection 19-A.

[1993, c. 383, §34 (NEW) .]

28. **Site.** "Site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided that the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered site property.

[1989, c. 585, Pt. E, §4 (NEW) .]

28-A. **Sludge.** "Sludge" means nonhazardous solid, semisolid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or wet process air pollution control facility or any other waste having similar characteristics and effect. The term does not include industrial discharges that are point sources subject to permits under the federal Clean Water Act, 33 United States Code, Section 1342 (1999).

[1999, c. 393, §1 (NEW) .]

29. **Solid waste.** "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material and landscape refuse, but does not include hazardous waste, biomedical waste, septage or agricultural wastes. The fact that a solid waste or constituent of the waste may have value or other use or may be sold or exchanged does not exclude it from this definition.

[2001, c. 247, §1 (AMD) .]

30. **Solid waste disposal facility.** "Solid waste disposal facility" means a solid waste facility for the incineration or landfilling of solid waste or refuse-derived fuel. Facilities that burn material-separated, refuse-derived fuel, either alone or in combination with fuels other than municipal solid waste or refuse-derived fuels, are not solid waste disposal facilities.

A. [1989, c. 869, Pt. A, §5 (RP).]

B. [1989, c. 869, Pt. A, §5 (RP).]

[1991, c. 220, §10 (AMD) .]

31. **Solid waste facility.** "Solid waste facility" means a waste facility used for the handling of solid waste, except that the following facilities are not included:

A. A waste facility that employs controlled combustion to dispose of waste generated exclusively by an institutional, commercial or industrial establishment that owns the facility; [1991, c. 492, §1 (AMD).]

B. Lime kilns; wood chip, bark and hogged fuel boilers; kraft recovery boilers and sulfite process recovery boilers, which combust solid waste generated exclusively at the facility; and [1991, c. 492, §1 (AMD).]

C. An industrial boiler that combusts mixed paper, corrugated cardboard or office paper to generate heat, steam or electricity if:

(1) The mixed paper, corrugated cardboard or office paper would otherwise be placed in a landfill;

(2) The market value of the mixed paper, corrugated cardboard or office paper as a raw material for the manufacture of a product with recycled content is less than its value to the facility owner as a fuel supplement;

(3) The mixed paper, corrugated cardboard or office paper is combusted as a substitute for, or supplement to, fossil or biomass fuels that constitute the primary fuels combusted in the industrial boiler; and

(4) The boiler combusts no other forms of solid waste except as provided in this subsection. [1993, c. 378, §4 (AMD).]

[1993, c. 378, §4 (AMD) .]

32. **Solid waste landfill.** "Solid waste landfill" means a waste disposal facility for the disposal of solid waste on or in land. This term does not include landspreading sites used in programs approved by the department.

[1989, c. 585, Pt. E, §4 (NEW) .]

32-A. **Solid waste processing facility.** "Solid waste processing facility" means a land area, structure, equipment, machine, device, system or combination thereof, other than an incineration facility, that is operated to reduce the volume or change the chemical or physical characteristics of solid waste. "Solid waste processing facility" includes but is not limited to a facility that employs shredding, baling, mechanical and magnetic separation or composting or other stabilization technique to reduce or otherwise change the nature of solid waste.

[2007, c. 583, §1 (NEW) .]

33. **Source separation.** "Source separation" means the preparation of materials for recycling by separation from wastes at the point of generation.

[1989, c. 585, Pt. E, §4 (NEW) .]

34. **Special waste.** "Special waste" means any solid waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

A. Oil, coal, wood and multifuel boiler and incinerator ash; [1989, c. 585, Pt. E, §4 (NEW).]

B. Industrial and industrial process waste; [1989, c. 585, Pt. E, §4 (NEW).]

C. Waste water treatment plant sludge, paper mill sludge and other sludge waste; [1989, c. 585, Pt. E, §4 (NEW).]

D. Debris and residuals from nonhazardous chemical spills and cleanup of those spills; [1989, c. 585, Pt. E, §4 (NEW).]

E. Contaminated soils and dredge spoils; [1989, c. 585, Pt. E, §4 (NEW).]

F. Asbestos and asbestos-containing waste; [1989, c. 585, Pt. E, §4 (NEW).]

G. Sand blast grit and nonliquid paint waste; [1989, c. 585, Pt. E, §4 (NEW).]

H. [1989, c. 869, Pt. A, §21 (AFF); 1989, c. 869, Pt. A, §5 (RP).]

I. High and low pH waste; [1989, c. 585, Pt. E, §4 (NEW).]

J. Spent filter media and residue; and [1989, c. 585, Pt. E, §4 (NEW).]

K. Other waste designated by the board, by rule. [1989, c. 585, Pt. E, §4 (NEW).]

[1989, c. 869, Pt. A, §5 (AMD); 1989, c. 869, Pt. A, §21 (AFF) .]

35. **State waste management and recycling plan.** "State waste management and recycling plan" means the plan adopted by the former Maine Waste Management Agency pursuant to chapter 24, subchapter 2, subsequent plans developed by the former State Planning Office pursuant to Title 5, former section 3305, subsection 1, paragraph N and the department pursuant to section 2122 and may also be referred to as "state plan."

[2011, c. 655, Pt. GG, §9 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

36. **Storage.** "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes.

[1989, c. 585, Pt. E, §4 (NEW) .]

37. **Substantially expand.** "Substantially expand" means the expansion of an existing licensed hazardous waste facility by more than 25%, as measured by volume of waste or affected land area, from the date of its initial licensed operation.

[1989, c. 585, Pt. E, §4 (NEW) .]

38. **Transport.** "Transport" means the movement of hazardous or solid waste, waste oil, sludge or septage from the point of generation to any intermediate points and finally to the point of ultimate disposition. Movement of hazardous waste on the site where it is generated or on the site of a licensed waste facility for hazardous waste is not "transport." Movement of waste oil on the site where it is generated or on the site of a licensed waste oil dealer's facility is not "transport."

[1989, c. 585, Pt. E, §4 (NEW) .]

39. **Treatment.** "Treatment" means any process, including but not limited to incineration, designed to change the character or composition of any hazardous waste, waste oil or biomedical waste so as to render the waste less hazardous or infectious.

[1995, c. 462, Pt. A, §90 (AFF); 1995, c. 462, Pt. A, §76 (RPR) .]

39-A. **Uncontrolled tire stockpile.** "Uncontrolled tire stockpile" means an area or location, whether or not licensed, where used motor vehicle tires are or were handled, stored or disposed of in such a manner as to present a significant fire hazard or a threat to public health or to the quality of a classified body of surface water or a significant sand and gravel aquifer or fractured bedrock aquifer as defined in section 1310-N, subsection 2-A.

[1991, c. 517, Pt. A, §1 (NEW) .]

39-B. **Used oil.** "Used oil" means waste oil, as defined in subsection 42.

[1995, c. 573, §2 (NEW) .]

39-C. **Used oil collection center.** "Used oil collection center" means a site or facility where used oil is accepted from the public and collected or stored in an aboveground tank for recycling.

[1995, c. 573, §2 (NEW) .]

40. **Waste facility.** "Waste facility" means any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous, biomedical or solid waste, waste oil, sludge or septage. A land area or structure does not become a waste facility solely because:

A. It is used by its owner for disposing of septage from the owner's residence; [1989, c. 585, Pt. E, §4 (NEW).]

B. It is used to store for 90 days or less hazardous wastes generated on the same premises; [1989, c. 585, Pt. E, §4 (NEW).]

C. It is used by individual homeowners or lessees to open burn leaves, brush, deadwood and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted under section 599, subsection 3; or [1989, c. 585, Pt. E, §4 (NEW).]

D. It is used by its residential owner to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted under section 599, subsection 3. [1989, c. 585, Pt. E, §4 (NEW).]

[1989, c. 869, Pt. A, §5 (AMD); 1989, c. 869, Pt. A, §21 (AFF) .]

41. **Waste management.** "Waste management" means purposeful, systematic and unified control of the handling and transportation of hazardous, biomedical or solid waste, waste oil, sludge or septage.

[1991, c. 72, §1 (AMD) .]

42. **Waste oil.** "Waste oil" means a petroleum-based or synthetic oil that, through use or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties. Waste oil that exhibits hazardous wastes characteristics, or has been contaminated with hazardous wastes in excess of quantities normally occurring in waste oil, is subject to the provisions of this chapter dealing with hazardous wastes.

[1999, c. 334, §10 (AMD) .]

43. **Waste oil dealer.** "Waste oil dealer" means any person in the business of transporting or handling more than 1,000 gallons of waste oil for the purpose of resale in a calendar month. A person who collects or stores waste oil on the site of generation, whether or not for the purpose of resale, is not a waste oil dealer.

[1989, c. 585, Pt. E, §4 (NEW) .]

44. **Waste reduction.** "Waste reduction" means an action that reduces waste at the point of generation and may also be referred to as "source reduction."

[1989, c. 585, Pt. E, §4 (NEW) .]

45. **Waste resulting from agricultural activities.** "Waste resulting from agricultural activities" means wastes which result from agricultural activities defined in section 361-A, subsection 1-B, which are returned to the soils as fertilizers and includes waste pesticides when generated by a farmer in his own use, provided that he triple rinses each emptied pesticide container in accordance with departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label.

[1989, c. 585, Pt. E, §4 (NEW) .]

46. **Wood wastes.** "Wood wastes" means brush, stumps, lumber, bark, woodchips, shavings, slabs, edgings, slash and sawdust, which are not mixed with other waste.

[1989, c. 585, Pt. E, §4 (NEW) .]

47. **Yard wastes.** "Yard wastes" means grass clippings, leaves and other vegetal matter other than wood wastes and land clearing debris.

[1991, c. 72, §2 (NEW) .]

SECTION HISTORY
1989, c. 585, §E4 (NEW). 1989, c. 794, §2 (AMD). 1989, c. 869, §§A3-5,21 (AMD). 1989, c. 878, §H7 (AMD). 1989, c. 890, §§A40,B225 (AMD). 1989, c. 929, §5 (AMD). 1991, c. 72, §§1,2 (AMD). 1991, c. 220, §§6-10 (AMD). 1991, c. 321, (AMD). 1991, c. 492, §§1,2 (AMD). 1991, c. 517, §A1 (AMD). 1991, c. 520, §4 (AMD). RR 1993, c. 1, §131 (COR). 1993, c. 355, §§46,47 (AMD). 1993, c. 378, §4 (AMD). 1993, c. 383, §§33,34 (AMD). 1993, c. 424, §§1,2 (AMD). 1993, c. 424, §3 (AFF). 1993, c. 732, §§A7,8 (AMD). 1995, c. 462, §A76 (AMD). 1995, c. 462, §A90 (AFF). 1995, c. 465, §A12 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 573, §§1,2 (AMD). 1995, c. 625, §C5 (AFF). 1995, c. 656, §§A19-21 (AMD). 1997, c. 393, §B9 (AMD). 1997, c. 602, §1 (AMD). 1997, c. 602, §3 (AFF). 1999, c. 334, §10 (AMD). 1999, c. 393, §1 (AMD). 1999, c. 525, §§1,2 (AMD). 2001, c. 247, §1 (AMD). 2005, c. 612, §§1,2 (AMD). 2007, c. 338, §§1, 2 (AMD). 2007, c. 338, §5 (AFF). 2007, c. 406, §1 (AMD). 2007, c. 414, §1 (AMD). 2007, c. 583, §1 (AMD). 2011, c. 206, §20 (AMD). 2011, c. 655, Pt. GG, §§7-9 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). MRSA T. 38, §1303-C/6 (AMD). MRSA T.38, §1303-C/1B (AMD).

§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.

[1989, c. 585, Pt. E, §5 (AMD) .]

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 septage, used motor vehicle tires and construction or demolition debris, conveyances used for the transportation of septage, used motor vehicle tires and construction or demolition debris and the operators of these conveyances as the board finds necessary to effect sound waste management; [1999, c. 385, §3 (AMD).]

B. Establishment of transporter licensing and conveyance registration fees that are sufficient to recover all costs of administering, monitoring compliance with and enforcing the provisions of this subsection and which fees must be paid to the Maine Environmental Protection Fund; [1991, c. 824, Pt. A, §87 (AMD).]

C. A manifest system for categories of solid waste that must provide a means to account for septage, used motor vehicle tires and construction or demolition debris handled, transported and disposed of in the State; and [1999, c. 385, §3 (AMD).]

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. [1987, c. 517, §9 (NEW).]

[1999, c. 385, §3 (AMD) .]

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; [1987, c. 517, §9 (NEW).]

B. Reporting on handling of special waste; [1987, c. 517, §9 (NEW).]

C. Waste which is not compatible; and [1987, c. 517, §9 (NEW).]

D. A marking system, by categories of waste, to clearly identify vehicles transporting solid waste. [1987, c. 517, §9 (NEW).]

[1987, c. 517, §9 (NEW) .]

1-C. **Rules; agronomic utilization of sludge.** Rules adopted by the board relating to the agronomic utilization of sludge are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 507, §1 (AMD) .]

2. **Site location.**

[1993, c. 383, §35 (RP) .]

3. **Municipal status reports.**

[1989, c. 585, Pt. E, §6 (RP) .]

4. **Technical assistance.** The commissioner is authorized to establish guidelines for effective waste management, to provide technical assistance to persons planning, constructing or operating waste facilities and to conduct applied research activities in the field of waste management, disposal technology and environmental effects, including methods of recycling hazardous or solid waste, sludge or septage.

[2011, c. 655, Pt. GG, §10 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

4-A. **Right of entry.** For the purposes of enforcing any provision of this Act or of developing or enforcing any rule authorized by this Act, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

A. Enter any establishment or other place which is not a residence, or any conveyance, where or in which hazardous or solid waste, sludge or septage is generated, handled or transported; [1981, c. 430, §8 (RPR).]

B. Inspect and obtain samples of any hazardous or solid waste, sludge or septage, including samples from any conveyance in which hazardous or solid waste, sludge or septage is being or has been transported, as well as samples of any containers or labels; and [1981, c. 430, §9 (AMD).]

C. Inspect and copy any records, reports, information or test results relating to hazardous or solid waste, sludge or septage. [1979, c. 383, §6 (NEW).]

[1981, c. 430, §§7-9 (AMD) .]

5. **Planning grants.**

[1989, c. 585, Pt. E, §8 (RP) .]

6. **Study.**

[1981, c. 478, §3 (RP) .]

7. **Hazardous waste plan.**

[1981, c. 478, §3 (RP) .]

8. **Licenses for waste facilities.**

[1987, c. 517, §10 (RP) .]

9. **Restrictive covenants.**

[1983, c. 432, §5 (RP) .]

10. **Legislative review.** Rules adopted by the board under this section and section 1319-O, subsection 1 which impose standards or requirements more stringent than final regulations of the United States Environmental Protection Agency shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review. Any rules adopted by the board under this section shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review pursuant to Title 5, section 8053-A.

[1987, c. 517, §11 (AMD) .]

11. **Imported waste report.**

[1993, c. 355, §48 (RP) .]

12. **Compliance orders.** The commissioner may issue compliance orders subject to the provisions of this subsection.

A. Whenever, after investigation, the commissioner determines that there is or has been an unauthorized discharge of hazardous waste, constituents of hazardous waste, or waste oil into the environment where there is a reasonable basis to believe that the discharge is endangering or causing damage to public health or the environment or that any person has violated or is in violation of any requirement of this subchapter, including rules adopted thereunder, relating to hazardous waste or waste oil activities, he may issue an order requiring compliance immediately or within a specified time period or requiring corrective action or other response measures as necessary to protect the public health and safety or the environment.

The commissioner may require assurance of financial ability for completing corrective action and may require, where necessary, that corrective action be taken beyond a facility or site to remove the danger to the public health or the environment unless the person to whom the order is directed demonstrates to the commissioner that, despite that person's best efforts, he was unable to obtain the necessary permission to undertake such actions. [1987, c. 192, §25 (AMD).]

B. Any order issued under this subsection may be directed to any person who causes or caused or contributes or contributed to the discharge or violation. Such order shall contain findings of fact describing, insofar as possible, and with reasonable specificity, the nature of the discharge or violation, the wastes involved, the nature of the cause or contribution of the person with respect to the discharge or violation, the site of the activity, the required action, the time period for compliance and the danger to public health or safety of the environment. [1985, c. 746, §29 (NEW).]

C. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §26 (AMD).]

D. The person to whom the order is directed shall comply immediately or within a specified time period. That person may apply to the board within 10 working days after receipt of the order for a hearing on the order. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is 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 is directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §27 (AMD).]

[2005, c. 330, §§26, 27 (AMD) .]

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, municipal waste water treatment plant sludges and the composting of yard wastes. The commissioner shall first determine that the proposed innovative disposal and waste management programs are consistent with the state plan. The commissioner 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.

[2011, c. 655, Pt. GG, §11 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

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. [1989, c. 299, (NEW).]

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 department 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 may 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. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §230 (AMD).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §230 (AMD) .]

13-B. **Municipal solid waste incinerator ash; rulemaking.** The board shall adopt rules establishing requirements for the use of municipal solid waste incinerator ash, referred to in this subsection as "ash." In developing these rules, the board shall consult with the Department of Transportation and the Maine Turnpike Authority on those issues relating to the use of ash in or on roads. In developing these rules, the board shall consider, but is not limited to considering, the following issues:

A. The feasibility and comparative health risk of using bottom ash versus using combined bottom ash and fly ash; [1997, c. 418, §1 (NEW).]

B. The risk to human health and the environment from toxic constituents of ash, including dioxin and heavy metals; [1997, c. 418, §1 (NEW).]

C. Site-specific restrictions and prohibitions on the use of ash, particularly on uses that might expose sensitive populations or sensitive natural resources to health or environmental risks; [1997, c. 418, §1 (NEW).]

D. Methods of tracking the physical location of ash in all initial and subsequent uses, and whether uses should be restricted to those that can be tracked; [1997, c. 418, §1 (NEW).]

E. Methods of state and municipal notification of activities involving the use of ash, which may include individual notice or permits for specific projects as needed; and [1997, c. 418, §1 (NEW).]

F. State and municipal liability in the case of a release or threat of release of a hazardous substance, hazardous waste, hazardous matter, special waste or contaminant into the environment resulting from the use of ash. [1997, c. 418, §1 (NEW).]

Rules adopted pursuant to this subsection must require that any risk assessment performed as part of an application for a license to use ash use the most current available data and methods and be reviewed by the Department of Health and Human Services, Bureau of Health in consultation with the department.

Except as specified in subsection 13-C, a person may not use ash without a license from the department issued pursuant to this subsection. The department may not process or act upon an application for a license under this subsection until rules are finally adopted by the board pursuant to this subsection. For purposes of this

subsection, the term "use" includes, but is not limited to, the following: use in a manufacturing process, use as aggregate for asphalt or concrete products, use in the construction industry, use as final landfill closure material and the use of a product manufactured from ash. The term "use" does not include transport, storage or disposal in a landfill licensed to accept ash.

Rules adopted pursuant to this subsection are major substantive rules under Title 5, chapter 375, subchapter II-A.

[1997, c. 418, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

13-C. **Use of treated ash in secure landfills.** Subject to the requirements of other applicable laws, a person may do the following without a license issued pursuant to subsection 13-B:

A. Process municipal solid waste incinerator ash to remove noncombusted materials, size the ash and reduce the solubility of metals contained within the ash; and [1997, c. 418, §1 (NEW).]

B. Use municipal solid waste incinerator ash processed in the manner specified in paragraph A as follows:

(1) As landfill daily cover material in a secure landfill;

(2) As construction material in a secure landfill; and

(3) In pilot projects in a secure landfill. [1997, c. 418, §1 (NEW).]

The use of municipal solid waste incinerator ash pursuant to this subsection is limited to the lined areas within a secure landfill and each use must receive case-by-case approval from the department. Prior to approving the use of municipal solid waste incinerator ash in a secure landfill, the department shall ensure that the use provides adequate protection of human health and the environment.

For purposes of this subsection, the term "secure landfill" means a landfill that utilizes a liner system, a leachate collection and treatment system and a final cover system to minimize discharges of waste or leachate and control the release of gas to the environment.

[1997, c. 418, §1 (NEW) .]

13-D. **Use of fish scales as crop nutrient supplements.** A person may use fish scales as a crop nutrient supplement without a license issued pursuant to this chapter as long as:

A. The department has reviewed the process by which the waste fish scales are generated and has approved the use of the scales as a soil amendment on crop farms; [1999, c. 283, §1 (NEW).]

B. The farm using fish scales as a supplement has developed and implemented a nutrient management plan in accordance with the provisions of Title 7, chapter 747 and in accordance with the Department of Agriculture, Conservation and Forestry's rules concerning nutrient management planning; and [1999, c. 283, §1 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

C. The person supplying the fish scales provides the following information to the department within 7 days of shipping the fish scales with respect to each person receiving the scales:

(1) The name of the person receiving the fish scales;

(2) The location or locations where the fish scales will be used; and

(3) The quantity of fish scales shipped. [1999, c. 283, §1 (NEW).]

[1999, c. 283, §1 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

14. **Disposal fees.**

[1989, c. 585, Pt. E, §11 (RP) .]

15. **Special services program.**

[1989, c. 585, Pt. E, §11 (RP) .]

16. **Wood yard debris.** The provisions of this chapter do not apply to soil containing incidental bark or woody material generated during the transport, handling or storage of logs prior to processing. For the purposes of this section, "processing" is defined to include the debarking, chipping and sawing of wood.

[1991, c. 643, §1 (NEW) .]

17. **Sludge and septage guidance.** The commissioner shall develop guidance to municipalities regarding the regulation of septage and sludge land application by municipalities. The guidance must include information regarding site location restrictions, testing and enforcement actions that may be undertaken by a municipality and municipal roles and responsibilities under section 1310-U.

[2001, c. 247, §2 (NEW) .]

18. **Use of residuals containing human pathogens.** The department may not license the utilization and distribution of residuals containing human pathogens, such as municipal treatment plant sludge, under permit-by-rule provisions established by the department pursuant to the provisions of section 344, subsection 7.

[2003, c. 231, §1 (NEW) .]

19. **Interested parties notice for distribution of composted sludge.** The department shall establish and maintain a list of interested parties, including a statewide organization that represents municipalities in this State, to whom notice of license applications and applications to modify existing licenses for the distribution in this State of composted sludge must be provided. In addition, the department shall electronically mail the notice to each municipality in the State that is equipped to receive electronic mail. Notice must be provided upon the department's finding that the application is complete for processing.

[2003, c. 231, §1 (NEW) .]

SECTION HISTORY
1973, c. 387, (NEW). 1975, c. 577, (AMD). 1977, c. 300, §§52,53 (AMD). 1979, c. 383, §§3-8 (AMD). 1979, c. 472, §16 (AMD). 1979, c. 663, §236 (AMD). 1979, c. 699, §§10-12 (AMD). 1981, c. 303, §1 (AMD). 1981, c. 430, §§7-11 (AMD). 1981, c. 470, §A171 (AMD). 1981, c. 478, §§3,4 (AMD). 1981, c. 698, §191 (AMD). 1983, c. 432, §5 (AMD). 1985, c. 157, (AMD). 1985, c. 746, §29 (AMD). 1985, c. 822, §4 (AMD). 1987, c. 192, §§25,26 (AMD). 1987, c. 517, §§9-12 (AMD). 1987, c. 883, §1 (AMD). 1989, c. 299, (AMD). 1989, c. 585, §§E5-11 (AMD). 1989, c. 890, §§A40,B226, 227 (AMD). 1991, c. 72, §3 (AMD). 1991, c. 643, §1 (AMD). 1991, c. 824, §A87 (AMD). 1993, c. 355, §48 (AMD). 1993, c. 383, §35 (AMD). 1995, c. 656, §§A22,23 (AMD). 1997, c. 418, §1 (AMD). 1999, c. 283, §1 (AMD). 1999, c. 385, §3 (AMD). 1999, c. 393, §2 (AMD). 2001, c. 247, §2 (AMD). 2003, c. 231, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 330, §§26,27 (AMD). 2009, c. 507, §1 (AMD). 2011, c. 655, Pt. GG, §§10, 11 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 657, Pt. W, §5 (REV).

§1304-A. DATA; FACILITY NEEDS PLAN

(REALLOCATED TO TITLE 38, SECTION 1319-Q)

SECTION HISTORY

1981, c. 478, §5 (NEW). 1983, c. 432, §6 (AMD). 1985, c. 481, §A97 (AMD). 1987, c. 517, §13 (RAL).

§1304-B. DELIVERY OF SOLID WASTES TO SPECIFIC WASTE FACILITIES

1. **Findings and purpose.** The Legislature makes the following findings of fact. Subject to the provisions of chapter 24, the State requires each municipality to provide for disposal services for domestic and commercial solid waste generated within the municipality. Solid waste contains valuable recoverable resources, including energy. Many municipalities have found that energy recovery reduces the cost of solid waste disposal. Energy recovery technology is complex and the equipment requires a steady supply of waste to operate efficiently. Because of the complicated technology, most energy recovery facilities have high capital costs and long payback periods. In order to remain cost effective throughout their lives, these energy recovery facilities require a guaranteed, steady supply of waste. Consequently, municipalities utilizing energy recovery facilities are usually required to enter long-term agreements to provide the facilities with specific amounts of waste. In order to make these energy recovery facilities financially feasible, and thereby simultaneously improve the environmental impacts and the economics of municipal solid waste disposal, municipalities shall have the legal authority to control the handling of solid waste generated within their borders.

The purpose of this section is to promote the recovery of resources from solid waste by creating one of the conditions which make energy recovery economically feasible, assuring municipalities the authority to guarantee a steady supply of solid waste to specific waste facilities.

[1989, c. 585, Pt. E, §12 (AMD) .]

2. **Flow control.** Subject to the provisions of chapter 24, municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and effect of such an ordinance is to gain management control over solid waste and enable the reclamation of resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

A. Requiring segregation of wastes; [1987, c. 517, §14 (AMD).]

B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility; [1991, c. 72, §4 (AMD).]

C. Designating certain materials as recyclable and exempt from the provisions of paragraph B; and [1991, c. 72, §5 (AMD).]

D. Designating yard wastes as compost material and requiring delivery of these wastes to a designated composting facility. [1991, c. 72, §6 (NEW).]

[1991, c. 72, §§4-6 (AMD) .]

3. **Ordinances.**

[1989, c. 585, Pt. E, §14 (RP) .]

4. **Contracts.** In order to encourage and facilitate the financing and development of solid waste facilities, including, but not limited to, facilities for resource recovery, municipalities shall have the following powers, notwithstanding any law, charter, ordinance provision or limitation to the contrary:

A. To contract with a corporation described in subsection 5 or a refuse disposal district organized under chapter 17 or any person, including, but not limited to, the owner or operator of any waste facility, for the collection, transportation, storage, processing, salvaging or disposal of waste. Any such contract may be for such term of years and may contain such other provisions as the municipality may approve. Any such contract may provide that, in consideration for the obligation of the facility owner or operator

to handle all or any portion of the solid waste generated in the municipality, the municipality shall pay to the facility owner or operator such fees, assessments and other payments as shall be established in accordance with the contract. [1985, c. 593, §8 (AMD).]

B. Without limiting the generality of the powers conferred in paragraph A, to agree in such a contract to pay fees, assessments or other payments in such amounts as may be reasonably necessary to pay:

(1) Costs associated with financing, developing, constructing, repairing, maintaining and operating all or any one or more of the waste facilities owned or operated by the facility owner or operator, including, but not limited to, the payment of debt service and the maintenance of reasonable reserves or sinking funds in connection with the financing or operation of any such waste facilities;

(2) Any other costs incurred by the facility owner or operator in connection with the handling of solid waste, whether performed at any waste facility referred to in subparagraph (1) or at another such facility differently owned and operated; and

(3) Any deficiencies arising by virtue of the failure of any other municipality so agreeing to meet its obligations to pay the costs set forth in subparagraphs (1) and (2) in accordance with any similar agreement with the same facility owner; and [1985, c. 593, §8 (AMD).]

C. To pledge the full faith and credit of the municipality for the payment of fees, assessments and other payments, as provided in paragraphs A and B, and to levy upon and raise from taxable estates within the municipality by general taxes the amounts required to pay these fees, assessments and payments or to raise those amounts by means of any fee, user charge or other cost-sharing or assessment mechanism duly adopted and authorized by the municipality or to borrow those amounts by issuance of general obligation bonds or notes. [1985, c. 337, §3 (NEW).]

Any contract complying with the requirements of this subsection and subsection 6 shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection.

[1985, c. 593, §8 (AMD) .]

4-A. **Contract limitations.** Any contract, including any contract in existence on the effective date of this subsection, for the provision of waste disposal, transportation or handling services to municipalities is subject to the following limitations.

A. No contract for waste disposal, transportation or handling services may prevent a municipality from recycling any portion of its solid waste, provided that any minimum BTU content level and minimum tonnage level required by that contract is maintained by the municipality. [1987, c. 517, §17 (NEW).]

B. No contract for waste disposal, transportation or handling services may prevent a municipality from meeting its obligations to supply a minimum BTU content level and minimum tonnage level required by that contract using solid waste generated outside its borders, provided that:

(1) The municipality is or will be unable, as the direct result of recycling or source reduction efforts, to meet the obligations using solid waste generated within its jurisdiction; and

(2) The municipality is liable for any damages caused by any solid waste it relies upon to satisfy the provisions of its contract. [1987, c. 517, §17 (NEW).]

C. For those waste disposal, transportation or handling services contracts which do not principally rely upon requiring minimum BTU content level or minimum tonnage level to secure solid waste for the waste disposal facility, but which instead rely upon a requirement that the municipality provide all or most of its solid waste to the waste disposal facility, no such contract may prohibit a municipality during the term of the contract from recycling those materials which the municipality determines to be recyclable. [1987, c. 517, §17 (NEW).]

D. A municipality that anticipates that it will be unable to meet its contract obligation to supply a minimum BTU content level or minimum tonnage due to waste reduction or recycling programs and is unable to reach an agreement with the incinerator for the anticipated reduction may request the department to intercede. The department shall assist the incinerator in soliciting solid waste to mitigate any anticipated shortfall in minimum BTU content level or minimum tonnage. If no agreement on mitigation of an anticipated shortfall is reached, the terms of the original contract prevail, except as otherwise provided in this chapter. [2011, c. 655, Pt. GG, §12 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

[2011, c. 655, Pt. GG, §12 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

5. **Public waste disposal corporations.** Notwithstanding any law, charter, ordinance provision or limitation to the contrary, pursuant to an interlocal agreement entered into in accordance with Title 30-A, chapter 115, 2 or more municipalities may organize or cause to be organized or may participate in one or more corporations organized as nonprofit corporations under Title 13, chapter 81 or Title 13-B for the purpose, among other permissible purposes, of owning or operating one or more waste facilities described in subsection 4, paragraph A. A subscribing municipality may agree in an interlocal agreement to pay fees, assessments or other payments as described in subsection 4, paragraph B for such a term of years and on such other terms as the interlocal agreement may provide and may pledge the full faith and credit of the municipality to the same extent provided in subsection 4, paragraph C. The applicable interlocal agreement or the articles of incorporation or the bylaws of the corporation may provide that the municipal officers of a municipality participating in the corporation may appoint an alternate director or alternate directors to act as the municipality's representative to the corporation's board of directors in the absence of the director or directors elected by the municipal officers. A corporation described in this subsection is a public municipal corporation as that term is used in Title 36, section 651, subsection 1, paragraph D, and its real and personal property located in subscribing, participating and associate member municipalities is exempt from municipal property taxation to the extent provided by Title 36, section 651, subsection 1, paragraph D. The applicable interlocal agreement or the articles of incorporation or bylaws of the corporation must provide that:

A. The corporation must be organized and continuously thereafter operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; [1995, c. 81, §1 (AMD).]

B. The directors of the corporation must be elected by the municipal officers of the municipalities participating in the corporation; and [1995, c. 81, §1 (AMD).]

C. Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the corporation. [1995, c. 81, §1 (AMD).]

Any interlocal agreement complying with the requirements of this subsection and subsection 6 must be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection. Any corporation organized in a manner that satisfies the requirements set forth in this subsection and subsection 6, whether organized prior to or after the effective date of this subsection, is deemed for all purposes as organized pursuant to this subsection. If so provided in the applicable interlocal agreement, any such corporation has the power, in addition to any other powers that may be delegated under Title 30-A, chapter 115, to issue, on behalf of one or more of the municipalities participating in the corporation, in order to finance the facilities, revenue obligation securities issued in accordance with Title 10, chapter 110, subchapter 4 and any other bonds, notes or debt obligations that municipalities are authorized to issue by applicable law. For these purposes, the term "municipal officers" as used in Title 10, chapter 110, subchapter 4 means the board of directors of any corporation described in this subsection. Title 10, section 1064, subsection 6 may not be construed to prohibit the assignment or pledge as collateral security of any contract of a municipality authorized by this section or of any or all of the payments under this section, regardless of whether the provisions of subsection 4, paragraph C are applicable to the contract or payments. The

provisions of Title 10, sections 1063 and 1064, subsection 1, paragraph A and paragraph C, subparagraph (4) do not apply to revenue obligation securities issued by any public waste disposal corporation described in this subsection.

[2007, c. 91, §1 (AMD) .]

5-A. **Other regional associations.** Notwithstanding any law, charter, ordinance provision or limitation to the contrary, any 2 or more municipalities, counties, refuse disposal districts, public waste disposal corporations or other quasi-municipal corporations may organize or cause to be organized or may acquire membership in one or more regional associations for the purpose, among other permissible purposes, of facilitating the disposal of domestic and commercial solid waste generated within the geographic boundaries of each member of the regional association. In accordance with this subsection, a regional association may conduct business without an interlocal agreement.

A. The articles of incorporation or bylaws of the regional association must provide that:

(1) The regional association must be organized and continuously operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; the receipt, directing and application of money in accordance with paragraph E may not be considered to be part of the net earnings, income or profit of the regional association;

(2) The directors of the regional association must be elected by the municipal officers, the trustees or the directors, as applicable, of the members of the regional association; and

(3) Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the regional association. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

B. Each member must enter into at least one solid waste disposal agreement with the owners of at least one solid waste disposal facility, including, but not limited to, a solid waste disposal facility that is a qualifying facility as defined in Title 35-A, section 3303. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

C. Each member must be in good standing with the regional association and abide by the bylaws of the regional association. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

D. Notwithstanding any limitation imposed by Title 30-A, chapter 223, subchapter III-A, or any other limitation on investments imposed on a member pursuant to state law, each member may invest its funds in and participate in the ownership of:

(1) One or more solid waste disposal facilities;

(2) An entity that owns one or more solid waste disposal facilities;

(3) A transmission and distribution utility that has a power purchase agreement with the owners of a solid waste disposal facility that, in turn, has a solid waste disposal contract with the member;

(4) A competitive electricity provider, as defined in Title 35-A, section 3201, affiliated with a public utility whether or not it is regulated by the Public Utilities Commission or a successor state agency; and

(5) A subsidiary entity formed by a transmission and distribution utility. [1999, c. 657, §26 (AMD).]

E. To the extent provided in its bylaws, a regional association may perform the following functions, among others, on behalf of its members:

(1) Receive and direct distributions of cash from and ownership interests in the entities described in paragraph D as well as other revenues from activities authorized under this subsection, including, but not limited to:

(a) Distribution on behalf of members based on a minimum tonnage guaranteed to be delivered or actually delivered to solid waste disposal facilities; and

(b) Earnings and other distributions from the members' investments in and participation in the entities described in paragraph D in the form of capital stock, limited partnership interest, warrants for equity interest or other equity positions in entities;

(2) Manage assets of its members that are related to the functions of the regional association, including, but not limited to, functions related to the entities described in paragraph D;

(3) Manage money or other value received on account of members from any source;

(4) Determine the use and application of assets on behalf of and for the benefit of its members, including investment and reinvestment in the entities described in paragraph D;

(5) Purchase, sell and otherwise deal with ownership interests, including the authority to exercise warrants for the purpose of making any purchase, in the entities described in paragraph D; and

(6) Administer the solid waste disposal agreement described in paragraph B and act as agent for its members under and pursuant to and to the extent provided by the solid waste disposal agreement, including the authority to bind its members through arbitration proceedings. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

F. A regional association may receive, direct and apply money as described in paragraph E without the need for further action by any member by appropriation or otherwise and, unless otherwise provided by a member in connection with its participation in a regional association, that money may not be taken into account for purposes of calculating any limitation on the member's annual expenditures or appropriations. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

A regional association may not pledge the full faith and credit of its members but it has all other powers necessary and incidental to carry out the purposes of this chapter. Notwithstanding any contrary provision in Title 13-B, a regional association may have more than one class of members as prescribed or established in its bylaws.

[1999, c. 657, §26 (AMD) .]

6. **Relationship to other laws.** The obligation of a municipality to pay any fees, assessments or other payments in accordance with any agreement entered into pursuant to subsection 4 or any interlocal agreement referred to in subsection 5 shall not constitute a "debt" or "indebtedness" of the municipality within the meaning of any statutory, charter or ordinance provision limiting the incurrence or the amount of municipal indebtedness nor shall the authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation by any means set forth in subsection 4, paragraph C, require or be subject to any voter referendum or approval under any law or any charter or ordinance provision.

A. A municipality may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with the provisions of any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments shall be made with respect to debt or any portion of debt which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the last full state valuation of the municipality; minus

(2) The municipality's then obtaining allocable share of any debt or portions of debt described in paragraph B with regard to which it is obliged to make payments. [1985, c. 593, §10 (NEW).]

B. Notwithstanding paragraph A, 2 or more municipalities may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more

waste facilities, provided that no such payments may be made with respect to debt or any portions of debts which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the sum of the last full state valuation of all municipalities so agreeing; minus

(2) Any amounts of debt or portions of debt described in paragraph A in connection with which any such municipality is obliged to make payments.

The limitations set forth in paragraphs A and B shall only apply to agreements by which a municipality or group of municipalities have agreed to make payments directly based, among other things, on a facility owner's costs of debt service and other costs of financing and shall not be construed to apply to contract payments calculated on any other basis, even if the facility owner uses the payments to meet its debt service obligations. [1985, c. 593, §10 (NEW).]

The obligation of the municipality to pay fees, assessments and other payments in accordance with subsection 4 or any interlocal agreement referred to in subsection 5 shall be binding upon and enforceable against the municipality without regard to whether all or any one or more of the waste facilities referred to in subsection 4, paragraph B, subparagraph (1), becomes operational or was or will be in operation during the period for which the fees, assessments or other payments are so charged.

No contract entered into in accordance with subsection 4 nor any ordinance adopted under the authority of subsection 2 may be deemed a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.

Notwithstanding any law, charter or ordinance provisions to the contrary, the powers conferred upon a municipality pursuant to subsections 4 and 5 and this subsection may be exercised by the municipal officers as defined in Title 30-A, section 2001, including the assessors of a plantation, only when authorized, in the case of a municipality with a city or town council, by action of the council and, in the case of a municipality without such a council, by action of the town meeting. This paragraph shall apply whether or not the action of the city council, town council or town meeting was taken before or after March 21, 1986.

Nothing in this section may be construed to be a limitation on the Home Rule powers granted to municipalities under Title 30-A, section 3001, or on the ability of communities to jointly exercise their powers as is recognized in Title 30-A, section 2201. This section provides an additional and alternative method for carrying out this subchapter.

[1987, c. 737, Pt. C, §§96, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

7. Subjugation. Notwithstanding any provision of this section to the contrary, the exercise of any power or authority granted under this section is subject to the provisions of chapter 24.

[1989, c. 585, Pt. E, §16 (NEW) .]

SECTION HISTORY
1983, c. 380, §1 (NEW). 1983, c. 726, §1 (AMD). 1983, c. 743, §16 (AMD). 1985, c. 337, §§3,4 (AMD). 1985, c. 506, §B38 (AMD). 1985, c. 593, §§8-10 (AMD). 1987, c. 517, §§14-17 (AMD). 1987, c. 737, §§C95,C96, C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 585, §§E12-16 (AMD). 1989, c. 869, §C10 (AMD). 1991, c. 72, §§4-6 (AMD). 1995, c. 81, §1 (AMD). 1995, c. 656, §A24 (AMD). 1997, c. 602, §2 (AMD). 1997, c. 602, §3 (AFF). 1999, c. 657, §26 (AMD). 2007, c. 91, §1 (AMD). 2011, c. 655, Pt. GG, §12 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1304-C. REPORT; MATERIAL-SEPARATED, REFUSE-DERIVED FUEL

Beginning on January 1, 1992, a municipal solid waste processing facility that produces any material-separated, refuse-derived fuel shall annually report the following information to the department: [1991, c. 220, §11 (NEW).]

1. **Total weight.** The total weight of municipal solid waste accepted by the facility during the previous 12 months by material category;

[1991, c. 220, §11 (NEW) .]

2. **Recycled weight.** The weight of the municipal solid waste recycled by the facility during the previous 12 months by material category;

[1991, c. 220, §11 (NEW) .]

3. **Material-separated, refuse-derived fuel production.** The weight of material-separated, refuse-derived fuel produced by the facility during the previous 12 months; and

[1991, c. 220, §11 (NEW) .]

4. **Disposition of remaining waste.** The disposition of any remaining waste.

[1991, c. 220, §11 (NEW) .]

SECTION HISTORY
1991, c. 220, §11 (NEW).

§1305. MUNICIPALITIES; POWERS AND DUTIES

1. **Disposal services.** Each municipality shall provide solid waste disposal services for domestic and commercial solid waste generated within the municipality and may provide these services for industrial wastes and sewage treatment plant sludge.

[1989, c. 585, Pt. E, §17 (RPR) .]

2. **Ordinances.**

[1983, c. 816, Pt. A, §43 (RP) .]

3.

[1983, c. 380, §3 (RP) .]

4. **Municipal status reports.**

[1989, c. 585, Pt. E, §18 (RP) .]

5. **Municipal permits.** All permits issued pursuant to Title 30-A, chapter 183, subchapter I, shall, in addition to requirements imposed by those sections, be conditioned on compliance with rules adopted by the board concerning the operation of solid waste disposal facilities. Copies of permits issued by the municipality must be submitted to the commissioner within 30 days of issue.

[1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §231 (AMD) .]

6. **Municipal septage sites.** Each municipality shall provide for the disposal of all refuse, effluent, sludge and any other materials from all septic tanks and cesspools located within the municipality. In addition, any person may provide a site for disposal of septage. In addition to making application to the Department of Environmental Protection for approval of any site, that person shall have written approval for the site location from the municipality in which it is located, unless the site is located in a Resource Protection District under the jurisdiction of the Maine Land Use Planning Commission. A municipality may determine whether approval of the site must be obtained first from the department or the municipality. The municipal officers shall approve, after hearing, any such private site if they find that the site complies with municipal ordinances and with local zoning and land use controls. In the absence of applicable municipal ordinances and local zoning and land use controls, the municipality shall base its approval of the site on compliance with the siting and design standards in the department's rules relating to septage management. For purposes of this subsection, "municipality" means a city, town or plantation.

[1997, c. 40, §1 (AMD); 2011, c. 682, §38 (REV) .]

7. **On-site disposal of domestic septage; enforcement.** Municipalities shall enforce the provisions of section 1306, subsection 2. Municipalities may recover all costs of enforcement, including attorneys' fees, from a septage pumper who violates the provisions of that subsection.

[1983, c. 726, §2 (NEW) .]

8. **Septage and sludge permits; municipal enforcement.** Pursuant to Title 30-A, section 4452, subsection 6, a municipality, after notifying the department, may enforce the terms and conditions of a septage land disposal or storage site permit or a sludge land application or storage site permit issued by the department under this subchapter.

[1997, c. 38, §2 (AMD) .]

9. **Coordination between municipality and department.** Coordination between the department and a municipality concerning applications and modifications in the terms or conditions of a permit or license for a sludge land application site or storage facility is governed by this subsection.

A. Within 14 working days of its receipt of a complete application for a sludge land application site or storage facility, the department shall notify the municipal officers or their designees from the municipality in which the site or facility would be located of the application and the name and address of the applicant. The department shall provide the municipal officers with copies of all test results performed on the sludge material that is proposed to be spread in that municipality. Prior to approving an application for a sludge land application site or storage facility, the department shall consult with the municipal officers or their designees in the municipality in which the site or facility is proposed and provide them with an opportunity to suggest conditions, including additional setbacks, to be imposed on a permit or license. If the department does not impose conditions on a permit or license that have been suggested in writing by the municipal officers, the department shall provide a written explanation to the municipal officers. [1999, c. 393, §3 (NEW).]

B. The department shall consult with the municipal officers within 10 days of receiving a request by the sludge generator to change the terms or conditions of a permit or license. The municipality may petition the commissioner to review a generating facility's testing protocol for sludge. The commissioner shall

respond to the municipality in writing within 10 days of the municipality's petition. The commissioner may order the applicant to conduct an additional test at the applicant's cost. A copy of the additional test results must be provided to the municipal officers. [1999, c. 393, §3 (NEW).]

[1999, c. 393, §3 (RPR) .]

SECTION HISTORY
1973, c. 387, (NEW). 1979, c. 383, §9 (AMD). 1979, c. 541, §A277 (AMD). 1983, c. 11, (AMD). 1983, c. 380, §§2,3 (AMD). 1983, c. 726, §2 (AMD). 1983, c. 816, §A43 (AMD). 1985, c. 27, (AMD). 1987, c. 737, §§C97,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 585, §§E17,E18 (AMD). 1989, c. 890, §§A40,B231 (AMD). 1991, c. 499, §21 (AMD). 1991, c. 732, §5 (AMD). 1997, c. 38, §§2-4 (AMD). 1997, c. 40, §1 (AMD). 1999, c. 393, §§3,4 (AMD). 2011, c. 682, §38 (REV).

§1305-A. MUNICIPAL PARTICIPATION FOR COMMERCIAL HAZARDOUS WASTE FACILITIES

(REPEALED)

SECTION HISTORY
1981, c. 478, §6 (NEW). 1981, c. 653, §§1-3 (AMD). 1985, c. 737, §A113 (AMD). 1987, c. 517, §18 (RP).

§1305-B. MUNICIPAL NOTICE OF DECOMMISSIONING WASTE

1. **Disposal; notice.** A person may not dispose of decommissioning waste or transfer decommissioning waste to a facility defined in section 1303-C, subsection 30 or 31 in this State without giving notice to the municipality in which the decommissioning waste is to be disposed of. Notice must be given at least 5 working days before the first scheduled disposal. The notice must include:

A. The type of decommissioning waste to be delivered to the facility; [1999, c. 739, §2 (AMD).]

B. The anticipated amount of decommissioning waste to be delivered to the facility; [1999, c. 739, §2 (AMD).]

C. The anticipated number of loads that will be delivered to the facility; and [1999, c. 739, §2 (AMD).]

D. The estimated delivery schedule of the decommissioning waste, including dates for delivery. [1999, c. 366, §1 (NEW).]

[1999, c. 739, §2 (AMD) .]

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

A. "Decommissioning waste" means any materials, whether solid or fluid, removed from a closed nuclear power plant, other than:

(1) Licensed discharges from the plant; and

(2) High-level radioactive waste and low-level radioactive waste regulated under chapter 14-A. [1999, c. 366, §1 (NEW).]

B. "Dispose of" means to deposit or attempt to deposit in the land or waters of this State. [1999, c. 366, §1 (NEW).]

[1999, c. 366, §1 (NEW) .]

SECTION HISTORY
1999, c. 366, §1 (NEW). 1999, c. 739, §2 (AMD).

§1306. PROHIBITION

1. **General prohibition.** It is unlawful for any person to establish, construct, alter or operate any waste facility without a permit issued by the department.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §232 (AMD) .]

2. **On-site disposal of domestic septage; penalty.** A homeowner may arrange for a septage pumper to dispose of septage from a residence on property of the owner of the residence at the request of the property owner, a maximum of 2 times a year, provided that the septage is placed at least 300 feet from property boundaries, fresh surface waters, tidal waters, water supplies, streets, highways and permanently or seasonally inhabited residential structures. Any homeowner or septage pumper who violates the provisions of this subsection shall be subject to a civil penalty, payable to the municipality, of not more than $1,000 for each day of violation.

[1985, c. 612, §19 (AMD) .]

3. **Discharge of hazardous waste.** The discharge of hazardous waste 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.

[1985, c. 481, Pt. A, §98 (NEW) .]

4. **Cathode ray tube disposal.** Beginning 9 months after the department adopts rules pursuant to section 1610, subsection 5, paragraph D, subparagraph (1), a person may not dispose of a cathode ray tube in a solid waste disposal facility. This subsection may not be construed to affect existing laws, rules or regulations governing disposal of cathode ray tubes in effect prior to the adoption of rules pursuant to section 1610, subsection 5, paragraph D, subparagraph (1).

[2005, c. 330, §28 (AMD) .]

5. **Control of fluids from motor vehicles at junkyards, automobile graveyards and automobile recycling businesses.** Fluids must be controlled in accordance with the following.

A. All fluids, including but not limited to engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel, oil and refrigerant, batteries and mercury switches must be properly handled by junkyards, automobile graveyards and automobile recycling businesses in such a manner that they do not leak, flow or discharge into or onto the ground, into a body of water or into the air. [2005, c. 247, §6 (NEW); 2005, c. 247, §7 (AFF).]

B. All fluids, refrigerant, batteries and mercury switches must be removed from motor vehicles that lack engines or other parts that render the vehicles incapable of being driven under their own motor power or that are otherwise incapable of being driven under their own motor power, appliances and other items within 180 days of acquisition by a junkyard, automobile graveyard or automobile recycling business. Motor vehicles, appliances and other items acquired by and on the premises of a junkyard, automobile graveyard or automobile recycling business prior to October 1, 2005 must have all fluids, refrigerant,

batteries and mercury switches removed by January 1, 2007. Fluids required to be removed under this paragraph must be removed to the greatest extent practicable. [2005, c. 247, §6 (NEW); 2005, c. 247, §7 (AFF).]

C. A person may not crush, shred or otherwise process, or cause to be crushed, shredded or otherwise processed, motor vehicles, appliances or other items before removal of all fluids, refrigerant, batteries and mercury switches. Fluids required to be removed under this paragraph must be removed to the greatest extent practicable. [2005, c. 247, §6 (NEW); 2005, c. 247, §7 (AFF).]

[2005, c. 247, §6 (NEW); 2005, c. 247, §7 (AFF) .]

6. **Construction and demolition debris.** The substitution of wood from construction and demolition debris for conventional fuels used in a boiler may not exceed 50% of total fuel by weight combusted on an average annual basis.

[2005, c. 617, §1 (NEW) .]

SECTION HISTORY
1973, c. 387, (NEW). 1979, c. 383, §10 (RPR). 1979, c. 663, §237 (AMD). 1979, c. 699, §13 (RP). 1981, c. 430, §12 (RPR). 1983, c. 726, §3 (RPR). 1985, c. 481, §A98 (AMD). 1985, c. 612, §19 (AMD). 1989, c. 890, §§A40,B232 (AMD). 2003, c. 150, §1 (AMD). 2005, c. 247, §6 (AMD). 2005, c. 247, §7 (AFF). 2005, c. 330, §28 (AMD). 2005, c. 617, §1 (AMD).

§1306-A. CRIMINAL PROVISIONS

(REPEALED)

SECTION HISTORY
1979, c. 699, §14 (NEW). 1981, c. 375, (AMD). 1981, c. 430, §§13-16 (AMD). 1987, c. 517, §19 (RP).

§1306-B. FORFEITURE; CIVIL LIABILITY

(REPEALED)

SECTION HISTORY
1979, c. 699, §15 (NEW). 1981, c. 430, §17 (RP).

§1306-C. FORFEITURE; CIVIL LIABILITY

(REALLOCATED TO TITLE 38, SECTION 1319-U)

SECTION HISTORY
1981, c. 430, §18 (NEW). 1983, c. 432, §7 (AMD). 1983, c. 785, §14 (AMD). 1985, c. 785, §A113 (AMD). 1987, c. 517, §20 (RAL).

§1307. VIOLATIONS

(REPEALED)

SECTION HISTORY
1973, c. 387, (NEW). 1977, c. 300, §54 (RP).

§1308. EXEMPTIONS

Rules and regulations adopted pursuant to this chapter concerning the location, establishment and construction of solid waste disposal facilities, but not concerning alteration or operation, shall not affect such facilities in existence prior to October 3, 1973. Landscape refuse and fill disposal sites established in connection with public works projects and commonly known as "stump dumps" are exempt from this chapter. [1973, c. 788, §213 (AMD).]

SECTION HISTORY
1973, c. 387, (NEW). 1973, c. 788, §213 (AMD).

§1308-A. HAZARDOUS WASTE FACILITY CLOSURE

(REALLOCATED TO TITLE 38, SECTION 1319-S)

SECTION HISTORY
1981, c. 303, §2 (NEW). 1983, c. 432, §8 (AMD). 1987, c. 517, §21 (RAL).

§1309. INTERSTATE COOPERATION

The Legislature encourages cooperative activities by the department with other states for the improved management of hazardous and solid waste; for improved, and as far as is practicable, uniform state laws relating to the management of hazardous and solid waste; and compacts between this and other states for the improved management of hazardous and solid waste. [2011, c. 655, Pt. GG, §13 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1979, c. 383, §11 (NEW). 1987, c. 517, §22 (AMD). 1989, c. 585, §E19 (AMD). 2001, c. 22, §1 (AMD). 2011, c. 655, Pt. GG, §13 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§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. [1981, c. 430, §19 (RPR).]

Any order issued under this section shall contain findings of fact describing, insofar as possible, the waste, the site of the activity and the danger to the public health or safety. [1979, c. 699, §16 (RPR).]

Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §29 (AMD).]

The person to whom the order is directed shall comply immediately. An order may not be appealed to the Superior Court, but a person to whom it is directed may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by the person to whom the order was directed. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is 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 is directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §30 (AMD).]

SECTION HISTORY
1979, c. 383, §11 (NEW). 1979, c. 699, §16 (RPR). 1981, c. 430, §19 (AMD). 1987, c. 192, §27 (AMD). 2005, c. 330, §§29,30 (AMD).

§1310-A. MUNICIPAL HAZARDOUS WASTE CONTROL

(REALLOCATED FROM TITLE 38, SECTION 1311)
(REALLOCATED TO TITLE 38, SECTION 1319-P)

SECTION HISTORY
1979, c. 663, §238 (RAL). 1987, c. 517, §23 (RAL).

§1310-B. CONFIDENTIAL INFORMATION

1. **Public records.** Except as provided in subsections 2 and 3, information obtained by the department under this chapter is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.

[1989, c. 794, §3 (AMD) .]

2. **Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans; chemicals.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6, information related to priority toxic chemicals submitted to the department under chapter 27 or information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submittor and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality

under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

[2011, c. 420, Pt. A, §35 (RPR); 2011, c. 657, Pt. W, §5 (REV) .]

3. **Release of information.** The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

[1979, c. 699, §17 (NEW) .]

4. **License and enforcement information.** Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

[1979, c. 699, §17 (NEW) .]

5. **Rules.** The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, chapter 13, subchapter I.

[1981, c. 470, Pt. A, §173 (AMD) .]

6. **Prohibition; penalties.**

A. It is unlawful to disclose designated information to any person not authorized by this section. [1979, c. 699, §17 (NEW).]

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C. [1979, c. 699, §17 (NEW).]

C. Any person who knowingly discloses designated information, knowing that he is not authorized to do so, is subject to a civil penalty of not more than $5,000. [1979, c. 699, §17 (NEW).]

D. In any action under this subsection, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. [1979, c. 699, §17 (NEW).]

[1979, c. 699, §17 (NEW) .]

SECTION HISTORY
1979, c. 699, §17 (NEW). 1981, c. 470, §§A172,A173 (AMD). 1985, c. 267, §2 (AMD). 1987, c. 517, §24 (AMD). 1989, c. 794, §3 (AMD). 1989, c. 890, §§A40,B233 (AMD). 2001, c. 373, §1 (AMD). 2003, c. 661, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 561, §7 (AMD). 2005, c. 590, §3 (AMD). 2007, c. 466, Pt. A, §72 (AMD). 2009, c. 397, §1 (AMD). 2009, c. 579, Pt. A, §1 (AMD). 2009, c. 610, §1 (AMD). 2011, c. 420, Pt. A, §35 (AMD). 2011, c. 657, Pt. W, §5 (REV).

Subchapter 1-A: SOLID WASTE HEADING: PL 1987, C. 517, §25 (NEW)

Article 1: REMEDIATION AND CLOSURE HEADING: PL 1987, C. 517, §25 (NEW)

§1310-C. PROGRAM ESTABLISHED

There is established within the Department of Environmental Protection a remediation and closure program for solid waste landfills. [1987, c. 517, §25 (NEW).]

1. **Objectives.** The program has 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; [1991, c. 374, §3 (AMD).]

B. To accomplish remedial activities to eliminate the existing hazards posed by those landfills; and [1991, c. 374, §3 (AMD).]

C. To provide markets for compost and reclaimed materials. [1991, c. 374, §3 (NEW).]

[1991, c. 374, §3 (AMD) .]

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

A. Open-municipal solid waste landfills; and [1987, c. 517, §25 (NEW).]

B. Abandoned or improperly or inadequately closed, municipal solid waste landfills. [1993, c. 732, Pt. C, §1 (AMD).]

[1993, c. 732, Pt. C, §1 (AMD) .]

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.

[1987, c. 517, §25 (NEW) .]

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

A. "Abandoned" with reference to a solid waste landfill means no longer handling solid waste on or after February 1, 1976 when the cessation of handling operations and the covering of the landfill have not been approved by the department or otherwise accomplished in accordance with the procedures and standards established in this article. [1993, c. 732, Pt. C, §2 (AMD).]

B. "Closed" with reference to a solid waste landfill means no longer handling solid waste when the cessation of handling operations has occurred in accordance with the provisions of a closure plan approved by the department or the closure of the landfill has occurred in accordance with the procedures established by this article. [1993, c. 732, Pt. C, §2 (AMD).]

B-1. "Closure" means the completion of those activities specified in this article or in rules adopted pursuant to this article or a department closing order as appropriate, including, but not limited to, the placement of a cover or cap as a barrier over a landfill in order to minimize the infiltration of precipitation into the waste contained in the landfill. [1993, c. 732, Pt. C, §3 (NEW).]

C. "Open-municipal solid waste landfill" means a solid waste landfill owned by a municipality or group of municipalities, the Passamaquoddy Tribe, the Penobscot Nation or a quasi-municipal entity, such as a county or legislatively chartered village corporation, handling solid waste on or after February 1, 1976. [1991, c. 519, §1 (AMD).]

D. [1991, c. 519, §2 (RP).]

E. "Solid waste landfill" means a waste facility for the permanent disposal of solid waste on or in land. This term does not include land spreading sites used in programs approved by the department, but includes publicly owned sludge landfills. [1991, c. 519, §3 (AMD).]

F. "Contractor" means a business entity that engages in, or intends to engage in, landfill closure activities as a business service on property that it does not own. [1989, c. 870, §1 (NEW).]

G. "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping of pollutants onto the land or into the water or ambient air. [1989, c. 870, §1 (AMD).]

H. "Contamination," with respect to subsection 6, means exceeding water quality standards, attributable to the solid waste facility, specified in:

(1) Primary drinking water standards adopted under Title 22, section 2611;

(2) Maximum exposure guidelines adopted under Title 22, section 2602-A; or

(3) A statistically significant increase in concentration of measured parameters above an established baseline, whether or not the existing concentration already exceeds the maximum concentration levels specified in this section, using the 95% confidence interval when the student's t-test is applied. The use of other statistical tests and confidence intervals must be approved by the department. [1993, c. 732, Pt. C, §4 (AMD).]

I. "Pollutant" means dredged spoils, 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, or any constituent thereof. [1989, c. 870, §1 (NEW).]

J. "Remediation" means those actions, other than closure activities, taken at or near a solid waste landfill to prevent or minimize public health impacts or environmental impacts and to prevent or minimize the release of pollutants beyond the boundary of the property on which the landfill is located. The term "remediation" includes but is not limited to installation of landfill leachate collection and treatment systems; vapor extraction systems; ground water collection and treatment; or slurry walls. Other measures such as property purchases and water supply replacements may be defined as remediation only if they are determined to be cost-effective and as protective of public health and the environment as measures defined above as "remediation". [1993, c. 732, Pt. C, §5 (NEW).]

[1993, c. 732, Pt. C, §§2 - 5 (AMD) .]

5. **Coordination with uncontrolled sites program.** Nothing in this article may be construed to limit the authority of the department under any other provisions of law administered by the department. At any time prior to or following the evaluations conducted pursuant to section 1310-D, subsection 2, the commissioner may proceed under chapter 13-B to properly close any landfill or mitigate any threats posed by the landfill to public health, safety or the environment.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §234 (AMD) .]

6. **Contractor liability.** Except as provided in subsection 7, a contractor that closes a municipal solid waste landfill in compliance with a closure plan approved by the department or in compliance with the procedures and standards established in section 1310-E-1 is not liable for the death of or injury to persons or for property damages resulting from contamination or a discharge of pollutants if:

A. The discharge is at or from the landfill site or the contamination resulted from a discharge at or from the landfill site; and [1989, c. 870, §2 (NEW).]

B. The contamination or discharge is related to on-site landfill closure activities. [1989, c. 870, §2 (NEW).]

[1993, c. 732, Pt. A, §6 (AMD) .]

7. **Exceptions.** Nothing in subsection 6 affects the liability of a contractor:

A. For its employees under former Title 39 or Title 39-A; or [1991, c. 885, Pt. E, §45 (AMD); 1991, c. 885, Pt. E, §47 (AFF).]

B. Under state and federal criminal laws. [1989, c. 870, §2 (NEW).]

[1991, c. 885, Pt. E, §45 (AMD); 1991, c. 885, Pt. E, §47 (AFF) .]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 870, §§1,2 (AMD). 1989, c. 890, §§A40,B234 (AMD). 1991, c. 374, §3 (AMD). 1991, c. 519, §§1-3 (AMD). 1991, c. 885, §E45 (AMD). 1991, c. 885, §E47 (AFF). 1993, c. 732, §§A6,C1-5 (AMD).

§1310-D. CLOSURE OF OPEN-MUNICIPAL LANDFILLS

The provisions of this section govern open-municipal solid waste landfills. [2001, c. 212, §4 (AMD).]

1. **Landfill ranking.** The department shall create and maintain a list of all open-municipal solid waste landfills ranked on the basis of the hazard each poses or potentially poses to the public health and environment. The list must establish no less than 2 categories of landfills: "high risk" landfills, which include those landfills that are known to pose a public health or environmental threat so immediate or substantial that corrective action must be taken without delay, and landfills that are not known to be "high risk." The department shall inform each affected municipality in writing whenever there are changes made to the priority list and publish the most current version of that list on or about February 1st of each year. All pertinent and related rules adopted by the department establishing standards governing landfill closure must be designed so that the costs of closure are coordinated with and reasonably proportionate to the relative public health risk and environmental risk indicated by the specific rank of the municipal landfill.

A. [1993, c. 732, Pt. C, §6 (RP).]

B. [1993, c. 732, Pt. C, §6 (RP).]

C. [1993, c. 732, Pt. C, §6 (RP).]

D. [1993, c. 732, Pt. C, §6 (RP).]

[2001, c. 315, §1 (AMD) .]

2. **Evaluation.** In response to the priorities established in the open-municipal solid waste landfill ranking and the objectives of paragraphs A to C, the commissioner shall conduct, subject to the availability of funding, environmental evaluations of each open-municipal solid waste landfill. The commissioner may employ private consultants to avoid additions to departmental staff and to accomplish the evaluations in a timely manner. The commissioner may utilize existing analyses of facilities, subject to the provisions of this subsection. Municipalities shall cooperate with the efforts of the department by providing reasonably available and relevant material that the department may require with regard to the purposes of this section. When the commissioner has sufficient knowledge of existing hazards to the environment and public health posed by a specific site, the commissioner may designate the landfill as a high-risk landfill and take measures necessary to effect proper closure of the landfill, notwithstanding the site's listed priority. In those cases, the commissioner shall ensure that the requirements of this subsection are met. The commissioner shall ensure that each evaluation achieves 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 requirements of the landfill; [2001, c. 315, §1 (AMD).]

B. When appropriate, to establish a monitoring system, which may include monitoring wells and test borings sufficient to ensure identification and monitoring of potential hazards; [1991, c. 519, §4 (AMD).]

C. When potential hazards are identified, to provide:

(1) A complete description of the movement of surface waters, ground waters and landfill gases 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 commissioner determines necessary to prepare the closure recommendations pursuant to this subchapter; [2001, c. 315, §1 (AMD).]

D. To provide a recommended closure plan for the landfill. Closure recommendations must 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 must 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 commissioner 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; and [2001, c. 315, §1 (AMD).]

E. To consult with and involve the affected municipality or municipalities in the conduct of the evaluation and the analysis of its results. [1987, c. 517, §25 (NEW).]

[2001, c. 315, §1 (AMD) .]

3. **Closing orders.** The commissioner may incorporate the recommendations of the landfill evaluations into a department closing order subject to the following provisions.

A. The order must specify the use of compost or reclaimed soil materials for landfill cover to the maximum extent practical and consistent with sound environmental practices. Subject to sections 1310-F and 1310-G, a time schedule for implementation and all pertinent cost sharing must be included as part of the order. [2001, c. 315, §1 (AMD).]

B. Any person who is aggrieved by the department order may appeal it as provided in section 341-D, subsection 4. [1991, c. 519, §5 (RPR).]

[2001, c. 315, §1 (AMD) .]

4. **Implementation.** The municipality owning or operating the landfill is the party responsible for the implementation of the plan issued by the commissioner.

[1993, c. 732, Pt. C, §9 (AMD) .]

5. **Certification of completion.** A municipality that engages a contractor to close a landfill under an order issued by the department shall hire a licensed engineer independent of the contractor or the municipality to, at a minimum, monitor, evaluate and report on all on-site landfill closure activities performed by the contractor. Upon completion of the closure work in compliance with the order issued by the department, that engineer shall provide the department and municipality with a written report that certifies that the work performed by the contractor conforms with the order issued by the department and all applicable laws and regulations. The cost to the municipality to engage the licensed engineer is a cost of closure under section 1310-F. Following receipt of the engineer's report, the department shall accept, conditionally accept or reject the engineer's certification. If the department either conditionally accepts or rejects the certification, the department shall identify and direct the municipality to undertake any measures necessary for completion of the closure in compliance with the order.

[1993, c. 732, Pt. C, §10 (AMD) .]

SECTION HISTORY

1987, c. 517, §25 (NEW). 1989, c. 870, §3 (AMD). 1989, c. 890, §§A40,B235, 236 (AMD). 1991, c. 374, §4 (AMD). 1991, c. 519, §§4-6 (AMD). 1991, c. 759, §§1,2 (AMD). 1993, c. 732, §§C6-10 (AMD). 2001, c. 212, §4 (AMD). 2001, c. 315, §1 (AMD).

§1310-E. CLOSURE AND REMEDIATION OF CLOSED OR ABANDONED SOLID WASTE LANDFILLS

(REPEALED)

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B237 (AMD). 1991, c. 519, §7 (AMD). 1993, c. 732, §C11 (RP). 2001, c. 626, §18 (AMD).

§1310-E-1. CLOSURE OF LANDFILLS

Notwithstanding closure schedules previously established by rule, unlicensed and licensed open-municipal solid waste landfills that have not been closed must be closed in accordance with the schedule established by federal law or rule; state law or rule; schedules of compliance; consent agreements; enforcement orders; or license conditions. Those landfills must be closed in accordance with one of the following procedures. [1993, c. 732, Pt. C, §12 (NEW).]

1. **Regulation procedure.** This procedure involves the submission of a closure plan and the implementation of the closure plan as approved by the department in accordance with landfill closure standards included in rules adopted pursuant to section 1304. This closure process is required of all licensed municipal solid waste landfills and may be otherwise initiated in one of 3 ways:

A. At the discretion of the municipality; [1993, c. 732, Pt. C, §12 (NEW).]

B. In response to an order issued by the department to close a landfill pursuant to section 1310-D, subsection 2 when the state cost share for the closure is immediately available. For the purposes of this section, "immediately available" means that the municipality is reimbursed the total eligible amount of the state cost share for the anticipated closure operation as ordered within 180 days of the municipality incurring the expense; or [1993, c. 732, Pt. C, §12 (NEW).]

C. In response to an order issued by the department to close a landfill pursuant to section 1310-D, subsection 2 in conjunction with a finding by the commissioner that the landfill poses a "high risk." [1993, c. 732, Pt. C, §12 (NEW).]

[1993, c. 732, Pt. C, §12 (NEW) .]

2. **Reduced closure procedure.** To achieve compliance with this section, a municipality has the option to close its landfill, in accordance with a reduced procedure as established by this subsection, except when:

A. The landfill is a licensed municipal solid waste landfill or the municipality has been ordered to close or remediate a landfill pursuant to section 1310-D, subsection 2 in which case the landfill must be closed in accordance with subsection 1; [1999, c. 556, §37 (AMD).]

B. The landfill meets one of the following criteria, in which case the landfill must close in accordance with subsection 3:

(1) A drinking water supply well is located within 1,000 feet of the solid waste boundary of the landfill;

(2) The public water supply well is located within 10,000 feet of the solid waste boundary of the landfill and in the same aquifer, for landfills located on a sand and gravel aquifer as mapped by the Natural Resources Information and Mapping Center;

(3) An enclosed building is located within 100 feet of the solid waste boundary of the landfill; or

(4) The landfill has received hazardous industrial wastes. [1999, c. 556, §38 (AMD).]

Those municipalities that are able to establish that their open-municipal landfill is not excluded from the closure option provided by this subsection may proceed with the option for a reduced closure procedure. This closure option is met if the closure complies with the landfill closure standards of 40 Code of Federal Regulations, Part 258, Section 258.60 (a). The municipal officers shall submit to the department a certification of completion of closure operations in accordance with the standards of this subsection no later than 60 days from the date of that completion.

[1999, c. 556, §§37, 38 (AMD) .]

3. **Alternative closure procedure.** A municipality that determines that it owns or operates a landfill that by the terms of subsection 2, paragraph B is not automatically eligible for the reduced closure option must notify the department in writing of that circumstance within 60 days of making the determination and the notification must be considered by the department as a request for permission to close the landfill in accordance with the closure standards established by subsection 2. Upon receipt of the notification and after further evaluating the circumstances of the landfill as may be necessary, the department must notify the municipality in writing that permission is granted to close the landfill in accordance with the standards established in subsection 2, or that permission is granted to close the landfill in accordance with the standards of subsection 2 and any reasonable additional closure or remediation standards that the department may require that are related to the identified characteristics that cause the landfill to not be automatically eligible for the reduced closure option.

[1993, c. 732, Pt. C, §12 (NEW) .]

4. **Subsequent landfill closure activity.** Any municipality that closes a landfill pursuant to subsection 1, 2 or 3 and that inspects, monitors and maintains the closure measures as required under subsection 6 is entitled to an assurance from the department that the municipality has met its closure obligations and that no further closure action other than inspection, monitoring and maintenance is required of the municipality by the department with regard to that landfill unless one or more of the following circumstances arises:

A. The commissioner finds that the landfill, although closed, is nonetheless a high-risk landfill and orders further closure or remediation activities; [1993, c. 732, Pt. C, §12 (NEW).]

B. Additional closure or remediation activities are needed and the department's cost share of the additionally required activity is immediately available; or [1993, c. 732, Pt. C, §12 (NEW).]

C. Additional closure or remediation activities are required as a result of an existing or pending formal department enforcement action with respect to the violation of the license conditions under which a landfill was operated. [1993, c. 732, Pt. C, §12 (NEW).]

Nothing with regard to this assurance may be construed to limit the department's authority to act using its own resources as that activity may be otherwise authorized by law.

[2007, c. 655, §7 (AMD) .]

5. **Existing closure procedures.** The closure procedures established in this section do not override or impair closure procedures established prior to the effective date of this section pursuant to a legally binding consent agreement, license condition, enforcement order or other form of contract between a municipality and that department that was executed prior to the effective date of this section.

[1993, c. 732, Pt. C, §12 (NEW) .]

6. **Post-closure maintenance.** A municipality that closes a landfill pursuant to subsection 1, 2 or 3 shall inspect, monitor and maintain the closure measures required under those subsections as necessary to ensure that the closure remains effective.

[2007, c. 655, §8 (NEW) .]

SECTION HISTORY
1993, c. 732, §C12 (NEW). 1995, c. 502, §E32 (AMD). 1999, c. 556, §§37,38 (AMD). 2007, c. 655, §§7, 8 (AMD).

§1310-E-2. INVESTIGATION AND REMEDIATION OF LANDFILLS

1. **Investigation.** The commissioner may investigate a solid waste landfill, including an abandoned landfill, when there is a reasonable basis to believe that an unauthorized discharge has occurred or may be occurring. The commissioner shall consult with and involve the affected municipality or municipalities in the conduct of the investigation and evaluation of the results of the investigation.

[2001, c. 315, §2 (NEW) .]

2. **Remediation recommendations.** When, after investigation, the commissioner has sufficient knowledge that a solid waste landfill poses a hazard to public health or the environment, the commissioner may undertake additional evaluations to develop a recommended plan for remediation of the hazard. Remediation recommendations must 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 must also seek to achieve a level or standard of control of pollutants in groundwater at least as stringent as the water quality criteria established under sections 465-C and 470, unless the commissioner finds that meeting those standards is technically and economically infeasible and that other measures may be implemented to ensure protection of public health and safety.

[2001, c. 315, §2 (NEW) .]

3. **Remediation orders.** The commissioner may take measures necessary to effect a recommended plan for remediation or may incorporate the plan recommendations into a remediation order. The order must include the time schedule for implementation as required under section 1310-G. The person or municipality owning or operating the landfill is the party responsible for the implementation of the order. Any person aggrieved by the order may appeal the order as provided in section 341-D, subsection 4.

[2001, c. 315, §2 (NEW) .]

SECTION HISTORY
2001, c. 315, §2 (NEW).

§1310-F. COST SHARING

The commissioner shall administer a closure and remediation cost-sharing program to assist municipalities and other public entities as provided in subsection 3 in the planning and implementation of the closure and remediation orders. The program is subject to the following provisions. [1991, c. 519, §8 (AMD).]

1. **Cost-share fraction.**

[1993, c. 732, Pt. C, §13 (RP) .]

1-A. **Remediation cost-share fraction.** Except as provided under subsection 2 and subject to the availability of funds, the commissioner shall issue grants or payments to eligible municipalities for 90% of the planning and implementation costs of remediation.

[2007, c. 655, §9 (AMD) .]

1-B. **Closure cost-share fraction.** Subject to the availability of funds, the commissioner shall issue grants or payments for the following percentages of landfill closure costs incurred by municipalities.

A. The state cost share is 75% of closure costs incurred before July 1, 1994. [1997, c. 479, §1 (RPR).]

B. The state cost share is 50% of landfill cover costs and 75% of other closure costs incurred on or after July 1, 1994 and before January 1, 1996. [1997, c. 479, §1 (RPR).]

C. The state cost share is 30% of landfill cover costs and 75% of other closure costs incurred on or after January 1, 1996 and before January 1, 2000. [1997, c. 479, §1 (RPR).]

D. Notwithstanding paragraphs B and C, the state cost share is 75% of closure costs, including landfill cover costs, incurred on or after July 1, 1994 and before January 1, 2000, if:

(1) The costs are incurred pursuant to a written agreement between the municipality and the department executed before July 1, 1994; or

(2) The commissioner determines that the closure work was delayed for reasons beyond the control of the municipality and the costs are identified in and incurred pursuant to a written agreement between the municipality and the department. [1997, c. 479, §1 (NEW).]

E. Notwithstanding paragraphs B, C and D, the state cost share is 75% of closure costs, including landfill cover costs, incurred on or after July 1, 1994 and before December 31, 2015, if:

(1) The commissioner originally issued a license on or before September 1, 1989 for operation of the landfill and found that the landfill met the design requirements and environmental protection standards at the time of licensing; and

(2) The commissioner has since determined that the landfill or portion of the landfill must be closed based on the finding that the landfill is contaminating groundwater and that corrective actions have not been successful. [2011, c. 435, §1 (NEW).]

The state cost share is 0% of landfill closure costs incurred on or after January 1, 2000, except that the commissioner may issue grants or payments as provided in paragraph E or for 30% of those costs if incurred pursuant to an alternative closure commitment executed before January 1, 2000, and if specifically identified in a department order or license, schedule of compliance or consent agreement.

As used in this subsection, "landfill cover costs" means the cost of materials and the cost of placement of materials associated with the physical construction of that portion of a cover over a landfill that meets the minimum landfill cover permeability of 1 x 10(-5)cm./sec. and the thickness standards of 40 Code of Federal Regulations, Part 258, Section 258.60(a).

[2011, c. 435, §1 (AMD) .]

2. **Eligibility.** A municipality that owns, rents or leases a solid waste landfill for which obligations are required or permitted by this chapter or rules adopted under this chapter is eligible for cost-sharing grants or reimbursement payments. In order to receive reimbursement pursuant to this section, the municipality shall, at a minimum, provide reasonable proof of municipal expenditures as the department may require, as well as certification signed by the municipal officers that, to the best of their knowledge and the knowledge of all the pertinent municipal officials, closure activities were performed in accordance with the applicable standards established by section 1310-E-1 and remediation activities were performed in accordance with a plan approved or issued by the department. A municipality that has spent funds to close its solid waste landfill or to remedy environmental and public health hazards posed by the landfill prior to the adoption of a closure

or remediation plan under this subchapter or that closed a landfill or remediated environmental or public health hazards posed by a landfill is also eligible for reimbursement of closure or remediation costs incurred after February 1, 1976, as long as the closure or remediation actions were in conformance with all applicable laws or rules in effect at the time. Costs incurred by closure or remediation actions taken after the adoption of a closure or remediation plan under this subchapter are eligible for reimbursement only if those actions conform to that plan. Grant or reimbursement payments may not be made to a municipality for a portion of payments to settle civil or criminal judgments against that municipality for damages or injuries caused by the landfill. In addition, for landfills in operation prior to January 1, 1993, grant payments may not be made to a municipality for remediation to mitigate a threat posed by that landfill to structures built after January 1, 1994 by that municipality, the county in which that municipality is located, a school administrative unit as defined in Title 20-A, section 1, a quasi-municipal corporation as defined in Title 30-A, section 2351 or a special district as defined in Title 30-A, section 5704 that includes any portion of the municipality unless the commissioner determines that the municipality could not have reasonably anticipated the threat. Any interest paid by a municipality prior to reimbursement on a municipal bond or commercial bank note issued to raise funds for remediation and closure activities is a cost eligible for reimbursement under this section. Unless otherwise directed by the terms of a bond issue approved by the voters, the commissioner shall use at least 1/3 of the funds approved by the voters for municipalities eligible for reimbursement of closure and remediation costs eligible under this subsection until all those municipalities have been reimbursed. The remainder of the available funds must be allocated in an equitable manner so that, at a minimum, an adequate cap is constructed over all identified high-risk landfills subject to closure. The department shall issue, upon the request of a municipality, a notice in writing that projects to a date certain the availability of cost-sharing funds for which the municipality is eligible. The inability or failure of the department to issue a written projection to a date certain means that the cost-sharing funds are not available for the foreseeable future. A landfill that is privately owned and operated is not eligible for reimbursement under this subchapter.

A. The commissioner may act to abate public health, safety and environmental threats at municipal solid waste landfills identified as uncontrolled hazardous substance sites under section 1362, subsection 3 or at federally declared Superfund sites. Notwithstanding subsections 1-A and 1-B, the commissioner shall determine the amount of grants or payments issued to municipalities for the costs of remediation and closure at those sites. [1997, c. 479, §2 (AMD).]

B. The commissioner may enter into contracts with the Maine Municipal Bond Bank to manage bonds issued under this article, as long as the management fee structure does not allow dilution of the bond principal. [1995, c. 462, Pt. A, §77 (RPR).]

C. In a circumstance where the department finds that further closure or remediation activities are required for a landfill because the landfill was not closed in accordance with the standards of closure that the municipal officers certified to the department pursuant to this subsection and further finds that the certification was a negligent misrepresentation of a material fact results in the ineligibility of the municipality for cost sharing for the additional activities that may be required as a result of the nonperformance of the previously certified activities. [1995, c. 462, Pt. A, §77 (RPR).]

D. A municipality that is eligible or authorized by the department to use the closing procedure established in section 1310-E-1, subsection 1, 2 or 3 is not eligible for reimbursement of costs associated with closing activities that are more stringent than the minimum required by that section unless those additional activities are approved in writing by the department. [1995, c. 462, Pt. A, §77 (RPR).]

E. If the municipality has taken reasonable steps to anticipate and abate threats posed by a municipal landfill, a municipality is eligible to receive a maximum reimbursement of 50% of the remediation costs related to any threat posed by the municipal landfill to wells or other structures constructed after December 31, 1999. [1999, c. 334, §11 (NEW).]

[2001, c. 315, §3 (AMD) .]

3. **Sanitary and refuse disposal districts.** Any of the following public entities owning or operating a solid waste landfill is eligible for reimbursement of closure or remediation costs incurred after February 1, 1976, if the closure or remediation actions were in conformance with all applicable laws or rules in effect at the time:

A. A sanitary district created under chapter 11 or by special act of the Legislature; or [1991, c. 66, Pt. A, §36 (RPR).]

B. A regional association as defined in section 1303-C, subsection 24. [1991, c. 66, Pt. A, §36 (RPR).]

[1991, c. 519, §11 (AMD) .]

4. **Insurance.** Notwithstanding subsection 1-B, the commissioner may not issue a grant or reimbursement payment under this section to a municipality for the costs of closure unless the municipality demonstrates to the commissioner that each person who performs work to implement the closure plan is self-insured or is covered by a workers' compensation insurance policy in accordance with Title 39-A.

[1993, c. 732, Pt. C, §16 (AMD) .]

5. **Audit.** A municipality or other public entity receiving grants or reimbursement payments shall include the remediation or closure project in its annual independent audit to provide assurance of the proper expenditure of state funds. A copy of this audit must be provided in a timely manner to the solid waste closure and remediation program of the Department of Environmental Protection.

[1993, c. 732, Pt. C, §17 (AMD) .]

6. **Contract enforcement.** At the request of a recipient of state funds under this section, the commissioner may provide technical assistance and, through the Attorney General, legal assistance in the administration or enforcement of any contract entered into by or for the benefit of the recipient in connection with a landfill closure and remediation project assisted by these funds. When state funds have been disbursed pursuant to this section, the State, acting through the Attorney General, has a direct right of action against the recipient of the funds, or a contractor, subcontractor, architect, engineer or manufacturer of equipment purchased with the funds, to recover the funds which may be properly awarded as actual damages in an action alleging negligence or breach of contract.

[1995, c. 642, §8 (NEW) .]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 273, (AMD). 1989, c. 869, §§A6,7 (AMD). 1989, c. 870, §4 (AMD). 1989, c. 890, §§A40,B238 (AMD). 1991, c. 66, §§A35-37 (AMD). 1991, c. 215, (AMD). 1991, c. 519, §§8-12 (AMD). 1991, c. 885, §E46 (AMD). 1991, c. 885, §E47 (AFF). 1993, c. 355, §49 (AMD). 1993, c. 621, §6 (AMD). 1993, c. 732, §§C13-17 (AMD). 1995, c. 462, §A77 (AMD). 1995, c. 642, §8 (AMD). 1995, c. 665, §HH1 (AMD). 1997, c. 479, §§1,2 (AMD). 1999, c. 334, §11 (AMD). 2001, c. 315, §3 (AMD). 2007, c. 655, §9 (AMD). 2011, c. 435, §1 (AMD).

§1310-G. TIME SCHEDULES FOR CLOSURE OF EXISTING FACILITIES

The department shall establish, as part of a municipal landfill closure and remediation plan, reasonable time schedules for the implementation of the plan. [1993, c. 732, Pt. C, §18 (AMD).]

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

A. The level of environmental and public health hazard posed by the landfill in its current state; [1987, c. 517, §25 (NEW).]

B. The availability of reasonable, alternative disposal options available to the municipality following closure of the existing landfill; [1993, c. 732, Pt. C, §18 (AMD).]

C. The period reasonably needed by the municipality to raise its share of plan costs; and [1993, c. 732, Pt. C, §18 (AMD).]

D. The availability of state cost-share funds for the project. [1993, c. 732, Pt. C, §18 (NEW).]

[1993, c. 732, Pt. C, §18 (AMD) .]

2. **Violation of schedule.**

[1993, c. 355, §50 (RP) .]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B239 (AMD). 1993, c. 355, §50 (AMD). 1993, c. 732, §C18 (AMD).

§1310-H. SUPERVISION AND ENFORCEMENT OF SCHEDULES

The commissioner shall monitor implementation of closure and remediation plans. In addition to any other remedy available by law, if the commissioner determines, after opportunity for public hearing, that any party responsible for the implementation of a plan has failed substantially to meet the established time schedule or has failed to execute the provisions of the plan, the commissioner may: [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §240 (AMD).]

1. **Departmental implementation.** Authorize the department or its agents to enter onto the site and complete the remaining provisions of the plan; and

[1987, c. 517, §25 (NEW) .]

2. **Cost recovery.** Initiate proceedings to recover any costs incurred by the department in implementing a plan from the party or parties responsible for implementation of the plan and, in the case of a municipal landfill, to recover from the municipality the full amount of any grants and loans made to it under this article in connection with closure and remediation of the landfill.

[1987, c. 517, §25 (NEW) .]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B240 (AMD).

§1310-H-1. NOTICE TO SUBSEQUENT OWNERS

The owner of a parcel of land upon which a closed or abandoned municipal solid waste landfill is located shall include notice of the presence of the landfill in any deed transferring ownership of all or part of the parcel and in any easement conveying a right of use to all or part of the parcel. [1999, c. 334, §12 (NEW).]

SECTION HISTORY
1999, c. 334, §12 (NEW).

§1310-I. REPORT TO THE LEGISLATURE

(REPEALED)

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B241 (AMD). 1993, c. 355, §51 (RP).

Article 2: RECYCLING AND SOURCE REDUCTION
HEADING: PL 1987, C. 517, §25 (NEW)

§1310-J. PROGRAM ESTABLISHED; GOALS

(REPEALED)

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 585, §E20 (RP).

§1310-K. STATE RECYCLING PLAN

(REPEALED)

SECTION HISTORY
1987, c. 517, §25 (NEW). 1987, c. 752, §§1,2 (AMD). 1989, c. 585, §E21 (RP).

§1310-L. RECYCLING ADVISORY COUNCIL

(REPEALED)

SECTION HISTORY
1987, c. 517, §25 (NEW). 1987, c. 769, §A182 (AMD). 1989, c. 503, §B179 (AMD). 1989, c. 585, §E22 (RP). 1993, c. 226, §A2 (RP).

§1310-M. REPORT TO THE LEGISLATURE

(REPEALED)

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 585, §E23 (RP).

Article 3: SOLID WASTE FACILITY SITING
HEADING: PL 1987, C. 517, §25 (NEW)

§1310-N. SOLID WASTE FACILITY LICENSES

No person may locate, establish, construct, expand the disposal capacity of or operate any solid waste facility unless approved by the department under the provisions of this chapter. When the proposed facility is located within the jurisdiction of the Maine Land Use Planning Commission, in addition to any other requirement, the department shall require compliance with existing standards of the commission. [1993, c. 680, Pt. A, §37 (RPR); 2011, c. 682, §38 (REV).]

1. **Licenses.** The department 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; [1993, c. 680, Pt. A, §37 (RPR).]

B. In the case of a disposal facility, the facility provides a substantial public benefit, determined in accordance with subsection 3-A; [2013, c. 458, §1 (AMD).]

C. In the case of a disposal facility or a solid waste processing facility that generates residue requiring disposal, 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. This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling or to any other facility exempt from the requirements of subsection 5-A. The department shall find that the provisions of this paragraph are satisfied when the applicant demonstrates that the applicable requirements of subsection 5-A have been satisfied; and [2013, c. 458, §1 (AMD).]

D. The practices of the facility are consistent with the State's solid waste management hierarchy set forth in section 2101. The department shall adopt rules incorporating the State's solid waste management hierarchy as a review criterion for licensing approval under this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 458, §1 (NEW).]

[2013, c. 458, §1 (AMD) .]

1-A. **Surface water protection.** The department may not issue a license for a solid waste facility if it finds that the proposed facility will cause an unreasonable threat to the quality of a classified body of surface water. In determining whether the proposed facility poses an unreasonable threat, the department shall require the applicant to provide evidence demonstrating that:

A. The soils on the proposed facility site are suitable to the nature of the undertaking; [1995, c. 126, §1 (NEW).]

B. An appropriate erosion and sedimentation control plan has been developed and will be implemented on the site; and [1995, c. 126, §1 (NEW).]

C. The proximity of any classified surface water bodies to the proposed solid waste facility has been considered during the site selection process and during the development of the erosion and sedimentation control plan. [1995, c. 126, §1 (NEW).]

[1995, c. 126, §1 (NEW) .]

2. **Finding of environmental suitability.**

[1989, c. 585, Pt. E, §25 (RP) .]

2-A. **Aquifer protection.** The department may 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 department finds that the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer 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 likely to provide drinking water supplies. [1993, c. 680, Pt. A, §37 (RPR).]

B. "Fractured bedrock aquifer" is defined as a consolidated rock formation that is fractured and that is saturated and recharged by precipitation percolating through overlying sediments to a degree that will permit wells drilled into the rock to produce a sufficient water supply for domestic use. [1993, c. 680, Pt. A, §37 (RPR).]

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 department 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 that 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 must 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. [1993, c. 680, Pt. A, §37 (RPR).]

[1993, c. 680, Pt. A, §37 (RPR) .]

2-B. **Traffic movement.**

[1993, c. 383, §36 (RP) .]

2-C. **Proximity to residential areas.**

[1991, c. 43, §4 (AFF); 1991, c. 43, §1 (RP) .]

2-D. **Setback requirements for transfer stations.** The department may not issue a permit or a license for a municipal solid waste transfer station unless the location of the handling site conforms to the following setback requirements.

A. For a transfer station on an island that is not connected to the mainland by a road, the department shall establish setback distances on a case-specific basis in accordance with this paragraph:

(1) No predetermined minimum setback from a property boundary, residence or public road established in statute or rule applies. A proposed setback from such a location must be reasonable and compatible with the abutting land use. If all abutting landowners give written approval to the location of the handling site, the department shall find that the proposed setback to a property boundary, residence or public road is reasonable and compatible with abutting land use. If all abutting landowners do not give written approval, the department shall make an independent determination of the reasonableness and the compatibility of the setback to a property boundary, residence or public road.

(2) No predetermined minimum setback from an active or closed landfill established in statute or rule applies. The proposed setback from an active or closed landfill must be reasonable and compatible with the abutting land use. The department shall make an independent determination of the reasonableness and compatibility of the proposed setback to an active or closed landfill.

(3) To the fullest extent possible, the department shall ensure that the handling site of a transfer station on an island is located in a manner that minimizes any adverse impact on the island residents. [1995, c. 73, §1 (RPR).]

B. For all other transfer stations, the handling site may not be within 250 feet of any abutting property boundary, unless:

(1) The department finds the use of the abutting property to be compatible with the operation of a transfer station on the proposed location. If the department finds use of the abutting property to be compatible, the handling site may be within 250 feet of the boundary but not within 250 feet of any permanent structure on that abutting property; or

(2) The municipality obtains the written permission of all property owners within 250 feet of the proposed handling site. [1995, c. 73, §2 (AMD).]

This subsection does not apply to transfer station permit or license renewals.

[1995, c. 73, §§1, 2 (AMD) .]

2-E. **Automobile dismantling, recycling and salvage operations.** The department may not issue a license for a solid waste facility that is larger than 3 acres in size and that is the location of automobile dismantling, recycling and salvage if the automobile dismantling, recycling and salvage operations take place within 100 feet of a well that serves as a public or private water supply. This prohibition does not include a private well that serves only the facility or the owner's or operator's abutting residence.

[1993, c. 680, Pt. A, §37 (RPR) .]

2-F. **Siting standards.** The department shall issue a license for a new or expanded solid waste facility when it finds that the following standards, in addition to any other requirements of this chapter, have been met.

A. The applicant has the financial and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this chapter. [1993, c. 680, Pt. A, §37 (RPR).]

B. The applicant has made adequate provision for traffic movement of all types into, out of and within the proposed solid waste facility. The department shall consider traffic movement both on site and off site. In making its determination, the department shall consider the following factors:

(1) Vehicular weight limits;

(2) Road construction and maintenance standards;

(3) Vehicle type;

(4) Public safety and congestion on any public or private road traveled by vehicles transporting waste to or from the proposed facility; and

(5) Other relevant factors. [1993, c. 680, Pt. A, §37 (RPR).]

C. The applicant has made adequate provision for fitting the proposed solid waste facility harmoniously into the existing natural environment and the proposed solid waste facility will not unreasonably adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. [1993, c. 680, Pt. A, §37 (RPR).]

D. The proposed solid waste facility will be built on soil types that are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment. [1993, c. 680, Pt. A, §37 (RPR).]

E. The proposed solid waste facility will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur. [1993, c. 680, Pt. A, §37 (RPR).]

F. The applicant has made adequate provision for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project, and the proposed solid waste facility will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services. [1993, c. 680, Pt. A, §37 (RPR).]

G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure. [1993, c. 680, Pt. A, §37 (RPR).]

[1993, c. 680, Pt. A, §37 (RPR) .]

2-G. **Setback requirement for land application and off-site storage of sludge.** The department may not issue a license for a sludge land application site that is within 75 feet of a river, perennial stream or great pond. The department may not issue a license for a sludge storage site or storage facility off the site of generation that is within 250 feet of a river, perennial stream or great pond. Upon the written request to the

department of a person who owns property that abuts a sludge land application site or storage facility, the department shall restrict the sludge application or sludge storage site to no less than 50 feet from that abutting property boundary. The board may establish other setbacks by rule.

[1999, c. 393, §5 (NEW) .]

3. **Public benefit determination.**

[1995, c. 465, Pt. A, §14 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

3-A. **Public benefit determination.** Public benefit determination is made in the following manner.

A. For the following facilities, the department determines public benefit and shall employ a rebuttable presumption of public benefit:

(1) Solid waste disposal facilities less than 6 acres in size that accept only inert fill, construction and demolition debris, debris from land clearing and wood wastes; and

(2) Solid waste disposal facilities used exclusively for the disposal of waste generated by the owner of the facility except that the facility may accept, on a nonprofit basis, waste not generated by the owner provided that the amount so accepted does not exceed 15% of all solid waste accepted on an annual average. [1995, c. 465, Pt. A, §15 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

B. For all other facilities, the commissioner shall make the determination of public benefit in accordance with section 1310-AA, and the commissioner's determination under that section is not subject to review by the department or the board as part of the licensing process under this section. [1995, c. 465, Pt. A, §15 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

[1995, c. 465, Pt. A, §15 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

4. **Presumption of public benefit.**

[1989, c. 585, Pt. E, §27 (RP) .]

5. **Recycling and source reduction determination.**

[2007, c. 583, §3 (RP) .]

5-A. **Recycling and source reduction determination.** The requirements of this subsection apply to solid waste disposal facilities and to solid waste processing facilities that generate residue requiring disposal.

A. An applicant for a new or expanded solid waste disposal facility shall demonstrate that:

(1) The proposed solid waste disposal facility will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law. The department shall attach this requirement as a standard condition to the license of a solid waste disposal facility governing the future acceptance of solid waste at the proposed facility; and

(2) The applicant has shown consistency with the recycling provisions of the state plan.

This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling. [2007, c. 583, §4 (NEW).]

B. The provisions of this paragraph apply to solid waste processing facilities that generate residue requiring disposal.

(1) An applicant for a new or expanded solid waste processing facility that generates residue requiring disposal shall demonstrate that all requirements of this paragraph will be satisfied. On an annual basis, an owner or operator of a licensed solid waste processing facility that generates residue requiring disposal shall demonstrate compliance with all the requirements of this paragraph. The annual demonstration of compliance must be included as an element of the facility's annual report to the department submitted in conformance with the provisions of subsection 6-D, paragraph B and department rules.

(2) A solid waste processing facility that generates residue requiring disposal shall recycle or process into fuel for combustion all waste accepted at the facility to the maximum extent practicable, but in no case at a rate less than 50%. For purposes of this subsection, "recycle" includes, but is not limited to, reuse of waste as shaping, grading or alternative daily cover materials at landfills; aggregate material in construction; and boiler fuel substitutes.

(3) A solid waste processing facility subject to this paragraph shall demonstrate consistency with the recycling provisions of the state plan.

(4) The requirements of this paragraph do not apply to solid waste composting facilities; solid waste processing facilities whose primary purpose is volume reduction or other waste processing or treatment prior to disposal of the waste in a landfill or incineration facility; solid waste processing facilities that are licensed in accordance with permit-by-rule provisions of the department's rules; or solid waste processing facilities that are exempt from the requirements of the solid waste management rules related to processing facilities adopted by the board.

(5) If the department amends the rules relating to fuel quality for construction and demolition wood fuel and the amendment adversely affects the ability of a solid waste processing facility to meet the 50% standard in subparagraph (2), the department may not enforce the requirements of subparagraph (2) against that processing facility and the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report relating to the rule change. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation related to the report.

The department shall adopt rules to implement the provisions of this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 412, Pt. A, §1 (AMD).]

[2009, c. 412, Pt. A, §1 (AMD) .]

6. **Terms and compliance schedules.** Except as provided in subsection 6-D, licenses are issued under terms and conditions the department prescribes, and for a term not to exceed 5 years. The department may establish reasonable time schedules for compliance with this article and rules adopted by the board. A licensed or unlicensed municipal solid waste landfill operating on December 31, 1991 may continue to operate until December 31, 1992 unless the commissioner finds that continued operation of a landfill poses an immediate hazard to the public health or the environment, including, without limitation, a threat to a public or private water supply.

[1993, c. 680, Pt. A, §37 (RPR) .]

6-A. **Relicensing.** Notwithstanding subsection 6, a transfer station or a recycling facility licensed under this chapter is not subject to relicensing unless the standards in effect at the time the previous license was issued are changed or the facility significantly changes its operation. For the purposes of this subsection, a transfer station includes any associated area or use that is permitted by the license, such as areas used to burn or chip wood or brush and areas used to store or handle white goods or tires, but does not include any associated wood waste or demolition debris landfills.

[1993, c. 680, Pt. A, §37 (RPR) .]

6-B. **Unlicensed landfills operating after December 31, 1992.** Notwithstanding subsection 6, the commissioner shall enter into an agreement with a municipality allowing that municipality to operate an unlicensed municipal solid waste landfill after December 31, 1992 if the commissioner determines that the municipality has:

A. Selected an alternative solid waste handling or disposal option that is licensed or capable of being licensed; [1993, c. 680, Pt. A, §37 (RPR).]

B. Proposed to the department a reasonable and mutually acceptable schedule for implementing that option; and [1993, c. 680, Pt. A, §37 (RPR).]

C. Agreed to cease accepting waste at the unlicensed landfill on a date certain. [1993, c. 680, Pt. A, §37 (RPR).]

An agreement under this subsection between a municipality and the department may not include any provision that prevents the municipality from using its unlicensed landfill for the disposal of municipal solid waste during the term of the agreement. Notwithstanding any provision of an agreement entered into under this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

[1993, c. 680, Pt. A, §37 (RPR) .]

6-C. **Summary of federal regulations.** The commissioner shall provide a summary of the criteria for municipal solid waste landfills set forth in 40 Code of Federal Regulations, Part 258 (1992) to each municipality operating a licensed or unlicensed municipal solid waste landfill on the effective date of this subsection. The summary must describe the operational and, where possible, the economic implications under federal and state rules of accepting waste at a municipal solid waste landfill after October 8, 1993.

[1993, c. 680, Pt. A, §37 (RPR) .]

6-D. **Solid waste facilities licensed under rules valid on or after May 24, 1989.** A solid waste facility license issued under applicable solid waste management rules valid on or after May 24, 1989 remains in effect unless modified, revoked or suspended under section 341-D, subsection 3. These licensees must:

A. Comply with applicable operating rules adopted by the board; [1993, c. 680, Pt. A, §37 (NEW).]

B. Comply with annual facility reporting rules adopted by the board; and [1993, c. 680, Pt. A, §37 (NEW).]

C. Beginning 5 years after the date of issuance of the license, pay an annual facility reporting fee established by the commissioner. The annual fee established in this paragraph must be an amount equal to 20% of the relicensing fee that would have applied to that facility. [1993, c. 680, Pt. A, §37 (NEW).]

Notwithstanding the terms of this subsection, a license issued to a solid waste facility that is not a solid waste landfill may be voluntarily surrendered by the license holder upon department approval.

[2001, c. 212, §5 (AMD) .]

6-E. **Unlicensed wood-waste, construction and demolition debris landfills.** An unlicensed municipal solid waste landfill accepting waste consisting exclusively of wood, landscape refuse or construction and demolition debris and operating as of the effective date of this subsection, may:

A. Continue to operate until April 9, 1994; and [1993, c. 732, Pt. C, §19 (NEW).]

B. Continue to operate until December 31, 1995 if:

(1) The landfill was operating as of December 31, 1993; and

(2) The landfill is a separate and discrete disposal unit that does not overlie or overlap a municipal solid waste landfill that accepts or has accepted "household waste" as defined in 40 Code of Federal Regulations, Part 288, Section 258.2. [1993, c. 732, Pt. C, §19 (NEW).]

Municipalities continuing to operate unlicensed wood-waste, construction and demolition debris landfills under paragraph B shall submit a progress report to the department on or before January 31, 1995. The report must include a description of the alternative handling and disposal method that the town plans to implement prior to December 31, 1995 and an implementation schedule.

Notwithstanding this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

[1993, c. 732, Pt. C, §19 (NEW) .]

6-F. **Agreements regarding unlicensed wood-waste, construction and demolition debris landfills operating after December 31, 1995.** The commissioner may enter into an agreement with a municipality operating an unlicensed wood-waste, construction and demolition debris landfill as authorized under subsection 6-E, paragraph B, allowing that municipality to continue operating after December 31, 1995, if:

A. The municipality agrees to comply with the applicable operating requirements of rules adopted by the board pertaining to site access, litter control, erosion prevention, side slopes, compaction, cover, open burning and fire protection; [1995, c. 160, §1 (NEW).]

B. The municipality is conducting a groundwater quality monitoring program at the landfill as of the effective date of this subsection and agrees to continue the program for the life of the facility, or the municipality implements, as a term of the agreement, a groundwater monitoring program approved by the department; and [1995, c. 160, §1 (NEW).]

C. The municipality submits a facility site plan and narrative that indicate current and proposed final landfill grades and describe the general operating plan and proposed landfilling sequence at the site. [1995, c. 160, §1 (NEW).]

Agreements entered into pursuant to the provisions of this subsection must be for terms of sufficient duration to allow for the planned use of remaining site capacity and the proper closure of these landfills. The department shall consider the terms of these agreements on a case-specific basis, based upon the information submitted in conformance with paragraph C.

Unlicensed wood-waste, construction and demolition debris landfills may not, under the terms of agreements entered into pursuant to this subsection, expand horizontally onto areas where waste has not previously been disposed of, unless the area is licensed under the applicable provisions of this chapter. Notwithstanding this subsection the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including, but not limited to, a threat to a public or private water supply.

[1995, c. 160, §1 (NEW) .]

7. **Criminal or civil record.** The department may refuse to grant a license under this article if it finds that the applicant or, if the applicant is other than a natural person, any person having legal interest in the applicant has been found guilty of a criminal or civil violation of laws administered by the department or other laws of the State, other states, the United States or another country.

[1993, c. 680, Pt. A, §37 (RPR) .]

8. **Exemption.** The disposal of construction and demolition debris, land clearing debris and wood wastes is exempt from the requirements of this chapter when:

A. The disposal facility is less than one acre in size; [1993, c. 680, Pt. A, §37 (RPR).]

B. The disposal facility is located on the same parcel of property where the waste is generated; and [1993, c. 680, Pt. A, §37 (RPR).]

C. Only one exempt disposal facility is located on a single parcel of property, except that additional disposal facilities on the same parcel that are less than one acre in size and that were in existence prior to the effective date of this subsection do not require a license under this chapter if no additional waste is disposed of in those additional facilities after the effective date of this subsection. [1993, c. 680, Pt. A, §37 (RPR).]

[1993, c. 680, Pt. A, §37 (RPR) .]

9. **Host community agreements.** The following provisions apply to a solid waste disposal facility, except that this subsection does not apply to a facility owned by the State or to a facility described in section 1303-C, subsection 6, paragraphs E or F.

A. The department may not issue a license for a solid waste disposal facility unless a host community agreement is in place as described in this subsection. [2007, c. 406, §2 (AMD).]

A-1. A solid waste disposal facility must have in place a host community agreement with all applicable host communities during the development and operation and through closure of that facility, except that a solid waste disposal facility owned by a municipality that meets the provisions of section 1303-C, subsection 6, paragraph B is not required to have in place a host community agreement with the host community that is the geographic site of the facility. A host community agreement for the purposes of this section must, when applicable, include the provisions set forth in paragraph B, except that a host community agreement in effect prior to the effective date of this paragraph is not required to include the provisions set forth in paragraph B. [2007, c. 406, §2 (NEW).]

B. Based upon the nature, size and projected impacts of the proposed facility, host community agreements must, when applicable, include provisions regarding:

(1) Improvement, maintenance and repair of local roads directly affected by traffic to and from the facility and of other infrastructural elements directly affected by the facility;

(2) Development and maintenance of adequate local emergency response capacity to accommodate the facility;

(3) Financial support for personnel or other means to provide technical assistance to the municipality in interpreting data and to advise the municipality on other technical issues concerning the facility; and

(4) Other issues determined on a case-specific basis by the applicant and municipality to be appropriate given the nature of the proposed facility.

The department shall adopt rules concerning the expenditure of funds made available to a municipality under the provisions of subparagraph (3) to ensure that funds are used to provide direct technical support to the municipality necessary for the conduct of municipal planning and decision making. [1995, c. 465, Pt. A, §16 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

C. In the event that the parties to a host community agreement required under this subsection cannot agree on the terms of agreement, the parties shall submit the dispute for resolution in accordance with this paragraph.

(1) The parties shall submit the dispute for mediation. The commissioner shall present to the parties a list of 5 experienced and qualified mediators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the mediator assigned to mediate the dispute. In assembling the list of proposed mediators, the commissioner may consider the panel of mediators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B.

(2) If mediation fails to result in an agreement between the parties, the parties shall submit the dispute for arbitration. The commissioner shall present to the parties a list of 5 experienced and qualified arbitrators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the arbitrator assigned to determine the dispute. In assembling the list of proposed arbitrators, the commissioner may consider the panels of arbitrators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B or by the American Arbitration Association or a successor organization.

(a) Both the facility and the host community will be bound by the decision of the arbitrator.

(b) Unless otherwise provided for in this subparagraph, the arbitration must be conducted in accordance with the rules of the American Arbitration Association or a successor organization for the conduct of commercial arbitration proceedings.

(c) Costs associated with the arbitration must be shared equally between the parties.

(d) The arbitrator shall submit the decision to the commissioner.

(e) Either party may appeal the decision of the arbitrator to the Superior Court. [2007, c. 406, §2 (NEW).]

[2007, c. 406, §2 (AMD) .]

10. **Water supply testing.** Upon written request to the department from the owner of property abutting a commercial solid waste disposal facility that accepts special waste for landfilling, the department shall require the facility licensee to have conducted biannual sampling and analysis of a private water supply well used by the requestor for drinking water. This subsection applies only if the requestor owned and resided and the private water supply well existed on that property prior to the time the property became an abutting property. For purposes of this subsection, "abutting" means both contiguous to the property on which the facility is located, including directly across a public or private right-of-way, and within one mile of the location of the facility.

A. Sampling and analysis must be conducted by a certified laboratory selected by the property owner in a manner specified by, and that meets criteria developed by, the department. The criteria must allow for split samples to be taken by the laboratory selected by the property owner and by a laboratory selected by the licensee. [1999, c. 691, §1 (NEW).]

B. The water supply must be analyzed for all parameters or chemical constituents determined by the department to be appropriate and consistent with department rules regarding solid waste management. The laboratory performing the sampling and analysis shall provide written copies of sample results to the licensee, the landowner and the commissioner. [1999, c. 691, §1 (NEW).]

C. If the analysis indicates possible contamination from the facility, the commissioner shall require the licensee to conduct additional sampling and analysis in conformance with department rules regarding solid waste management to determine more precisely the nature, extent and source of contamination. The commissioner shall, if necessary, require this sampling beyond the boundaries of the property abutting the facility. [1999, c. 691, §1 (NEW).]

D. If a facility adversely affects a public or private water supply by contamination, pollution, degradation, diminution or other means that result in a violation of the state drinking water standards as determined by the commissioner, the licensee shall restore the affected supply at no cost to the consumer or replace the affected supply with an alternative source of water that is of like quantity and quality to the original supply at no cost to the consumer. [1999, c. 691, §1 (NEW).]

E. The licensee shall provide owners of property abutting the facility with written notice of their rights under this subsection on a form prepared by the commissioner as follows:

(1) On or before December 1, 2000, for a commercial solid waste disposal facility that accepts special waste for landfilling licensed under this chapter prior to October 1, 2000; and

(2) At or before the time of license issuance for a commercial solid waste disposal facility that accepts special waste for landfilling licensed under this chapter on or after October 1, 2000. [1999, c. 691, §1 (NEW).]

This subsection applies to a new, expanded or existing commercial solid waste disposal facility that accepts special waste for landfilling. When licensing any such facility, the department shall incorporate the provisions of this subsection into the license. The provisions of this subsection apply only to a commercial solid waste disposal facility that accepts special waste for landfilling.

[1999, c. 691, §1 (NEW) .]

11. **Waste generated within the State.** Consistent with the Legislature's findings in section 1302, a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State. For purposes of this subsection, "waste generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside of the State, if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.

[2007, c. 414, §3 (NEW) .]

12. **Citizen advisory committee notification.** Except for applications for minor alterations, the department may not issue a license or an amendment to a license to a solid waste disposal facility owned by the State unless the provisions of this subsection are satisfied.

A. For purposes of this subsection, the following terms have the following meanings.

(1) "Appointing authority" means an entity authorized pursuant to law or resolve to appoint a member to a citizen advisory committee.

(2) "License" means a license, permit, order or approval issued by the department pursuant to this chapter.

(3) "Minor alteration" means an alteration that in the department's judgment does not have a potential to impact the environment or public health or welfare or to create a nuisance. [2011, c. 543, §1 (NEW).]

B. The owner or operator of a solid waste disposal facility shall:

(1) At least 10 days prior to filing an application for a license or an amendment to a license with the department, send to each member of the relevant citizen advisory committee established pursuant to law or resolve a notice that a copy of the license or amendment application will be sent to each appointing authority in accordance with subparagraph (2). The notice must be sent by United States Postal Service, certified mail, return receipt requested; and

(2) At the time of filing an application for a license or an amendment to a license with the department, send to each municipality and any other appointing authority a copy of the license or amendment application. The copy must be sent by United States Postal Service, certified mail, return receipt requested or by a commercial mail delivery service with a comparable proof of delivery. [2011, c. 543, §1 (NEW).]

C. When filing a license or amendment application, the owner or operator of a solid waste disposal facility shall submit to the department a copy of the certified mail receipts or comparable proof of delivery received under paragraph B. [2011, c. 543, §1 (NEW).]

The department may not issue a license or an amendment to a license prior to 30 days after the latest date of mailing of an application or notice sent in accordance with paragraph B.

[2011, c. 543, §1 (NEW) .]

SECTION HISTORY

1987, c. 517, §25 (NEW). 1987, c. 557, §1 (AMD). 1989, c. 157, (AMD). 1989, c. 585, §§E24-28 (AMD). 1989, c. 890, §§A40, B242 (AMD). 1991, c. 43, §§1,2 (AMD). 1991, c. 43, §§4,5 (AFF). 1991, c. 72, §7 (AMD). 1991, c. 169, (AMD). 1991, c. 241, (AMD). 1991, c. 622, §X14 (AMD). 1991, c. 644, §1 (AMD). 1991, c. 745, §3 (AMD). 1993, c. 191, §1 (AMD). 1993, c. 191, §4 (AFF). 1993, c. 378, §§5,6 (AMD). 1993, c. 383, §36 (AMD). 1993, c. 680, §A37 (RPR). 1993, c. 732, §§B1,2,C19 (AMD). 1995, c. 73, §§1, 2 (AMD). 1995, c. 126, §1 (AMD). 1995, c. 160, §1 (AMD). 1995, c. 465, §§A13-16 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 642, §9 (AMD). 1997, c. 393, §§A47,48 (AMD). 1999, c. 393, §5 (AMD). 1999, c. 691, §1 (AMD). 2001, c. 212, §5 (AMD). 2007, c. 406, §2 (AMD). 2007, c. 414, §§2, 3 (AMD). 2007, c. 583, §§2-4 (AMD). 2009, c. 412, Pt. A, §1 (AMD). 2011, c. 543, §1 (AMD). 2011, c. 682, §38 (REV). 2013, c. 243, §1 (AMD). 2013, c. 458, §1 (AMD).

§1310-O. CAPACITY NEEDS ANALYSIS

(REPEALED)

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 585, §E29 (RP).

§1310-P. ESCROW CLOSURE ACCOUNTS

(REPEALED)

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 890, §§A40,B243, 244 (AMD). 1993, c. 378, §7 (RP).

§1310-Q. TRANSFER OF LICENSE

1. **Transfer.** A person may not transfer a license issued pursuant to this Title without the transfer of the license being approved by the department prior to transfer of the ownership of the property, facility or structure that constitutes or is part of the solid waste disposal facility. The department, at its discretion, may require that the proposed new owner of the facility apply for a new license or may approve the transfer of the existing license upon a satisfactory showing that the new owner can abide its terms and conditions and will be able to comply with the provisions of this Title, except that the department may not approve the transfer of an existing license of a municipal solid waste disposal facility to a private entity and the department may not approve the transfer of the license of a solid waste facility subject to subsection 2 unless the provisions of that subsection are satisfied. The department shall consider the extent to which the disposal facility was sited and developed and is currently operated to meet the capacity needs of municipalities within a specific geographic region. The department shall approve the transfer of license when, in addition to all other requirements of this Title, the applicant has demonstrated that:

A. The facility will continue to be operated to meet the municipal disposal capacity needs for which the facility was sited and developed and for which it is currently operated; [1987, c. 557, §2 (NEW).]

B. The applicant has made substantially equivalent, alternative provisions to satisfy these disposal capacity needs; or [1987, c. 557, §2 (NEW).]

C. These disposal capacity needs no longer exist. [1987, c. 557, §2 (NEW).]

[2009, c. 380, §1 (AMD); 2009, c. 380, §2 (AFF) .]

2. **Transfers of solid waste license for a facility that incinerates municipal solid waste or special waste.** In addition to the provisions of subsection 1, during the stated term of any waste handling contract between a solid waste facility that incinerates municipal solid waste or special waste and the host community in which the facility is geographically sited, the department may approve the transfer of a solid waste facility license from the solid waste facility only after the expiration of a due diligence review period for the host community in which the facility is geographically sited, which must conclude within 180 days of the date of filing of the application for transfer of the license. For purposes of this section, any change of owner or operator of the solid waste facility, whether accomplished through sale, merger, lease, sale of stock, assignment or otherwise, is subject to the requirement set forth in this subsection. Any facility owned wholly or in part by a regional association pursuant to section 1304-B, subsection 5 is exempt from this subsection. A transfer to a host community in which the facility is geographically sited is exempt from this subsection.

The board shall decide all applications for transfer of a license subject to this subsection. The board shall hold a public hearing on a transfer application within or in the vicinity of the municipality in which the facility is located after expiration of the due diligence review period prescribed in this subsection.

[2009, c. 380, §1 (NEW); 2009, c. 380, §2 (AFF) .]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1987, c. 557, §2 (RPR). 1989, c. 890, §§A40,B245 (AMD). 2005, c. 612, §3 (AMD). 2009, c. 380, §1 (AMD). 2009, c. 380, §2 (AFF).

§1310-R. TRANSITION PROVISIONS

1. **General.** Except as otherwise provided, the provisions of this article apply to any new, expanded or existing solid waste disposal facility licensed or relicensed after the effective date of this article.

[1987, c. 517, §25 (NEW) .]

2. **Recycling.** The recycling requirements shall apply as follows.

A. The department shall apply the provisions of section 1310-N, subsection 5-A, paragraph A, subparagraph (1) when relicensing any solid waste disposal facility, except that, to the extent that waste disposal contracts in effect on June 29, 1987 are inconsistent with section 1310-N, subsection 5-A, paragraph A, subparagraph (1), those provisions apply at the expiration of the term of those contracts without consideration of any renewals or extensions of those contracts. [2007, c. 583, §5 (AMD).]

B. The department shall require an applicant for a new or expanded solid waste disposal facility or for a license renewal submitting a complete application prior to the adoption of the state plan to demonstrate that the facility furthers the purposes of section 2101 and satisfies the regulations under section 1310-N. [1989, c. 585, Pt. E, §30 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §246 (AMD).]

C. The provisions of section 1310-N, subsection 5-A, paragraph A, subparagraph (2) do not apply to the relicensing of any solid waste disposal facility licensed prior to June 29, 1987. [2007, c. 583, §6 (AMD).]

[2007, c. 583, §§5, 6 (AMD) .]

3. **Public benefit.** The public benefit requirements shall apply as follows.

A. [1989, c. 585, Pt. E, §30 (RP).]

A-1. The department shall require an applicant for a new or expanded solid waste disposal facility submitting a complete application prior to the initial adoption of the state plan to submit such information as the department requires to demonstrate that the proposed facility provides a substantial public benefit, including the information described in former section 1310-O. [1989, c. 585, Pt. E, §30 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §247 (AMD).]

B. The provisions of section 1310-N, subsection 1, paragraph B, and section 1310-N, subsection 3, do not apply to the relicensing of a solid waste disposal facility licensed prior to June 29, 1987. [1989, c. 585, Pt. E, §30 (AMD).]

C. [1995, c. 465, Pt. A, §17 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

[1995, c. 465, Pt. A, §17 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

4. **Incineration facilities.**

[1995, c. 465, Pt. A, §18 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 585, §§E30,E31 (AMD). 1989, c. 890, §§A40,B246- 248 (AMD). 1995, c. 465, §§A17,18 (AMD). 1995, c. 465, §C2 (AFF). 2007, c. 583, §§5, 6 (AMD).

§1310-S. PUBLIC AND LOCAL PARTICIPATION

In addition to provisions for public participation provided pursuant to Title 5, chapter 375, the following provisions apply to an application for a solid waste disposal facility. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §249 (AMD).]

1. **Notification.** A person applying for a license under this article or giving notice to the commissioner pursuant to section 485-A shall give, at the same time, written notice to the municipal officers of the municipality in which the proposed facility may be located and shall publish notice of the application in a newspaper of general circulation in the area.

[2011, c. 655, Pt. GG, §14 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

1-A. **Preliminary notice.** Sixty days prior to submitting an application to the commissioner regarding a specific site for a solid waste disposal facility, the applicant shall notify by certified mail the municipal officers of the municipality in which the site is located or, in the unorganized territories, the county commissioners with jurisdiction over the site.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §249 (AMD) .]

2. **Public hearing.** The department may hold an adjudicatory public hearing within the municipality in which the facility may be located or in a convenient location in the vicinity of the proposed facility. The department shall hold an adjudicatory public hearing on an application for a new or expanded commercial or state-owned solid waste disposal facility that accepts special waste upon request from a resident or a property owner in the municipality in which the proposed facility is located. Upon a timely request for an adjudicatory hearing from 5 or more residents in the municipality in which the facility is located or abutting property owners of the facility, the commissioner shall hold an adjudicatory public hearing on an application for a vertical increase in the approved final elevation that would increase the waste disposal capacity of a commercial or state-owned solid waste disposal facility that accepts special waste or the commissioner shall request that the board assume jurisdiction in accordance with section 344, subsection 2-A. At a hearing on an application for a vertical increase in the approved final elevation that would increase the waste disposal capacity, the testimony is limited to issues related to relevant standards of review under chapter

13, subchapter 1-A. The hearing must be conducted in accordance with Title 5, chapter 375, subchapter 4. Administrative expenses of a hearing held pursuant to this subsection and all costs incurred by the department in processing an application must be paid for by the person applying for the license as provided in department rules.

[2005, c. 341, §1 (AMD) .]

3. **Automatic municipal intervenor status.** The municipal officers, or their designees, from the municipality in which the facility would be located have intervenor status if they request it within 60 days of notification under subsection 1. The intervenor status granted under this subsection applies in any proceeding for a license under this article. Immediately upon the commissioner's receipt of such a request, the intervenors have all rights and responsibilities commensurate with this status.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §249 (AMD) .]

3-A. **Automatic abutter intervenor status.** An abutting property owner has intervenor status in any public hearing held pursuant to subsection 2 if the property owner requests it no later than 10 days following public notice of the hearing. Immediately upon the commissioner's receipt of such a request, the intervenor has all rights and responsibilities commensurate with this status. A party granted intervenor status under this subsection is not eligible for intervenor assistance grants or reimbursements pursuant to subsection 4.

For purposes of this subsection, "abutting property owner" means an owner of property that is both contiguous to the property on which a facility is proposed and within 1 mile of the location of the proposed facility site, including property directly across a public or private right-of-way.

[1997, c. 624, §16 (NEW) .]

4. **Financial assistance.** The commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under subsection 3, not to exceed $50,000. The board shall adopt rules governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the department. Allowable expenses include, without limitation, hydrogeological studies, waste generation and recycling studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses not used in support of direct, substantive participation in the proceedings before the department, including attorney's fees related to court appeals, are not eligible for reimbursement under this subsection. Expenses otherwise eligible under this section that are incurred by the municipality after notification pursuant to subsection 1 are eligible for reimbursement under this subsection only if a completed application is accepted by the department. The commissioner may make an additional assistance grant not to exceed $50,000, to be paid by the applicant as provided in department rules, to any party granted intervenor status under subsection 3 on an application for the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling when the intervenor demonstrates to the commissioner that the size, nature, location, geological setting or other relevant factors warrant additional expenditures for technical assistance. The board shall also establish rules governing:

A. The process by which an intervenor under subsection 3 may gain entry to the proposed facility site for purposes of reasonable inspection and site investigations under the auspices of the department; and [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §249 (AMD).]

B. The reduction in the maximum level of reimbursable costs to the extent the municipality establishes by local ordinance any substantially similar financial requirements of the applicant. [1987, c. 517, §25 (NEW).]

[1997, c. 624, §17 (AMD) .]

5. **Unincorporated townships and plantations.** For the purposes of this section, county commissioners shall act as municipal officers for unincorporated townships, and assessors of plantations shall act as municipal officers for plantations.

[1987, c. 557, §3 (NEW) .]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1987, c. 557, §3 (AMD). 1989, c. 15, §§1,2 (AMD). 1989, c. 585, §E32 (AMD). 1989, c. 890, §§A40,B249 (AMD). 1991, c. 794, §1 (AMD). 1993, c. 378, §8 (AMD). 1995, c. 465, §A19 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A25 (AMD). 1997, c. 624, §§15-17 (AMD). 2005, c. 341, §1 (AMD). 2011, c. 655, Pt. GG, §14 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1310-T. APPLICATION FEE

In addition to any fees imposed pursuant to section 352, the applicant shall pay a fee of $50,000 at the time of filing an application for a solid waste disposal facility. An application is considered incomplete and the department shall defer any review or processing of the application until the applicant has paid the full $50,000 fee. The fee must be deposited in the Maine Environmental Protection Fund and used only to make reimbursements and grants to the intervenor in the applicant's license proceedings pursuant to section 1310-S. The applicant releases all control over this money and does not retain any rights to audit the spending of these funds once the fee has been deposited in the Maine Environmental Protection Fund. Any portion of the fee not disbursed by the department for these purposes is reimbursed to the applicant, together with any interest that may have accrued on that portion. Upon request, the commissioner shall provide an audit report to the applicant after all the application and appeal proceedings before the department have concluded. [1989, c. 15, §3 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §250 (AMD).]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 15, §3 (AMD). 1989, c. 890, §§A40,B250 (AMD).

§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 State or a state agency or a regional association. [2011, c. 655, Pt. GG, §15 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

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 that contain standards the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protection; surface water protection; erosion and sedimentation control; and compatibility of the solid waste facility with local zoning and land use controls, provided 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 under these articles. Municipal ordinances must use definitions consistent with those adopted by the board. [1995, c. 126, §2 (AMD).]

A municipality adopting an ordinance under this section shall forward a copy of the ordinance to the commissioner within 30 days of its adoption. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §251 (AMD).]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1989, c. 585, §E33 (RPR). 1989, c. 869, §A8 (AMD). 1989, c. 890, §§A40,B251 (AMD). 1991, c. 66, §A38 (AMD). 1995, c. 126, §2 (AMD). 1995, c. 656, §A26 (AMD). 2011, c. 655, Pt. GG, §15 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1310-V. MORATORIUM

Prior to 91 days after the First Regular Session of the 113th Legislature adjourns, the department may not process or act upon any application or issue a license for a new commercial landfill facility or the substantial expansion of a commercial landfill facility. In processing applications after the moratorium, priority must be given to applications for commercial landfill facilities used for the disposal of solid waste that is generated by an energy recovery facility designed to reduce the volume or alter the physical characteristics of municipal solid waste and to produce electricity through incineration. Notwithstanding the provisions of Title 1, section 302, any application for a new or substantially expanded commercial landfill facility pending or filed after the effective date of this article and any application for an expanded commercial landfill facility filed after October 8, 1987, is subject to departmental rules regarding solid waste adopted pursuant to section 1304 and the provisions of Private and Special Law 1987, chapter 28. Notwithstanding other provisions of this Title, the department may not issue a license for a new or substantially expanded commercial landfill facility under this article or for an expanded commercial landfill facility, the application for which was filed after October 8, 1987, until the board has adopted rules pursuant to the provisions of Private and Special Law 1987, chapter 28. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §252 (AMD).]

For the purposes of this section, the term, "commercial landfill facility" is defined pursuant to section 1303-C, except that the term does not include a waste facility that is controlled by the owners of an energy recovery facility or facilities and that is used exclusively for the disposal of ash or other wastes processed and thereby generated by such energy recovery facility or facilities. [1989, c. 878, Pt. B, §41 (AMD).]

SECTION HISTORY
1987, c. 517, §25 (NEW). 1987, c. 557, §4 (AMD). 1989, c. 878, §B41 (AMD). 1989, c. 890, §§A40,B252 (AMD).

§1310-W. COUNTY COMMISSIONERS

(REPEALED)

SECTION HISTORY
1987, c. 557, §5 (NEW). 1987, c. 706, §1 (RP).

§1310-X. FUTURE COMMERCIAL WASTE DISPOSAL FACILITIES

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

[1993, c. 355, §52 (AMD) .]

2. **Relicense or transfer of license.** The department may relicense or approve a transfer of license for a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989, if the facility had been previously licensed by the department as a commercial solid waste disposal or biomedical waste disposal or treatment facility prior to October 6, 1989, and all other provisions of law have been satisfied.

[1995, c. 465, Pt. A, §20 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

3. **Expansion of facilities.** The department may license an expansion of a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989 if:

A. The department has previously licensed the facility prior to October 6, 1989; [1991, c. 297, §1 (RPR).]

B. The department determines that the proposed expansion is contiguous with the existing facility and:

(1) Is located on property owned on December 31, 1989 by the licensee or by a corporation or other business entity under common ownership or control with the licensee; or

(2) For a commercial solid waste disposal facility that is a commercial landfill facility that is not under order or agreement to close, is located on property owned by the licensee; and [2011, c. 566, §1 (AMD).]

C. For a commercial solid waste disposal facility the commissioner or the department determines as provided in section 1310-N, subsection 3-A that the facility provides a substantial public benefit. [1995, c. 465, Pt. A, §21 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

The department may not process or act upon any application or license an expansion of a commercial landfill facility pursuant to this subsection until the applicant demonstrates to the department that it is in full compliance with the host community agreement pursuant to section 1310-N, subsection 9, if any, on the existing facility and until a host community agreement amendment is executed to account for the proposed expansion.

An expanded facility may not receive a property tax exemption on real or personal property.

[2011, c. 566, §1 (AMD) .]

4. **Exemption.** The following are exempt from the provisions of this section:

A. A commercial biomedical waste disposal or treatment facility, if at least 51% of the facility is owned by a licensed hospital or hospitals as defined in Title 22, section 328, subsection 14 or a group of hospitals that are licensed under Title 22 acting through a statewide association of Maine hospitals or a wholly owned affiliate of the association; and [2003, c. 551, §17 (AMD).]

B. Expansion of a commercial solid waste disposal facility, if the expansion will not result in an increase in the facility's disposal capacity and the expansion will not be used for solid waste disposal. [1995, c. 588, §1 (NEW).]

[2003, c. 551, §17 (AMD) .]

SECTION HISTORY
1989, c. 585, §E34 (NEW). 1989, c. 869, §A9 (RPR). 1989, c. 878, §H8 (RPR). 1991, c. 297, §1 (RPR). 1991, c. 382, (AMD). 1993, c. 355, §52 (AMD). 1995, c. 68, §1 (AMD). 1995, c. 465, §§A20,21 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 588, §1 (AMD). 2003, c. 551, §17 (AMD). 2011, c. 566, §1 (AMD).

§1310-Y. FINANCIAL ASSURANCE

An owner or operator of a solid waste disposal facility licensed under section 1310-N shall provide the department assurance of its financial ability to satisfy the estimated cost of corrective action for known releases from the facility and its financial capacity to satisfy the estimated cost of closure and postclosure care and maintenance at the facility for a period of at least 30 years after closure. The board may adopt rules that increase or decrease that postclosure care period, as long as those rules are consistent with applicable federal rules. The department may consider the use of more than one acceptable form of financial assurance per facility to satisfy the financial assurance requirement of this section. This section applies to all privately owned solid waste disposal facilities licensed by the department, including facilities licensed by the department before June 16, 1993. This section does not apply to a municipally owned or operated solid waste disposal facility that accepts exclusively special waste, construction and demolition debris, land-clearing debris or any combination of those types of waste or to a municipally owned or operated solid waste disposal facility licensed before June 16, 1993. [2001, c. 575, §1 (AMD).]

1. **Acceptable forms of financial assurance.** Acceptable forms of financial assurance are:

A. A letter of credit; [1993, c. 378, §9 (NEW).]

B. A surety bond; [1993, c. 378, §9 (NEW).]

C. An escrow account; [1993, c. 378, §9 (NEW).]

D. A reserve account calculated in a manner consistent with the United States Internal Revenue Code; [1993, c. 378, §9 (NEW).]

E. An irrevocable trust account; or [1993, c. 378, §9 (NEW).]

F. In the case of a municipal solid waste disposal facility, any of the allowable financial assurance mechanisms set forth in applicable federal rules. [1993, c. 378, §9 (NEW).]

[1993, c. 378, §9 (NEW) .]

1-A. **Substitute requirements.** The department may substitute part of the acceptable forms of financial assurance under subsection 1 with one or more of the following requirements:

A. A current rating for its senior unsubordinated debt of AAA, AA, A or BBB as issued by Standard and Poor's Corporation or Aaa, Aa, A or Baa as issued by Moody's Investors Services, Inc.; [2001, c. 575, §1 (NEW).]

B. A ratio of less than 1.5 comparing total liabilities to net worth; or [2001, c. 575, §1 (NEW).]

C. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10,000,000, to total liabilities. [2001, c. 575, §1 (NEW).]

[2001, c. 575, §1 (NEW) .]

2. **Report.** An owner or operator of a solid waste disposal facility shall annually prepare a report containing a sworn statement providing the year-end balance of any escrow, trust or reserve account established under this section. That report must be submitted to the commissioner by March 31st of each year or such other date as the commissioner may designate.

[1993, c. 378, §9 (NEW) .]

SECTION HISTORY
1993, c. 378, §9 (NEW). 1995, c. 44, §1 (AMD). 2001, c. 315, §4 (AMD). 2001, c. 575, §1 (AMD).

§1310-Z. LABORATORY ANALYSES

Laboratory analyses required in support of the licensing, operation, closure or postclosure care of a solid waste facility must be performed by a qualified laboratory. Six months after the adoption of laboratory certification rules required by Title 22, section 567, all laboratories must be certified or exempted from certification pursuant to those rules. [1993, c. 378, §9 (NEW).]

SECTION HISTORY
1993, c. 378, §9 (NEW).

§1310-AA. PUBLIC BENEFIT DETERMINATION

1. **Application for public benefit determination.** Prior to submitting an application under section 1310-N for a license for a new or expanded solid waste disposal facility, a person must apply to the commissioner for a determination of whether the proposed facility provides a substantial public benefit.

[1995, c. 465, Pt. A, §22 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

1-A. **Public benefit determination for acceptance by publicly owned solid waste landfills of waste generated out of state.** Prior to accepting waste that is not generated within the State, a solid waste facility that is subject to this subsection shall apply to the commissioner for a determination of whether the acceptance of the waste provides a substantial public benefit.

A. A facility is subject to this subsection if the facility is a solid waste landfill that is not a commercial solid waste disposal facility pursuant to:

(1) Section 1303-C, subsection 6, paragraph A-2;

(2) Section 1303-C, subsection 6, paragraph B-2; or

(3) Section 1303-C, subsection 6, paragraph C-2. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

B. A facility that is subject to this subsection may not accept waste that is not generated within the State unless the commissioner determines that the acceptance of the waste provides a substantial public benefit. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

C. The commissioner shall make the determination of public benefit in accordance with subsections 2 and 3. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

D. For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State; waste whether generated within the State or outside of the State used for daily cover, frost protection or stability in accordance with all applicable rules and licenses; and waste generated within 30 miles of the solid waste disposal facility. [2011, c. 566, §2 (AMD).]

[2011, c. 566, §2 (AMD) .]

1-B. **State-owned solid waste disposal facilities.** This subsection applies to public benefit determinations for solid waste disposal facilities owned by the State.

A. The department may not process or act upon any application for a new, modified or amended solid waste license for a solid waste disposal facility acquired by the State after January 1, 2007, including an application to expand, until the facility has applied for and received a public benefit determination. [2013, c. 243, §2 (NEW).]

B. A solid waste disposal facility owned by the State before January 1, 2007 is deemed to hold a public benefit determination for the licensed disposal capacity at the facility on the effective date of this subsection. The department may require the holder of a public benefit determination under this paragraph to submit an application for a modified public benefit determination if the department finds

that a material change in the underlying facts or circumstances has occurred or is proposed, including, but not limited to, a change in the disposal capacity or a change of the owner or operator of the facility. The department may not process or act upon any application to expand a solid waste disposal facility owned by the State before January 1, 2007 until the facility has applied for and received a public benefit determination. [2013, c. 243, §2 (NEW).]

[2013, c. 243, §2 (NEW) .]

2. **Process.** Determinations by the commissioner under this section are not subject to Title 5, chapter 375, subchapter 4. The applicant shall provide public notice of the filing of an application under this section in accordance with department rules. The department shall accept written public comment during the course of processing the application. In making the determination of whether the facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit, the commissioner shall consider the state plan, written information submitted in support of the application and any other written information the commissioner considers relevant. The commissioner shall hold a public meeting in the vicinity of the proposed facility under subsection 1 or the solid waste landfill under subsection 1-A to take public comments and shall consider those comments in making the determination. The commissioner shall issue a decision on the matter within 60 days of receipt of the application. The commissioner's decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section.

[2011, c. 566, §3 (AMD) .]

3. **Standards for determination.** The commissioner shall find that the proposed facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility or the acceptance of waste that is not generated within the State:

A. Meets immediate, short-term or long-term capacity needs of the State. For purposes of this paragraph, "immediate" means within the next 3 years, "short-term" means within the next 5 years and "long-term" means within the next 10 years. When evaluating whether a proposed facility meets the capacity needs of the State, the commissioner shall consider relevant local and regional needs as appropriate and the regional nature of the development and use of disposal capacity due to transportation distances and other factors; [2011, c. 566, §4 (AMD).]

B. Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy as set out in section 2101; [2011, c. 566, §5 (AMD).]

C. Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; and [2007, c. 338, §3 (AMD); 2007, c. 338, §5 (AFF).]

D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted. [2007, c. 655, §10 (AMD).]

[2011, c. 566, §§4,5 (AMD) .]

4. **Application.** This section does not apply to facilities described in section 1310-N, subsection 3-A, paragraph A.

[2009, c. 348, §1 (AMD); 2009, c. 348, §3 (AFF) .]

5. **Modifications.** Public benefit determinations may be revised by the department if the department finds that a material change in the underlying facts or circumstances upon which a public benefit determination was based has occurred or is proposed, including, but not limited to, a change related to

disposal capacity or a change of the owner or operator of a facility. The department may require the holder of a public benefit determination to submit an application for modification of that determination if the department finds that a change in the underlying facts or circumstances has occurred or is proposed.

[2011, c. 566, §6 (AMD) .]

6. **Substantial public benefit.**

[2013, c. 243, §3 (RP) .]

7. **Decision making.** When making a decision on an application for a determination of public benefit, the commissioner:

A. May issue a full or partial approval of an application, with or without conditions; and [2011, c. 566, §7 (NEW).]

B. For an application related to a state-owned solid waste disposal facility, shall conduct a review that is in accordance with the provisions of this section and is independent of any other contract or agreement between the State and the facility operator or any other party concerning the operation or development of the facility. [2011, c. 566, §7 (NEW).]

[2011, c. 566, §7 (NEW) .]

SECTION HISTORY
RR 1995, c. 1, §33 (COR). 1995, c. 314, §1 (NEW). 1995, c. 465, §A22 (NEW). 1995, c. 465, §C2 (AFF). 2007, c. 338, §3 (AMD). 2007, c. 338, §5 (AFF). 2007, c. 414, §§4, 5 (AMD). 2007, c. 655, §10 (AMD). 2009, c. 348, §§1, 2 (AMD). 2009, c. 348, §3 (AFF). 2011, c. 566, §§2-7 (AMD). 2013, c. 243, §§2, 3 (AMD).

§1310-BB. USE OF UNAUTHORIZED TIRE MANAGEMENT SITE OR FACILITY

(REPEALED)

SECTION HISTORY
RR 1995, c. 1, §33 (RNU). 1995, c. 314, §1 (NEW). 1995, c. 579, §1 (RP).

Subchapter 2: SOLID WASTE MANAGEMENT SUBSIDY

§1311. FINDINGS; INTENT

(REALLOCATED TO TITLE 38, SECTION 1310-A)
(REPEALED)

SECTION HISTORY
1979, c. 383, §11 (NEW). 1979, c. 511, §2 (NEW). 1979, c. 640, §1 (AMD). 1979, c. 663, §238 (RAL). 1983, c. 566, §43 (RP).

§1312. SOLID WASTE SUBSIDY

(REPEALED)

SECTION HISTORY
1979, c. 511, §2 (NEW). 1979, c. 640, §2 (AMD). 1983, c. 566, §44 (RP).

§1313. ELIGIBLE FACILITIES

(REPEALED)

SECTION HISTORY
1979, c. 511, §2 (NEW). 1979, c. 640, §3 (RPR). 1983, c. 566, §45 (RP).

§1314. ELIGIBLE COSTS

(REPEALED)

SECTION HISTORY
1979, c. 511, §2 (NEW). 1979, c. 640, §§4-6 (AMD). 1983, c. 566, §46 (RP).

§1315. ADMINISTRATION

(REPEALED)

SECTION HISTORY
1979, c. 511, §2 (NEW). 1979, c. 640, §7 (AMD). 1983, c. 566, §47 (RP).

Subchapter 2-A: TIRE STOCKPILE ABATEMENT
HEADING: PL 1991, C. 517, PT. A, §2 (NEW)

§1316. PROHIBITION

A person may not handle used motor vehicle tires at an uncontrolled tire stockpile in violation of an order issued under this subchapter. [1991, c. 517, Pt. A, §2 (NEW).]

SECTION HISTORY
1991, c. 517, §A2 (NEW).

§1316-A. INVESTIGATION AND ENFORCEMENT

If the commissioner finds upon investigation that an area or location where used motor vehicle tires are or were handled, stored or disposed of is not licensed or is in violation of the solid waste management rules relating to tires and presents a significant fire hazard or a threat to public health or safety or to the environment, the commissioner may designate that location as an uncontrolled tire stockpile and may issue an administrative order directing the responsible party or parties to mitigate or eliminate the threatening or hazardous conditions posed by the uncontrolled tire stockpile. [1995, c. 579, §2 (NEW).]

An administrative order issued under this section must contain findings of fact describing, insofar as possible, and with reasonable specificity, the site of the activity and the danger to public health or safety or to the environment. [1995, c. 579, §2 (NEW).]

Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §31 (AMD).]

The person to whom the order is directed shall comply immediately. That person may apply to the board for a hearing within 10 working days after receipt of the order. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must

be sworn, and the department shall first establish the basis for the administrative order and for naming the person to whom the administrative order was directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §31 (AMD).]

The Office of the State Fire Marshal may employ its enforcement powers as authorized in Title 25, section 2396 to require a responsible party or parties to take any action necessary to protect public health and safety from substantial and immediate fire danger posed by an uncontrolled tire stockpile. [1995, c. 314, §2 (NEW).]

SECTION HISTORY
1991, c. 517, §A2 (NEW). 1995, c. 314, §2 (AMD). 1995, c. 579, §2 (AMD). 2005, c. 330, §31 (AMD).

§1316-B. ABATEMENT; CLEANUP; MITIGATION

If a responsible party does not comply immediately with all conditions of an administrative order issued pursuant to section 1316-A or an administrative consent agreement issued pursuant to section 347-A, subsection 4 or any court order, the commissioner may act to abate, clean up or mitigate the threat or hazard posed by an uncontrolled tire stockpile. The commissioner may: [1995, c. 579, §3 (AMD).]

1. **Assistance.** Employ private consultants and other persons to evaluate, design or conduct tire removal or site remediation activities;

[1991, c. 517, Pt. A, §2 (NEW) .]

2. **Process and remove.** Cause the processing or removal of all stockpiled tires;

[1995, c. 579, §4 (AMD) .]

3. **Secure.** Have barriers constructed and sufficient security measures implemented to prohibit the access of unauthorized persons to the site, including the responsible party;

[1991, c. 517, Pt. A, §2 (NEW) .]

4. **Equipment.** Have fire-fighting or pollution abatement equipment purchased and stored either at or away from the tire stockpile;

[1991, c. 517, Pt. A, §2 (NEW) .]

5. **Alter.** Have the physical characteristics of the stockpile site altered, including the construction of fire lanes, fire or pollution barriers or other necessary site remediation activity;

[1995, c. 314, §3 (AMD) .]

6. **Close.** Permanently close the stockpile and prohibit the use of the site for the storage or disposal of used motor vehicle tires; or

[1995, c. 314, §3 (AMD) .]

7. **Consultation.** Consult with the Office of the State Fire Marshal regarding on-site fire abatement and control measures.

[1995, c. 314, §4 (NEW) .]

SECTION HISTORY

1991, c. 517, §A2 (NEW). 1995, c. 314, §§3,4 (AMD). 1995, c. 579, §§3,4 (AMD).

§1316-C. LIABILITY; RECOVERY BY STATE

Each responsible party is jointly and severally liable for all costs incurred by the State, including court costs and attorney's fees, for the abatement, cleanup or mitigation of the threat or hazard posed by an uncontrolled tire stockpile and for damages for injury to, destruction of, loss of or loss of use of natural resources of the State resulting from the uncontrolled tire stockpile, including the reasonable costs of assessing natural resources damages. The commissioner shall demand prompt reimbursement of all costs incurred under sections 1316-A and 1316-B. If payment is not received by the State within 30 days of demand, the Attorney General may file suit in the Superior Court and may seek reimbursement of other costs and any other relief provided by law. Notwithstanding the time limits stated in this section, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability. [2007, c. 655, §11 (AMD).]

The commissioner may not demand from responsible parties that are municipalities reimbursement of more than 10% of all costs incurred by the State under sections 1316-A and 1316-B. [1991, c. 517, Pt. A, §2 (NEW).]

In any suit filed under this section, the State need not prove negligence in any form or matter by a defendant. The State need only prove that a defendant is a responsible party and the site poses or posed or potentially poses or posed a threat or hazard to the health, safety or welfare of any citizen of the State or the environment of the State, to which the acts or omissions of the defendant are or were causally related. Punitive damages may be awarded by the court upon a finding that a responsible party acted in willful violation of law, rule or order in creating, increasing or maintaining an uncontrolled tire stockpile. [1991, c. 517, Pt. A, §2 (NEW).]

Funds recovered under this section must be deposited into the Tire Management Fund. [1995, c. 465, Pt. A, §23 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

SECTION HISTORY
1991, c. 517, §A2 (NEW). 1995, c. 465, §A23 (AMD). 1995, c. 465, §C2 (AFF). 2007, c. 655, §11 (AMD).

§1316-D. IMMUNITY

Notwithstanding Title 14, chapter 741, the State, its agencies or its employees are not liable for the death or injury of any person or for any property damage that results from abatement activities pursuant to this subchapter. This section does not affect the right of any person to receive workers' compensation or other applicable benefits. [1991, c. 517, Pt. A, §2 (NEW).]

SECTION HISTORY
1991, c. 517, §A2 (NEW).

§1316-E. LIEN ESTABLISHED

1. **Establishment.** All costs incurred by the State, including court costs and attorney's fees, for the abatement, cleanup or mitigation of an uncontrolled tire stockpile and all related interest and penalties constitute a lien against the real estate of the responsible party or parties.

[1991, c. 517, Pt. A, §2 (NEW) .]

2. **Priority.** The priority of a lien filed pursuant to this section is governed by the following.

A. Any lien filed pursuant to this section on real estate where an uncontrolled tire stockpile is located has precedence over all encumbrances on the real estate recorded after the effective date of this section. For the purposes of this paragraph, the term "real estate" includes all real estate of a responsible party that has been included in the property description of the real estate on which the stockpile is located within the 3-year period preceding the date of the filing of the lien or the period between the effective date of this section and the date on which the lien is filed, whichever period is shorter. [1991, c. 517, Pt. A, §2 (NEW).]

B. Any lien filed pursuant to this section on any other real estate of the responsible party has precedence over all transfers and encumbrances filed after the date that the lien is filed with the registry of deeds. [1991, c. 517, Pt. A, §2 (NEW).]

[1991, c. 517, Pt. A, §2 (NEW) .]

3. **Notice.** A certificate of lien signed by the commissioner must be mailed by certified mail, return receipt requested, to all persons of record holding an interest in the real estate over which the commissioner's lien is entitled to priority under subsection 2, paragraph A. A certificate may be filed for record in the office of the clerk of any municipality in which the real estate is situated.

[1991, c. 517, Pt. A, §2 (NEW) .]

4. **Recording.** Any lien filed pursuant to this section is effective when filed with the registry of deeds for the county in which the real estate is located. The lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

[1991, c. 517, Pt. A, §2 (NEW) .]

5. **Limitation.** This section does not apply to a unit of real estate that consists primarily of real estate used or under construction as single or multifamily housing at the time the lien is recorded or to property owned by a municipality.

[1991, c. 517, Pt. A, §2 (NEW) .]

6. **Discharge of lien.** When the amount of a lien recorded under this section has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any foreclosure action on the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the property subject to the lien is situated.

[1991, c. 517, Pt. A, §2 (NEW) .]

SECTION HISTORY
1991, c. 517, §A2 (NEW).

§1316-F. TIRE MANAGEMENT FUND

The Tire Management Fund is created within the department as a nonlapsing dedicated fund to pay the costs of tire stockpile abatement, remediation and cleanup. All funds appropriated or allocated to the fund must be deposited in the fund and the fund may accept grants, bequests, gifts or contributions from any person, corporation or governmental entity. The fund must be used for the purposes set forth in section 1316-B. Permissible uses include providing financial incentives to tire processors to make the processing of tires

economically feasible. The department shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by March 1, 1996 on how the funds have been spent. [1995, c. 465, Pt. A, §24 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

SECTION HISTORY
1995, c. 465, §A24 (NEW). 1995, c. 465, §C2 (AFF).

§1316-G. TIRE STOCKPILE ABATEMENT PROGRAM

The State shall undertake a program to eliminate tire stockpiles. The program is under the direction of the department with assistance from other agencies including the Department of the Attorney General, the Maine State Police, the Maine National Guard and the Department of Corrections. [2011, c. 655, Pt. GG, §16 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Tire stockpile abatement.** The department shall, as available resources allow:

A. Estimate the number of tires that are stockpiled and that pose a significant risk to the environment or public health; [1995, c. 578, §1 (NEW).]

B. Develop a tire stockpile reduction priority plan based on environmental and public health risks; [1995, c. 578, §1 (NEW).]

C. Seek the cooperation and assistance of private and governmental landowners or tire stockpile operators to reduce the size and number of tire stockpiles; [1995, c. 578, §1 (NEW).]

D. Assist tire stockpile owners and operators willing to cooperate within the law; [1995, c. 578, §1 (NEW).]

E. Utilize enforcement powers unilaterally or in conjunction with the Department of the Attorney General or the Maine State Police or other parties to abate health, safety and environmental risks posed by tire stockpiles when voluntary cooperation is not provided by landowners or operators; [1995, c. 578, §1 (NEW).]

F. Develop or cause to be developed site-specific tire stockpile abatement plans; [1995, c. 578, §1 (NEW).]

G. Give preference in implementing site-specific tire stockpile abatement activities to the processing of tires for removal and beneficial use while mitigating fire risk; [1995, c. 578, §1 (NEW).]

H. Educate the public and encourage use of tires based on consideration of environmental and public health impacts as well as market conditions; and [2007, c. 655, §12 (AMD).]

I. Contract for services to reduce tire stockpiles and abate significant risk to the environment and public health at tire stockpile sites. [2007, c. 655, §13 (AMD).]

J. [2007, c. 655, §14 (RP).]

[2007, c. 655, §§12-14 (AMD) .]

2. **Market development.** The department shall, as available resources allow, assist with market development to encourage the beneficial reuse of whole tires and processed tires inside or outside the State. The department may also make recommendations to the Legislature regarding legislation that would enhance the beneficial reuse of waste tires or processed tires.

[2011, c. 655, Pt. GG, §17 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

3. **Business retention and new technology.** The Department of Economic and Community Development, as available resources allow, shall lead a cooperative effort involving the department and the Finance Authority of Maine to identify measures the State can take to provide a favorable environment for the

retention of businesses assisting in the processing of waste tires. This cooperative effort must also provide for the introduction of viable new technologies to cost-effectively convert waste tires to commodities that can be utilized for beneficial reuse and for energy production.

[2011, c. 655, Pt. GG, §17 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1995, c. 578, §1 (NEW). 2007, c. 655, §§12-14 (AMD). 2011, c. 655, Pt. GG, §§16, 17 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

Subchapter 2-B: MANAGEMENT OF MOTOR VEHICLE TIRES HEADING: PL 1995, C. 579, §5 (NEW)

§1316-L. MANAGEMENT OF MOTOR VEHICLE TIRES

1. **Disposal, storage and processing.** A person may not dispose of, store or process, or cause to be disposed of, stored or processed, used motor vehicle tires at a site or facility in this State that:

A. Is an uncontrolled tire stockpile that is the subject of an administrative order of the commissioner pursuant to section 1316-A; or [1995, c. 579, §5 (NEW).]

B. Is unlicensed, unless the facility is exempt from licensing or otherwise authorized under state law to dispose of, store or process such tires. [1995, c. 579, §5 (NEW).]

[1995, c. 579, §5 (NEW) .]

2. **Transfer to tire transporter.** A person may not transfer custody or possession of scrap tires to any transporter if that person knows or has reason to believe the transporter:

A. Does not have a license or permit to transport scrap tires as required by department rules; [1995, c. 579, §5 (NEW).]

B. Does not have a manifest documenting the transport of such tires as required by department rules; or [1995, c. 579, §5 (NEW).]

C. Will transport or handle the scrap tires in violation of this subchapter or of subchapter II-A or rules adopted pursuant to section 1304. [1995, c. 579, §5 (NEW).]

[1995, c. 579, §5 (NEW) .]

The department shall maintain current lists of uncontrolled tire stockpiles, licensed and authorized tire storage, disposal or processing facilities and transporters licensed or authorized to transport scrap tires. [1995, c. 579, §5 (NEW).]

SECTION HISTORY
1995, c. 579, §5 (NEW).

§1316-M. TRANSPORTATION OF TIRES

1. **Examination of license and manifest.** A state, county or local law enforcement officer may examine a nonhazardous waste transporter license to determine if it is valid, or a nonhazardous waste manifest to determine whether scrap tires are being transported to a licensed or exempt waste facility.

[1995, c. 579, §5 (NEW) .]

2. **Impoundment.** When a law enforcement officer has reasonable grounds to believe that scrap tires are being transported to an unlicensed, nonexempt waste facility, or that scrap tires are being transported to a waste facility without a manifest or license as required by the department's nonhazardous waste transporter rules, the law enforcement officer may impound the vehicle and hold the vehicle until the transporter has fully complied with department rules.

[1995, c. 579, §5 (NEW) .]

3. **Alternative manifest.** A law enforcement officer may issue an alternative manifest to the transporter to transport scrap tires to a licensed waste facility. An alternative manifest must include the following information:

A. The name and location of the waste generator; [1995, c. 579, §5 (NEW).]

B. The quantity of scrap tires; and [1995, c. 579, §5 (NEW).]

C. The name and location of the waste facility to which the scrap tires are being transported. [1995, c. 579, §5 (NEW).]

A copy of the alternative manifest prepared by the law enforcement officer and any summons issued to the transporter must be sent to the department.

[1995, c. 579, §5 (NEW) .]

4. **Transporting without license or manifest; penalties.** A person who transports scrap tires without a license or without a manifest as required by department rules commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The minimum fines for transporting scrap tires without a license or without a manifest are as follows:

A. For a vehicle with a registered gross weight of up to 12,000 pounds, $500; [2003, c. 452, Pt. W, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. For a vehicle with a registered gross weight of between 12,001 and 34,000 pounds, $2,000; and [2003, c. 452, Pt. W, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. For a vehicle with a registered gross weight of over 34,000 pounds, $4,500. [2003, c. 452, Pt. W, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

This minimum fine may not be suspended, but it may be reduced by the amount of the disposal fee paid by the transporter for disposal of the truckload of tires at a licensed waste facility. Notwithstanding Title 17-A, section 1301, the maximum fine under this subsection is not more than $10,000 per violation.

[2003, c. 452, Pt. W, §10 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

5. **Transporting after summons or arrest.** A person who, after being issued a summons or arrested for a violation of the license or manifest requirements, transports the scrap tires to an unlicensed, nonexempt waste facility commits a Class D crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. Notwithstanding Title 17-A, section 1301, the maximum fine under this subsection is not more than $25,000 per violation.

[2003, c. 452, Pt. W, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1995, c. 579, §5 (NEW). 2003, c. 452, §§W10,11 (AMD). 2003, c. 452, §X2 (AFF).

Subchapter 2-C: DANGEROUS OR UNSAFE MATERIAL CONTROL HEADING: PL 2005, C. 406, §1 (NEW)

§1316-O. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 406, §1 (NEW).]

1. **Dangerous or unsafe material.** "Dangerous or unsafe material" means any substance or material that is capable of or likely to cause injury, including, but not limited to:

A. Pressure tanks such as propane tanks; [2005, c. 406, §1 (NEW).]

B. Flammable liquids or solids; and [2005, c. 406, §1 (NEW).]

C. Explosive materials such as dynamite or fireworks. [2005, c. 406, §1 (NEW).]

[2005, c. 406, §1 (NEW) .]

SECTION HISTORY
2005, c. 406, §1 (NEW).

§1316-P. PROHIBITION; PENALTIES

A person commits a civil violation for which a fine of not more than $500 may be assessed if, with respect to any dangerous or unsafe material that the person knows is dangerous or unsafe, that person knowingly: [2005, c. 406, §1 (NEW).]

1. **Conceals.** Conceals that material by placing it inside other waste material or covering it with other waste material; and

[2005, c. 406, §1 (NEW) .]

2. **Disposes at solid waste facility.** Disposes or causes another to dispose of such material in a solid waste facility.

[2005, c. 406, §1 (NEW) .]

SECTION HISTORY
2005, c. 406, §1 (NEW).

Subchapter 3: HAZARDOUS MATTER CONTROL

§1317. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1979, c. 730, §2 (NEW).]

1. **Discharge.** "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping onto the land or into the water or ambient air.

[1979, c. 730, §2 (NEW) .]

2. **Hazardous matter.** "Hazardous matter" means substances identified by the board under section 1319 that present a present or potential danger to the people of the State or to its natural environment when deposited on land or discharged on or into waters of the State or ambient air.

[1979, c. 730, §2 (NEW) .]

3. **Remove or removal.** "Remove" or "removal" means the mitigation of the danger created by hazardous matter by either:

A. Treatment or cleanup of a discharge of hazardous matter; or [1979, c. 730, §2 (NEW).]

B. Any action necessary to prevent or minimize danger from a discharge or threatened discharge. [1979, c. 730, §2 (NEW).]

[1979, c. 730, §2 (NEW) .]

4. **Responsible party.** "Responsible party" means the person having care, custody, possession or control of hazardous matter.

[1979, c. 730, §2 (NEW) .]

SECTION HISTORY
1979, c. 730, §2 (NEW).

§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. For purposes of this section, the discharge of gaseous hazardous matter into the ambient air includes discharges within buildings or structures from sources that are not encapsulated within secondary containment. The discharge must be reported and removed as provided under section 1318-B, subsections 1 and 3. [2005, c. 330, §32 (AMD).]

SECTION HISTORY
1979, c. 730, §2 (NEW). 1991, c. 499, §22 (AMD). 2005, c. 330, §32 (AMD).

§1318. MITIGATION OF PENALTIES

1. **Reporting.** The immediate reporting of a discharge or threatened discharge by the responsible party or by the person causing the discharge may be considered in mitigation of any criminal or civil penalties assessed under this subchapter.

[1979, c. 730, §2 (NEW) .]

2. **Removal.** If the responsible party or person causing the discharge immediately reports and removes the discharge in accordance with this subchapter, a plan submitted under section 1318-C and the rules and orders of the board or commissioner, the party or person is not subject to criminal or civil penalties under this subchapter.

[1991, c. 208, §1 (AMD) .]

SECTION HISTORY
1979, c. 730, §2 (NEW). 1989, c. 890, §§A40,B253 (AMD). 1991, c. 208, §1 (AMD).

§1318-A. RECOVERY BY STATE, COUNTIES AND MUNICIPALITIES FOR EXPENDITURES FOR REMOVAL OF DISCHARGES

1. **Responsible party.** The responsible party or the person causing the discharge is liable for all acts and omissions of its servants and agents that are committed within the course and scope of their employment.

[2005, c. 100, §1 (AMD) .]

2. **State, counties and municipalities to recover for expenditures for removal.** Any person who permits, causes or is responsible for a prohibited discharge shall reimburse the State, counties and municipalities for all costs incurred, including personnel costs, in removing the discharge, including costs for ensuring public safety. Funds recovered under this section must be deposited to the account from which they were expended. Requests from the State for reimbursement, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191, or, for county or municipal cost, to the District Attorney for collection.

[2005, c. 100, §1 (AMD) .]

In any suit to enforce claims of the State, a county or a municipality under this section, it is not necessary for the State, county or municipality to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge. The State, county or municipality need only plead and prove the fact of the prohibited discharge and that the discharge occurred while the hazardous matter was in the custody or control of the person causing, permitting or responsible for the discharge. [2005, c. 100, §1 (AMD).]

At the request of one or more municipalities, a county may bring legal action for recovery under this section on behalf of the municipality or municipalities. If the county is successful in the action, the county is entitled to recover the cost of the action and reasonable attorney's fees. [2005, c. 100, §1 (NEW).]

SECTION HISTORY
1979, c. 730, §2 (NEW). 1989, c. 317, §1 (AMD). 1991, c. 817, §33 (AMD). 2005, c. 100, §1 (AMD).

§1318-B. PROCEDURES FOR REMOVAL OF DISCHARGES OF HAZARDOUS MATTER

1. **Reporting.** Except as provided in this subsection, the responsible party or person causing the discharge shall report a discharge immediately to the Department of Public Safety, which shall immediately notify the Commissioner of Environmental Protection and the public safety agency of the municipality in which the discharge takes place. Upon submission to the commissioner of a written spill prevention control and clean-up plan that meets the criteria of section 1318-C, subsection 1, a discharge containing a hazardous matter that is covered by the plan must be reported only if the discharge equals or exceeds the applicable reportable quantity for that particular hazardous matter as specified in Code of Federal Regulations, Title 40, Parts 302.4, 302.5 and 302.6 (b)(1), revised as of July 1, 2002, or when the discharge extends or spreads beyond the area on the site covered by the spill prevention control and clean-up plan.

[2005, c. 330, §33 (AMD) .]

2. **Preservation of public order.** The local public safety agency shall exercise authority for preservation of public order and safety, shall coordinate the response to the spill and shall be reimbursed under section 1318-A. The Department of Public Safety shall exercise this authority in those areas of the State without a local public safety agency, or in any situation in which a local public safety agency requests assistance from the Department of Public Safety.

[1989, c. 317, §2 (AMD) .]

3. **Commissioner of Environmental Protection to direct removal.** The Commissioner of Environmental Protection shall have authority and responsibility to plan, implement and, with the cooperation of the appropriate public safety agency, direct that part of the response to a discharge of hazardous matter that involves removal.

A. The responsible party or person causing the discharge shall immediately undertake removal of the discharge. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §255 (AMD).]

B. The commissioner may undertake the removal of the discharge and may retain agents and make contracts for this purpose. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §255 (AMD).]

C. Any unexplained discharge of hazardous matter occurring within state jurisdiction, or on land or in water or air beyond state jurisdiction that for any reason penetrates within state jurisdiction, must be removed by or under the direction of the commissioner. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §255 (AMD).]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §255 (AMD) .]

4. **Limited liability for responders.** A person who voluntarily, without expectation of monetary or other compensation, assists or advises the commissioner in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous matter is not liable for removal costs, damages, injuries, civil liabilities or penalties that result from actions taken or omitted in the course of rendering assistance or advice in accordance with the directions of the commissioner. This liability limitation does not apply:

A. If the person is grossly negligent or engages in willful misconduct; or [1995, c. 642, §11 (NEW).]

B. To a person who caused the discharge or threatened discharge or otherwise is determined to be a responsible party. [1995, c. 642, §11 (NEW).]

[1995, c. 642, §11 (NEW) .]

SECTION HISTORY
1979, c. 730, §2 (NEW). 1981, c. 184, §§1,2 (AMD). 1989, c. 317, §2 (AMD). 1989, c. 890, §§A40,B254, 255 (AMD). 1991, c. 208, §2 (AMD). 1995, c. 642, §§10,11 (AMD). 1997, c. 364, §39 (AMD). 2005, c. 330, §33 (AMD).

§1318-C. SPILL PREVENTION CONTROL AND CLEAN-UP PLAN

A responsible party may develop and submit to the commissioner spill prevention, control and clean-up plans referred to in this section as "the plan" to address discharges of hazardous matter. [1991, c. 208, §3 (NEW).]

1. **Plan content.** Spill prevention control and clean-up plans must include at a minimum the following information:

A. The hazardous matter and substances covered including the reportable quantity for each hazardous matter and mixture measured in pounds if a solid and in pounds and gallons if a liquid; [1993, c. 355, §53 (AMD).]

B. Any containment and diversionary structures or equipment where appropriate; [1991, c. 208, §3 (NEW).]

C. Inspection, maintenance and testing procedures for storage and containment areas; [1991, c. 208, §3 (NEW).]

D. A list of emergency response equipment and locations and a description of the capabilities of the equipment; [1991, c. 208, §3 (NEW).]

E. A description of employee training programs; [1991, c. 208, §3 (NEW).]

F. A description of areas in need of protection and method of protection; [1991, c. 208, §3 (NEW).]

G. A description of discharge detection devices and emergency warning systems; [1991, c. 208, §3 (NEW).]

H. A list of on-site emergency coordinators and the qualifications of on-site trained employee responders; [1991, c. 208, §3 (NEW).]

I. A description of evacuation procedures and assembly points; [1991, c. 208, §3 (NEW).]

J. Notification procedures for federal, state and local officials; [1991, c. 208, §3 (NEW).]

K. Procedures for supplying written reports to the department; [1991, c. 208, §3 (NEW).]

L. General response and clean-up protocols by substance or substance class; [1991, c. 208, §3 (NEW).]

M. Specific on-site containment, treatment or removal plans; [1991, c. 208, §3 (NEW).]

N. A description of the record-keeping process for responses involving the implementation of this plan; [1991, c. 208, §3 (NEW).]

O. A description and copies of mutual aid agreements and any agreements with clean-up contractors; and [1991, c. 208, §3 (NEW).]

P. A promulgation statement and date of plan adoption. [1991, c. 208, §3 (NEW).]

[1993, c. 355, §53 (AMD) .]

2. **Submission.** The plan and all amendments to the plan must be submitted to the commissioner upon adoption or amendment.

[1991, c. 208, §3 (NEW) .]

3. **Amendments.** The plan must be amended as necessary to reflect current conditions at the facility or as determined appropriate by the facility or state agencies.

[1991, c. 208, §3 (NEW) .]

SECTION HISTORY
1991, c. 208, §3 (NEW). 1993, c. 355, §53 (AMD).

§1319. POWERS OF THE BOARD

1. **Identification of hazardous matter.**

A. Any substance designated as hazardous by the United States Environmental Protection Agency in proposed or final regulations under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 United States Code, Section 9602, and any substance identified as hazardous waste under section 1319-O may be identified by rule as hazardous matter by the board. [1997, c. 364, §40 (AMD).]

B. Any substance which has not been so designated by the United States Environmental Protection Agency may be identified by rule as hazardous matter by the board. [1979, c. 730, §2 (NEW).]

C. Rules adopted under paragraph B shall be submitted to the Joint Standing Committee on Energy and Natural Resources for review. These rules shall become effective after the next regular session of the Legislature only if approved by Joint Resolution. [1979, c. 730, §2 (NEW).]

[1997, c. 364, §40 (AMD) .]

2. **Rules.** The board shall have authority to adopt rules in order to:

A. Prescribe procedures for reporting discharges prohibited by this subchapter; [1979, c. 730, §2 (NEW).]

B. Prescribe procedures, methods, means and equipment to be used in the removal of discharges of hazardous matter; and [1979, c. 730, §2 (NEW).]

C. Exempt types or methods of discharges of hazardous matter from the requirements of this subchapter that the board determines do not present danger, imminent, present or delayed, to the people of the State or to its natural environment. [1999, c. 334, §13 (AMD).]

[1999, c. 334, §13 (AMD) .]

SECTION HISTORY
1979, c. 730, §2 (NEW). 1997, c. 364, §40 (AMD). 1999, c. 334, §13 (AMD).

§1319-A. DUTIES OF THE COMMISSIONER

1. **Facilities.** The commissioner may undertake studies and evaluations necessary to develop suitable waste facilities.

[1979, c. 730, §2 (NEW) .]

2. **Training.** The commissioner may train state and local personnel to remove discharges of hazardous matter. Insofar as practical, the commissioner shall rely on existing sources to deliver this training.

[1979, c. 730, §2 (NEW) .]

SECTION HISTORY
1979, c. 730, §2 (NEW).

Subchapter 4: MAINE HAZARDOUS WASTE FUND

§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. [1981, c. 478, §7 (NEW).]

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 overweighs the economic burdens and any burden of strict liability imposed by this subchapter upon those engaged in generating, transporting and handling hazardous waste. [1981, c. 478, §7 (NEW).]

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. [1983, c. 342, §5 (NEW).]

SECTION HISTORY
1981, c. 478, §7 (NEW). 1983, c. 342, §5 (AMD).

§1319-C. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1981, c. 478, §7 (NEW).]

1. **Discharge.** "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping of hazardous waste onto the land or into the water or ambient air.

[1981, c. 478, §7 (NEW) .]

2. **Remove or removal.**

[1985, c. 162, §10 (RP) .]

3. **Responsible party.** "Responsible party" means any person who could be held liable under section 1319-J.

[2009, c. 501, §15 (NEW) .]

SECTION HISTORY
1981, c. 478, §7 (NEW). 1985, c. 162, §10 (AMD). 2009, c. 501, §15 (AMD).

§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 and subchapter III. All fees, penalties, interest and other charges under this subchapter must be credited to this fund. This fund must be charged with the expenses of the department related to this subchapter and subchapter III, including costs of removal or abatement of discharges and costs of the inspection or supervision of hazardous waste activities and hazardous waste handlers. [2001, c. 212, §6 (AMD).]

Money in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities for hazardous waste management shall be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest received on that investment shall be credited to the fund. [1981, c. 478, §7 (NEW).]

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 1319-E, subsection 1, paragraphs C and E for each biennium. The budget must be submitted as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures therefrom as approved by the commissioner. Expenditures pursuant to section 1319-E, subsection 1, paragraphs A and D may be made as authorized by the State Controller following approval by the commissioner. [1997, c. 424, Pt. B, §10 (AMD).]

SECTION HISTORY
1981, c. 478, §7 (NEW). 1985, c. 162, §11 (AMD). 1987, c. 750, §4 (AMD). 1989, c. 546, §14 (AMD). 1989, c. 890, §§A40,B256 (AMD). 1997, c. 424, §B10 (AMD). 2001, c. 212, §6 (AMD).

§1319-E. DISBURSEMENTS FROM THE MAINE HAZARDOUS WASTE FUND

1. **Money disbursed.** Money in the Maine Hazardous Waste Fund may be disbursed by the commissioner 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, waste oil or biomedical waste. Whenever practical, the commissioner may offer the responsible party the opportunity to remove or abate the discharge or threatened discharge; [1993, c. 355, §54 (AMD).]

B. [1989, c. 546, §15 (RP).]

C. Costs incurred for the purchase of necessary hazardous waste, waste oil and biomedical waste 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; [1993, c. 355, §54 (AMD).]

D. Amounts necessary to reimburse municipalities as required by section 1319-R, subsection 3; [1989, c. 874, §8 (AMD).]

E. Costs incurred in the inspection or supervision of hazardous waste, waste oil and biomedical waste activities and handlers; and [2011, c. 653, §26 (AMD); 2011, c. 653, §33 (AFF).]

F. [2011, c. 653, §33 (AFF); 2011, c. 653, §27 (RP).]

G. Costs incurred in the administration of chapter 27 or the provision of technical assistance under the technical assistance and recognition programs described in section 2326. [2009, c. 579, Pt. B, §10 (AMD); 2009, c. 579, Pt. B, §13 (AFF).]

[2009, c. 579, Pt. B, §10 (AMD); 2009, c. 579, Pt. B, §13 (AFF); 2011, c. 653, §§26, 27 (AMD); 2011, c. 653, §33 (AFF) .]

2. Limitation.

[1987, c. 192, §28 (RP) .]

SECTION HISTORY
1981, c. 478, §7 (NEW). 1983, c. 342, §6 (AMD). 1985, c. 162, §12 (AMD). 1987, c. 192, §28 (AMD). 1987, c. 517, §26 (AMD). 1989, c. 546, §15 (AMD). 1989, c. 874, §§8-10 (AMD). 1989, c. 890, §§A40, B257 (AMD). 1991, c. 499, §23 (AMD). 1993, c. 355, §54 (AMD). 2009, c. 579, Pt. B, §10 (AMD). 2009, c. 579, Pt. B, §13 (AFF). 2011, c. 653, §§26, 27 (AMD). 2011, c. 653, §33 (AFF).

§1319-F. PERSONNEL AND EQUIPMENT

The commissioner may employ personnel, subject to the Personnel Laws, and maintain equipment necessary to carry out the department's responsibilities under this subchapter. [1981, c. 478, §7 (NEW).]

SECTION HISTORY
1981, c. 478, §7 (NEW).

§1319-G. REIMBURSEMENT TO THE FUND

1. Recovery. The commissioner shall seek recovery to the use of the Maine Hazardous Waste Fund of all sums expended from the fund, including overdrafts, for disbursements made from the fund under section 1319-E, subsection 1, paragraphs A, B and C, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount too small or the likelihood of recovery too uncertain. Requests by the department for reimbursement to the Maine Hazardous Waste Fund, if not paid

within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191.

The commissioner may file a claim with or otherwise seek money from federal agencies to recover to the use of the fund all disbursements from the fund.

[2007, c. 655, §15 (AMD) .]

1-A. **Lien.** All costs incurred by the State in the removal, abatement and remediation of an unlicensed discharge or threatened discharge of hazardous waste, waste oil or biomedical waste under this subchapter and interest are a lien against the real estate of the responsible party.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

[2009, c. 501, §16 (NEW) .]

2. **Waiver of reimbursement.** Upon petition of any person who has paid into the fund, the board, after opportunity for a hearing, may waive the right to reimbursement to the fund if it finds that the incident was the result of:

A. An act of war; [1981, c. 478, §7 (NEW).]

B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 1319-E; and [1981, c. 478, §7 (NEW).]

C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency. [1981, c. 478, §7 (NEW).]

[1981, c. 478, §7 (NEW) .]

3. **Waiver of reimbursement for registered used oil collection centers.** Upon petition of the owner or operator of a registered used oil collection center, the commissioner may waive the right to reimbursement to the fund of costs incurred in the removal or abatement of up to 660 gallons of hazardous waste from that collection center if the commissioner finds that:

A. The registered used oil collection center is in compliance with the requirements contained in section 1319-Y and any rules adopted pursuant to section 1319-O, subsection 2, paragraph B; [1995, c. 573, §3 (NEW).]

B. The owner or operator of the registered used oil collection center:

(1) Did not mix the oil with hazardous waste; and

(2) Did not knowingly accept hazardous waste or oil mixed with hazardous waste; and [1995, c. 573, §3 (NEW).]

C. The commissioner has not granted any previous waivers of reimbursement for costs incurred in the removal or abatement of hazardous waste from the same registered used oil collection center pursuant to this subsection during the previous 12 months. [1995, c. 573, §3 (NEW).]

Notwithstanding this subsection, the commissioner may not grant waivers of reimbursement to the fund pursuant to this subsection that total more than $10,000 in any one fiscal year.

[1995, c. 573, §3 (NEW) .]

SECTION HISTORY
1981, c. 478, §7 (NEW). 1989, c. 890, §§A40,B258 (AMD). 1991, c. 817, §34 (AMD). 1995, c. 573, §3 (AMD). 2007, c. 655, §15 (AMD). 2009, c. 501, §16 (AMD).

§1319-H. APPLICATION AND ANNUAL FEES

1. **Fees for reviewing applications.** The following fees are required for reviewing applications.

A. Any person who applies for a license for a hazardous waste facility shall pay the appropriate fee. An application for a license will not be considered complete and will not be processed until this fee is received. Application fees are as follows.

(1) Disposal facility..... $10,000

(2) Commercial treatment facility.....7,000

(3) On-site treatment facility.....4,000

(4) Other waste facility for hazardous waste, including storage facilities 2,500

(5) Waste oil storage facility.....2,500

(6) Treatment facility under license by rule provisions where the hazardous waste treated is 1,000 kilograms or less per calendar month.....75

(7) All other facilities for hazardous waste under license by rule provisions.....400

(8) Facility post-closure license.....2,000 [1989, c. 878, Pt. H, §9 (AMD).]

B. A refund of 50% of the fee shall be returned to an applicant who withdraws his application within 30 days of its submission. [1981, c. 478, §7 (NEW).]

C. The application fees established by this section are required for an initial application and for any substantial modification to the facility or to the license. The fee is not required for renewal applications or for an application to allow a change of ownership or operator, where, in such cases, no substantial change to the facility or license is sought. [1981, c. 478, §7 (NEW).]

[1989, c. 878, Pt. H, §9 (AMD) .]

2. **Annual fees.** Licensed hazardous waste facilities are subject to the following annual fees.

A. Disposal facility ..... $1,500 [1981, c. 478, §7 (NEW).]

B. Commercial treatment facility and on-site treatment facility ..... 1,000 [1981, c. 478, §7 (NEW).]

C. Other waste facilities for hazardous waste, including storage facilities .....500 [1987, c. 787, §18 (AMD).]

D. Waste oil storage facility .....500 [1983, c. 342, §8 (NEW).]

E. Treatment facility under license by rule provisions where the hazardous waste treated is 1,000 kilograms or less per calendar month.....100 [1987, c. 787, §18 (AMD).]

F. All other facilities for hazardous waste under license by rule provisions.....200 [1987, c. 787, §18 (NEW).]

G. Facility post-closure license.....500 [1989, c. 878, Pt. :H, §10 (NEW).]

[1989, c. 878, Pt. H, §10 (AMD) .]

3. **Commercial and on-site treatment facilities.** For the purposes of this section, a commercial treatment facility is a commercial hazardous waste facility which treats hazardous waste. An on-site treatment facility is a licensed hazardous waste treatment facility which uses a noncontinuous treatment process to treat in excess of 1,000 kilograms of hazardous waste in any calendar month.

[1981, c. 478, §7 (NEW) .]

SECTION HISTORY
1981, c. 478, §7 (NEW). 1983, c. 342, §§7,8 (AMD). 1985, c. 746, §§30,31 (AMD). 1987, c. 787, §§17,18 (AMD). 1989, c. 878, §§H9,10 (AMD).

§1319-I. FEES

1. **Fees for actions taken on the site of generation.** Any person in the State who generates more than 1,000 kilograms of hazardous waste in any calendar month shall pay a fee as follows:

A. For hazardous waste that is disposed of on the site of generation in a licensed hazardous waste disposal facility, 3¢ a pound; and [2005, c. 549, §1 (AMD).]

B. For hazardous waste which is stored on the site of generation in a licensed hazardous waste storage facility for more than 90 days, but less than 6 calendar months, and for each time period thereafter or 6 calendar months or portion thereof, .5¢ a pound. [1987, c. 491, §25 (RPR).]

[2005, c. 549, §1 (AMD) .]

2. **Fees for action taken off site of generation.** Any person who transports hazardous waste in the State shall pay a fee as follows:

A. For hazardous waste that is transported off the site to a licensed hazardous waste disposal facility for disposal, 3¢ a pound; and [2005, c. 549, §2 (AMD).]

B. For hazardous waste that is transported off the site to a licensed hazardous waste treatment facility for treatment, storage facility for storage or other licensed facility for handling, including beneficial reuse, reclamation or recycling, 3¢ a pound. [2005, c. 549, §3 (AMD).]

C. [1987, c. 491, §25 (RP).]

D. [1987, c. 491, §25 (RP).]

Fees required under this subsection for hazardous waste that is transported off a federally declared Superfund site that was added to the national priorities list by the United States Environmental Protection Agency pursuant to 40 Code of Federal Regulations, Part 300 on or before January 1, 1997 may not exceed $200,000 per site in any calendar year.

[2005, c. 549, §§2, 3 (AMD) .]

2-A. **Fees for noncompliance with reduction requirements.**

[2009, c. 579, Pt. B, §13 (AFF); 2009, c. 579, Pt. B, §11 (RP) .]

3. **Fee for transportation into Maine from out of state.** If hazardous waste or waste oil is transported into Maine from out of state, the person who first transports the hazardous waste or waste oil into Maine shall pay the fee indicated by the schedules outlined in subsection 2 for hazardous waste or subsection 4-A for waste oil, as if that person were the waste oil dealer.

[2005, c. 549, §4 (AMD) .]

4. **Fee for failure to treat or dispose of hazardous waste within 90 days from arrival.** Any person who owns or operates a hazardous waste treatment or disposal facility and who does not treat or dispose of the hazardous waste within 90 days from the date the hazardous waste arrives at the hazardous waste facility shall pay a fee according to the fee schedule in subsections 1 and 2.

[1987, c. 491, §25 (RPR) .]

4-A. **Fee on waste oil sale or disposal.** A fee of 2¢ a gallon on each gallon of waste oil transported, collected or stored must be paid by the waste oil dealer that first transports, collects or stores that waste oil. Waste oil dealers shall maintain records sufficient to determine whether the dealer is liable for any and all fees imposed pursuant to this subsection and shall submit such records to the commissioner as required by rule of the board.

[2005, c. 549, §5 (AMD) .]

4-B. **Fee on hazardous materials transported by railroad.** Any person who transports more than 25 tons of certain hazardous materials as specified in this subsection at any one time by rail shall register annually with the commissioner. Fees for the transportation of hazardous materials by rail are imposed on the registrant who first transports the materials in the State by rail. Fees for the transportation of hazardous materials are determined by one of the following methods:

A. Fifteen cents per ton of hazardous materials transported by the registrant during the period of registration paid quarterly by the registrant on the basis of records certified to the commissioner; or [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §260 (AMD).]

B. Twenty-five thousand dollars paid at the time of registration. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §260 (AMD).]

The registrant shall select the method of payment at the time of registration. Fees are paid to the department and upon receipt credited to the Maine Hazardous Waste Fund. A registrant selecting quarterly payments is automatically subject to the $25,000 annual registration fee if the fee for any quarter has not been paid to the Maine Hazardous Waste Fund within 60 days after the fee becomes due. Hazardous materials subject to the requirements of this subsection are those substances listed in 49 Code of Federal Regulations, Part 172.101, Subpart B, 1994, except that, for purposes of this subsection, "hazardous materials" does not include oil as defined in Title 38, section 542, subsection 6. The registrant shall make available to the commissioner and the commissioner's authorized representatives all documents relating to the hazardous materials transported by the registrant during the period of registration.

[1995, c. 642, §12 (AMD) .]

5. **Time of payment of fees.** Fees required by this section shall be paid according to time schedules established by the commissioner, but not more frequently than quarterly.

[1981, c. 478, §7 (NEW) .]

6. **Penalty for late payment of fee.** In addition to any other liability or penalty imposed by law, any person liable for any fee imposed by this section shall pay 3 times the appropriate fee if the fee has not been paid to the Maine Hazardous Waste Fund within 6 months after the fee becomes due.

[1981, c. 478, §7 (NEW) .]

7. **Fees reduced when fund reaches limit.**

[1987, c. 750, §6 (RP) .]

8. **Limit on fees.** No person may be required to pay, for any calendar year, more than $15,000 in fees under subsection 1.

[1987, c. 491, §25 (RPR) .]

9. **Hazardous waste subject to fees.** No hazardous waste may be subject to the fees established in this section unless the waste is identified under section 1319-O, subsection 1, provided that waste identified under section 1319-O, subsection 1, paragraph B, shall not be subject to the fees until 90 days after the next regular session of the Legislature.

[1987, c. 517, §27 (AMD) .]

10. **Sunset on certain fees.**

[1983, c. 342, §11 (RP); 1983, c. 432, §9 (RP) .]

11. **Waiver.** The commissioner may waive payment of fees under this section if the commissioner finds the amount involved is too small in relation to the cost of collection.

[2001, c. 626, §19 (NEW) .]

SECTION HISTORY
1981, c. 478, §7 (NEW). 1983, c. 342, §§9-11 (AMD). 1983, c. 432, §9 (AMD). 1983, c. 467, §2 (AMD). 1987, c. 491, §25 (AMD). 1987, c. 517, §27 (AMD). 1987, c. 750, §§5,6 (AMD). 1987, c. 787, §19 (AMD). 1989, c. 419, (AMD). 1989, c. 890, §§A40,B259, 260 (AMD). 1989, c. 929, §6 (AMD). 1991, c. 520, §5 (AMD). 1995, c. 642, §12 (AMD). 1997, c. 258, §1 (AMD). 2001, c. 626, §19 (AMD). 2005, c. 549, §§1-5 (AMD). 2009, c. 579, Pt. B, §11 (AMD). 2009, c. 579, Pt. B, §13 (AFF).

§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. [1981, c. 478, §7 (NEW).]

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. [1981, c. 478, §7 (NEW).]

SECTION HISTORY
1981, c. 478, §7 (NEW).

§1319-K. CONSTRUCTION

This subchapter, being necessary for the general welfare, public health and public safety of the State and its inhabitants, shall be construed to effect the purposes set forth under this subchapter. No rule, regulation or order of the board may be stayed pending appeal under this subchapter. [1981, c. 478, §7 (NEW).]

SECTION HISTORY
1981, c. 478, §7 (NEW).

§1319-L. EXEMPTION FOR TREATMENT OF CORROSIVE HAZARDOUS WASTES

1. **Licensing.** A hazardous waste facility license is not required under section 1317-A or 1319-O for elementary neutralization units as defined in department rules for the owner or operator of the facility who complies with requirements of law applicable to elementary neutralization or elementary neutralization units. Requirements of law include waste discharge permits authorizing the discharge of treated waste, permit or other requirements for adoption of a spill prevention plan, and maintenance of collection and treatment equipment.

[1995, c. 241, §1 (NEW) .]

2. **Reporting.** Collection and handling of hazardous waste exempt from licensing under subsection 1 is also exempt from the reporting requirement under section 1318, subsection 1 and section 1318-B, subsection 1 provided such wastes are discharged into a contained area, which may include a pipe or sewer.

[1995, c. 241, §1 (NEW) .]

SECTION HISTORY
1995, c. 241, §1 (NEW).

Subchapter 5: HAZARDOUS WASTE AND WASTE OIL HEADING: PL 1987, C. 517, §28 (NEW)

§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.

Hazardous waste may be identified as follows.

(1) The board may identify any substance as a hazardous waste if that substance is identified as hazardous by particular substance, by characteristic, by chemical class or as a waste product of a specific industrial activity in proposed or final rules of the United States Environmental Protection Agency.

(2) The board may identify any substance as a hazardous waste if the board, after evaluation based on existing data or data reasonably extrapolated from previously conducted studies using similar classes of substances or compounds under similar circumstances, has determined that the substance is an acute or chronic toxin causing significant potential adverse public health or environmental effects. An acute or chronic toxin may include the characteristics of:

(a) Carcinogenicity;

(b) Mutagenicity;

(c) Teratogenicity; or

(d) Infectiousness.

Rules adopted under this subparagraph must be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review. These rules remain in effect until 90 days after adjournment of the next regular session of the Legislature unless adopted by legislative enactment.

(3) Whenever the board proposes to adopt or amend rules identifying hazardous waste or removing hazardous waste from identification, it shall hold a public hearing.

(4) In addition to hazardous waste identified under subparagraphs (1) and (2), the Legislature identifies the following chemicals, materials, substances or waste as being hazardous waste:

(a) Polychlorinated biphenyls and any substance containing polychlorinated biphenyls. [1989, c. 124, §2 (AMD); 1989, c. 869, Pt. A, §10 (AMD); 1989, c. 869, Pt. A, §21 (AFF).]

B. The board may adopt rules relating to the handling of hazardous waste, including, but not limited to:

(1) Containerization and labeling of hazardous waste, consistent with applicable rules of other federal and state agencies;

(2) Reporting of handling of hazardous waste; and

(3) Waste which is not compatible. [1987, c. 517, §28 (NEW).]

C. The board may adopt rules relating to transportation of hazardous waste, including, but not limited to:

(1) Licensing of transporters of hazardous waste, conveyances used for the transportation of hazardous waste and the operators of these conveyances; and licensing fees shall be paid to the Maine Hazardous Waste Fund; and

(2) A manifest system for hazardous waste which takes into consideration the requirements of the United States Resources Conservation and Recovery Act of 1976, Public Law 94-580, as amended, and this subchapter. [1987, c. 517, §28 (NEW).]

D. The board may adopt rules relating to the interim and final licensing and operation of waste facilities for hazardous waste, including, but not limited to:

(1) Standards for the safe operation and maintenance of the waste facilities, including, but not limited to, record keeping, monitoring before and during operation of the facility and after its termination of use or closure, inspections and contingency plans to minimize potential damage from hazardous waste;

(2) The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities;

(3) The termination, closing and potential future uses of the waste facilities;

(4) Rules equivalent to regulations of the United States Environmental Protection Agency that provide for licensing or permitting by rule; and

(5) Corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this subchapter, regardless of the time waste was placed in the unit. For purposes of this paragraph, solid waste management unit includes any waste pile, landfill, surface impoundment or land treatment facility from which hazardous constituents might migrate, regardless of whether the unit was intended for the management of solid or hazardous wastes. [1989, c. 794, §4 (AMD).]

E. The board may adopt rules relating to evidence of financial capacity of hazardous waste facilities' owners or operators, and of those who transport hazardous waste, to protect public health, safety and welfare and the environment, including, but not limited to:

(1) Liability insurance;

(2) Bonding; and

(3) Financial ability to comply with statutory and regulatory requirements or conditions.

Evidence of financial capacity required by the board may include one, or any combination, of the following:insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. In establishing the required evidence of financial capacity to further the purposes of this subchapter, the board may specify policy or other contractual terms, conditions or defenses that are necessary or that are unacceptable. [1989, c. 794, §4 (AMD).]

F. By January 1, 2000, the board shall adopt, at a minimum, the universal waste rules, excluding pesticides, promulgated by the United States Environmental Protection Agency as defined in 40 Code of Federal Regulations, Parts 9, 260, 261, 262, 264, 265, 266, 268, 270 and 273. [1999, c. 340, §1 (NEW).]

[1999, c. 340, §1 (AMD) .]

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 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 that are operated by waste oil dealers, evidence of financial capability and manifest systems for waste oil. A person licensed by the department to transport or handle hazardous waste is not required to obtain a waste oil dealer's license, but the hazardous waste license must include any terms or conditions determined necessary by the department relating to the transportation or handling of waste oil; and [1997, c. 624, §18 (AMD).]

B. The board may adopt rules relating to the registration, design and operation of used oil collection centers for the purposes of section 1319-Y. Rules adopted pursuant to this paragraph are major substantive rules as defined in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II-A. [1995, c. 573, §5 (NEW).]

[1997, c. 624, §18 (AMD) .]

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.

A. The rules must include, without limitation:

(1) Registration of biomedical waste generators;

(2) Handling of biomedical waste by generators;

(3) Licensing of biomedical waste transporters and the conveyances used for the transportation of biomedical waste;

(4) Implementation of a biomedical waste tracking or manifest system;

(5) Establishment of treatment and disposal standards; and

(6) Categories of biomedical waste subject to regulation under this subsection, consistent with the provisions of section 1303-C, subsection 1-A. [1989, c. 124, §3 (NEW); 1989, c. 869, Pt. A, §11 (AMD); 1989, c. 869, Pt. A, §21 (AFF).]

B. The board shall adopt rules governing the siting, licensing, operational and record-keeping requirements for biomedical waste treatment, storage and disposal facilities. [1989, c. 124, §3 (NEW); 1989, c. 860, Pt. A, §11 (AMD); 1989, c. 860, Pt. A, §21 (AFF).]

C. The board shall require evidence of financial capacity. [1989, c. 124, §3 (NEW).]

D. The board may assess licensing and registration fees sufficient to pay for the department's administrative costs in regulating biomedical waste. [2005, c. 549, §6 (AMD).]

E. The rules must provide transportation and disposal options for persons who generate fewer than 50 pounds of sharps per month that allow:

(1) The generator or an employee of the generator to transport properly packaged sharps to a licensed biomedical waste disposal facility or another medical facility that has volunteered to serve as a collection point for sharps if no more than 50 pounds of sharps are transported in one trip; and

(2) The generator to mail properly packaged sharps to a licensed biomedical waste disposal facility in this State or a facility in another state if the carrier accepts those items and no more than 50 pounds are transported in any single package.

For purposes of this paragraph, "sharps" means items that may cause puncture wounds or cuts, including hypodermic needles, syringes, scalpel blades, capillary tubes and lancets, and "properly packaged" means packaged in accordance with department rules and rules or requirements imposed by the mail carrier. [1993, c. 529, §1 (NEW).]

[2005, c. 549, §6 (AMD) .]

SECTION HISTORY
1987, c. 517, §28 (NEW). 1989, c. 124, §§2,3 (AMD). 1989, c. 794, §4 (AMD). 1989, c. 869, §§A10,11,21 (AMD). 1989, c. 890, §§A40,B261 (AMD). 1993, c. 529, §1 (AMD). 1995, c. 573, §§4,5 (AMD). 1997, c. 624, §18 (AMD). 1999, c. 340, §1 (AMD). 2005, c. 549, §6 (AMD).

§1319-P. MUNICIPAL HAZARDOUS WASTE CONTROL

(REALLOCATED FROM TITLE 38, SECTION 1310-A)

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. [1987, c. 517, §23 (RAL).]

SECTION HISTORY
1987, c. 517, §23 (RAL).

§1319-Q. DATA COLLECTION; REPORT

(REALLOCATED FROM TITLE 38, SECTION 1304-A)

1. **Data collection and monitoring.** The commissioner shall have data on the generation, transportation and handling of hazardous waste collected and monitored in a coordinated manner.

[2007, c. 1, §21 (COR) .]

2. **Report.** The commissioner shall biennially, prior to November 1st, prepare a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must cover the prior 2 calendar years and must include the following data:

A. The amount of hazardous waste by type that is generated, handled or transported within the State; [1987, c. 517, §13 (RAL).]

B. The amount of hazardous waste by type that is handled at commercial hazardous waste facilities within the State; [1987, c. 517, §13 (RAL).]

C. The number of hazardous waste facility permits by type currently active and the number granted and revoked in the year; [1987, c. 517, §13 (RAL).]

D. The amount of hazardous waste by type generated outside the State that was handled at permitted facilities within the State, and the amount of hazardous waste generated within the State that was handled at facilities located outside the State; [1987, c. 517, §13 (RAL).]

E. A list of hazardous waste facilities located within the State and those located outside the State which are available for use by generators in the State; and [1987, c. 517, §13 (RAL).]

F. A list of known firms that provide testing, consulting, brokerage, waste exchange, transport or other services to hazardous waste generators. [1987, c. 517, §13 (RAL).]

[2007, c. 292, §38 (AMD) .]

3. **Facility needs plan.**

[1993, c. 355, §56 (RP) .]

4. **Legislative recommendations.**

[2007, c. 292, §38 (RP) .]

5. **Procedural requirements.**

[2007, c. 292, §38 (RP) .]

SECTION HISTORY
1987, c. 517, §13 (RAL). 1989, c. 890, §§A40,B262 (AMD). 1993, c. 355, §§55-57 (AMD). RR 2007, c. 1, §21 (COR). 2007, c. 292, §38 (AMD).

§1319-R. FACILITY SITING

1. **Licenses for hazardous waste facilities.** The department shall issue a license for a hazardous waste facility whenever the department finds that 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. Licenses must be issued under the terms and conditions as the department prescribes and for a term not to exceed 5 years. The department may establish reasonable time schedules for compliance with this subchapter and rules promulgated by the board.

A. The department must find that:

(1) The applicant presents evidence of sufficient financial capacity, including projections of utilization of the facility by hazardous waste generators, to justify granting the license;

(2) Issuing the license is consistent with the applicable standards, requirements and procedures of this chapter;

(3) In the case of a disposal facility, the volume of the waste and the risks related to its handling have been reduced to the maximum practical extent by treatment and volume reduction prior to disposal; and

(4) If corrective action required by section 1319-V can not be completed by an applicant prior to issuance of a license, the applicant has the financial capacity to undertake and complete the corrective action. [1991, c. 66, Pt. A, §39 (RPR).]

B. The department shall issue an interim license for a waste facility for hazardous waste or shall deem the facility to be so licensed if:

(1) The waste facility is in existence on April 1, 1980, or the waste facility is in existence on the effective date of statutory or regulatory changes that first render the facility subject to the requirement to have a license under this subchapter;

(2) The owner or operator has within 60 days of first becoming subject to the license requirements of this subchapter:

(a) Notified the commissioner of the location of the facility;

(b) Provided a detailed description of the operation of the facility;

(c) Identified the hazardous waste that the facility handles; and

(d) Applied for a license to handle hazardous waste;

(3) The waste facility is not altered or operated except in accordance with the board's rules;

(4) The waste facility has a discharge or emission license under section 414 or 591 and the facility is operated in accordance with that license; and

(5) The facility was not previously denied a noninterim hazardous waste license or an interim license has not expired pursuant to paragraph C, subparagraphs (2) to (6). [1991, c. 66, Pt. A, §39 (RPR).]

C. Interim licenses expire on the earliest of the following dates:

(1) The date of the final administrative disposition of the application for a hazardous waste facility license;

(2) The date of a finding of the department that the disposition referred to in subparagraph (1) was not made because of the applicant's failure to furnish information reasonably required or requested to process the application;

(3) The date of expiration of the license issued under section 414 or 591;

(4) The date on which the application for a noninterim hazardous waste facility license is due if the person operating under the interim license fails to apply for that noninterim license;

(5) For interim licenses issued prior to November 8, 1984, unless the owner or operator of the facility has filed a complete application with the commissioner before one of the following dates and that application demonstrates compliance with all applicable ground water and financial responsibility requirements:

(a) November 8, 1985, for a land disposal facility;

(b) November 8, 1986, for a hazardous waste incinerator; or

(c) November 8, 1989, for any facility other than a land disposal facility or hazardous waste incinerator; or

(6) Twelve months after the facility first becomes subject to the permit requirements of this subchapter unless the owner or operator of the facility has filed a complete application with the commissioner before that date and that application demonstrates compliance with all applicable ground water and financial responsibility requirements. [1991, c. 66, Pt. A, §39 (RPR).]

D. If the commissioner determines based on documentation received from an electronics demanufacturing facility licensed by the department that the facility meets the provisions of this paragraph, the commissioner may allow the facility to undertake the controlled breakage of cathode ray tubes. If the commissioner does not approve or deny the facility's request to undertake controlled breakage of cathode ray tubes within 30 calendar days of receiving the documentation, the facility may undertake controlled breakage of cathode ray tubes in accordance with the provisions of this paragraph.

(1) The facility shall ensure that no crushing or treatment of universal waste or hazardous subcomponents occurs other than dismantling except that controlled breakage of cathode ray tubes may be performed in a manner protective of public health and safety and the environment. Controlled breakage of cathode ray tubes may occur only in a dedicated space with ventilation equipment that prevents the release of fugitive emissions to adjacent areas. Lead and cadmium concentrations immediately outside the dedicated space may not significantly exceed background levels of lead and cadmium concentrations or current ambient air quality standards for the State. The facility shall determine background levels through monitoring. The facility shall meet the conditions listed in 40 Code of Federal Regulations, Section 261.39 (2010). As used in this subparagraph, "fugitive emissions" has the same meaning as in section 582, subsection 7-C.

(2) The facility shall obtain certification from an environmental and safety program approved by the department and submit proof of certification to the department, except that if a facility has not completed certification, controlled breakage of cathode ray tubes may begin prior to certification if:

(a) The facility provides information to the department on its process of achieving certification, including a detailed gap analysis; and

(b) The controlled breakage is monitored by an environmental professional to ensure environmental and safety standards are met.

(3) The facility shall develop a written operating manual specifying how to safely break cathode ray tubes. The operating manual must be available to all employees at the facility and include:

(a) Operating and maintenance procedures developed in accordance with any related manufacturer's specifications;

(b) Procedures for testing and monitoring of equipment;

(c) Procedures to address emergency situations, including, but not limited to, procedures to address lead and cadmium hazards, waste handling and equipment failure;

(d) Procedures to assess whether surrounding areas will be negatively affected either by physical proximity to or air exchange with a heating, ventilation and air conditioning system;

(e) Procedures for proper waste management practices; and

(f) Procedures for employee training to ensure employees have been trained in operation and maintenance of equipment, including, but not limited to, engineering controls to mitigate hazardous waste releases and personal protective equipment use.

The department shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 250, §1 (NEW).]

[2011, c. 250, §1 (AMD) .]

2. **Municipal ordinances.** Municipalities may enact necessary police power ordinances dealing with commercial hazardous waste facilities, provided that the ordinances are not more stringent than or duplicative of the hazardous waste provisions of this chapter or rules and orders promulgated by the board or commissioner. The department shall incorporate all applicable local requirements to the fullest extent practicable.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §263 (AMD) .]

3. **Site review.** All persons who make application for a license to construct, operate or substantially expand a commercial hazardous waste facility shall give, at the same time, written notice to the municipal officers of the municipality in which the proposed facility will be located. The municipality through its municipal officers is granted intervenor status in any proceeding for site review of a commercial hazardous waste facility. The commissioner shall reimburse the municipalities' direct costs, not to exceed $5,000, for participation in the proceedings.

The Governor may appoint a person to facilitate communications between the applicant and the municipality and between the department and the municipality.

The State may accept public and private funds from any source for the purpose of carrying out responsibilities under this section.

Notwithstanding section 341-D, subsection 2, the board shall decide all applications for commercial hazardous waste facilities.

The board shall hold at least one public hearing in the municipality in which the facility will be located.

During any proceeding for site review of a commercial hazardous waste facility, the legislative body of the municipality in which the facility is to be located may appoint 4 representatives to the board. If the facility is proposed to be located in an unorganized township, the county commissioners of that county may appoint 4 representatives. These representatives may vote on board decisions related to the proposed commercial hazardous waste facility. All representatives appointed under this subsection shall participate on the board only for that site review, until final disposition of the application, including any administrative or judicial appeals. A license application may not be considered by the board unless all municipal members of the board and the municipality have been given written notice of the board meeting and provided copies of all written recommendations of the department, at least 30 days prior to the date of the meeting. The municipal members are entitled to the same pay for each day and expenses as regular board members during the period of their service, to be paid by the department.

[1991, c. 205, (AMD) .]

4. **Municipal fees authorized.** A municipality, by ordinance, may levy a fee on a commercial hazardous waste facility located in the municipality. These fees must be applied as a percentage of the annual billings of the facility to its customers. No fee so levied may exceed 2% of the annual billings. The municipality may audit the accounts of a facility to determine the amount of the fee owed to the municipality. Payment of the fee by the facility to the municipality is a condition of any license approved under this section.

[1991, c. 205, (AMD) .]

5. **Application.** Except for substantial expansion, this section does not apply to any facility granted an interim or final license prior to September 18, 1981.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §263 (AMD) .]

6. **Post-closure licenses.** When the board determines that a facility under the jurisdiction of this subchapter does not have and will not be issued a license pursuant to this subchapter, the board may issue a license containing terms and conditions governing the post-closure requirements applicable to the facility, including, but not limited to, environmental monitoring and corrective action. The findings in subsection 1, paragraph A, subparagraphs (1), (2) and (3) are not required for post-closure licenses.

[1997, c. 624, §19 (AMD) .]

7. **Criteria for facility development.** In addition to other criteria established by law or rule for facilities under this section, the following criteria for facility development apply to an application for treatment, storage and disposal facilities for hazardous waste.

A. The applicant has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards. [1993, c. 383, §37 (NEW).]

B. The applicant has provided adequately for fitting the project harmoniously into the existing natural environment and has ensured that the project will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. [1993, c. 383, §37 (NEW).]

C. The proposed project does not pose an unreasonable risk that a discharge to significant ground water aquifer will occur. [1993, c. 383, §37 (NEW).]

D. The project will be built on soil types suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment. [1993, c. 383, §37 (NEW).]

E. The applicant will provide adequately for traffic movement of all types into, out of or within the project area. The department shall consider traffic movement both on site and off site including public safety and congestion along waste conveyance transportation routes. The Department of Transportation shall provide the department with an analysis of traffic movement of all types into, out of or within the project area. [1993, c. 383, §37 (NEW).]

F. The applicant has provided adequately for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project and has ensured that the project will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services. [1993, c. 383, §37 (NEW).]

G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure. [1993, c. 383, §37 (NEW).]

[1993, c. 383, §37 (NEW) .]

8. **Prohibition.** The department may not issue a license for a hazardous waste disposal facility or any commercial hazardous waste facility if the proposed facility overlies a significant ground water aquifer or a primary sand and gravel recharge area.

[1993, c. 383, §37 (NEW) .]

SECTION HISTORY
1987, c. 517, §28 (NEW). 1989, c. 794, §§5,6 (AMD). 1989, c. 890, §§A40,B263 (AMD). 1991, c. 66, §A39 (AMD). 1991, c. 205, (AMD). 1993, c. 383, §37 (AMD). 1997, c. 624, §19 (AMD). 2011, c. 250, §1 (AMD).

§1319-S. HAZARDOUS WASTE FACILITY CLOSURE

(REALLOCATED FROM TITLE 38, SECTION 1308-A)

1. **Closure plan.** Closure of any new or existing waste facility for hazardous waste and, if required, post-closure care, must 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 any application for a license. For a facility that 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 the licensee 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.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §264 (AMD) .]

2. **Closure notice.** Upon approval of a closure plan for a facility for hazardous waste, the commissioner shall file notice with the register of deeds for the county in which the facility is located. This notice must contain the name and address of the current owner of the property, its location, the nature of hazardous wastes handled and the methods of treatment, storage and disposal used at the facility.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §264 (AMD) .]

3. **Restrictions.** The board may require the present or subsequent owner of the land used for a facility for hazardous waste to execute and record a written instrument which imposes a restrictive covenant on the present and future uses of all or part of the land. The covenant shall be recorded in the registry of deeds of the county in which the facility is located. The instrument shall be executed by the owners of the property and the commissioner. It may only be required when the board determines that it is necessary to protect the public health and safety. A covenant executed under this section shall run with the land.

[1987, c. 517, §21 (RAL) .]

4. **Petition for removal of restrictions.** The owner of the property restricted by covenant under subsection 3 may petition the board to modify or remove these deed restrictions. This petition shall detail the restrictions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered. Upon a showing that the restrictions are not necessary to protect public health and safety, the board may remove all or part of the restrictions.

[1987, c. 517, §21 (RAL) .]

5. **Post-closure orders.** Without restricting or limiting any other remedy, the department may issue a post-closure order and enforce its terms when the facility owner or operator has failed to submit a complete application for a post-closure license under section 1319-R, subsection 6, in a timely manner.

[1989, c. 794, §7 (NEW) .]

SECTION HISTORY
1987, c. 517, §21 (RAL). 1989, c. 794, §7 (AMD). 1989, c. 890, §§A40,B264 (AMD).

§1319-T. CRIMINAL PROVISIONS

In addition to being subject to civil penalties as provided by section 349, subsection 2 and to criminal penalties as provided in section 349, subsection 3, conduct described in subsections 1 and 2 is subject to criminal penalties as follows. [1991, c. 548, Pt. A, §32 (AMD).]

1. **Penalty provisions.** Any person is guilty of a Class C crime and may be punished accordingly if that person, with respect to any substance or material that has been identified as hazardous waste by the board and that the person believes may be harmful to human health or knows or has reason to know has been so identified, knowingly:

A. Transports any such substance or material without, in fact, having a proper license or permit as may be required under this subchapter; [1987, c. 517, §28 (NEW).]

B. Transports any such substance or material to a waste facility knowing or consciously disregarding a risk that such facility does not have a proper license or permit as may be required under this subchapter; [1987, c. 545, (AMD).]

C. Handles any such substance or material without, in fact, having obtained a proper license or permit to do so as may be required under this subchapter; or [1987, c. 517, §28 (NEW).]

D. Handles any such substance or material at any location knowing or consciously disregarding a risk that such location does not have a proper license or permit as may be required under this subchapter for such treatment, storage or disposal. [1987, c. 517, §28 (NEW).]

Notwithstanding Title 17-A, section 1301, subsection 1, paragraph A-1 or Title 17-A, section 1301, subsection 3, paragraph D, the fine for such violation may not exceed $50,000 for each day of such violation. In a prosecution under paragraph B or D, the conscious disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

[1991, c. 548, Pt. A, §32 (AMD) .]

2. **Class D crimes.** A person is guilty of a Class D crime if, with respect to any substance or material that, in fact, has been identified as hazardous waste by the board and that the person knows or has reason to believe has been so identified or may be harmful to human health, that person knowingly:

A. Establishes, constructs, alters or operates any waste facility for any such substance or material without, in fact, having obtained a proper license or permit as may be required under this subchapter; [1987, c. 517, §28 (NEW).]

B. Handles or transports any substance or material identified as hazardous waste by the board in any manner that violates the terms of any condition, order, rule, license, permit, approval or decision of the board or commissioner with respect to the handling or transporting of that substance or material; or [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §265 (AMD).]

C. Gives custody or possession of any such substance or material to any other person whom that person knows or has reason to believe:

(1) Does not have a license or permit to transport or handle such substance or material as may be required under this subchapter; or

(2) Will transport or handle such substance or material in violation of this subchapter or rules adopted under it. [1991, c. 548, Pt. A, §32 (AMD).]

A person who violates the provisions of this subsection may be punished accordingly, except that, notwithstanding Title 17-A, section 1301, subsection 1, paragraph B, or Title 17-A, section 1301, subsection 3, paragraph E, the fine for such violation may not exceed $25,000 for each day of the violation.

[1991, c. 548, Pt. A, §32 (AMD) .]

SECTION HISTORY
1987, c. 517, §28 (NEW). 1987, c. 545, (AMD). 1989, c. 502, §B51 (AMD). 1989, c. 890, §§A40,B265 (AMD). 1991, c. 548, §A32 (AMD).

§1319-U. FORFEITURE; CIVIL LIABILITY

(REALLOCATED FROM TITLE 38, SECTION 1306-C)

1. **Property forfeited.** The following property shall be subject to forfeiture to the State and all property rights therein shall be in the State:

A. All conveyances which are used or intended for use in handling or transporting hazardous waste in violation of this subchapter and all materials, products and equipment used or intended for use in such handling or transportation or handled or transported shall be subject to forfeiture to the State; and [1987, c. 517, §20 (RAL).]

B. All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in any transaction involving a hazardous waste in violation of this subchapter, all proceeds traceable to such a transaction and all moneys, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of this subchapter. [1987, c. 517, §20 (RAL).]

[1987, c. 517, §20 (RAL) .]

2. **Jurisdiction.** Property subject to forfeiture may be declared forfeited by a court having jurisdiction over the property or having final jurisdiction over a related civil or criminal proceeding under this subchapter.

[1987, c. 517, §20 (RAL) .]

3. **Exceptions.** The court may order forfeiture of all property subject to forfeiture, except as follows.

A. No conveyance used by a common carrier in the transaction of business as a common carrier may be forfeited, unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of this subchapter. [1987, c. 517, §20 (RAL).]

B. No conveyance may be forfeited by reason of an act or omission established by the owner to have been committed or omitted by another person while the conveyance was unlawfully in the possession of another person in violation of the criminal laws of the United States or of any state. [1987, c. 517, §20 (RAL).]

C. No conveyance may be subject to forfeiture unless the owner knew or should have known that that conveyance was used in and for the handling of hazardous waste in violation of this subchapter. Proof that the conveyance was used on 3 or more occasions for the purpose of handling hazardous waste in violation of this subchapter shall be prima facie evidence that the owner knew thereof or should have known thereof. [1987, c. 517, §20 (RAL).]

D. No property subject to forfeiture under subsection 1, paragraph B may be forfeited, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. [1987, c. 517, §20 (RAL).]

[1987, c. 517, §20 (RAL) .]

4. **Procedure.** The Attorney General may seek forfeiture of a conveyance according to the procedure set forth in Title 15, section 5822, with the following exceptions.

A. A final order issued by the court under that procedure must provide for disposition of the conveyance by the Department of Administrative and Financial Services, including official use by a public agency or sale at public auction or by competitive bidding. [1997, c. 364, §41 (AMD).]

B. The proceeds of a sale must be used to pay the costs of cleanup, abatement or mitigation of any threats or hazards to public health or safety or to the environment, the costs of any removal, storage, treatment, disposal or other handling of hazardous waste or hazardous substances, as defined in section

1362, reasonable expenses for the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and to pay any bona fide mortgage thereon, and the balance, if any, shall be deposited in the General Fund. [1997, c. 364, §41 (AMD).]

C. Records, required by Title 15, section 5825, must be open to inspection by all federal and state officers charged with enforcement of federal and state laws relating to the handling of hazardous waste. [1997, c. 364, §41 (AMD).]

[1997, c. 364, §41 (AMD) .]

5. **Civil liability.** A person who disposes of or treats hazardous waste, when that disposal or treatment, in fact, endangers the health, safety or welfare of another, is liable in a civil suit for all resulting damages. It is not necessary to prove negligence.

For the purposes of this section, damages are limited to damages to real estate or personal property or loss of income directly or indirectly as a result of a disposal or treatment of hazardous wastes. Damages awarded may be mitigated if the disposal or treatment is the result of an act of war or an act of God.

[1993, c. 732, Pt. A, §9 (AMD) .]

Nothing in this section shall preclude any action for damages which may be maintained under the common law or the laws of this State. [1987, c. 517, §20 (RAL).]

SECTION HISTORY
1987, c. 517, §20 (RAL). 1993, c. 732, §A9 (AMD). 1997, c. 364, §41 (AMD).

§1319-V. CORRECTIVE ACTION

1. **Requirement.** The facility owner or operator shall undertake corrective action beyond the facility boundary or site to remove the danger to public health or the environment unless the facility owner or operator demonstrates to the satisfaction of the board that the owner or operator is unable to undertake the action and despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action. If the board makes these findings, the facility owner or operator is not relieved of responsibility to clean up a release that has migrated off the facility site. The board shall decide how to proceed on a case-by-case basis.

[1989, c. 794, §8 (NEW) .]

2. **Compliance schedules.** If corrective action can not be completed by an applicant prior to issuance of a license pursuant to this subchapter, the license must contain a schedule of compliance for corrective action.

[1989, c. 794, §8 (NEW) .]

SECTION HISTORY
1989, c. 794, §8 (NEW).

§1319-W. RIGHTS OF ACTION AGAINST FINANCIAL GUARANTORS

If the owner or operator of a facility permitted under this subchapter is in liquidation, reorganization or adjustment pursuant to the federal Bankruptcy Reform Act of 1978, Public Law 95-598, as amended, or when, with reasonable diligence, jurisdiction in any state court or any federal court can not be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial capacity must be provided under this subchapter may be asserted by the department

directly against the guarantor providing evidence of financial capacity. For the purpose of this section, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial capacity for an owner or operator under this subchapter. [1989, c. 794, §8 (NEW).]

1. **Rights of guarantor.** In any action pursuant to this section, the guarantor is entitled to invoke all rights and defenses that would be available to the owner or operator if any action was brought against the owner or operator by the claimant and that would be available to the guarantor if an action was brought against the guarantor by the owner or operator.

[1989, c. 794, §8 (NEW) .]

2. **Liability.** The total liability of any guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial capacity to the board on behalf of the owner or operator under this subchapter. Nothing in this section may be construed to limit any other liability of a guarantor to its owner or operator as established by state or federal statutory, contractual or common law including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this section may be construed to diminish the liability of any person under this subchapter or other applicable law.

[1989, c. 794, §8 (NEW) .]

SECTION HISTORY
1989, c. 794, §8 (NEW).

§1319-X. CRITERIA FOR DEVELOPMENT OF WASTE OIL STORAGE FACILITIES AND BIOMEDICAL WASTE FACILITIES

The following criteria for facility development apply to an application for a waste oil storage facility or a new or substantially modified biomedical waste treatment or disposal facility in addition to other criteria established by law or rule for those facilities. [1993, c. 383, §38 (NEW).]

1. **Financial capacity.** The applicant has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.

[1993, c. 383, §38 (NEW) .]

2. **No adverse effect on the natural environment.** The applicant has provided adequately for fitting the project harmoniously into the existing natural environment and the project will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

[1993, c. 383, §38 (NEW) .]

3. **Ground water.** The proposed project does not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur.

[1993, c. 383, §38 (NEW) .]

4. **Soil types and erosion.** The project will be built on soil types suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment.

[1993, c. 383, §38 (NEW) .]

5. **Traffic movement.** The applicant has provided adequately for traffic movement of all types into, out of or within the project area. The department shall consider traffic movement both on site and off site, including safety and congestion along waste conveyance transportation routes. The Department of Transportation shall provide the department with an analysis of traffic movement of all types into, out of or within the project area.

[1993, c. 383, §38 (NEW) .]

6. **Infrastructure.** The applicant has provided adequately for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project and the project will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services.

[1993, c. 383, §38 (NEW) .]

7. **Flooding.** The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure.

[1993, c. 383, §38 (NEW) .]

The department may not issue a license for a waste oil storage facility if the proposed facility overlies a significant ground water aquifer or a primary sand and gravel recharge area. [1993, c. 383, §38 (NEW).]

SECTION HISTORY
1993, c. 383, §38 (NEW).

§1319-Y. REQUIREMENTS FOR USED OIL COLLECTION CENTERS

Owners and operators of used oil collection centers who wish to register their used oil collection centers for the purposes of section 1319-G, subsection 3 must comply with the following requirements in addition to any other requirements that may be established in rules adopted pursuant to section 1319-O, subsection 2, paragraph B. Other used oil collection centers are not required to comply with the provisions of this section. [1995, c. 573, §6 (NEW).]

1. **Registration.** Registration of used oil collection centers is governed by this subsection.

A. The owner or operator of a used oil collection center shall register the center on a form provided by the department. The registration form must be sent by certified mail or hand-delivered to the department. The registration form must be accompanied by photographs of the used oil collection center that clearly show that the design requirements of subsection 2 have been met. [1995, c. 573, §6 (NEW).]

B. If the applicable requirements of this section have not been met, the department shall notify the owner or operator in writing no later than 30 days after the department receives the completed registration form and photographs. If the department has not notified the applicant within the 30-day period, the center is deemed to be registered. [1995, c. 573, §6 (NEW).]

C. The owner or operator of a used oil collection center shall file an amended registration form within 10 business days upon any change in the information provided on the initial registration form. [1995, c. 573, §6 (NEW).]

[1995, c. 573, §6 (NEW) .]

2. **Design requirements.** In order to qualify for the waiver of reimbursement under section 1319-G, subsection 3, the following design requirements applicable to aboveground tanks used to collect or store used oil must be met.

A. Tanks that are located outdoors must be watertight, must be equipped with spill and overfill protection, must be secured to prevent the tank from tipping over and must either:

(1) Be double-walled; or

(2) Have an alternate means of impervious secondary containment that is watertight and has the capacity to hold a minimum of 110% of the contents of the tank, with a roof over both the tank and the secondary containment. [1995, c. 573, §6 (NEW).]

B. Tanks that are located inside a building must have rigid piping, must have a funnel that is rigidly attached, must be secured to prevent the tank from tipping over and must either:

(1) Be double-walled; or

(2) Have an alternate means of impervious secondary containment that has the capacity to hold a minimum of 50% of the contents of the tank. [1995, c. 573, §6 (NEW).]

C. Tanks must be constructed of fiberglass, steel or other nonporous material. [1995, c. 573, §6 (NEW).]

D. The total aggregate capacity of all used oil tanks at a used oil collection center may not exceed the greater of 660 gallons or the total aggregate capacity of the used oil tanks at that center on the effective date of this section. [1995, c. 573, §6 (NEW).]

E. Tanks must be located in a manner that permits them to be readily inspected for evidence of leaks. [1995, c. 573, §6 (NEW).]

F. Tanks may not be located where any leaks could drain into sewers, floor drains or storm water catch basins or in areas subject to floods. [1995, c. 573, §6 (NEW).]

G. Tanks must be maintained in good condition with no severe rusting, no apparent structural defects or deterioration and no visible leaks. [1995, c. 573, §6 (NEW).]

H. Tanks must be clearly labeled or marked with the words "Used Oil." [1995, c. 573, §6 (NEW).]

I. Tanks must be located so that they are not exposed to a spill or leak of a Class I or Class II liquid. [1995, c. 573, §6 (NEW).]

J. The installation of tanks must be in accordance with applicable local ordinances. [1995, c. 573, §6 (NEW).]

K. Tanks must be protected from vehicular traffic by location or protection with bollards or similar devices. [1995, c. 573, §6 (NEW).]

[1995, c. 573, §6 (NEW) .]

3. **Operational requirements.** In order to qualify for the waiver of reimbursement under section 1319-G, subsection 3, the owners and operators of used oil collection centers:

A. May accept no more than 20 gallons of used oil from any entity or individual in a 24-hour period; [1995, c. 573, §6 (NEW).]

B. Shall inspect each load of used oil by sight or scent before accepting the used oil for collection; [1995, c. 573, §6 (NEW).]

C. Shall keep the used oil collection tank locked at all times, except when used oil is being added or removed; [1995, c. 573, §6 (NEW).]

D. Shall supervise the addition of used oil to the tank; [1995, c. 573, §6 (NEW).]

E. Shall provide ongoing maintenance and repairs at the used oil collection center to avoid any environmental hazards such as spills, leaks, discharges, fires and explosions; [1995, c. 573, §6 (NEW).]

F. May offer used oil only to persons licensed with the department as waste oil transporters pursuant to section 1319-O, subsection 2, paragraph A; [1995, c. 573, §6 (NEW).]

G. Shall report to the Department of Public Safety within 2 hours of becoming aware of a discharge and immediately take action to contain and remove any discharges of used oil; and [1995, c. 573, §6 (NEW).]

H. Shall notify the department no later than 24 hours after discovery that used oil delivered to or collected at the center is a hazardous waste. [1995, c. 573, §6 (NEW).]

[1995, c. 573, §6 (NEW) .]

SECTION HISTORY
1995, c. 573, §6 (NEW).

Chapter 13-A: SEPTIC TANK AND CESSPOOL WASTE AND OTHER WASTE MATERIALS

§1320. SEPTIC TANK AND CESSPOOL WASTE AND OTHER WASTE MATERIALS

(REPEALED)

SECTION HISTORY
1977, c. 353, §3 (NEW). 1979, c. 383, §12 (RP).

§1321. DISPOSAL OF CERTAIN MATERIALS PROHIBITED

(REPEALED)

SECTION HISTORY
1977, c. 353, §3 (NEW). 1979, c. 383, §12 (RP).

§1322. EMERGENCY

(REPEALED)

SECTION HISTORY
1977, c. 353, §3 (NEW). 1979, c. 383, §12 (RP).

Chapter 13-B: UNCONTROLLED HAZARDOUS SUBSTANCE SITES

§1361. FINDINGS AND PURPOSE

The Legislature finds and declares that uncontrolled hazardous substance sites within the jurisdiction of the State present a hazard to all the people of the State and that hazard poses a threat or potential threat to the public health, safety or welfare, to the environment of the State and to owners and users of property near or adjacent to uncontrolled sites. [1983, c. 569, §1 (NEW).]

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. [1983, c. 569, §1 (NEW).]

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. [1983, c. 569, §1 (NEW).]

SECTION HISTORY
1983, c. 569, §1 (NEW).

§1362. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 569, §1 (NEW).]

1. **Hazardous substance.** "Hazardous substance" means:

A. Any substance identified by the board under section 1319-O; [1987, c. 517, §29 (AMD).]

B. Any substance identified by the board under section 1319; [1983, c. 569, §1 (NEW).]

C. Any substance designated pursuant to the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, Sections 101 and 102 (Superfund); [1985, c. 746, §32 (AMD).]

D. Any toxic pollutant listed under the United States Federal Water Pollution Control Act, Section 307(a); [1983, c. 569, §1 (NEW).]

E. Any hazardous air pollutant listed under the United States Clean Air Act, Section 112; [1985, c. 746, §32 (AMD).]

F. Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to the United States Toxic Substances Control Act, Section 7; and [1985, c. 746, §32 (AMD).]

G. Waste oil as defined in section 1303-C. [1989, c. 878, Pt. B, §42 (AMD).]

[1989, c. 878, Pt. B, §42 (AMD) .]

1-A. **Federal banking or lending agency.** "Federal banking or lending agency" means the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, a federal reserve bank, a federal home loan bank, the United States Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Small Business Administration, the Farmers' Home Administration, the Rural Electrification Administration or the RECOLL Management Corporation.

[1991, c. 811, §1 (NEW); 1991, c. 811, §7 (AFF) .]

1-B. **Lender.** "Lender" means any person, as defined by Title 9-B, section 131, subsection 30, including a successor or assignee of that person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person; a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A; a financial institution that is acting through a service corporation as defined in Title 9-B, section 131, subsection 37; or any federal or state banking or lending agency that provides loans, guarantees or other financial assistance. For the purpose of this subsection, the phrase "acting through" includes the assignment or transfer of an interest in real property acquired in satisfaction of a debt.

[1999, c. 289, §1 (AMD) .]

1-C. **Political subdivision.** "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119, or quasi-municipal corporation or special purpose district, including, but not limited to, any water district or sanitary district.

[1991, c. 811, §1 (NEW); 1991, c. 811, §7 (AFF) .]

1-D. **Fiduciary.** "Fiduciary" means a person who is:

A. Acting in any of the following capacities: a personal representative as defined in Title 18-A, section 1-201; a voluntary executor or administrator; a guardian; a conservator; a trustee under a will or intervivos instrument creating a trust of a donative type associated with probate practice where the trustee takes title to, otherwise controls or manages, property for the purpose of protecting or conserving that property; a trustee pursuant to an indenture agreement or similar financing agreement; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; and an assignee or trustee acting under an assignment made for the benefit of creditors; and [1993, c. 355, §59 (NEW).]

B. Holding legal title to, controlling or managing, directly or indirectly, any site as a fiduciary for purposes of administering an estate or trust of which the site is a part. [1993, c. 355, §59 (NEW).]

"Fiduciary" does not include the real or personal property held by an estate or trust administered by a fiduciary.

[1993, c. 355, §59 (NEW) .]

1-E. **Site.** "Site" means a licensed or unlicensed area or location where hazardous substances are handled or were handled or otherwise came to be located. "Site" includes all structures, appurtenances, improvements, equipment, machinery, containers, tanks and conveyances on the site.

[1993, c. 355, §59 (NEW) .]

2. **Responsible party.** "Responsible party" means any one or more of the following persons:

A. The owner or operator of the uncontrolled site; [1983, c. 569, §1 (NEW).]

B. Any person who owned or operated the uncontrolled site from the time any hazardous substance arrived there; [1983, c. 569, §1 (NEW).]

C. Any person who arranged for the transport or handling of a hazardous substance, provided that the substance arrived at the uncontrolled site; and [1983, c. 569, §1 (NEW).]

D. A person who accepted a hazardous substance for transport, if substance arrived at the uncontrolled site. After April 1, 1992, a person who accepts a hazardous substance for transport and delivers that substance to a licensed hazardous waste storage, treatment or disposal facility according to the manifest signed by the generator is not a responsible party. [1993, c. 732, Pt. A, §10 (AMD).]

[1993, c. 732, Pt. A, §10 (AMD) .]

2-A. **State banking or lending agency.** "State banking or lending agency" means any state agency that provides loans, guarantees or other financial assistance, including the Finance Authority of Maine, the Department of Economic and Community Development and the Maine State Housing Authority.

[1991, c. 811, §3 (NEW); 1991, c. 811, §7 (AFF) .]

3. **Uncontrolled hazardous substance site.** "Uncontrolled hazardous substance site" or "uncontrolled site" means an area or location, whether or not licensed, at which hazardous substances are or were handled or otherwise came to be located, if it is concluded by the commissioner that the site poses a threat or hazard to the health, safety or welfare of any person or to the natural environment and that action under this chapter is necessary to abate, clean up or mitigate that threat or hazard. The term includes all contiguous land under the same ownership or control and includes without limitation all structures, appurtenances, improvements, equipment, machinery, containers, tanks and conveyances on the site.

[1983, c. 569, §1 (NEW) .]

SECTION HISTORY
1983, c. 569, §1 (NEW). 1985, c. 746, §32 (AMD). 1987, c. 517, §29 (AMD). 1989, c. 878, §B42 (AMD). 1991, c. 811, §§1-3 (AMD). 1991, c. 811, §7 (AFF). 1993, c. 355, §§58,59 (AMD). 1993, c. 732, §A10 (AMD). 1999, c. 289, §1 (AMD).

§1363. PROHIBITED ACTS

No person may handle hazardous substances at an uncontrolled hazardous substance site in violation of any order issued under this chapter. [1983, c. 569, §1 (NEW).]

SECTION HISTORY
1983, c. 569, §1 (NEW).

§1364. POWERS AND DUTIES OF THE DEPARTMENT

1. **Technical services.** The commissioner shall establish a technical services capability within the department to assist in the identification, evaluation and mitigation of uncontrolled hazardous substance sites.

[1983, c. 569, §1 (NEW) .]

2. **Rules.** The board may adopt rules related to the handling of hazardous substances; the investigation, abatement, mitigation and cleanup of spills of hazardous substances; and the investigation, designation and mitigation of uncontrolled hazardous substance sites. The board may provide by rule that any person who knows or has reason to believe that any hazardous substance is present in ground water or soils beneath a site which is owned or operated by that person provide notice of that condition to the department if the concentration of the hazardous substance in ground water exceeds state or federal recommended contaminant levels for drinking water or the concentration in soils exceeds contaminant levels established by the board.

[1993, c. 355, §60 (AMD) .]

3. **Investigation and evaluation.** The commissioner may investigate and sample sites where hazardous substances are stored or handled to identify uncontrolled hazardous substance sites. During the course of the investigation, the commissioner may require submission of information or documents that relate or may relate to the site under investigation from any person whom the commissioner has reason to believe may be a responsible party. The information may include the nature and amounts of hazardous substances or other

wastes that arrived or may have arrived at the site, manner of transportation, treatment or disposal of the hazardous substances or other wastes and any other information relating to the site or to threats posed by the potential site.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §266 (AMD) .]

4. **Designation.** In accordance with section 1365, the commissioner may declare a site to be an uncontrolled hazardous substance site. The designation may be appealed only upon the issuance of an order pursuant to section 1365, subsection 2, as provided in section 1365, subsection 4.

[1987, c. 419, §13 (AMD) .]

5. **Mitigation.** The commissioner may take whatever action necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by an uncontrolled site or to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards, and implementing remedies to remove, store, treat, dispose of or otherwise handle hazardous substances located in, on or over an uncontrolled site, including soil and water contaminated by hazardous substances. When the necessary action includes the installation of a public water supply or the extension of mains of an existing water utility, the department's obligation is limited to construction of those works that are necessary to furnish the contaminated or potentially contaminated properties with a supply of water sufficient for existing uses. The department is not obligated to contribute to a water utility's system development charge, nor to provide works or water sources exceeding those required to abate the threats or hazards posed by the uncontrolled site. The department may pay the costs of operation, maintenance and depreciation of the works or water supply for a period not exceeding 20 years if funds are available from Other Special Revenue or proceeds from the sale of bonds. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with a hazardous substance:

A. Neither the commissioner nor any responsible party is obligated under this chapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as provided in section 548, subsection 1; and [1995, c. 462, Pt. A, §78 (AMD).]

B. The obligation of the commissioner or any responsible party under this chapter with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in an area other than one described in paragraph A. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well. [1995, c. 462, Pt. A, §78 (AMD).]

For purposes of this subsection, "viable community public water system" has the same meaning as in section 548.

[1995, c. 462, Pt. A, §78 (AMD) .]

6. **Accept funds.** The department may accept any public or private funds which may be available for carrying out the purposes of this chapter. The Uncontrolled Sites Fund is established to be used by the department as a nonlapsing revolving fund for carrying out the purposes of this chapter, including the long-term oversight of uncontrolled hazardous substance sites. Money in the fund, not needed currently to meet the obligations of the department in the exercise of its responsibilities under this chapter, shall be deposited with the Treasurer of State to the credit of the fund and may be invested in such a manner as is provided for by law. Interest received on that investment shall be credited to the fund.

[1987, c. 192, §29 (AMD) .]

7. **Acquisition of property; authority.** The department may acquire, by purchase, lease, condemnation, donation or otherwise, any real property or any interest in real property that the board in its discretion determines, by 2/3 majority vote, is necessary to conduct remedial actions in response to threats or hazards posed or potentially posed by an uncontrolled site, including, but not limited to:

A. Actions to prevent further threats or hazards and to mitigate or terminate the threats or hazards; [1991, c. 312, §2 (NEW).]

B. Actions to clean up soils and ground water and remove hazardous substances from an uncontrolled site; and [1991, c. 312, §2 (NEW).]

C. Replacement of water supplies contaminated or threatened by hazardous substances. [1991, c. 312, §2 (NEW).]

The department may exercise the right of eminent domain in the manner described in Title 35-A, chapter 65, to take and hold real property for any of the purposes described in this subsection. The commissioner shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over natural resource matters during the next regular session following the acquisition of any property by eminent domain. The department may transfer or convey to any person real property or any interest in real property once acquired.

[1991, c. 312, §2 (NEW) .]

SECTION HISTORY
1983, c. 569, §1 (NEW). 1985, c. 746, §§33,34 (AMD). 1987, c. 192, §29 (AMD). 1987, c. 419, §13 (AMD). 1989, c. 792, (AMD). 1989, c. 890, §§A40,B266, 267 (AMD). 1991, c. 66, §A40 (AMD). 1991, c. 312, §§1,2 (AMD). 1993, c. 355, §60 (AMD). 1993, c. 621, §7 (AMD). 1995, c. 462, §A78 (AMD).

§1365. DESIGNATION OF UNCONTROLLED HAZARDOUS SUBSTANCE SITES

1. **Investigation.** Upon finding, after investigation, that a location at which hazardous substances are or were handled or otherwise came to be located may create a danger to the public health, to the safety of any person or to the environment, the commissioner may:

A. Designate that location as an uncontrolled hazardous substance site; [2005, c. 330, §34 (NEW).]

B. 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; and [2005, c. 330, §34 (NEW).]

C. Order any person contributing to the danger or likelihood of danger to cease or prevent that contribution. [2005, c. 330, §34 (NEW).]

[2005, c. 330, §34 (RPR) .]

2. **Orders.** Any order issued under this section shall contain findings of fact describing, insofar as possible, the hazardous substances, the site of the activity and the danger to the public health or safety.

[1983, c. 569, §1 (NEW) .]

3. **Service.** Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

[2005, c. 330, §35 (AMD) .]

4. **Compliance; appeal.** The person to whom the order is directed shall comply immediately and 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. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is 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 is 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. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

[2005, c. 330, §36 (AMD) .]

5. **Civil action.** The Attorney General may file suit in Superior Court to compel any responsible party to abate, clean up or mitigate threats or hazards posed or potentially posed by an uncontrolled site.

[1983, c. 569, §1 (NEW) .]

6. **Enforcement; penalties; punitive damages.** Any responsible party who fails without sufficient cause to undertake removal or remedial action promptly in accordance with an order issued pursuant to section 1304, subsection 12 and this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action.

The Attorney General is authorized to commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the commissioner pursuant to this subsection must be deposited in the Uncontrolled Sites Fund.

[1993, c. 355, §61 (NEW) .]

SECTION HISTORY
1983, c. 569, §1 (NEW). 1985, c. 746, §35 (AMD). 1989, c. 890, §§A40,B268 (AMD). 1993, c. 355, §61 (AMD). 2005, c. 330, §§34-36 (AMD).

§1366. ABATEMENT, CLEAN UP AND MITIGATION COSTS

Whenever possible and practical, the commissioner shall make use of resources available under the Superfund program or other federal programs to evaluate and investigate uncontrolled sites and to abate, clean up or mitigate threats or hazards posed or potentially posed by uncontrolled sites. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §269 (AMD).]

In the case of a site at which federal resources may be or are being used, proceeds from the sale of bonds for the evaluation and investigation of sites and for implementation of plans to abate, clean up or mitigate hazards or threats posed or potentially posed by an uncontrolled site may be used: [1983, c. 569, §1 (NEW).]

1. **Privately owned sites.** In the case of a site that was privately owned at the time of disposal of any hazardous substances, for the state's share of remedial action costs; and

[1983, c. 569, §1 (NEW) .]

2. **Sites owned by state or political subdivision.** In the case of a site which was owned at the time of disposal of any hazardous substances by the state or a political subdivision thereof, for the state's share of response costs.

[1983, c. 569, §1 (NEW) .]

In the case of a site where federal resources are not used, the commissioner shall notify the Governor in writing. The Governor may authorize the commissioner to proceed under this chapter without those resources. In the event the State proceeds at its own expense with work eligible for federal funding, the commissioner shall present the United States Environmental Protection Agency with a demand for reimbursement. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §269 (AMD).]

SECTION HISTORY
1983, c. 569, §1 (NEW). 1987, c. 192, §30 (AMD). 1989, c. 890, §§A40,B269 (AMD).

§1367. LIABILITY; RECOVERY BY THE STATE FOR ABATEMENT, CLEAN UP OR MITIGATION COSTS AND FOR DAMAGES

Each responsible party is jointly and severally liable for all costs incurred by the State resulting from hazardous substances at the site or from the acts or omissions of a responsible party with respect to those hazardous substances and for the abatement, cleanup or mitigation of the threats or hazards posed or potentially posed by an uncontrolled site, including, without limitation, all costs of acquiring property. Each responsible party also is jointly and severally liable for damages for injury to, destruction of, loss of or loss of use of natural resources of the State, the reasonable costs of assessing natural resources damages and the costs of preparing and implementing a natural resources restoration plan. The commissioner shall demand reimbursement of costs, including interest, and payment of damages to be recovered under this section. The interest rate charged may not exceed the prime rate of interest plus 4%. Interest must be computed beginning 60 days from the date of a payment demand by the commissioner. Payment must be made promptly by the responsible party or parties upon whom the demand is made. Requests for reimbursement to the Uncontrolled Sites Fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191. The Attorney General or an attorney retained by the department may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability. [2009, c. 121, §16 (AMD).]

In any suit filed under this section, the State need not prove negligence in any form or matter by a defendant. The State need only prove that a defendant is a responsible party, as defined in section 1362, and the site poses or posed or potentially poses or posed a threat or hazard to the health, safety or welfare of any citizen of the State or the environment of the State, to which the acts or omissions of the defendant are or were causally related. [1983, c. 569, §1 (NEW).]

A person who would otherwise be a responsible party shall not be subject to liability under this section, if he can establish by a preponderance of the evidence that threats or hazards posed or potentially posed by an uncontrolled site, for which threats or hazards he would otherwise be responsible, were caused solely by: [1983, c. 569, §1 (NEW).]

1. **Act of God.** An act of God;

[1983, c. 569, §1 (NEW) .]

2. **Act of war.** An act of war;

[1983, c. 569, §1 (NEW) .]

3. **Act or omission.** An act or omission of a 3rd party who is not that person's employee or agent. A person seeking relief from liability for the acts or omissions of a 3rd party shall also demonstrate by a preponderance of the evidence that that person exercised due care with respect to the hazardous substance and uncontrolled site concerned, taking into consideration the characteristics of that substance and site, in light of all relevant facts and circumstances and that that person took precautions against foreseeable acts or omissions of any such 3rd party and the consequences that could foreseeably result from such acts or omissions.

A. For purposes of this subsection, a person may demonstrate the exercise of due care with respect to any uncontrolled site that that person has acquired after hazardous substances were located on that uncontrolled site, if that person shows that at the time that person acquired the uncontrolled site the person did not know and had no reason to know that any hazardous substance that is the subject of the release or threatened release was disposed on, in or at the uncontrolled site. [1991, c. 81, (NEW).]

B. To establish that a person meets the criteria of paragraph A, a person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this paragraph, the court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination of the property, and the ability to detect that contamination by appropriate inspection; or [1991, c. 81, (NEW).]

[1991, c. 81, (AMD) .]

4. **Combination.** Any combination of the foregoing subsections.

[1983, c. 569, §1 (NEW) .]

Funds recovered under this section shall be deposited into the Uncontrolled Sites Fund and shall be used by the department to carry out the purposes of this chapter. [1987, c. 192, §31 (AMD).]

SECTION HISTORY
1983, c. 569, §1 (NEW). 1987, c. 192, §31 (AMD). 1991, c. 81, (AMD). 1991, c. 312, §3 (AMD). 2007, c. 655, §16 (AMD). 2009, c. 121, §16 (AMD).

§1367-A. LIMITED EXEMPTION FROM LIABILITY FOR FINANCIAL INSTITUTIONS AND FEDERAL AND STATE BANKING OR LENDING AGENCIES

(REPEALED)

SECTION HISTORY
1991, c. 811, §4 (NEW). 1991, c. 811, §7 (AFF). 1993, c. 732, §A11 (RP).

§1367-B. LIMITED EXEMPTION FROM LIABILITY FOR STATE OR LOCAL GOVERNMENTAL ENTITIES

1. **Limited exemption from liability.** Liability under section 1367 does not apply to the State or any political subdivision that acquired ownership or control of an uncontrolled hazardous substance site through tax delinquency proceedings pursuant to Title 36, or through any similar statutorily created procedure for the collection of governmental taxes, assessments, expenses or charges, or involuntarily through abandonment, or in circumstances in which the State or political subdivision involuntarily acquired ownership or control by virtue of its function as a sovereign. The exemption from liability provided under this subsection does not apply to the State or any political subdivision that has caused, contributed to or exacerbated a release or threatened release of a hazardous substance on or from the uncontrolled site.

[1991, c. 811, §4 (NEW); 1991, c. 811, §7 (AFF) .]

2. **Reimbursement for department expenses.** Notwithstanding the exemption from liability provided in subsection 1, the State or any political subdivision that acquires or has acquired ownership of property that encompasses an uncontrolled hazardous substance site pursuant to any of the proceedings referred to in subsection 1 is liable for any costs incurred by the department pursuant to this chapter during the period in which the State or political subdivision had ownership of the property, up to the amount of the proceeds from the sale or disposition of the property minus the out-of-pocket costs of the sale or disposition.

[1991, c. 811, §4 (NEW); 1991, c. 811, §7 (AFF) .]

SECTION HISTORY
1991, c. 811, §4 (NEW). 1991, c. 811, §7 (AFF).

§1367-C. LIMIT ON OBLIGATION TO REPLACE OR TREAT WATER SUPPLY WELLS

If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with a hazardous substance: [1993, c. 621, §8 (NEW).]

1. **Delineated contaminated area.** Neither the commissioner nor any responsible party is obligated under this chapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as provided in section 548, subsection 1; and

[1995, c. 462, Pt. A, §79 (AMD) .]

2. **Areas not delineated.** The obligation of the commissioner or any responsible party under this chapter with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well was installed in an area other than one described in subsection 1. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

[1995, c. 462, Pt. A, §79 (AMD) .]

For purposes of this section, "viable community public water system" has the same meaning as in section 548. [1993, c. 621, §8 (NEW).]

SECTION HISTORY
1993, c. 621, §8 (NEW). 1995, c. 462, §A79 (AMD).

§1368. EMERGENCY

Whenever the commissioner determines that an emergency exists as the result of a threat or hazard posed by an uncontrolled site, the commissioner shall immediately notify the Governor. The Governor may declare an emergency and, in addition to whatever action is necessary and available to him under law, may authorize the Commissioner of Environmental Protection in conjunction with the Commissioner of Public Safety to: [1983, c. 569, §1 (NEW).]

1. **Take control.** Take control of the uncontrolled site and threatened adjacent areas;

[1983, c. 569, §1 (NEW) .]

2. **Secure.** Secure the uncontrolled site;

[1983, c. 569, §1 (NEW) .]

3. **Eject.** Eject all persons from the uncontrolled site;

[1983, c. 569, §1 (NEW) .]

4. **Dispose, treat, store or handle.** Dispose, treat, store or otherwise handle all hazardous substances located on the uncontrolled site, including soil and water contaminated by hazardous substances; and

[1983, c. 569, §1 (NEW) .]

5. **Take action.** Take whatever other action is deemed necessary to abate, clean up or mitigate the threat or hazard posed by the uncontrolled site.

[1983, c. 569, §1 (NEW) .]

SECTION HISTORY
1983, c. 569, §1 (NEW).

§1369. IMMUNITY

Notwithstanding the provisions of Title 14, chapter 741, neither the State nor any agency or employee thereof engaged in any abatement, clean up or mitigation activity, while complying with or attempting to comply with this chapter, or with any rule promulgated or directive issued in the implementation of this chapter, may be liable for the death of or injury to persons, or damage to property, as a result of that activity. This section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under the workers' compensation law or any other pension law, nor the right of any person to receive benefits or compensation under any act of Congress. [1983, c. 569, §1 (NEW).]

SECTION HISTORY
1983, c. 569, §1 (NEW).

§1370. PROPERTY FORFEITED

The following property shall be subject to forfeiture to the State in accordance with the procedures set forth in section 1319-U and all property rights therein shall be in the State: [1987, c. 517, §30 (AMD).]

1. **Real estate.** All real estate, structures, appurtenances, improvements, equipment, machinery, containers, tanks, conveyances, products, materials and supplies used directly or intended to be used directly in violation of any provision of this chapter; and

[1983, c. 569, §1 (NEW) .]

2. **Moneys.** All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in any transaction, and all proceeds traceable to such a transaction, intended to be used directly in violation of any provision of this chapter.

[1983, c. 569, §1 (NEW) .]

SECTION HISTORY
1983, c. 569, §1 (NEW). 1987, c. 517, §30 (AMD).

§1371. LIEN ESTABLISHED

1. **Established.** All costs incurred by the State for the abatement, cleanup or mitigation of hazards posed by an uncontrolled hazardous substance site and all interest and penalties shall be a lien against the real estate of the responsible party.

[1987, c. 540, (RPR) .]

2. **Priority.** The priority of a lien filed pursuant to this section shall be governed by the following.

A. Any lien filed pursuant to this section on real estate that encompasses an uncontrolled hazardous substance site has precedence over all encumbrances on the real estate, including liens of the State or any political subdivision, recorded after July 7, 1987. The term "real estate" in this paragraph includes all real estate of a responsible party that has been included in the property description of the affected real estate within the 3-year period preceding the date of filing of the lien or on or after July 7, 1987, whichever period is shorter. [1991, c. 811, §5 (AMD); 1991, c. 811, §7 (AFF).]

B. Any lien filed pursuant to this section on any other real estate of the party responsible for the uncontrolled hazardous substance site shall have precedence over all transfers and encumbrances filed after the date that the lien is filed with the registry of deeds. [1987, c. 540, (NEW).]

[1991, c. 811, §5 (AMD); 1991, c. 811, §7 (AFF) .]

3. **Notice.** A certificate of lien signed by the Commissioner of Environmental Protection shall be mailed by certified mail, return receipt requested, to all those persons of record holding an interest in the real estate over which the commissioner's lien is entitled to priority under subsection 2, paragraph A. A certificate may be filed for record in the office of the clerk of any municipality in which the real estate is situated.

[1987, c. 540, (RPR) .]

4. **Recording.** Any lien filed pursuant to this section shall be effective when filed with the registry of deeds for the county in which the real estate is located. The lien shall include a description of the real estate, the amount of the lien and the name of the owner as grantor.

[1987, c. 540, (RPR) .]

5. **Limitation.** This section does not apply to a unit of real estate that consists primarily of real estate used or under construction as single or multi-family housing at the time the lien is recorded or to property owned by a political subdivision except for the real estate that encompasses an uncontrolled hazardous substance site and that is owned by a political subdivision.

[1991, c. 811, §6 (AMD); 1991, c. 811, §7 (AFF) .]

6. **Discharge of lien.** When the amount with respect to which a lien has been recorded under this section, has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate which is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate shall be recorded in the registry in which the lien was recorded. Any action of the foreclosure of the lien shall be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the property subject to the lien is situated.

[1987, c. 540, (NEW) .]

SECTION HISTORY
1987, c. 419, §14 (NEW). 1987, c. 540, (RPR). 1991, c. 811, §§5,6 (AMD). 1991, c. 811, §7 (AFF).

Chapter 13-C: SLUDGE AND RESIDUALS UTILIZATION RESEARCH

§1380. FOUNDATION ESTABLISHED; PURPOSE

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §127 (RP).

§1381. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §127 (RP).

§1382. BOARD OF TRUSTEES

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1991, c. 517, §B2 (AMD). 1995, c. 465, §A25 (AMD). 1995, c. 465, §C2 (AFF). 1999, c. 668, §128 (RP).

§1383. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §129 (RP).

§1384. LIMITATION OF POWERS

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §129 (RP).

§1385. PROHIBITED INTERESTS OF OFFICERS, DIRECTORS AND EMPLOYEES

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §129 (RP).

§1386. DONATIONS TO THE STATE

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §129 (RP).

§1387. ANNUAL REPORT; AUDIT

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §129 (RP).

§1388. DISSOLUTION OF FOUNDATION

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §129 (RP).

§1389. FUNDING

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §129 (RP).

§1390. LIABILITY

(REPEALED)

SECTION HISTORY
1987, c. 799, §2 (NEW). 1999, c. 668, §129 (RP).

Chapter 13-D: WELLHEAD PROTECTION

§1391. DECLARATION OF POLICY

The Legislature finds and declares it to be the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to establish a coordinated statewide program to protect drinking water wells from contamination by oil or hazardous waste. The Legislature further finds that spills of oil and hazardous waste pose a significant risk to groundwater quality and that the handling of those substances near drinking water wells should be restricted to reduce the risk of contamination. [2007, c. 569, §6 (NEW).]

SECTION HISTORY
2007, c. 569, §6 (NEW).

§1392. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 569, §6 (NEW).]

1. **Aboveground heating oil supply tank.** "Aboveground heating oil supply tank" means an aboveground oil storage tank that is connected directly to an oil-burning heating appliance and is used solely to store heating oil.

[2007, c. 569, §6 (NEW) .]

2. **Aboveground oil storage facility.** "Aboveground oil storage facility" has the meaning set out in section 562-A, subsection 1-A.

[2007, c. 569, §6 (NEW) .]

3. **Aboveground oil storage tank.** "Aboveground oil storage tank" has the meaning set out in section 562-A, subsection 1-B.

[2007, c. 569, §6 (NEW) .]

4. **Community drinking water well.** "Community drinking water well" means a public drinking water well that supplies a community water system as defined under Title 22, section 2660-B, subsection 2.

[2007, c. 569, §6 (NEW) .]

5. **Double-walled tank.** "Double-walled tank" means a tank with inner and outer walls separated by an interstitial space that allows detection and containment of leaks.

[2007, c. 569, §6 (NEW) .]

6. **Hazardous waste.** "Hazardous waste" means any substance identified as hazardous waste by the board pursuant to section 1319-O.

[2007, c. 569, §6 (NEW) .]

7. **Oil.** "Oil" has the meaning set out in section 562-A, subsection 15. "Oil" does not include liquefied natural gas or other liquefied petroleum that is a gas at ambient temperatures.

[2007, c. 569, §6 (NEW) .]

8. **Private drinking water well.** "Private drinking water well" means a well that is used to supply water for human consumption and that is not a public drinking water well.

[2007, c. 569, §6 (NEW) .]

9. **Public drinking water well.** "Public drinking water well" means a drinking water supply well for a public water system as defined in Title 22, section 2601, subsection 8.

[2007, c. 569, §6 (NEW) .]

10. **Underground oil storage facility.** "Underground oil storage facility" has the meaning set out in section 562-A, subsection 21.

[2007, c. 569, §6 (NEW) .]

11. **Wellhead protection zone.** "Wellhead protection zone" means:

A. In the case of a private drinking water well, the area within 300 feet of the well; and [2007, c. 569, §6 (NEW).]

B. In the case of a public drinking water well, the greater of:

(1) The area within 1,000 feet of the well; and

(2) The source water protection area of the well if mapped by the Department of Health and Human Services as described under Title 30-A, section 2001, subsection 20-A. [2007, c. 569, §6 (NEW).]

[2007, c. 569, §6 (NEW) .]

SECTION HISTORY
2007, c. 569, §6 (NEW).

§1393. PROHIBITION ON INSTALLATION OF FACILITIES IN WELLHEAD PROTECTION ZONES

1. **Prohibition.** Unless otherwise exempted pursuant to subsection 2:

A. A person may not install an underground oil storage facility in a wellhead protection zone; and [2007, c. 569, §6 (NEW).]

B. After September 30, 2008, a person may not install in a wellhead protection zone:

(1) An aboveground oil storage facility;

(2) An automobile graveyard as defined in Title 30-A, section 3752, subsection 1 or an automobile recycling business as defined in Title 30-A, section 3752, subsection 1-A;

(3) An automobile body shop or other automobile maintenance and repair facility;

(4) A dry cleaning facility that uses perchloroethylene;

(5) A metal finishing or plating facility; or

(6) A commercial hazardous waste facility as defined under section 1303-C, subsection 4. [2011, c. 206, §21 (AMD).]

[2011, c. 206, §21 (AMD) .]

2. **Exceptions.** Subsection 1 does not apply to:

A. A facility in existence on the effective date of the prohibition established under subsection 1; [2011, c. 206, §22 (AMD).]

B. The replacement or expansion of an underground oil storage facility in existence on September 30, 2001 or a facility identified in subsection 1, paragraph B in existence on September 30, 2008 as long as the replacement or expansion occurs on the same property, the facility meets all applicable requirements of law and, in the case of replacement, the facility owner:

(1) Within 30 days after removal of the existing facility, notifies the commissioner and municipal code enforcement officer in writing of the owner's intent to replace the facility; and

(2) Commences construction of the replacement facility within 2 years after removal of the existing facility; [2011, c. 206, §23 (AMD).]

C. The conversion of an aboveground oil storage facility in existence on September 30, 2001 to an underground oil storage facility or vice versa, as long as the conversion occurs on the same property and the facility to be converted meets all applicable requirements of law; [2007, c. 569, §6 (NEW).]

D. The installation of an oil storage facility used solely to store heating oil for consumption on the premises, including the installation of an aboveground heating oil supply tank; or [2007, c. 569, §6 (NEW).]

E. The installation of a facility located on the same property as a well serving only users of that property. [2007, c. 569, §6 (NEW).]

This subsection may not be interpreted to allow the conversion, replacement or expansion of an underground oil storage tank or underground oil storage facility subject to the abandonment requirement under section 566-A.

[2011, c. 206, §§22, 23 (AMD) .]

SECTION HISTORY
2007, c. 569, §6 (NEW). 2009, c. 501, §17 (AMD). 2011, c. 206, §§21-23 (AMD).

§1394. VARIANCES

The provisions of this section govern the granting of a variance from the prohibitions under section 1393. [2007, c. 569, §6 (NEW).]

1. **Community drinking water well, private drinking water well or well that supplies school.** In the case of a community drinking water well, a private drinking water well or a well that supplies drinking water to a school, the commissioner may grant a variance from the prohibition of section 1393 if the applicant demonstrates that no hydrogeologic connection exists between the proposed facility and the water supply at issue.

[2007, c. 569, §6 (NEW) .]

2. **Public drinking water well that is not community drinking water well or does not supply school.** In the case of a public drinking water well other than a community drinking water well or a drinking water well supplying drinking water to a school, the commissioner may grant a variance from the prohibition of section 1393 if the commissioner determines that the engineering and monitoring measures proposed by the applicant exceed regulatory requirements and will effectively minimize the likelihood of drinking water contamination due to the discharge of oil or hazardous waste.

[2007, c. 569, §6 (NEW) .]

3. **Determination.** In considering whether to grant a variance under this section, the commissioner may consider the importance of the groundwater resource, the hydrogeology of the site and other relevant factors.

[2007, c. 569, §6 (NEW) .]

4. **Procedure.** The commissioner shall provide public notice and an opportunity for public comment on each variance request. The commissioner may deny a variance request or approve the request with or without conditions. The decision must be in writing with findings sufficient to explain the basis of the decision. The decision may be appealed to the board under section 341-D, subsection 4, paragraph A.

[2007, c. 569, §6 (NEW) .]

SECTION HISTORY
2007, c. 569, §6 (NEW).

§1395. INSTALLATION REQUIREMENTS FOR ABOVEGROUND HEATING OIL SUPPLY TANKS IN THE WELLHEAD PROTECTION ZONE OF A COMMUNITY DRINKING WATER WELL

Effective July 1, 2009, a person may not install an aboveground heating oil supply tank in the wellhead protection zone of a community drinking water well unless the tank: [2007, c. 569, §6 (NEW).]

1. **Double-walled or secondary containment.** Is a double-walled tank or has secondary containment approved by the commissioner;

[2007, c. 569, §6 (NEW) .]

2. **Independent testing authority.** And any secondary containment are listed and approved by a nationally recognized, independent testing authority; and

[2007, c. 569, §6 (NEW) .]

3. **Licensed professional.** Is installed by a journeyman or master oil and solid fuel burning technician licensed by the Maine Fuel Board under Title 32, section 18132 or 18133 or, in the case of an outside tank serving manufactured housing, by any person licensed by the Maine Fuel Board under Title 32, section 18140 to install such tanks.

[2009, c. 344, Pt. D, §14 (AMD); 2009, c. 344, Pt. E, §2 (AFF) .]

The requirements of this section do not apply to tanks with a capacity of more than 660 gallons or to tanks at an aboveground oil storage facility with an aggregate tank capacity of more than 1,320 gallons. The requirements of this section are in addition to any other installation standards provided for in law or rule. [2007, c. 569, §6 (NEW).]

SECTION HISTORY
2007, c. 569, §6 (NEW). 2009, c. 344, Pt. D, §14 (AMD). 2009, c. 344, Pt. E, §2 (AFF).

§1396. FINANCIAL ASSISTANCE FOR UPGRADING ABOVEGROUND OIL STORAGE TANKS OR FACILITIES

The commissioner may disburse money from the Ground Water Oil Clean-up Fund to retrofit, repair or replace aboveground oil storage tanks or aboveground oil storage facilities in a wellhead protection zone when the commissioner determines that action is necessary to abate an imminent threat to the well.

Disbursements must be made in the manner provided under section 569-A, subsection 8, paragraphs M and N and are subject to the annual disbursement limitations of those paragraphs. [2007, c. 569, §6 (NEW).]

SECTION HISTORY
2007, c. 569, §6 (NEW).

§1397. ENFORCEMENT

In addition to other enforcement actions allowed under state law, the commissioner may issue an administrative order after providing a notice of violation for failure to comply with the requirements of this chapter and after providing a reasonable opportunity to correct the violation. The administrative order may include, but is not limited to, a requirement that the owner or operator of the facility cease operation of the facility that is the subject of the violation until the violation has been corrected. [2007, c. 569, §6 (NEW).]

1. **Service.** Service of the commissioner's administrative order under this section must be made by hand delivery by an authorized representative of the department or by certified mailing, return receipt requested.

[2007, c. 569, §6 (NEW) .]

2. **Appeal.** The person to whom the commissioner's administrative order under this section is directed shall comply immediately or within the time period specified in the order. That person may appeal the order to the board by filing a written petition within 5 working days after receipt of the order. Within 15 working days after receipt of the petition, the board shall hold a hearing on the matter. All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

[2007, c. 569, §6 (NEW) .]

SECTION HISTORY
2007, c. 569, §6 (NEW).

§1398. ELIGIBILITY FOR CLEAN-UP FUNDS

Clean-up costs and 3rd-party damages resulting from discharges from an aboveground oil storage facility or an underground oil storage facility installed in violation of section 1393 are not eligible for coverage by the Ground Water Oil Clean-up Fund under sections 568-A and 569-A. [2007, c. 569, §6 (NEW).]

SECTION HISTORY
2007, c. 569, §6 (NEW).

§1399. MUNICIPAL AUTHORITY

This chapter may not be construed to prevent a municipality from imposing siting restrictions more stringent than the prohibitions in this chapter or in rules adopted by the board. [2007, c. 569, §6 (NEW).]

SECTION HISTORY
2007, c. 569, §6 (NEW).

§1400. RULES

Subject to Title 5, chapter 375, the department may adopt rules as it determines necessary to implement this chapter. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 538, §14 (NEW).]

SECTION HISTORY
2011, c. 538, §14 (NEW).

Chapter 14: LIABILITY OF PERSONS MITIGATING THE EFFECTS OF DISCHARGE OF HAZARDOUS MATERIALS

§1401. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 111, (NEW).]

1. **Discharge.** "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping onto the land or into the water or ambient air.

[1983, c. 432, §10 (RPR) .]

2. **Hazardous material.** "Hazardous material" includes:

A. Hazardous waste, as defined in section 1303; [1983, c. 432, §11 (NEW).]

B. Hazardous matter, as defined in section 1317; [1983, c. 432, §11 (NEW).]

C. Hazardous material, as defined in Title 25, section 2102; and [1999, c. 57, Pt. B, §8 (AMD).]

D. [1999, c. 57, Pt. B, §9 (RP).]

E. Other substances identified as hazardous by any state or federal agency. [1983, c. 432, §11 (NEW).]

[1999, c. 57, Pt. B, §§8, 9 (AMD) .]

3. **Person.** "Person" includes any individual, partnership, corporation, association or other entity.

[1983, c. 111, (NEW) .]

SECTION HISTORY
1983, c. 111, (NEW). 1983, c. 432, §§10,11 (AMD). 1999, c. 57, §§B8,9 (AMD).

§1402. IMMUNITY

Notwithstanding any provision of law, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean-up or dispose of any such discharge, may be subject to civil liabilities or penalties of any type. [1983, c. 111, (NEW).]

§1402. Definitions

(As reallocated by PL 1983, c. 345, §2 is repealed by PL 1983, c. 500, §4)

SECTION HISTORY
1983, c. 111, (NEW). 1983, c. 345, §2 (RAL). 1983, c. 500, §4 (RP).

§1403. EXCEPTIONS

The immunities provided in section 1402 do not apply to any person: [1983, c. 111, (NEW).]

1. **Persons causing the discharge.** Whose act or omission caused in whole or in part the actual or threatened discharge and who would otherwise be liable therefore; or

[1983, c. 111, (NEW) .]

2. **Persons compensated for assistance.** Who receives compensation other than reimbursement for out-of-pocket expenses for its services in rendering the assistance or advice.

[1983, c. 111, (NEW) .]

SECTION HISTORY
1983, c. 111, (NEW). 1983, c. 432, §12 (AMD).

§1404. LIABILITY FOR GROSS NEGLIGENCE OR RECKLESS, WANTON OR INTENTIONAL MISCONDUCT

Nothing in section 1402 limits or otherwise affects the liability of any person for damages resulting from that person's gross negligence, or from that person's reckless, wanton or intentional misconduct. [1983, c. 111, (NEW).]

SECTION HISTORY
1983, c. 111, (NEW).

Chapter 14-A: NUCLEAR WASTE ACTIVITY

Subchapter 1: GENERAL PROVISIONS

§1451. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 381, §9 (NEW).]

1. **Area studies, for high-level radioactive waste.** "Area studies," for high-level radioactive waste, means the study of areas with potentially acceptable sites using available geophysical, geologic, geochemical, hydrologic and other information; and additional geological reconnaissance and field work, including geophysical testing, preliminary borings and excavation as necessary to assess whether site characterization should be undertaken for any sites within the area. Area studies also include socioeconomic and environmental studies and preparation of any environmental assessment relating to the suitability of the site for nomination for site characterization.

[1983, c. 381, §9 (NEW) .]

2. **By-product material.** "By-product material" means:

A. Any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing nuclear material; and [1983, c. 381, §9 (NEW).]

B. The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. [1983, c. 381, §9 (NEW).]

[1983, c. 381, §9 (NEW) .]

3. **Closure or site closure.** "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site, following termination of licensed operation.

[1983, c. 381, §9 (NEW) .]

3-A. **Commission.**

[2011, c. 691, Pt. C, §7 (RP) .]

4. **Decommissioning a nuclear power plant.** "Decommissioning a nuclear power plant" means the series of activities undertaken, beginning at the time of closing of a nuclear power plant, to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant.

[1983, c. 381, §9 (NEW) .]

5. **Environmental impact statement.** "Environmental impact statement" means any document prepared pursuant to or in compliance with the requirements of the United States National Environmental Policy Act of 1969, Section 102(2)(c), 83 Stat. 852, 1981.

[1983, c. 381, §9 (NEW) .]

6. **High-level radioactive waste.** "High-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the United States Nuclear Regulatory Commission, consistent with existing law, determines by rule to require permanent isolation.

[1983, c. 381, §9 (NEW) .]

7. **High-level radioactive waste disposal.** "High-level radioactive waste disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel or other highly radioactive material with no foreseeable intent of recovery, whether or not that emplacement permits the recovery of that waste.

[1983, c. 381, §9 (NEW) .]

8. **High-level radioactive waste repository or repository.** "High-level radioactive waste repository" or "repository" means any system licensed by the United States Nuclear Regulatory Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not the system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in the system. This term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

[1983, c. 381, §9 (NEW) .]

9. **High-level radioactive waste storage.** "High-level radioactive waste storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover that waste or fuel for subsequent use, processing or disposal.

[1983, c. 381, §9 (NEW) .]

10. **License.** "License" means a federal or state license, issued to a named person upon application to use, manufacture, produce, transfer, receive, acquire or possess quantities of, or devices or equipment utilizing, radioactive material.

[1983, c. 381, §9 (NEW) .]

11. **Low-level radioactive waste.** "Low-level radioactive waste" means radioactive material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste or by-product material, as defined in the United States Code, Title 42, Section 2014(e)(2), the Atomic Energy Act of 1954, Section 11(e)(2); and that the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste. Low-level radioactive waste also includes any radioactive material that is generated through the production of nuclear power and 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.

A. "Low-level radioactive waste" does not include radioactive material remaining at the site of a decommissioned nuclear power plant if the following enhanced state standards are met, as determined by the department:

(1) The site has been determined by the United States Nuclear Regulatory Commission to meet the criteria for release under 10 Code of Federal Regulations, Part 20 pursuant to a license termination plan approved by that commission;

(2) The site is not used for the disposal of radioactive material generated by a facility other than the nuclear power plant;

(3) The residual radioactivity distinguishable from background radiation results in a total effective dose equivalent to an average member of the critical group of not more than 10 millirems, or 0.10 millisievert, per year, including that from groundwater sources of drinking water;

(4) The residual radioactivity distinguishable from background radiation in groundwater sources of drinking water results in a total effective dose equivalent of not more than 4 millirems, or 0.04 millisievert, per year to the average member of the critical group; and

(5) Any construction demolition debris, including concrete, disposed of at the site qualifies for unrestricted use within the limits specified in Table 1 in the 1974 United States Atomic Energy Commission Regulatory Guide 1.86. Below-grade, intact structures, including, but not limited to, slabs, walls and foundations, are not considered construction demolition debris for purposes of this subparagraph but are subject to the provisions of subparagraphs (1) to (4).

A nuclear facility owner shall demonstrate compliance with subparagraphs (1) to (4) using actual measurements and the analytic methodology approved by the United States Nuclear Regulatory Commission and supplemented by modeling the effects of engineering controls that have been designed to reduce exposure.

In order to determine compliance with subparagraphs (1) to (4), the department may require appropriate testing and analysis, including, but not limited to, analysis of the effectiveness and integrity of engineering controls. [1999, c. 741, §1 (NEW).]

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

(1) "Average member of the critical group" means a member of the critical group who is subjected to the most likely exposure situation based on prudently conservative exposure assumptions and parameter values within the model calculations.

(2) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(3) "Nuclear facility owner" means the owner of a nuclear power plant or decommissioned nuclear power plant in the State.

(4) "Total effective dose equivalent" has the same meaning as in 10 Code of Federal Regulations, Section 20.1003, as in effect on January 1, 2000. [1999, c. 741, §1 (NEW).]

[1999, c. 741, §1 (AMD) .]

12. **Low-level radioactive waste disposal facility.** "Low-level radioactive waste disposal facility" means a facility for the isolation of low-level radioactive waste from the biosphere inhabited by people and their food chains.

[1983, c. 381, §9 (NEW) .]

13. **Low-level radioactive waste generator.** "Low-level radioactive waste generator" means a person who produces or processes low-level radioactive waste, whether or not that waste is shipped off site.

[1983, c. 381, §9 (NEW) .]

14. **Low-level radioactive waste licensee or low-level waste licensee.** "Low-level radioactive waste licensee" or "low-level waste licensee" means any person licensed by the State or Federal Government to generate, treat, store or dispose of low-level radioactive waste.

[1983, c. 381, §9 (NEW) .]

15. **Low-level radioactive waste storage facility.** "Low-level radioactive waste storage facility" means any facility for storage of low-level radioactive waste, except for temporary on-site storage prior to disposal.

[1983, c. 381, §9 (NEW) .]

16. **Radioactive material.** "Radioactive material" means any material which emits ionizing radiation spontaneously. It includes accelerator-produced, by-product, naturally occurring, source and special nuclear materials.

[1983, c. 381, §9 (NEW) .]

17. **Site characterization, for high-level radioactive waste.** "Site characterization," for high-level radioactive waste, means:

A. Siting research facilities with respect to a test and evaluation facility at a candidate site; and [1983, c. 381, §9 (NEW).]

B. Activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken. [1989, c. 502, Pt. B, §52 (AMD).]

[1989, c. 502, Pt. B, §52 (AMD) .]

18. **Source material.** "Source material" means:

A. Uranium or thorium, or any combination thereof, in any physical or chemical form; or [1983, c. 381, §9 (NEW).]

B. Ores which contain by weight 1/20th of 1%, 0.05% or more of uranium, thorium or any combination thereof. Source material does not include special nuclear material. [1983, c. 381, §9 (NEW).]

[1983, c. 381, §9 (NEW) .]

19. **Source material mill tailings.** "Source material mill tailings" means the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface waste resulting from underground solution extraction processes, but not including underground ore bodies depleted by those solution extraction processes.

[1983, c. 381, §9 (NEW) .]

20. **Special nuclear material.** "Special nuclear material" means:

A. Plutonium, uranium 233 and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material; or [1983, c. 381, §9 (NEW).]

B. Any material artificially enriched by any of the material listed in paragraph A, but does not include source material. [1983, c. 381, §9 (NEW).]

[1983, c. 381, §9 (NEW) .]

21. **Spent nuclear fuel.** "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

[1983, c. 381, §9 (NEW) .]

22. **Transuranic waste.** "Transuranic waste" means radioactive waste containing alpha-emitting transuranic elements with radioactive half-lives greater than 5 years, in excess of 10 nanocuries per gram.

[1983, c. 381, §9 (NEW) .]

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 309, §5 (AMD). 1985, c. 737, §A114 (AMD). 1989, c. 461, §1 (AMD). 1989, c. 502, §B52 (AMD). 1993, c. 664, §13 (AMD). 1999, c. 741, §1 (AMD). 2011, c. 691, Pt. C, §7 (AMD).

§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. [1985, c. 802, §5 (AMD).]

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 802, §5 (AMD).

§1453. ADVISORY COMMISSION ON RADIOACTIVE WASTE

(REPEALED)

SECTION HISTORY
1985, c. 309, §6 (NEW). 1985, c. 501, §B22 (AMD). 1985, c. 522, §1 (AMD). 1985, c. 525, (AMD). 1985, c. 737, §A115 (AMD). 1993, c. 92, §17 (AMD). 1993, c. 664, §14 (RP).

§1453-A. ADVISORY COMMISSION ON RADIOACTIVE WASTE AND DECOMMISSIONING

(REPEALED)

SECTION HISTORY
1993, c. 664, §15 (NEW). 1993, c. 664, §21 (AFF). 1995, c. 333, §§3,4 (AMD). 1995, c. 488, §5 (AMD). 1995, c. 642, §§13,14 (AMD). 1997, c. 700, §§2-8 (AMD). 1999, c. 366, §2 (AMD). 1999, c. 585, §§2,3 (AMD). 2003, c. 689, §§B6,7 (REV). MRSA T. 38, §1453-A, sub-7 (RP).

§1454. RADIOACTIVE WASTE EVALUATION FUND

(REPEALED)

SECTION HISTORY
1985, c. 309, §6 (NEW). 1985, c. 522, §§2,3 (AMD). 1987, c. 530, §3 (RPR). 1989, c. 890, §§A40,B270 (AMD). 1993, c. 664, §16 (RP).

§1454-A. RADIOACTIVE WASTE ADVISORY COMMISSION FUND

(REPEALED)

SECTION HISTORY
1993, c. 664, §17 (NEW). 1995, c. 333, §5 (AMD). 1995, c. 502, §E32 (AMD). 1999, c. 556, §39 (AMD). 2003, c. 689, §§B6,7 (REV). 2007, c. 619, §8 (RP).

§1455. NUCLEAR FACILITY DECOMMISSIONING CLEANUP

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

A. "Average member of the critical group" means a member of the critical group who is subjected to the most likely exposure situation based on prudently conservative exposure assumptions and parameter values within the model calculations. [1999, c. 739, §3 (NEW).]

B. "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances. [1999, c. 739, §3 (NEW).]

C. "Nuclear facility owner" means the owner of a nuclear power plant or decommissioned nuclear power plant in the State. [1999, c. 739, §3 (NEW).]

D. "Total effective dose equivalent" has the same meaning as in 10 Code of Federal Regulations, Section 20.1003, as in effect on January 1, 2000. [1999, c. 739, §3 (NEW).]

[1999, c. 739, §3 (NEW) .]

2. **Radiation dose standard.** The site at which the decommissioning of a nuclear power plant has been completed must meet the following standards, as determined by the department:

A. The residual radioactivity distinguishable from background radiation results in a total effective dose equivalent to an average member of the critical group of not more than 10 millirems, or 0.10 millisievert, per year, including that from groundwater sources of drinking water; and [1999, c. 739, §3 (NEW).]

B. The residual radioactivity distinguishable from background radiation in groundwater sources of drinking water results in a total effective dose equivalent of not more than 4 millirems, or 0.04 millisievert, per year to the average member of the critical group. [1999, c. 739, §3 (NEW).]

A nuclear facility owner shall demonstrate compliance with this subsection using actual measurements and the analytic methodology approved by the United States Nuclear Regulatory Commission and supplemented by modeling the effects of engineering controls that have been designed to reduce exposure.

In order to determine compliance with this subsection, the department may require appropriate testing and analysis, including, but not limited to, analysis of the effectiveness and integrity of engineering controls.

[1999, c. 739, §3 (NEW) .]

3. **Cumulative risk assessment.** The department shall evaluate the cumulative risk posed by radiological and chemical contaminants that will remain at the site at which the decommissioning of a nuclear power plant is occurring or has been completed. In undertaking its evaluation, the department shall consider any proposed institutional and engineering controls.

[1999, c. 739, §3 (NEW) .]

4. **Compliance with applicable law; assessment of compliance.** A nuclear facility owner must obtain and be in compliance with all licenses, permits and approvals required under this Title, including, but not limited to, those required under chapter 3, article 6 and chapter 13 for the site at which the decommissioning of a nuclear power plant is occurring or has been completed. In addition to its existing authority to require monitoring wells and other measures for nonradiological environmental issues under chapters 3, 13, 13-B and other applicable laws, the department may require radiological monitoring, use of monitoring wells, use of liners, soil sampling and other measures at the site to allow the department to assess and ensure compliance with applicable requirements of this Title, including, but not limited to, subsection 2, and the terms of any licenses and permits issued pursuant to this Title with respect to the site.

[1999, c. 739, §3 (NEW) .]

5. **Provision of information.** As part of any permit application by a nuclear facility owner or site investigation by the department pursuant to this Title, the nuclear facility owner shall provide to the department information necessary for the department to establish compliance with the provisions of this section or other applicable laws.

[1999, c. 739, §3 (NEW) .]

SECTION HISTORY
1999, c. 739, §3 (NEW).

Subchapter 2: HIGH-LEVEL RADIOACTIVE WASTE

§1461. INTENT

(REPEALED)

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 802, §6 (RP).

§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; [1985, c. 802, §7 (NEW).]

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 [1985, c. 802, §7 (NEW).]

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. [1985, c. 802, §7 (NEW).]

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.

[1985, c. 802, §7 (NEW) .]

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.

[1985, c. 802, §7 (NEW) .]

SECTION HISTORY
1985, c. 802, §7 (NEW).

§1462. LIMITATION

(REPEALED)

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 802, §8 (RP).

§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 these studies to the Legislature for approval, including any federal 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.

[1985, c. 802, §9 (AMD) .]

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.

[1985, c. 802, §9 (AMD) .]

3. **Public hearings.** No plan for area studies may be approved unless it contains provision for public hearings in the State within 12 months after commencement of the studies to receive comments on:

A. The technical feasibility of the proposed waste management technology; [1983, c. 381, §9 (NEW).]

B. The environmental impact of a waste repository in the area of study; [1983, c. 381, §9 (NEW).]

C. The social impact of a waste repository in the area of study; [1983, c. 381, §9 (NEW).]

D. The economic impact of a waste repository in the area of study; [1983, c. 381, §9 (NEW).]

E. Whether the proposed facility will be subject to section 413, waste discharge licenses; section 483, site location of development; section 590, air emission licensing; section 1304, licenses for waste facilities; and any other laws administered by the department or the Maine Land Use Planning Commission that may be applicable; [1985, c. 802, §9 (AMD); 2011, c. 682, §38 (REV).]

F. Conformance of the plan with the federal guidelines cited in subsection 2; [1985, c. 802, §9 (AMD).]

G. A reasonable comparative evaluation of the suitability of sites in the study area compared with sites in other areas; and [1985, c. 802, §9 (AMD).]

H. Such other matters as the commissioner deems appropriate. [1985, c. 802, §9 (NEW).]

[1985, c. 802, §9 (AMD); 2011, c. 682, §38 (REV) .]

4. **Approval of plan required.** Except for oversight monitoring and public information activities, no agent of the State may participate in area studies unless the Legislature has approved a plan for these studies.

No person may conduct borings or excavations relating to area studies, unless the Legislature has approved a plan for the studies, including those borings or excavations.

[1985, c. 802, §9 (AMD) .]

5. **Reports.** The commissioner shall keep the Governor and the Legislature fully and currently informed about the conduct of any area studies and, within 90 days of completion of those studies, shall review the findings and report them, together with the commissioner's comments to the Governor and the Legislature.

[1985, c. 802, §9 (AMD) .]

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 802, §9 (AMD). 2011, c. 682, §38 (REV).

§1464. SITE CHARACTERIZATION AND SELECTION

1. **Limitation.** Except for oversight, monitoring and public information activities, no agent of the State may participate in site characterization or selection studies, until the Legislature finds that all of the matters in section 1463, subsection 3, have been adequately addressed and has approved a plan for the studies and the Federal Government agrees that the site characterization or selection process includes:

A. Compliance with the United States National Environmental Policy Act of 1969, Public Law 91-190, including preparation of a specific environmental impact statement; and [1983, c. 381, §9 (NEW).]

B. Compliance with all applicable state and local laws. [1983, c. 381, §9 (NEW).]

[1985, c. 802, §9 (AMD) .]

2. **Legislative findings.**

[1985, c. 802, §9 (RP) .]

2-A. **Limitations on excavation activities.** No person may excavate any exploratory shaft for site characterization, selection or construction, unless the Legislature has approved that activity.

[1985, c. 802, §9 (NEW) .]

3. **Reports.** The commissioner shall keep the Governor and the Legislature fully and currently informed about the conduct of any site characterization and, within 90 days of completion of that effort, shall review the findings and report them, together with the commissioner's comments to the Governor and the Legislature.

[1985, c. 802, §9 (AMD) .]

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 802, §9 (AMD).

§1465. NOTICE OF DISAPPROVAL

(REPEALED)

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 802, §10 (RP).

§1466. OTHER FACILITIES

Except for on-site storage of spent fuel from a nuclear power plant, any facility for storage or processing of high-level radioactive waste which is not a repository covered by section 1461, subsection 1, is subject to the requirements in this section. Except for storage in existing licensed capacity, on-site storage of spent fuel from a nuclear power plant shall be subject to subsections 1 and 2. [1985, c. 802, §11 (AMD).]

1. **Notification.** Any person planning to construct a facility covered by this section shall notify the commissioner. The board shall, by rule, specify the form, content and timing of that notice.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §271 (AMD) .]

2. **Commissioner review.** Upon receipt of notice under subsection 1, the commissioner shall review the proposed facility as closely as possible in accordance with section 1463 and report its findings and recommendations within 90 days to the Governor and the Legislature.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §271 (AMD) .]

3. **Legislative approval of facilities required.** No high-level radioactive waste disposal or storage facility covered by this section may be constructed or operated in the State, unless the Legislature has expressly approved the construction or operation of that facility. This approval does not replace any other license or permit that may be required by law or rule.

[1983, c. 381, §9 (NEW) .]

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 802, §11 (AMD). 1989, c. 890, §§A40,B271 (AMD).

Subchapter 3: LOW-LEVEL RADIOACTIVE WASTE

§1471. PURPOSE

In accordance with the United States Low-level Radioactive Waste Policy Act of 1980, Public Law 96-573, as amended by the United States Low-level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240, the State accepts its responsibility for providing for the capacity for the disposal of low-level radioactive waste generated within this State that consists of or contains Class A, B or C radioactive waste, as defined by the Code of 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. [1985, c. 705, §1 (AMD).]

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 705, §1 (AMD).

§1472. REPORTING

Each low-level radioactive waste generator shall annually report, by March 31st, the volume, radioactivity and other physical and chemical characteristics of low-level waste generated and of low-level waste shipped to commercial disposal facilities, and the volume, radioactivity and other pertinent characteristics of low-level radioactive waste stored on-site. This report shall be submitted to the commissioner and to the Commissioner of Health and Human Services, and shall include information on the specific radioactive materials handled. [1985, c. 705, §2 (AMD); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY
1983, c. 381, §9 (NEW). 1985, c. 705, §2 (AMD). 2003, c. 689, §B7 (REV).

§1473. GEOLOGICAL CHARACTERIZATION

The State Geologist shall advise the Governor and the Legislature on the suitability of areas of the State for low-level waste disposal. In determining suitability, the State Geologist shall consider final rules for facility siting under 10 Code of Federal Regulations, Part 61, and other rules, as appropriate. [1983, c. 381, §9 (NEW).]

SECTION HISTORY
1983, c. 381, §9 (NEW).

§1474. REGIONAL COMPACTS

1. **Negotiation.** The Governor may negotiate on behalf of the State compacts or other agreements, with other states and the Federal Government with respect to the siting, licensing, operation and use of low-level radioactive waste disposal facilities.

[1985, c. 705, §3 (NEW) .]

2. **Ratification.** Except for an agreement with the Southeast Compact Commission for acceptance through June 30, 1994 of low-level radioactive waste generated by and on the premises of any facility of the United States Navy in Kittery, Maine, any compact or agreement with any other state or states or the Federal Government for low-level waste disposal must be ratified by legislative act and, in accordance with subchapter IV, by the voters of the State.

[1993, c. 541, §1 (AMD) .]

SECTION HISTORY
1983, c. 381, §9 (NEW). 1983, c. 500, §1 (RAL). 1983, c. 862, §91 (RPR). 1985, c. 705, §3 (RPR). 1993, c. 541, §1 (AMD).

§1476. LOW-LEVEL WASTE SITING COMMISSION

(REPEALED)

SECTION HISTORY
1981, c. 439, §9 (NEW). 1983, c. 88, §2 (AMD). 1983, c. 381, §5 (RAL). 1983, c. 812, §§296,297 (AMD). 1985, c. 309, §7 (RP).

§1477. LOW-LEVEL WASTE SITING FUND

(REPEALED)

SECTION HISTORY
1981, c. 439, §9 (NEW). 1983, c. 88, §§3,4 (AMD). 1983, c. 381, §6 (RAL). 1985, c. 309, §8 (RP).

§1478. DEPARTMENTAL REVIEW OF LOW-LEVEL RADIOACTIVE WASTE FACILITIES

(REPEALED)

SECTION HISTORY
1983, c. 500, §5 (NEW). 1987, c. 233, (AMD). 1987, c. 787, §20 (AMD). 1989, c. 890, §§A40,B272, 273 (AMD). 1993, c. 383, §§39,40 (AMD). 1995, c. 642, §15 (RP).

§1478-A. HEARINGS; ORDERS; CONSTRUCTION SUSPENDED

(REPEALED)

SECTION HISTORY
1993, c. 383, §41 (NEW). 1995, c. 642, §16 (RP).

§1479. LEGISLATIVE APPROVAL OF FACILITIES REQUIRED

A low-level radioactive waste disposal or storage facility may not be established in the State, unless the Legislature has, by Private and Special Act, approved the establishment of that facility. The Legislature shall act expeditiously after a decision by the United States Nuclear Regulatory Commission to approve a facility, but may not act until after the conclusion of any judicial review of the decision and any resulting administrative proceedings. [1995, c. 642, §17 (AMD).]

Approval under this section does not replace any other license required by law and is in addition to the voter approval required by section 1493. [1995, c. 642, §17 (AMD).]

SECTION HISTORY
1983, c. 500, §5 (NEW). 1983, c. 583, §25 (AMD). 1985, c. 705, §4 (AMD). 1995, c. 642, §17 (AMD).

§1480. APPLICABILITY OF REGULATIONS

(REPEALED)

SECTION HISTORY
1983, c. 500, §5 (NEW). 1995, c. 642, §18 (RP).

§1480-A. JOINT HEARINGS; INTERVENTION

The Department of Health and Human Services or the Governor's Energy Office may intervene in any federal licensing proceeding to carry out the purpose of this chapter. [2011, c. 655, Pt. MM, §23 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

SECTION HISTORY
1983, c. 500, §5 (NEW). 1995, c. 642, §19 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 655, Pt. MM, §23 (AMD). 2011, c. 655, Pt. MM, §26 (AFF).

Subchapter 3-A: LOW-LEVEL RADIOACTIVE WASTE DISPOSAL HEADING: PL 1987, C. 402, PT. A, §206 (NEW)

§1481. STATE LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY

(REPEALED)

SECTION HISTORY
1985, c. 705, §5 (NEW). 1993, c. 664, §18 (RP).

§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.

[1985, c. 705, §5 (NEW) .]

1-A. **State ownership; exception.** Notwithstanding subsection 1, if a low-level radioactive waste disposal facility is developed at the site of a decommissioned nuclear power plant in the course of or as a result of the decommissioning process, the State is not required to own the facility.

[1999, c. 739, §4 (NEW) .]

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.

[1985, c. 705, §5 (NEW) .]

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.

[1985, c. 705, §5 (NEW) .]

4. **Licensing.** A low-level radioactive waste disposal facility developed in the State must be licensed by the United States Nuclear Regulatory Commission. The facility must be approved by the Legislature in accordance with section 1479 and approved by the voters in accordance with section 1493.

[1995, c. 642, §20 (AMD) .]

5. Facility near existing nuclear power plant.

[1999, c. 174, §5 (RP) .]

SECTION HISTORY
1985, c. 705, §5 (NEW). 1991, c. 174, (AMD). 1995, c. 642, §20 (AMD). 1999, c. 174, §5 (AMD). 1999, c. 739, §4 (AMD).

§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. [1989, c. 461, §2 (NEW).]

SECTION HISTORY
1989, c. 461, §2 (NEW).

Subchapter 4: WASTE DISPOSAL

§1491. TITLE

This subchapter shall be known and may be cited as "An Act to Require Voter Approval of the Disposal of Low-level Radioactive Waste." [1985, c. 1, (NEW).]

SECTION HISTORY
IB 1985, c. 1, (NEW).

§1492. PURPOSE

The purpose of this Act is to require approval by the voters of Maine as a precondition for the construction or operation within the State of Maine of any low-level radioactive waste disposal or storage facility and to require approval by the voters of Maine as a precondition for the participation by the State of Maine in any compact or agreement with any other state or states or the Federal Government concerning low-level radioactive waste disposal or storage. [1985, c. 1, (NEW).]

SECTION HISTORY
IB 1985, c. 1, (NEW).

§1493. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL REFERENDUM

A low-level radioactive waste disposal or storage facility may not be constructed or operated in the State unless the construction or operation is approved by a majority of the voters voting on the construction or operation in a statewide election. The election must be held in the manner prescribed by law for holding a statewide election and in accordance with the procedures set forth in Title 35-A, section 4302. The voters must be asked to vote on the acceptance or rejection of construction or operation by voting on the following question:

> "Do you approve (insert construction or operation) of a low-level radioactive waste (insert disposal or storage) facility as proposed for (insert location)?"

[1995, c. 642, §21 (AMD).]

This question must be submitted to the legal voters of the State at the next following statewide election after a decision by the United States Nuclear Regulatory Commission to approve a low-level radioactive waste facility. The construction or operation of the facility may not commence prior to the election. [1995, c. 642, §21 (AMD).]

SECTION HISTORY
IB 1985, c. 1, (NEW). 1987, c. 769, §B9 (AMD). 1995, c. 642, §21 (AMD).

§1494. LOW-LEVEL RADIOACTIVE WASTE COMPACT REFERENDUM

The State of Maine may not enter into any compact or agreement with any other state or states or with the Federal Government concerning the disposal or storage of low-level radioactive waste either within or without the State unless the compact or agreement has been approved by a majority of the voters voting on the compact or agreement in a statewide election. The election must be held in the manner prescribed by law for holding a statewide election and in accordance with the procedures under Title 35-A, section 4302. The voters shall vote on the acceptance or rejection of the compact or agreement by voting on the following question:

> "Do you approve of the (insert compact or agreement) to be made with (insert name of state or states or "the Federal Government") for the (insert disposal or storage) of the State's low-level radioactive waste at a proposed facility in (insert name of state or other location)?"

[1993, c. 400, §1 (AMD).]

This question must be submitted to the legal voters of the State at the next following statewide election after any such compact or agreement is recommended by the Governor pursuant to section 1474 or any other provision of law. [1993, c. 400, §1 (AMD).]

SECTION HISTORY
IB 1985, c. 1, (NEW). 1987, c. 769, §B10 (AMD). 1993, c. 400, §1 (AMD).

§1495. LIMITING PROVISIONS

The provisions of this Act shall not apply: [1985, c. 1, (NEW).]

1. **Power plant waste facilities having all licenses, permits, approvals, etc., for construction and operation.** To any nuclear power plant or facility for the disposal or storage of low-level radioactive wastes if, prior to May 1, 1984, such power plant or waste facility has obtained all federal, state and local licenses, permits, certificates, variances and other approvals necessary for the construction and operation thereof; or

[1985, c. 1, (NEW) .]

2. **Facilities used to store or dispose of wastes generated through medical or bioresearch applications.** To any facility solely for the disposal or storage of low-level radioactive wastes generated within the State of Maine through medical or bioresearch applications.

[1985, c. 1, (NEW) .]

SECTION HISTORY
IB 1985, c. 1, (NEW).

§1496. NULLIFYING PREVIOUS COMPACTS OR AGREEMENTS

Any compact, agreement or contract into which the State of Maine has entered with any individual, corporation or partnership or with any other state or states or the Federal Government between May 1, 1984, and the effective date of this Act concerning the disposal or storage of low-level radioactive wastes shall be null and void. [1985, c. 1, (NEW).]

SECTION HISTORY
IB 1985, c. 1, (NEW).

§1497. APPLICABILITY OF REGULATIONS

Nothing in this Act may be construed to exempt any proposed nuclear power plant, any facility for the disposal or storage of low-level radioactive waste or any compact or agreement or contract subject to the provisions of this Act from meeting any licensing, permit, certification, variance or other approval requirement of the State of Maine or political subdivisions thereof. [1985, c. 1, (NEW).]

SECTION HISTORY
IB 1985, c. 1, (NEW).

Chapter 14-B: MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1993, C. 664, §19 (RP)

§1501. SHORT TITLE

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1502. LEGISLATIVE FINDINGS AND PURPOSE

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §1 (AMD). 1993, c. 664, §19 (RP).

§1503. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 461, §3 (AMD). 1989, c. 480, §2 (AMD).
1991, c. 762, §1 (AMD). 1993, c. 664, §19 (RP).

§1504. ESSENTIAL GOVERNMENTAL FUNCTION

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1505. EXEMPTION FROM TAXES; PAYMENT IN LIEU OF TAXES

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1506. FISCAL YEAR

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

Subchapter 2: ORGANIZATION HEADING: PL 1993, C. 664, §19 (RP)

§1511. AUTHORITY ESTABLISHED

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1512. MEMBERSHIP; QUALIFICATIONS; TERMS; AND COMPENSATION

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1513. MEETINGS; QUORUM

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1514. EXECUTIVE DIRECTOR

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1515. STAFF EMPLOYEES; CONFLICT OF INTEREST; PERSONAL LIABILITY

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1516. SUNSET

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §§3,4 (AMD). RR 1993, c. 1, §132 (COR). 1993, c. 664, §19 (RP).

Subchapter 2-A: LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT HEADING: PL 1993, C. 664, §19 (RP)

§1517. POLICY AND FINDINGS

(REPEALED)

SECTION HISTORY
1993, c. 400, §2 (NEW). 1993, c. 664, §19 (RP).

§1518. MEMBER OF COMMISSION

(REPEALED)

SECTION HISTORY
1993, c. 400, §2 (NEW). 1993, c. 664, §19 (RP).

§1519. TERM OF COMMISSION MEMBER

(REPEALED)

SECTION HISTORY
1993, c. 400, §2 (NEW). 1993, c. 664, §19 (RP).

§1520. COMPENSATION OF COMMISSION MEMBER

(REPEALED)

SECTION HISTORY
1993, c. 400, §2 (NEW). 1993, c. 664, §19 (RP).

§1520-A. ASSESSMENT FOR COMPACT COSTS

(REPEALED)

SECTION HISTORY
1993, c. 400, §2 (NEW). 1993, c. 664, §19 (RP).

§1520-B. UNSPENT BALANCES

(REPEALED)

SECTION HISTORY
1993, c. 400, §2 (NEW). 1993, c. 664, §19 (RP).

§1520-C. NONDISCRIMINATION IN ACCESS

(REPEALED)

SECTION HISTORY
1993, c. 400, §2 (NEW). 1993, c. 664, §19 (RP).

Subchapter 3: POWERS AND PROPERTY HEADING: PL 1993, C. 664, §19 (RP)

§1521. POWERS

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §5 (AMD). 1993, c. 664, §19 (RP).

§1522. PROPERTY

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1523. CONTRACTORS; CONTRACTS

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §7 (AMD). 1993, c. 664, §19 (RP).

§1524. PENALTIES

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §8 (AMD). 1993, c. 664, §19 (RP).

Subchapter 4: DUTIES AND RESPONSIBILITIES
HEADING: PL 1993, C. 664, §19 (RP)

§1525. LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT PLAN
(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1987, c. 544, (AMD). 1989, c. 480, §9 (AMD). 1993, c. 664, §19 (RP).

§1526. OPERATING PLAN AND BUDGET; ANNUAL REPORT
(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1527. PLANNING, SITING AND CONSTRUCTION OF FACILITIES
(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §10 (AMD). 1991, c. 287, (AMD). 1991, c. 879, §2 (AMD). 1993, c. 664, §19 (RP).

§1527-A. CITIZENS' ADVISORY GROUP
(REPEALED)

SECTION HISTORY
RR 1991, c. 2, §148 (COR). 1991, c. 879, §3 (NEW). 1993, c. 226, §§B2-4 (AMD). 1993, c. 664, §19 (RP).

§1528. RECORDS
(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §11 (AMD). 1993, c. 664, §19 (RP).

§1529. PAYMENTS TO THE ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE BOARD
(REPEALED)

SECTION HISTORY
1989, c. 589, §1 (NEW). 1993, c. 664, §19 (RP).

§1530. VOLUME AND CURIE CONTENT REDUCTION
(REPEALED)

SECTION HISTORY
1991, c. 122, (NEW). 1993, c. 664, §19 (RP).

Subchapter 5: FINANCIAL MATTERS HEADING: PL 1993, C. 664, §19 (RP)

§1531. FEES AND OTHER CHARGES

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §12 (AMD). 1993, c. 664, §19 (RP).

§1532. OBLIGATIONS OF THE AUTHORITY; USE OF REVENUE

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1533. GRANTS

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1534. LOW-LEVEL RADIOACTIVE WASTE FACILITY FUND

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §13 (AMD). 1993, c. 664, §19 (RP).

§1534-A. ADMINISTRATIVE COSTS

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 234, (AMD). 1989, c. 480, §14 (AMD). 1993, c. 664, §19 (RP).

§1535. PLANNING, SITING AND CONSTRUCTION COSTS; ADMINISTRATIVE COSTS; LIMIT ON ASSESSMENT

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1987, c. 769, §A183 (AMD). 1989, c. 480, §15 (AMD). 1991, c. 879, §4 (AMD). 1993, c. 664, §19 (RP).

§1536. OPERATION, MAINTENANCE, CLOSURE AND POST-CLOSURE COSTS

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §16 (AMD). 1991, c. 879, §§5,6 (AMD). 1993, c. 664, §19 (RP).

§1537. IMPACT AND INCENTIVE PAYMENTS; PROPERTY VALUE OFFSET

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1991, c. 879, §7 (RPR). 1993, c. 664, §19 (RP).

§1538. ANNUAL FINANCIAL REPORT; AUDIT

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1539. BUDGET AND FISCAL MANAGEMENT

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1993, c. 664, §19 (RP).

§1540. LIABILITY

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §17 (AMD). 1991, c. 762, §§2-5 (AMD). 1993, c. 664, §19 (RP).

§1540-A. LIABILITY SCHEME

(REPEALED)

SECTION HISTORY
1991, c. 762, §6 (NEW). 1993, c. 664, §19 (RP).

Subchapter 6: RESPONSIBILITIES OF GENERATORS

§1541. DELIVERY OF LOW-LEVEL RADIOACTIVE WASTE REQUIRED

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1989, c. 480, §18 (AMD). 1993, c. 664, §19 (RP).

§1542. SUPPLEMENTAL FEE

(REPEALED)

SECTION HISTORY
1987, c. 530, §4 (NEW). 1991, c. 762, §7 (AMD). RR 1993, c. 1, §133 (COR). 1993, c. 664, §19 (RP).

Chapter 14-C: LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

§1545. ASSESSMENT FOR COMPACT COSTS

(REPEALED)

SECTION HISTORY
1993, c. 664, §20 (NEW). 2001, c. 629, §2 (RP).

§1546. POLICY AND FINDINGS

(REPEALED)

SECTION HISTORY
1995, c. 333, §6 (NEW). 2001, c. 629, §2 (RP).

§1547. MEMBER OF COMMISSION

(REPEALED)

SECTION HISTORY
1995, c. 333, §6 (NEW). 2001, c. 629, §2 (RP).

§1548. TERM OF COMMISSION MEMBER

(REPEALED)

SECTION HISTORY
1995, c. 333, §6 (NEW). 2001, c. 629, §2 (RP).

§1549. COMPENSATION OF COMMISSION MEMBER

(REPEALED)

SECTION HISTORY
1995, c. 333, §6 (NEW). 2001, c. 629, §2 (RP).

§1550. NONDISCRIMINATION IN ACCESS

(REPEALED)

SECTION HISTORY
1995, c. 333, §6 (NEW). 2001, c. 629, §2 (RP).

Chapter 15: REGIONAL REFUSE DISPOSAL DISTRICT ENABLING ACT

§1551. SHORT TITLE

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1552. POLICY

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1553. PURPOSE

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1554. EXEMPTION FROM TAXATION

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1555. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1556. REFUSE DISPOSAL DISTRICT FORMATION

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1557. VOTE ON ESTABLISHING DISTRICT

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1558. CORPORATE BODY; POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1975, c. 325, §§5,6 (AMD). 1983, c. 820, §1 (RP).

§1559. DIRECTORS

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1560. APPORTIONMENT OF EXPENSES

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1561. AUDIT OF ACCOUNTS

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1562. REFUSE DISPOSAL PLAN

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1563. PLAN REVISION

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1564. ADMISSION OF NEW MEMBERS

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1565. WITHDRAWAL OF MEMBERSHIP

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

§1566. DISSOLUTION

(REPEALED)

SECTION HISTORY
1973, c. 371, (NEW). 1983, c. 820, §1 (RP).

Chapter 16: SALE OF CONSUMER PRODUCTS AFFECTING THE ENVIRONMENT

§1601. AEROSOL SPRAY

After January 1, 1979, no person shall sell or offer to sell in this State any aerosol spray which contains a propellant trichloromonofluoromethane, difluorodichloromethane or any other saturated chlorofluorocarbon compound not containing hydrogen; provided that nothing in this Act shall prohibit the sale or use of any aerosol spray containing such a propellant if the product contains one or more drugs as defined by section 201(g)(1) of the Federal Food, Drug and Cosmetic Act and which aerosol spray is to be used for a generally recognized medical purpose, or is classified as an essential use exemption in 40 Code of Federal Regulations, subchapter R, section 762.21, paragraphs (a) to (g), 43 Federal Register, 11324, March 17, 1978, 43 Federal Register, 59500, December 21, 1978. [1979, c. 153, (AMD).]

1. **Violation.** Violation of this section is a Class E crime.

[1977, c. 202, (NEW) .]

SECTION HISTORY
1977, c. 202, (NEW). 1979, c. 153, (AMD).

§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. [1981, c. 249, (NEW).]

SECTION HISTORY
1981, c. 249, (NEW).

§1603. FOAM PRODUCTS

1. **Prohibition on extruded polystyrene foam sheets.** After January 1, 1989, no person may sell or offer to sell in this State any product composed in whole or in part of thermoformed extruded polystyrene foam sheets if the foam is manufactured using any fully halogenated chlorofluorocarbon found by the United States Environmental Protection Agency to be an ozone-depleting chemical.

[1987, c. 752, §3 (NEW) .]

2. **Prohibition on foam board.** No person may sell or offer to sell in this State any product composed in whole or in part of foam board if:

A. The foam is manufactured using any fully halogenated chlorofluorocarbons found by the United States Environmental Protection Agency to be an ozone-depleting chemical; and [1987, c. 752, §3 (NEW).]

B. A substitute for fully halogenated chlorofluorocarbon blowing agents is available and found to meet public health and safety standards by all applicable federal and state agencies. [1987, c. 752, §3 (NEW).]

[1989, c. 39, (AMD) .]

3. **Compliance.** Compliance with this section shall be as follows.

A. All distributors engaged in the sale or distribution in the State of products covered under subsection 1 shall certify to the commissioner their compliance with subsection 1. [1989, c. 39, (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §274 (AMD).]

B. All distributors engaged in the sale or distribution in the State of products covered under subsection 2 shall certify to the commissioner by July 1, 1990, their compliance or scheduled compliance with subsection 2. [1989, c. 39, (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §274 (AMD).]

[1989, c. 39, (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §274 (AMD) .]

SECTION HISTORY
1987, c. 752, §3 (NEW). 1989, c. 39, (AMD). 1989, c. 890, §§A40,B274 (AMD).

§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. [1989, c. 583, (NEW); 1989, c. 585, Pt. E, §35 (NEW); 1989, c. 878, Pt. A, §116 (RPR).]

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.

[1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

2. **Lead-acid battery retailers.** A person selling or offering for retail sale lead-acid batteries shall:

A. Accept, at the point of transfer, used lead-acid batteries in reasonably clean and unbroken condition from customers in a quantity at least equal to the number of new batteries purchased; [1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR).]

B. If a used lead-acid battery is not exchanged at the time of sale, collect a $10 deposit on the new battery.

(1) The deposit shall be returned to the customer when the customer delivers a used lead-acid battery within 30 days of the date of sale.

(2) All funds received by a dealer as a deposit on a lead-acid battery shall be held in trust and separately accounted for by the retailer. Any interest on those funds shall inure to the benefit of the retailer. Annually on July 1st, all deposits not returned to customers in exchange for lead-acid batteries during the previous year ending June 30th shall inure to the benefit of the retailer; and [1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR).]

C. Post an 8 1/2" x 11" written notice that includes the display of the universal recycling symbol and the following language.

(1) "State law requires us to accept motor vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

(2) "A deposit of $10 will be charged for each new lead-acid battery that is not exchanged with an old lead-acid battery."

(3) "It is illegal to dump, bury or incinerate a motor vehicle lead-acid battery or other lead-acid battery."

(4) "Recycle your used batteries." [1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR).]

[1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

3. **Lead-acid battery wholesalers.** Any person selling new lead-acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries in reasonably clean and unbroken condition from customers. A person accepting lead-acid batteries in transfer from an automotive battery retailer shall be allowed a period, not to exceed 90 days, to remove batteries from the retail point of collection.

[1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

4. **Inspection and enforcement.** The Department of Environmental Protection shall produce, print and distribute notices required under subsection 2. The department shall enforce the provisions of this section and may inspect places, buildings or premises governed by this section.

[1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

5. **Violations.** Any person who does not abide by this section commits a civil violation subject to section 349.

[1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

SECTION HISTORY
1989, c. 583, (NEW). 1989, c. 585, §E35 (NEW). 1989, c. 878, §A116 (RPR).

§1605. PLASTIC BAGS; RECYCLING

A retailer may use plastic bags to bag products at the point of retail sale only if the retailer: [1991, c. 475, §1 (RPR).]

1. **Location.** Locates inside the store or within 20 feet of the main entrance to the store a receptacle for collecting any used plastic bags; and

[1991, c. 475, §1 (NEW) .]

2. **Recycles.** Ensures that the plastic bags collected are recycled or delivered to a person engaged in recycling plastics.

[1991, c. 475, §1 (NEW) .]

SECTION HISTORY
1989, c. 585, §E35 (NEW). 1991, c. 475, §1 (RPR).

§1606. MOTOR VEHICLE AIR CONDITIONING

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

A. "Motor vehicle" has the same meaning as defined in Title 29-A, section 101, subsection 42. [1995, c. 65, Pt. A, §150 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF).]

B. "CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115 and CFC-502. [1989, c. 622, (NEW).]

[1995, c. 65, Pt. A, §150 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF) .]

2. **Service.** After January 1, 1992, a person may not perform service on motor vehicle air conditioners for compensation, unless that person uses equipment that is certified by the Underwriters' Laboratories or an institution determined by the commissioner to be comparable, as meeting the Society of Automotive Engineers standard applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners.

[1989, c. 622, (NEW) .]

3. **Recordkeeping.** After January 1, 1992, a commercial establishment servicing automobile air conditioners shall maintain records at the establishment of the following:

A. The number of automobile air conditioners serviced by the establishment; [1989, c. 622, (NEW).]

B. The amount of CFC purchased by the establishment; and [1989, c. 622, (NEW).]

C. The amount of CFC sold or used by the establishment. [1989, c. 622, (NEW).]

The establishment shall maintain records for not less than 3 years and provide those records on request to the commissioner.

[1989, c. 622, (NEW) .]

4. **CFC coolant.** After October 1, 1991, a person may not sell any CFC coolant in a container containing less than 15 pounds of that coolant, unless it bears a warning label indicating the product's danger to ozone in the stratosphere. After January 1, 1992, a person may sell or offer for sale CFC coolant, suitable for use in motor vehicle air conditioners, only:

A. For commercial or industrial use; or [1989, c. 622, (NEW).]

B. In containers containing more than 15 pounds of that coolant. [1989, c. 622, (NEW).]

[1989, c. 622, (NEW) .]

5. **Registration.** A motor vehicle with a model year of 1995 or later may not be registered in the State or sold to a consumer or dealer in the State if it contains air conditioning equipment that uses CFCs.

[1993, c. 37, §1 (AMD) .]

SECTION HISTORY
1989, c. 622, (NEW). 1993, c. 37, §1 (AMD). 1995, c. 65, §A150 (AMD). 1995, c. 65, §§A153,C15 (AFF).

§1606-A. WHEEL WEIGHTS

1. **Tire service.** Beginning January 1, 2011, when replacing or balancing a tire on a motor vehicle required to be registered under Title 29-A, chapter 5, a person may not use a wheel weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product.

[2009, c. 125, §1 (NEW) .]

2. **Sales ban.** Except as provided in subsection 3, beginning January 1, 2011, a person may not sell or offer to sell or distribute weights or other products for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product.

[2009, c. 125, §1 (NEW) .]

3. **New motor vehicles.** Beginning January 1, 2012, a person may not sell a new motor vehicle that is equipped with a weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product. For purposes of this subsection, "new motor vehicle" means a motor vehicle that is required to be registered under Title 29-A, chapter 5 that has not been previously sold to any person except a distributor, wholesaler or motor vehicle dealer for resale.

[2009, c. 125, §1 (NEW) .]

SECTION HISTORY
2009, c. 125, §1 (NEW).

§1607. CONNECTORS

(REPEALED)

SECTION HISTORY
1989, c. 878, §G9 (NEW). 1991, c. 415, §3 (RP).

§1608. OZONE-DEPLETING PRODUCTS

After January 1, 1992, no person may sell or offer for sale in this State the following ozone-depleting products: [1991, c. 11, (NEW).]

1. **Cleaning sprays.** CFC cleaning sprays for noncommercial or nonindustrial usage in cleaning electronic and photographic equipment;

[1991, c. 11, (NEW) .]

2. **Fire extinguishers.** Hand-held halon fire extinguishers for residential use; and

[1991, c. 11, (NEW) .]

3. **Party streamers and noisemakers.** Party streamers and noisemakers in aerosol containers that contain CFC.

[1991, c. 11, (NEW) .]

For purposes of this section, "CFC" has the same meaning as in section 1606. [1991, c. 11, (NEW).]

SECTION HISTORY
1991, c. 11, (NEW).

§1609. RESTRICTIONS ON SALE AND DISTRIBUTION OF BROMINATED FLAME RETARDANTS

For purposes of this section, "brominated flame retardant" means any chemical containing the element bromine that is added to a plastic, foam or textile to inhibit flame formation. [2007, c. 296, §1 (NEW).]

1. **"Penta" mixture and "octa" mixtures of polybrominated diphenyl ethers.** Effective January 1, 2006, a person may not sell or offer to sell, or distribute for promotional purposes, a product containing more than 0.1% of the "penta" or "octa" mixtures of polybrominated diphenyl ethers.

[2007, c. 296, §1 (AMD) .]

2. **Review; report.**

[2007, c. 296, §1 (RP) .]

3. **Application.**

[2007, c. 296, §1 (RP) .]

4. **"Deca" mixture of polybrominated diphenyl ethers in home furniture.** Effective January 1, 2008, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State any of the following products that contain the "deca" mixture of polybrominated diphenyl ethers:

A. A mattress or mattress pad; and [2007, c. 655, §17 (AMD).]

B. Upholstered furniture intended for indoor use in a home or other residential occupancy. [2007, c. 296, §1 (NEW).]

[2007, c. 655, §17 (AMD) .]

5. **"Deca" mixture of polybrominated diphenyl ethers in electronics.** Effective January 1, 2010, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a television or computer that has a plastic housing containing more than 0.1% of the "deca" mixture of polybrominated diphenyl ethers.

[2009, c. 121, §17 (AMD) .]

5-A. **"Deca" mixture of polybrominated diphenyl ethers in shipping pallets.** This subsection governs the manufacture and sale of shipping pallets and products made from shipping pallets containing the "deca" mixture of polybrominated diphenyl ethers, referred to in this subsection as "the "deca" mixture."

A. A person may not manufacture, sell or offer for sale or distribute for sale or use in the State a product that is manufactured from recycled shipping pallets containing the "deca" mixture, except that this prohibition does not apply to the manufacturing, selling or distribution of shipping pallets that are manufactured from recycled shipping pallets containing the "deca" mixture. [2009, c. 610, §2 (NEW).]

B. Beginning January 1, 2012, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a shipping pallet containing the "deca" mixture, other than a shipping pallet made from recycled shipping pallets or described in subsection 11, paragraph A-1. [2009, c. 610, §2 (NEW).]

C. By January 1, 2013, and annually thereafter, a manufacturer or owner of shipping pallets subject to the restrictions of this subsection shall submit a report to the department that certifies its compliance with the restrictions of this subsection. The report must include data on the bromine content of a representative number of shipping pallets and an interpretive analysis of the data sufficient to

demonstrate compliance with this subsection. The board may adopt rules to implement the reporting requirements of this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 610, §2 (NEW).]

[2009, c. 610, §2 (NEW) .]

5-B. **Exemptions.** Notwithstanding subsection 5-A, paragraph B, a person may sell or distribute a shipping pallet containing the "deca" mixture of polybrominated diphenyl ethers for which an exemption is obtained pursuant to this subsection. A manufacturer or owner of a shipping pallet may apply for an exemption by filing a written petition with the commissioner. The petition must include a proposed duration for the exemption. The commissioner shall grant an exemption upon finding that:

A. A safer alternative that meets the criteria of subsection 14 does not exist; [2009, c. 610, §3 (NEW).]

B. A shipping pallet containing a proposed safer alternative fails to meet applicable fire safety standards, approvals and tests or relevant performance standards; [2009, c. 610, §3 (NEW).]

C. Additional time is needed by the petitioner to complete testing or obtain approval to ensure that a shipping pallet containing a proposed safer alternative complies with applicable fire safety standards, approvals and tests; or [2009, c. 610, §3 (NEW).]

D. Additional time is needed by the petitioner to modify the manufacturing process in order to produce a shipping pallet containing the safer alternative. [2009, c. 610, §3 (NEW).]

The commissioner may not grant an exemption pursuant to this subsection that extends beyond January 1, 2013.

[2009, c. 610, §3 (NEW) .]

6. **Exemptions.** The restrictions in subsections 4 and 5 do not apply to the following products containing the “deca” mixture of polybrominated diphenyl ethers:

A. Transportation vehicles or products or parts for use in transportation vehicles or transportation equipment; [2007, c. 296, §1 (NEW).]

B. Products or equipment used in industrial or manufacturing processes; or [2007, c. 296, §1 (NEW).]

C. Electronic wiring and cable used for power transmission. [2007, c. 296, §1 (NEW).]

[2007, c. 296, §1 (NEW) .]

7. **Manufacturer responsibility.** Effective January 1, 2008, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 1, 4 or 5 must notify persons that sell the manufacturer’s product of the requirements of this section. Beginning January 1, 2013, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 5-A must notify persons that sell the manufacturer's product of the requirements of this section.

[2009, c. 610, §4 (AMD) .]

8. **Retailer assistance.** The department must develop a program to assist retailers in identifying products that might contain polybrominated diphenyl ethers in their inventory.

[2007, c. 296, §1 (NEW) .]

9. **Interstate clearinghouse.** The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of this chapter and to help coordinate education and outreach activities, review risk assessments and alternatives to the use of chemicals listed in this section, and carry out any other activities related to the administration of this chapter.

[2007, c. 296, §1 (NEW) .]

10. **Review; report.**

[2007, c. 643, §1 (RP) .]

11. **Application.** This section does not prohibit the sale, distribution or use of:

A. Used products; [2009, c. 121, §18 (NEW).]

A-1. Shipping pallets manufactured before January 1, 2012 that contain the "deca" mixture of polybrominated diphenyl ethers or shipping pallets for which an exemption has been granted under subsection 5-B; [2009, c. 610, §5 (NEW).]

B. Except as provided in subsection 5-A, products if the presence of polybrominated diphenyl ether is due solely to the use of recycled material; or [2009, c. 610, §5 (AMD).]

C. Replacement parts that contain the "octa" or "penta" mixtures of polybrominated diphenyl ether if the parts are for use in a product manufactured before January 1, 2006. [2009, c. 121, §18 (NEW).]

[2009, c. 610, §5 (AMD) .]

12. **Enforcement.** If there are grounds to suspect that a product is being offered for sale in violation of this section, the commissioner may request the manufacturer of the product to provide a certificate of compliance. Within 10 days of receipt of a request, the manufacturer shall:

A. Provide the commissioner with a certificate attesting that the product complies with the requirements of this section; or [2007, c. 296, §1 (NEW).]

B. Notify persons who sell the manufacturer's products in this State that the sale of the product is prohibited and provide the commissioner with a list of the names and addresses of those notified. [2007, c. 296, §1 (NEW).]

When it appears that a product has been sold, offered for sale or distributed in this State in violation of this section, the commissioner may take enforcement action in accordance with section 347-A against the product manufacturer. For the purpose of this section, "manufacturer" means any person who manufactured the final product or whose brand name is affixed to the product. In the case of a product that was imported into the United States, "manufacturer" includes the importer or domestic distributor of the product if the person who manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

[2007, c. 296, §1 (NEW) .]

13. **Department rule-making authority; flame retardants.** If the commissioner determines, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention and the Department of Public Safety, Office of the State Fire Marshal, that a flame retardant is harmful to the public health and the environment or meets the criteria as a prohibited replacement pursuant to subsection 14, paragraph B and a safer alternative to the flame retardant as set forth in subsection 14 is available, the commissioner may adopt rules to prohibit the manufacture, sale or distribution in the State of:

A. A mattress, a mattress pad or upholstered furniture intended for indoor use in a home or other residential occupancy that contains that flame retardant; [2009, c. 610, §6 (AMD).]

B. A television or computer that has a plastic housing containing that flame retardant; or [2009, c. 610, §6 (AMD).]

C. A plastic shipping pallet that contains that flame retardant. [2009, c. 610, §6 (NEW).]

The commissioner's rulemaking under this subsection must be made in accordance with Title 5, chapter 375, subchapter 2-A. The department shall report any rulemaking undertaken pursuant to this subsection to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to the department's report. For purposes of this subsection, "flame retardant" means any chemical that is added to a plastic, foam or textile to inhibit flame formation. Rules adopted pursuant to this subsection are routine technical rules.

[2009, c. 610, §6 (AMD) .]

14. **Safer alternatives; policy.** It is the policy of the State that the "deca" mixture of polybrominated diphenyl ethers be replaced with safer alternatives as soon as practicable.

A. For the purposes of this subsection, "safer alternative" means a substitute process, product, material, chemical, strategy or any combination of these that:

(1) When compared to the chemical to be replaced would reduce the potential for harm to human health or the environment or has not been shown to pose the same or greater potential for harm to human health or the environment as the chemical to be replaced;

(2) Serves a functionally equivalent purpose that enables applicable fire safety standards, approvals and tests and relevant performance standards to be met;

(3) Is commercially available on a national basis; and

(4) Is not cost-prohibitive. [2009, c. 610, §7 (NEW).]

B. Effective June 1, 2011, a person subject to the restrictions under this section may not replace the "deca" mixture of polybrominated diphenyl ethers with a chemical alternative that the commissioner, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, determines:

(1) Has been identified as or meets the criteria for identification as a persistent, bioaccumulative and toxic chemical by the United States Environmental Protection Agency;

(2) Is a brominated or chlorinated flame retardant, unless the person demonstrates to the satisfaction of the commissioner that the flame retardant is a safer alternative; or

(3) Creates another chemical as a breakdown product through degradation or metabolism that meets the provisions of subparagraph (1).

A replacement to the "deca" mixture of polybrominated diphenyl ethers may contain an amount of the chemicals listed or described in subparagraphs (1), (2) and (3) equal to or less than 0.1%, except that a replacement may contain an amount of a halogenated organic chemical containing the element fluorine equal to or less than 0.2%.

Upon request by the commissioner, a person subject to the restrictions under this subsection shall provide the commissioner with all existing information about the hazard and exposure characteristics of the replacement chemical that is known to, in the possession or control of or reasonably ascertainable by the person. [2011, c. 160, §1 (AMD).]

[2011, c. 160, §1 (AMD) .]

15. **Confidentiality.** Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions set forth in section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.

[2009, c. 610, §8 (NEW) .]

SECTION HISTORY
RR 2003, c. 2, §119 (RAL). 2003, c. 629, §1 (NEW). 2003, c. 661, §2 (NEW). 2007, c. 296, §1 (AMD). 2007, c. 643, §1 (AMD). 2007, c. 655, §§17, 18 (AMD). 2009, c. 121, §§17, 18 (AMD). 2009, c. 610, §§2-8 (AMD). 2011, c. 160, §1 (AMD).

§1610. ELECTRONIC WASTE

(REALLOCATED FROM TITLE 38, SECTION 1609)

1. **Findings; purpose.** The Legislature finds that the establishment of a system to provide for the collection and recycling of electronic devices in this State is consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds that such a system is consistent with the overall state solid waste management policy including its intent to pursue and implement an integrated approach to solid waste management and to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The Legislature finds that the purpose of this section is to establish a comprehensive electronics recycling system that ensures the safe and environmentally sound handling, recycling and disposal of electronic products and components and encourages the design of electronic products and components that are less toxic and more recyclable.

The Legislature further finds that it is the purpose of this section to establish an electronics recycling system that is convenient and minimizes cost to the consumer of electronic products and components. It is the intent of the Legislature that manufacturers of electronic products and components will be responsible for ensuring proper handling, recycling and disposal of discarded products and that costs associated with consolidation, handling and recycling be internalized by the manufacturers of electronic products and components before the point of purchase.

The Legislature further finds that the manufacturers of electronic products and components should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in these products.

The Legislature further finds that a system of shared responsibility for the collection and recycling of covered electronic devices among manufacturers, consolidators, municipalities and other parties is the most effective and equitable means of achieving the purposes of this section. Manufacturers of electronic devices and components, in working to achieve the goals and objectives of this section, should have the flexibility to act in partnership with each other, with state, municipal and regional governments and with businesses that provide collection and handling services to develop, implement and promote a safe and effective electronics recycling system for the State.

[2007, c. 292, §39 (AMD) .]

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

A. "Computer monitor" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to display information from a central processing unit or the Internet. "Computer monitor" includes a digital picture frame. [2009, c. 397, §2 (AMD).]

B. "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, treatment or disposal facility. "Consolidation facility" includes a transport vehicle owned or leased by a consolidator and used to collect covered electronic devices at collection sites in this State at a cost no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to the rules governing reasonable operational costs adopted under subsection 5, paragraph D, subparagraph (1). [2011, c. 250, §2 (AMD).]

B-1. "Consolidator" means a person that provides consolidation and handling services for electronic wastes and that operates at least one consolidation facility. [2007, c. 292, §41 (NEW).]

B-2. "Covered entity" means a household in this State, a business or nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) that employs 100 or fewer individuals, a primary school or a secondary school. [2011, c. 250, §3 (NEW).]

C. "Covered electronic device" means a computer central processing unit, a desktop printer, a video game console, a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile, a household appliance, a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act. [2009, c. 397, §3 (AMD).]

C-1. "Desktop printer" means a device that prints text or illustrations on paper and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile. [2009, c. 397, §4 (NEW).]

D. "Manufacturer" means a person who :

(1) Manufactures or has manufactured a covered electronic device under its own brand or label;

(2) Sells or has sold under its own brand or label a covered electronic device produced by other suppliers;

(3) Imports or has imported a covered electronic device into the United States that is manufactured by a person without a presence in the United States; or

(4) Owns a brand that it licenses or licensed to another person for use on a covered electronic device. [2007, c. 292, §42 (AMD).]

D-1. "Market share" means a manufacturer's national sales of a covered electronic device expressed as a percentage of the total of all manufacturers' national sales for that category of covered electronic devices. [2009, c. 231, §1 (NEW); 2009, c. 231, §7 (AFF).]

E. "Municipal collection site" means a municipally owned solid waste transfer station or recycling center, including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or consortium of municipalities to provide solid waste management services. [2003, c. 2, §119 (RAL).]

F. [2011, c. 250, §4 (RP).]

G. "Orphan waste" means a covered electronic device, excluding a video game console and a television, the manufacturer of which can not be identified or is no longer in business and has no successor in interest. [2009, c. 397, §5 (AMD).]

H. "Recycling" means the use of materials contained in previously manufactured goods as feedstock for new products, but not for energy recovery or energy generation by means of combustion. [2003, c. 2, §119 (RAL).]

I. "Recycling and dismantling facility" means a business that processes covered electronic devices for reuse and recycling. [2003, c. 2, §119 (RAL).]

J. "Retailer" means a person who sells a covered electronic device in the State to a consumer. "Retailer" includes, but is not limited to, a manufacturer of a covered electronic device who sells directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, or any similar electronic means, but not including wholesale transactions with a distributor or other retailer. [2003, c. 2, §119 (RAL).]

K. "Television" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to receive video programming via broadcast, cable or satellite transmission or video from surveillance or other similar cameras. [2003, c. 2, §119 (RAL).]

L. "Video game console" means an interactive entertainment computer or electronic device that produces a video display signal that can be used with a display device such as a television or computer monitor to display a video game. [2009, c. 397, §6 (NEW).]

[2011, c. 250, §§2-4 (AMD) .]

3. **Sales prohibition.** Beginning January 1, 2006 the following sales prohibitions apply to manufacturers and retailers.

A. A manufacturer not in compliance with this section is prohibited from offering a covered electronic device for sale in this State. A manufacturer not in compliance with this section shall provide the necessary support to retailers to ensure the manufacturer's covered electronic devices are not offered for sale in this State. [2003, c. 2, §119 (RAL).]

B. A retailer may not offer for sale in this State a covered electronic device of a manufacturer that is not in compliance with this section. [2003, c. 2, §119 (RAL).]

[2003, c. 2, §119 (RAL) .]

4. **Manufacturer label required.** Beginning January 1, 2005, a manufacturer may not offer for sale in this State a covered electronic device unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to it.

[2003, c. 2, §119 (RAL) .]

5. **Responsibility for recycling.** Municipalities, consolidators, manufacturers and the State share responsibility for the disposal of covered electronic devices as provided in this subsection.

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that computer monitors, televisions, desktop printers and video game consoles generated as waste from covered entities within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling facility, by contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system. [2011, c. 250, §5 (AMD).]

A-1. A covered entity may deliver no more than 7 covered electronic devices at one time to a municipal collection site or consolidator collection event, unless the municipal collection site or consolidator is willing to accept additional covered electronic devices. [2011, c. 250, §6 (NEW).]

B. A consolidator is subject to the requirements of this paragraph.

(1) A consolidator shall identify the manufacturer of each waste computer monitor and desktop printer delivered to a consolidation facility and identified as generated by a covered entity in this State and shall maintain an accounting of the number of waste computer monitors and desktop printers by manufacturer. By March 1st each year, a consolidator shall provide this accounting by manufacturer to the department.

(1-A) A consolidator shall maintain a written log of the total weight of televisions and video game consoles delivered each month to the consolidator and identified as generated by a covered entity in the State. By March 1st each year, a consolidator shall provide this accounting to the department.

(2) A consolidator may perform the manufacturer identification required by subparagraph (1) at the consolidation facility or may contract for this identification and accounting service with the recycling and dismantling facility to which the covered electronic devices are shipped.

(3) A consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system with costs calculated for televisions on a basis proportional to the manufacturer's national market share of televisions in the State multiplied by the total pounds recycled and with costs calculated for video game consoles on a basis proportional to the manufacturer's national market share of video game consoles in the State multiplied by the total pounds recycled. At a minimum, a consolidator shall invoice the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

(4) A consolidator shall transport computer monitors, televisions, desktop printers and video game consoles to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A consolidator shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility that receives covered electronic devices from the consolidator and shall provide the department with a copy of these records within 24 hours of request by the department. [2011, c. 250, §7 (AMD).]

C. A recycling and dismantling facility shall provide to a consolidator a sworn certification that its handling, processing, refurbishment and recycling of covered electronic devices meet guidelines for environmentally sound management published by the department. [2007, c. 292, §43 (AMD).]

D. Computer monitor, television, desktop printer and video game console manufacturers are subject to the requirements of this paragraph.

(1) Each computer monitor manufacturer and each desktop printer manufacturer is individually responsible for handling and recycling all computer monitors and desktop printers that are produced by that manufacturer or by any business for which the manufacturer has assumed legal responsibility, that are generated as waste by covered entities in this State and that are received at consolidation facilities in this State. In addition, each computer manufacturer is responsible for a pro rata share of orphan waste computer monitors and each desktop printer manufacturer is responsible for a pro rata share of orphan waste desktop printers generated as waste by covered entities in this State and received at consolidation facilities. The manufacturers shall pay the reasonable operational costs of the consolidator attributable to the handling of all computer monitors, televisions, desktop printers and video game consoles received at consolidation facilities in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. "Reasonable operational costs" includes the costs associated with ensuring that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. The recycling of televisions must be funded by allocating the cost of the program among the manufacturers selling televisions in the State on a basis proportional to the manufacturer's national market share of televisions. The department shall annually determine each television manufacturer's recycling share based on readily available national market share data. If the department determines that a television manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A television manufacturer whose market share is determined de minimus by the department is not

responsible for payment of a pro rata share of televisions for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the television manufacturers that have 1/10 of 1% or more of the market. The recycling of video game consoles must be funded by allocating the cost of the program among the manufacturers selling video game consoles in the State on a basis proportional to the manufacturer's national market share of video game consoles. The department shall annually determine each video game console manufacturer's recycling share based on readily available national market share data. If the department determines that a video game console manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A video game console manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share of video game consoles for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the video game console manufacturers that have 1/10 of 1% or more of the market.

(2) Each computer monitor manufacturer, television manufacturer, desktop printer manufacturer and video game console manufacturer shall work cooperatively with consolidators to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidator for allowable costs incurred by that consolidator. [2011, c. 250, §8 (AMD).]

E. Annually by January 1st the department shall provide manufacturers of computer monitors and desktop printers and consolidators with a listing of each manufacturer's pro rata share of orphan waste computer monitors and desktop printers. The department shall determine each manufacturer's pro rata share based on the best available information, including but not limited to data provided by manufacturers and consolidators and data from electronic waste collection programs in other jurisdictions within the United States. Annually, the department shall also provide manufacturers of televisions and consolidators with a listing of each television manufacturer's proportional market share responsibility for the recycling of televisions for the subsequent calendar year. Annually by January 1st, the department shall also provide manufacturers of video game consoles and consolidators with a listing of each video game console manufacturer's proportional market share responsibility for the recycling of video game consoles for the subsequent calendar year. [2009, c. 397, §7 (AMD).]

[2011, c. 250, §§5-8 (AMD) .]

6. **Manufacturer plan and reporting requirements.**

[2009, c. 397, §14 (AFF); 2009, c. 397, §8 (RP) .]

6-A. **Manufacturer registration.** Prior to offering a covered electronic device and by July 1st annually, a manufacturer that offers or has offered a computer monitor or desktop printer, or offers or has offered within the preceding calendar year a television or video game console, for sale in or into this State shall submit a registration to the department. The annual registration must include:

A. The name, contact and billing information of the manufacturer; [2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF).]

B. The manufacturer's brand name or names and the type of televisions, video game consoles, computer monitors and desktop printers on which each brand is used, including:

(1) All brands sold in the State in the past; and

(2) All brands currently being sold in the State; [2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF).]

C. When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products; [2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF).]

D. When a logo, mark or image is used as a label, the manufacturer must include a graphic representation of the logo, mark or image and a general description of the logo, mark or image as it appears on the manufacturer's electronic products; [2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF).]

E. The method or methods of sale used in the State; [2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF).]

F. Annual national sales data on the weight, number and type of computer monitors, televisions, desktop printers and video game consoles sold by the manufacturer in this State over the 5 years preceding the filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B; [2011, c. 250, §9 (AMD).]

G. The manufacturer's consolidator handling option for the next calendar year, as selected in accordance with rules adopted pursuant to subsection 10; and [2011, c. 250, §9 (AMD).]

H. A registration fee paid by a manufacturer as follows:

(1) Seven hundred and fifty dollars for manufacturers with less than 0.1% national market share as determined by the department based on the most recent readily available national market share data; and

(2) Three thousand dollars for all other manufacturers, except that computer monitor and desktop printer manufacturers that have not marketed any covered electronic device in the current calendar year and have had less than 50 units managed by approved consolidators in the preceding 3 years are exempted from paying the fee. [2011, c. 250, §9 (NEW).]

A manufacturer's annual registration filed subsequent to its initial registration must clearly delineate any changes in information from the previous year's registration. Whenever there is any change to the information on the manufacturer's registration, the manufacturer shall submit an updated form within 14 days of the change. Registration fees collected by the department pursuant to this subsection must be deposited in the Maine Environmental Protection Fund established in section 351.

[2011, c. 250, §9 (AMD) .]

7. **Enforcement; cost recovery.** The department must enforce this section in accordance with the provisions of sections 347-A and 349. If a manufacturer fails to pay for the costs allocated to it pursuant to subsection 5, paragraph D, subparagraph (1), including, for a computer monitor manufacturer and a desktop printer manufacturer, its pro rata share of costs attributable to orphan waste, the department may pay a consolidator its legitimate costs from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of such failure to comply.

The Attorney General is authorized to commence a civil action against any manufacturer to recover the costs described in this subsection, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the State pursuant to this subsection must be deposited in the Maine Solid Waste Management Fund established in section 2201.

[2009, c. 397, §10 (AMD) .]

8. **Reports to Legislature.** The department shall submit a report on the recycling of electronic waste in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters as part of each product stewardship report submitted in accordance with section 1772. The report may include an evaluation of the recycling rates in the State for covered electronic devices and recommendations for any changes to the system of collection and recycling of electronic devices in the State.

[2011, c. 250, §10 (AMD) .]

9. **State procurement.** All vendors of electronic devices to the State shall provide take-back and management services for their products at the end of life of those products and must be in compliance with all the requirements of this section. Vendors shall provide assurances that all take-back and management services will operate in compliance with all applicable environmental laws. Purchasing preference must be given to electronic devices that incorporate design for the preservation of the environment.

[2003, c. 2, §119 (RAL) .]

10. **Rulemaking.** The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement, administer and enforce this chapter. The rules must identify the criteria that consolidators must use to determine reasonable operational costs attributable to the handling of computer monitors, video game consoles, televisions and desktop printers.

[2009, c. 397, §11 (NEW) .]

11. **Interstate clearinghouse for electronic waste.** The department may participate in the establishment and implementation of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

[2009, c. 397, §12 (NEW) .]

SECTION HISTORY
RR 2003, c. 2, §119 (RAL). 2005, c. 330, §§37-40 (AMD). 2005, c. 561, §8 (AMD). 2007, c. 292, §§39-44 (AMD). 2009, c. 231, §§1-5 (AMD). 2009, c. 231, §7 (AFF). 2009, c. 397, §§2-12 (AMD). 2009, c. 397, §14 (AFF). 2011, c. 250, §§2-10 (AMD).

Chapter 16-A: NONDEGRADABLE FOOD AND BEVERAGE CONTAINERS

§1651. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 804, (NEW).]

1. **Consumer.** "Consumer" means an individual who purchases or accepts food or beverage for use or consumption.

[1987, c. 804, (NEW) .]

2. **Food service.** "Food service" means an individual, sole proprietorship, partnership, association, corporation or agency of the State or a political subdivision of the State that sells, offers to sell, engages in the sale of or engages in the provision of food or beverages to consumers.

[1987, c. 804, (NEW) .]

3. **Political subdivision.** "Political subdivision" has the meaning set forth in Title 14, section 8102, subsection 3.

[1987, c. 804, (NEW) .]

4. **State.** "State" has the meaning set forth in Title 14, section 8102, subsection 4.

[1987, c. 804, (NEW) .]

SECTION HISTORY
1987, c. 804, (NEW).

§1652. STATE AND POLITICAL SUBDIVISION FACILITIES AND FUNCTIONS

1. **Prohibition of polystyrene containers.** A food service providing or serving individual portions of food or a beverage at a facility or function of the State or of a political subdivision may not provide or serve those portions in or on containers that are composed in whole or in part of polystyrene foam plastic, unless the food service recycles the containers following use.

[1993, c. 323, §1 (AMD) .]

1-A. **Prohibition on plastic beverage stirrers.** A food service providing or serving a beverage at a facility or function of the State or of a political subdivision shall not provide beverage stirrers that are composed of plastic. For the purposes of this subsection, the term, "beverage stirrer," is a device which is designed solely for the purpose of mixing liquids intended for internal human consumption in single serving containers.

[1989, c. 38, §§1, 2 (NEW) .]

2. **Schools.** A school or school administrative district shall comply with the provisions of this section except that a food service providing such services to satellite facilities at the school or school administrative district serviced by central kitchen facilities not at the same location is exempt. A school or school administrative district may submit a request to the department for a 3-year waiver from the provisions of this section. The department may grant the requested waiver as long as:

A. The request includes an explanation of the district's financial hardship and a waste reduction plan. The plan must be designed to achieve the goal of using durable containers in place of disposable containers, unless it is shown that the use of durable containers is not feasible and alternative goals are proposed. The plan must include a proposed capital plan for the acquisition of necessary equipment; and [1997, c. 195, §1 (NEW).]

B. The school or school administrative district has held a public hearing on the proposal to use polystyrene containers and the waste reduction plan. [1997, c. 195, §1 (NEW).]

The department may renew the waiver for 2-year periods if it finds that the school or school administrative district has made reasonable progress toward implementing the waste reduction plan. The department, within available resources, may provide technical and financial assistance to schools and school administrative districts to assist them with meeting the goal of using durable containers.

[2011, c. 655, Pt. GG, §18 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

3. **Meals on wheels.** A food service funded in whole or in part, directly or indirectly, by the Department of Health and Human Services to provide meals at dispersed locations from central kitchen facilities is exempt.

[2011, c. 657, Pt. BB, §16 (AMD) .]

SECTION HISTORY
1987, c. 804, (NEW). 1989, c. 38, §§1,2 (AMD). 1989, c. 878, §B43 (AMD). 1993, c. 323, §1 (AMD). 1997, c. 195, §1 (AMD). 2011, c. 655, Pt. GG, §18 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 657, Pt. BB, §16 (AMD).

§1653. PENALTY

A violation of this chapter is a civil violation for which a forfeiture of not more than $100 may be adjudged. [1987, c. 804, (NEW).]

SECTION HISTORY
1987, c. 804, (NEW).

§1654. EFFECTIVE DATE

This chapter is effective on January 1, 1990. [1987, c. 804, (NEW).]

SECTION HISTORY
1987, c. 804, (NEW).

Chapter 16-B: MERCURY-ADDED PRODUCTS AND SERVICES

§1661. DEFINITIONS

For the purposes of this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 656, §1 (NEW).]

1. **Mercury-added product.** "Mercury-added product" means any of the following items if it contains mercury added during manufacture:

A. A thermostat or thermometer; [2001, c. 656, §1 (RPR).]

B. A switch or other device, individually or as part of another product, used to measure, control or regulate gas, other fluids or electricity; [2001, c. 656, §1 (RPR).]

C. A medical or scientific instrument; [2001, c. 656, §1 (RPR).]

D. An electric relay or other electrical device; and [2001, c. 656, §1 (RPR).]

E. A lamp. [2001, c. 656, §1 (RPR).]

[2001, c. 656, §1 (RPR) .]

1-A. **Amalgam separator system.** "Amalgam separator system" means a device that removes dental amalgam from the waste stream prior to its discharge into either the local public wastewater system or a private septic system located at the dental facility and that meets a minimum removal efficiency of 95% if installed prior to March 20, 2003 or 98% if installed on or after March 20, 2003, as determined through testing in accordance with standards contained in "ISO 11143, Dental Equipment - Amalgam Separators," published by the International Organization for Standardization, in effect on the date the system is installed.

[2003, c. 301, §1 (NEW) .]

1-B. **Dental amalgam.** "Dental amalgam" means a mixture of silver and mercury used to restore dental integrity.

[2003, c. 301, §1 (NEW) .]

2. **Mercury headlamp.** "Mercury headlamp" is a mercury-added lamp that is mounted on the front of a motor vehicle to illuminate the roadway.

[2001, c. 656, §1 (NEW) .]

2-A. **Mercury-added button cell battery.** "Mercury-added button cell battery" means a button cell battery to which the manufacturer intentionally introduces mercury.

[2005, c. 509, §1 (NEW) .]

3. **Mercury light switch.** "Mercury light switch" means a mercury switch used for the purpose of turning a light bulb or lamp on and off.

[2001, c. 656, §1 (NEW) .]

3-A. **Mercury relay.** "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit. "Mercury relay" includes mercury displacement relays, mercury wetted reed relays and mercury contact relays.

[2003, c. 221, §1 (NEW) .]

4. **Mercury switch.** "Mercury switch" means a mercury-added product or device for measuring, controlling or regulating the flow of gas, other fluids or electricity. "Mercury switch" includes mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, mercury flame sensors and mercury connectors for making, breaking or changing the connection in an electrical circuit. "Mercury switch" does not include a mercury-added thermostat as defined in section 1665-B, subsection 1, paragraph B.

[2009, c. 277, §1 (AMD) .]

5. **Motor vehicle component.** "Motor vehicle component" means a mercury-added product that is a component in a motor vehicle. "Motor vehicle component" includes, but is not limited to, a mercury headlamp, a mercury light switch and a mercury switch in antilock braking systems.

[2001, c. 656, §1 (NEW) .]

6. **Scrap recycling facility.** "Scrap recycling facility" means a fixed location where machinery and equipment are used to process and manufacture scrap metal into prepared grades and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap for sale for remelting purposes.

[2005, c. 148, §2 (NEW) .]

SECTION HISTORY
1999, c. 779, §2 (NEW). 2001, c. 373, §2 (AMD). 2001, c. 656, §1 (RPR). 2003, c. 221, §§1,2 (AMD). 2003, c. 301, §1 (AMD). 2005, c. 148, §2 (AMD). 2005, c. 509, §1 (AMD). 2009, c. 277, §1 (AMD).

§1661-A. NOTIFICATION

1. **Prior written notice required.** Effective January 1, 2002, a product to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture, may not be offered for final sale or use or distributed for promotional purposes in the State unless the manufacturer of the product or product component or a trade association representing manufacturers of the product or component has provided written notice to the department in accordance with this section. The requirements of this section do not apply to drugs approved by the United States Food and Drug Administration. The notice must include the following information on a form provided by the department or the clearinghouse under section 1671:

A. A brief description of the product or product component; [2001, c. 373, §3 (NEW).]

B. The purpose for which mercury is used in the product or product component; [2001, c. 373, §3 (NEW).]

C. The amount of mercury in each unit of the product or product component, reported as an exact number, as an average per product or component with an upper or lower limit or as falling within a range approved by the department; [2001, c. 373, §3 (NEW).]

D. The total amount of mercury in all units of the product or product components sold in the United States during the most recent calendar year for which sales figures are available, reported either for the units or components sold by the manufacturer or as aggregated by a manufacturer trade association for all units of the product or components made by the industry; and [2001, c. 373, §3 (NEW).]

E. The name and address of the manufacturer, and the name, address and phone number of a contact person for the manufacturer. [2001, c. 373, §3 (NEW).]

[2001, c. 373, §3 (NEW) .]

2. **Exemption.** A mercury-added product or product component for which federal law governs notice in a manner that preempts state authority is exempt from the requirements of this section.

[2001, c. 373, §3 (NEW) .]

3. **Product category information.** With the approval of the department, the manufacturer may supply the information required in subsection 1 for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification whenever there is significant change in the information or when requested by the department. The information required under subsection 1, paragraph D must be updated and provided to the department every 3 years.

[2001, c. 373, §3 (NEW) .]

4. **Confidentiality.** Information submitted to the department pursuant to this section may be kept confidential as provided under sections 1310-B and 1671.

[2001, c. 373, §3 (NEW) .]

5. **Product components.** Notwithstanding subsection 1, paragraph C, the manufacturer of a product containing one or more mercury-added components is not required to include information on the amount of mercury in the component in the notice to the department if the component manufacturer has provided that information to the department and the manufacturer of the product that contains the component identifies the component and component manufacturer in the notice.

[2001, c. 626, §20 (AMD) .]

An importer of the product or product component from a foreign country may not sell, use or distribute the product or product component in the State unless the manufacturer of the product or product component is in compliance with this section, except that this prohibition does not apply to retailers for whom importing is not a primary business. [2001, c. 373, §3 (NEW).]

SECTION HISTORY
2001, c. 373, §3 (NEW). 2001, c. 626, §20 (AMD).

§1661-B. DISCLOSURE FOR MERCURY-CONTAINING PRODUCTS USED IN HOSPITALS

Effective January 1, 2002, the manufacturer of a formulated product that contains mercury or a mercury compound from any source or cause, whether intended or unintended, and that is offered for sale or use to a hospital in the State must provide, upon request of the hospital, a certificate of analysis documenting the mercury content of the product unless the concentration is less than 200 parts per 1,000,000,000,000. The certificate must be based on representative samples of the product as determined in consultation with the hospital and, at a minimum, an annual analysis of the product. The hospital shall provide a copy of the certificate to the department upon request. For the purpose of this section, a "formulated product" means a consistent mixture of chemicals, including, but not limited to, acids, alkalis, laboratory chemicals, bleach and other products used for cleaning or disinfection, pharmaceuticals, stains, reagents, preservatives, fixatives, buffers and dyes. [2001, c. 373, §3 (NEW).]

The requirements of this section do not apply to drugs approved by the United States Food and Drug Administration. [2001, c. 373, §3 (NEW).]

SECTION HISTORY
2001, c. 373, §3 (NEW).

§1661-C. RESTRICTIONS ON SALE AND USE OF MERCURY

1. **Fever thermometers.**

[2009, c. 501, §18 (RP) .]

2. **Manometers.**

[2009, c. 501, §19 (RP) .]

3. **Schools.** Effective January 1, 2002, bulk elemental or chemical mercury or mercury compounds may not be sold for use in a primary or secondary classroom in the State. Manufacturers of such materials shall notify wholesalers and retailers about this ban and shall instruct them on how to properly dispose of the remaining inventory. Mercury-added products used by schools are not subject to this ban.

[2001, c. 373, §3 (NEW) .]

4. **Elemental mercury.** Effective January 1, 2002, a person may not sell or provide elemental mercury to another person except for manufacturing or recycling purposes without providing that person with a material safety data sheet, as defined in 42 United States Code, Section 11049, and without requiring the purchaser or recipient to sign a statement that the purchaser or recipient:

A. Will use the mercury only for medical, dental amalgam dispose-caps or research purposes; [2003, c. 551, §18 (AMD).]

B. Understands that mercury is toxic and that the purchaser will store and use it appropriately so that no person is exposed to the mercury; and [2001, c. 373, §3 (NEW).]

C. Will not place or allow anyone under the purchaser's control to place or cause to be placed the mercury in solid waste for disposal or in a wastewater treatment and disposal system. [2001, c. 373, §3 (NEW).]

[2003, c. 551, §18 (AMD) .]

5. **Mercury-added thermostats.**

[2009, c. 277, §2 (RP) .]

6. **Instruments and measuring devices.** Effective July 1, 2006, a person may not sell or offer to sell or distribute the following mercury-added products:

A. A barometer; [2003, c. 221, §4 (NEW).]

B. An esophageal dilator, bougie tube or gastrointestinal tube; [2003, c. 221, §4 (NEW).]

C. A flow meter; [2003, c. 221, §4 (NEW).]

D. A hydrometer; [2003, c. 221, §4 (NEW).]

E. A hygrometer or psychrometer; [2003, c. 221, §4 (NEW).]

F. A manometer; [2009, c. 501, §20 (AMD).]

G. A pyrometer; [2003, c. 221, §4 (NEW).]

H. A sphygmomanometer; or [2003, c. 221, §4 (NEW).]

I. A thermometer. [2009, c. 501, §21 (AMD).]

This subsection does not apply to the sale of a mercury-added product listed in paragraphs A to I if use of the product is a federal requirement or if the only mercury-added component in the product is a button cell battery.

[2009, c. 501, §§20, 21 (AMD) .]

7. **Mercury switches and relays.** Effective July 1, 2006, a person may not sell or offer to sell or distribute a mercury switch or mercury relay individually or as a product component. This prohibition does not apply if the switch or relay is used to replace a switch or relay that is a component in a larger product in use prior to July 1, 2006 and one of the following applies:

A. The larger product is used in manufacturing; or [2003, c. 221, §4 (NEW).]

B. The switch or relay is integrated and not physically separate from other components of the larger product. [2003, c. 221, §4 (NEW).]

This subsection does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is a federal requirement.

[2003, c. 221, §4 (NEW) .]

8. **Exemptions.** Subsections 6 and 7 do not apply to the sale of a mercury-added product for which an exemption is obtained under this subsection. The manufacturer or user of the product may apply for an exemption by filing a written petition with the commissioner. The commissioner may grant an exemption with or without conditions upon finding that:

A. The exemption is requested because the mercury-added product is required to meet specific advanced technology product specifications identified by the customer or end user of the product; or [2003, c. 221, §4 (NEW).]

B. The mercury-added product is reasonable and appropriate for a specific use. In this situation, the petitioner must demonstrate that:

(1) A system exists for the proper collection, transportation and processing of the product at the end of its life; and

(2) One of the following applies:

(a) Use of the product provides a net benefit to the environment, public health or public safety when compared to available nonmercury alternatives; or

(b) Technically feasible nonmercury alternatives are not available at comparable cost. [2003, c. 221, §4 (NEW).]

Prior to approving an exemption, the commissioner may consult with neighboring states, by means of the interstate clearinghouse under section 1671 or otherwise, to promote consistency in the way in which mercury-added products are regulated. The commissioner may request individuals receiving an exemption to maintain records and provide reasonable reports to the department that characterize mercury use. Exemptions may be granted for a term not to exceed 5 years and may be renewed upon written application if the commissioner finds that the mercury-added product continues to meet the criteria of this subsection and the manufacturer or other persons comply with the conditions of its original approval. The board shall adopt rules for processing exemption applications that provide for public participation, taking into account the role of the interstate clearinghouse. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2003, c. 221, §4 (NEW) .]

9. **Button cell batteries.** This subsection governs the sale of mercury-added button cell batteries.

A. After December 31, 2011, a person may not sell or offer to sell or distribute for promotional purposes a mercury-added button cell battery identified in this paragraph or a product that contains a mercury-added button cell battery identified in this paragraph:

(1) A zinc-air button cell battery;

(2) An alkaline manganese button cell battery; or

(3) A silver oxide button cell battery stamped with the designation 357, 364, 371, 377, 395, SR44W, SR621SW, SR626SW, SR920SW or SR927SW or a silver oxide button cell battery that is interchangeable with a battery that is stamped with one of those designations; and [2011, c. 206, §24 (AMD).]

B. After January 1, 2015, a person may not sell or offer to sell or distribute for promotional purposes a silver oxide mercury-added button cell battery or a product that contains a silver oxide mercury-added button cell battery. [2009, c. 86, §1 (NEW).]

[2011, c. 206, §24 (AMD) .]

10. **Sale of used products.** Subsections 6 and 7 do not apply to the sale of used products.

[2007, c. 98, §1 (NEW) .]

11. **Mercuric oxide batteries.** A person may not sell, distribute or offer for sale in this State a consumer mercuric oxide button cell battery. The sale and use of all other types of mercuric oxide batteries is subject to the requirements of section 2165.

[2011, c. 206, §25 (NEW) .]

12. **Alkaline manganese and zinc-carbon batteries.** A person may not sell, distribute or offer for sale in this State the following batteries:

A. An alkaline manganese battery that contains any added mercury; or [2011, c. 206, §26 (NEW).]

B. A zinc carbon battery that contains any added mercury. [2011, c. 206, §26 (NEW).]

[2011, c. 206, §26 (NEW) .]

SECTION HISTORY
2001, c. 373, §3 (NEW). 2001, c. 620, §1 (AMD). 2003, c. 221, §§3,4 (AMD). 2003, c. 551, §18 (AMD). 2005, c. 509, §2 (AMD). 2007, c. 98, §1 (AMD). 2009, c. 86, §1 (AMD). 2009, c. 277, §2 (AMD). 2009, c. 501, §§18-22 (AMD). 2011, c. 206, §§24-26 (AMD).

§1662. LABELING AND CONSUMER INFORMATION

1. **Labeling required for certain products.** Effective January 1, 2002, a manufacturer may not sell at retail in this State or to a retailer in this State, and a retailer may not knowingly sell, a mercury-added product unless the item is labeled pursuant to this subsection. The label must clearly inform the purchaser or consumer that mercury is present in the item and that the item may not be disposed of or placed in a waste stream destined for disposal until the mercury is removed and reused, recycled or otherwise managed to ensure that it does not become part of solid waste or wastewater. Manufacturers shall affix to mercury-added products labels that conform to the requirements of this subsection.

The board shall adopt rules to establish standards for affixing labels to the product and product package. The rules must strive for consistency with labeling programs in other states and provide for approval of alternative compliance plans by the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

This subsection applies to mercury-added lamps effective January 1, 2006, except that it does not apply to products containing mercury-added lamps. The manufacturer of a mercury-added lamp is in compliance with this subsection if the manufacturer labels all mercury-added lamps sold in this State in compliance with similar requirements adopted by another state.

[2005, c. 148, §3 (AMD) .]

2. **Mercury-added lamps; large use applications.** A person who sells mercury-added lamps to the owner or manager of an industrial, commercial or office building or to any person who replaces or removes from service outdoor lamps that contain mercury shall clearly inform the purchaser in writing on the invoice for the lamps or in a separate document that the lamps contain mercury, a hazardous substance that is regulated by federal and state law, and that they may not be placed in solid waste destined for disposal. Retail establishments that incidentally sell mercury-added lamps to the specified purchasers are exempt from the requirements of this subsection.

A person who contracts with the owner or manager of an industrial, commercial or office building or with a person responsible for outdoor lighting to remove from service mercury-added lamps shall clearly inform in writing the person for whom the work is being done that the lamps being removed from service contain mercury and what the contractor's arrangements are for the management of the mercury in the removed lamps.

[1999, c. 779, §2 (NEW) .]

SECTION HISTORY
1999, c. 779, §2 (NEW). 2005, c. 148, §3 (AMD).

§1663. DISPOSAL BAN

After July 15, 2002, a person may not knowingly place a mercury-added product in solid waste for disposal in a solid waste disposal facility. This section may not be construed to affect existing laws, rules or regulations governing disposal of mercury-added products prior to July 15, 2002. [1999, c. 779, §2 (NEW).]

SECTION HISTORY
1999, c. 779, §2 (NEW).

§1664. SOURCE SEPARATION

1. **Removal from service; products containing mercury.** When a mercury-added product is removed from service, the mercury in the item must be reused, recycled or otherwise managed to ensure compliance with section 1663.

A person who is in the business of replacing or repairing a mercury-added product in households shall ensure, or deliver the item to a facility that will ensure, that the mercury contained in an item that is replaced or repaired is reused, recycled or otherwise managed in compliance with section 1663.

[1999, c. 779, §2 (NEW) .]

2. **Thermostats.**

[2009, c. 501, §23 (RP) .]

SECTION HISTORY
1999, c. 779, §2 (NEW). 2003, c. 640, §1 (AMD). 2009, c. 501, §23 (AMD).

§1665. AUTOMOBILE COMPONENT PARTS

(REPEALED)

SECTION HISTORY
1999, c. 779, §2 (NEW). 2001, c. 373, §4 (AMD). 2001, c. 656, §2 (RP).

§1665-A. MOTOR VEHICLE COMPONENTS

Notwithstanding sections 1663 and 1664, this section applies to a mercury-added product that is a motor vehicle component. [2001, c. 656, §3 (NEW).]

1. **Prohibition on sale of new motor vehicles with mercury switches.** A person may not sell a motor vehicle manufactured on or after January 1, 2003 if it contains a mercury switch. A motor vehicle manufacturer may apply to the commissioner for an exemption from this prohibition. The commissioner may grant an exemption upon finding that:

A. The manufacturer has provided assurance that a system exists for the proper removal and recycling of the mercury switch; and [2001, c. 656, §3 (NEW).]

B. Either of the following applies:

(1) Use of the mercury switch is necessary to protect public health or safety; or

(2) There are no technically feasible alternatives to the mercury switch at comparable cost. [2001, c. 656, §3 (NEW).]

[2001, c. 656, §3 (NEW) .]

2. **Prohibition on replacement mercury light switches.** Effective January 1, 2003, a person may not sell or distribute a mercury light switch for installation in a motor vehicle.

[2001, c. 656, §3 (NEW) .]

3. **Removal of certain mercury components when vehicle use ends.** A person may not flatten, crush or bale a motor vehicle for the purpose of sending it to a scrap recycling facility, or arrange for a motor vehicle to be flattened, baled or crushed for that purpose, without first removing all mercury switches and mercury headlamps, except that a scrap recycling facility may agree to accept a motor vehicle that has not been flattened, crushed or baled. If a scrap recycling facility accepts such a motor vehicle, the scrap recycling facility is responsible for removing the mercury switches and mercury headlamps before the vehicle is flattened, crushed, baled or shredded. Upon removal, the components must be collected, stored, transported and otherwise handled in accordance with the universal waste rules adopted by the board under subsection 8.

[2005, c. 148, §4 (RPR) .]

4. **Voluntary removal of mercury light switches prior to end of vehicle use.** A motor vehicle dealer or any person engaged in motor vehicle repair or maintenance may participate in the mercury light switch removal and collection effort pursuant to subsection 5, as long as the person notifies the department before commencing removal and receives such training as may be required by the department. Any person who removes a mercury light switch from a motor vehicle before the motor vehicle is removed from service

shall affix an official sticker to the motor vehicle to indicate that the switch has been removed. The stickers may be obtained from the department and must be affixed to the doorpost or other location specified by the department. A person may not install a mercury light switch into a motor vehicle to which the sticker is affixed.

[2001, c. 656, §3 (NEW) .]

5. **Motor vehicle manufacturer responsibility.** Manufacturers of motor vehicles sold in this State that contain mercury switches or mercury headlamps shall, individually or collectively, do the following:

A. Establish a system to collect and recycle mercury switches removed pursuant to subsection 3. The system may consist of consolidation facilities geographically located to serve all areas of the State to which the switches may be transported by the persons performing the removal or any other collection methodology approved by the department. The system must be convenient to use, must accept the switches free of charge and may not provide for collection of the switches at an automobile dealership; [2009, c. 277, §3 (AMD).]

B. Pay for each mercury switch brought to the consolidation facilities as partial compensation for the removal, storage and transport of the switches a minimum of $4 if the vehicle identification number or year, make and model of the source vehicle is provided. If the vehicle identification number or year, make and model of the source vehicle is not provided, no payment is required; [2011, c. 206, §27 (AMD).]

C. Ensure that mercury switches collected pursuant to paragraph A are managed in accordance with the universal waste rules adopted by the board under subsection 8; and [2009, c. 277, §3 (AMD).]

D. Provide the department and persons who remove motor vehicle components under this section with information, training and other technical assistance required to facilitate removal and recycling of the components in accordance with the universal waste rules adopted by the board under subsection 8, including, but not limited to, information identifying the motor vehicle models that contain or may contain mercury switches or mercury headlamps. [2001, c. 656, §3 (NEW).]

The goal of this collection and recycling effort is to minimize mercury emissions to the environment by ensuring that all mercury switches are removed from motor vehicles for recycling before the vehicles are flattened, baled or crushed.

In complying with the requirements of this subsection, manufacturers of motor vehicles shall establish a system that does not require a person who removes a mercury switch to segregate switches separately according to each manufacturer of motor vehicles from which the switches are removed.

[2011, c. 206, §27 (AMD) .]

6. **Department responsibility.** The department shall:

A. Assist those subject to the source separation requirements of this section by providing training on the universal waste rules adopted by the board under subsection 8 and by taking other steps as determined appropriate to provide for the safe removal and proper handling of motor vehicle components; [2001, c. 656, §3 (NEW).]

B. Design and distribute the stickers required under subsection 4; and [2001, c. 656, §3 (NEW).]

C. Make available to the public information concerning services to remove mercury light switches in motor vehicles. [2001, c. 656, §3 (NEW).]

[2001, c. 656, §3 (NEW) .]

7. **Labeling.** Effective July 15, 2002, the labeling requirements of section 1662 apply to motor vehicle components. In approving an alternative compliance plan for labeling for motor vehicles under section 1662, the commissioner shall require a motor vehicle manufacturer to apply a doorpost label listing the mercury-added products that may be components in the motor vehicle. The commissioner may not require a manufacturer to affix a label to each mercury-added component.

[2001, c. 656, §3 (NEW) .]

8. **Rulemaking.** The board shall revise the universal waste rules adopted pursuant to section 1319-O, subsection 1, paragraph F as necessary to establish standards by which mercury switches in motor vehicles may be handled as universal waste.

[2001, c. 656, §3 (NEW) .]

9. **Reporting.** Before January 1, 2003 and annually thereafter, motor vehicle manufacturers doing business in the State shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on any fee or other charge collected on the sale of new motor vehicles for the purpose of paying the cost of carrying out the manufacturer responsibilities under subsection 5. The report must specify the amount of the fee or charge collected and how the amount of the fee or charge was determined. When the commissioner determines that the number of mercury switches available for collection is too small to warrant continuation of the program, the department shall recommend to the joint standing committee of the Legislature having jurisdiction over natural resources matters that the mercury switch removal, collection and recycling requirements of this section be repealed. The committee may report out a bill repealing this section.

[2007, c. 655, §19 (AMD) .]

SECTION HISTORY
2001, c. 656, §3 (NEW). 2003, c. 6, §1 (AMD). 2005, c. 148, §§4,5 (AMD). 2005, c. 561, §9 (AMD). 2007, c. 292, §45 (AMD). 2007, c. 655, §19 (AMD). 2009, c. 277, §3 (AMD). 2011, c. 206, §27 (AMD).

§1665-B. MERCURY-ADDED THERMOSTATS

1. **Definitions.** For purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Manufacturer" means a person who owns or owned a brand of mercury-added thermostats sold in the State before January 1, 2006. [2009, c. 277, §4 (NEW).]

B. "Mercury-added thermostat" or "mercury thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating or air conditioning equipment. "Mercury-added thermostat" or "mercury thermostat" includes a thermostat used to sense and control room temperature in residential, commercial, industrial and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process. [2009, c. 277, §4 (NEW).]

C. "Retailer" means a person who sells thermostats of any kind directly to homeowners or other nonprofessionals through any selling or distribution mechanism, including, but not limited to, sales using the Internet or catalogues. [2009, c. 277, §4 (NEW).]

D. "Wholesaler" means a business that the department determines is primarily engaged in the distribution and selling of heating, ventilation and air conditioning components to contractors that install heating, ventilation and air conditioning components. [2011, c. 206, §28 (AMD).]

[2011, c. 206, §28 (AMD) .]

1-A. **Prohibitions.** The following prohibitions apply to the sale or distribution of mercury thermostats in the State.

A. A person may not sell or offer to sell or distribute for promotional purposes a mercury thermostat. [2009, c. 277, §5 (NEW).]

B. A manufacturer not in compliance with this section is prohibited from offering any thermostat for sale in the State. A manufacturer not in compliance with this section shall provide the necessary support to retailers to ensure the manufacturer's thermostats are not offered for sale in this State. [2009, c. 277, §5 (NEW).]

C. A wholesaler or retailer may not offer for sale in this State any thermostat of a manufacturer that is not in compliance with this section. [2009, c. 277, §5 (NEW).]

[2009, c. 277, §5 (NEW) .]

2. **Manufacturer responsibility.** Each manufacturer of mercury-added thermostats that have been sold in this State shall, individually or collectively:

A. Establish and maintain a collection and recycling program for out-of-service mercury-added thermostats. The collection and recycling program must be designed and implemented to ensure that:

(1) A maximum rate of collection of mercury-added thermostats is achieved;

(2) Handling and recycling of mercury-added thermostats are accomplished in a manner that is consistent with section 1663, with other provisions of this chapter and with the universal waste rules adopted by the board pursuant to section 1319-O;

(3) Authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed $25 to all heating, ventilation and air conditioning supply, electrical supply and plumbing supply distributor locations that sell thermostats and to all retailers who volunteer to participate in the program; and

(4) By January 1, 2007, authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed $25 to municipalities and regions requesting bins for mercury-added thermostat collection at universal waste collection sites or at periodic household hazardous waste collection events, as long as the collection sites or events are approved by the department for mercury-added thermostat collections; [2011, c. 420, Pt. E, §1 (AMD); 2011, c. 420, Pt. E, §5 (AFF).]

B. Work cooperatively with the department and others in accordance with subsection 4 to establish appropriate systems in order to implement the plan developed pursuant to subsection 4; [2005, c. 558, §1 (NEW).]

C. Within 3 months after the department develops phase one of the plan required by subsection 4, implement phase one of the plan; [2005, c. 558, §1 (NEW).]

D. Within 3 months after the department develops phase 2 of the plan required by subsection 4, implement phase 2 of the plan; [2005, c. 558, §1 (NEW).]

E. Within 3 months after the department develops phase one of the plan required by subsection 4, provide a financial incentive with a minimum value of $5 for the return of each mercury-added thermostat by a contractor or service technician to an established recycling collection point; [2011, c. 420, Pt. E, §2 (AMD); 2011, c. 420, Pt. E, §5 (AFF).]

F. Within 3 months after the department develops phase 2 of the plan required by subsection 4, provide a financial incentive with a minimum value of $5 for the return of each mercury-added thermostat by a homeowner to an established recycling collection point; [2011, c. 420, Pt. E, §3 (AMD); 2011, c. 420, Pt. E, §5 (AFF).]

G. Beginning in 2008, submit an annual report to the department by January 30th of each year. The report must be submitted on a form provided by the department and must include at a minimum:

(1) The number of mercury-added thermostats collected and recycled by that manufacturer pursuant to this section during the previous calendar year;

(2) The estimated total amount of mercury contained in the thermostat components collected by that manufacturer pursuant to this section;

(3) An evaluation of the effectiveness of the manufacturer's collection and recycling program and the financial incentive provided pursuant to paragraphs E and F;

(4) An accounting of the administrative costs incurred in the course of administering the collection and recycling program and the financial incentive plan developed pursuant to subsection 4;

(5) A description of the education and outreach strategies employed during the previous calendar year to increase participation and collection rates and examples of education and outreach materials used; and

(6) Modifications that the manufacturer is proposing to make in its collection and recycling program; and [2009, c. 277, §8 (AMD).]

H. Beginning January 1, 2010, submit a quarterly report to the department within 30 days after the end of each quarter that, for each shipment of thermostats received by the manufacturer or manufacturer's agent for recycling during the quarter, provides:

(1) The collection location that shipped the thermostats;

(2) The date the manufacturer received the shipment;

(3) The number of mercury thermostats; and

(4) The total amount of mercury collected. [2009, c. 277, §9 (NEW).]

[2011, c. 420, Pt. E, §§1-3 (AMD); 2011, c. 420, Pt. E, §5 (AFF) .]

2-A. **Wholesaler responsibility.** A wholesaler may not sell a thermostat in the State unless the wholesaler acts as a collection site for thermostats that contain mercury. A wholesaler may meet the requirements of this subsection by participating as a collection site in a manufacturer collection and recycling program under subsection 2. A wholesaler shall post in a prominent location open to public view a notice about the financial incentive plan developed pursuant to subsection 4. The notice must be approved by the department and supplied by the manufacturer at no cost to the wholesaler.

[2009, c. 501, §24 (AMD) .]

2-B. **Termination of retailer participation.** A manufacturer may terminate a retailer's participation in the collection program under subsection 2, paragraph A only after complying with the provisions of this subsection.

A. The manufacturer must notify the retailer, in writing, of noncompliance with program policies and procedures and provide the retailer an opportunity to comply. [2009, c. 277, §11 (NEW).]

B. If the retailer continues to send in significant ineligible materials through the collection program after 2 written notices of noncompliance, the manufacturer may terminate the retailer's participation. [2009, c. 277, §11 (NEW).]

C. For termination to occur under this subsection, the manufacturer must notify the retailer and the department in writing. [2009, c. 277, §11 (NEW).]

[2009, c. 277, §11 (NEW) .]

3. **Sales prohibition.**

[2009, c. 277, §12 (RP) .]

4. **Financial incentive plan.** The department shall develop a manufacturer financial incentive plan in 2 phases. By January 1, 2007, the department shall develop phase one of the plan, which must address collection of mercury-added thermostats from contractors and service technicians. By August 1, 2007, the department shall develop phase 2 of the plan, which must address collection of mercury-added thermostats from homeowners. The plan must be developed in consultation with a stakeholder group that includes representatives from the thermostat industry, environmental groups, thermostat wholesalers and service contractors. The plan must be developed in a manner that ensures to the maximum extent practical that:

A. The capture rate of out-of-service mercury-added thermostats is maximized; [2005, c. 558, §1 (NEW).]

B. Adequate incentives and education are provided to contractors, service technicians and homeowners to encourage return of thermostats to established recycling collection points; [2005, c. 558, §1 (NEW).]

C. Administrative costs of the plan are minimized; [2005, c. 558, §1 (NEW).]

D. The plan encourages the purchase of nonmercury thermostats qualified by the United States Environmental Protection Agency's Energy Star program as replacements for mercury-added thermostats; and [2005, c. 558, §1 (NEW).]

E. Mechanisms are in place to protect against the fraudulent return of thermostats. [2005, c. 558, §1 (NEW).]

The plan must include a requirement that manufacturers provide a financial incentive with a minimum value of $5 for the return of each mercury-added thermostat to an established recycling collection point in accordance with subsection 2, paragraphs E and F. The financial incentive may include, without limitation, cash, rebates, discounts, coupons or other incentives.

[2005, c. 558, §1 (NEW) .]

5. **Goals.** The goal of the collection and recycling efforts under this section is to collect and recycle at least 125 pounds of mercury per year from mercury-added thermostats within 2 years after the development of phase one of the plan required by subsection 4 and at least 160 pounds of mercury per year within 3 years after the development of phase 2 of the plan required by subsection 4.

[2005, c. 558, §1 (NEW) .]

6. **Report.** Annually, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report that includes an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. The report may be included in the report required pursuant to section 1772, subsection 1.

[2013, c. 315, §1 (AMD) .]

SECTION HISTORY
2005, c. 558, §1 (NEW). 2009, c. 277, §§4-12 (AMD). 2009, c. 501, §24 (AMD). 2011, c. 206, §§28-31 (AMD). 2011, c. 420, Pt. E, §§1-3 (AMD). 2011, c. 420, Pt. E, §5 (AFF). 2013, c. 315, §1 (AMD).

§1666. HOUSEHOLD HAZARDOUS WASTE EXEMPTION

A person who uses mercury-added products in that person's home is not subject to the provisions of section 1663 or 1664 until January 1, 2005 with respect to those products the person uses in that person's home and is not subject to fines or penalties for noncompliance with the provisions of section 1663 or 1664 with respect to those products the person uses in that person's home. [1999, c. 779, §2 (NEW).]

SECTION HISTORY
1999, c. 779, §2 (NEW).

§1667. DENTAL PROCEDURES

1. **Prevention plan.** By July 15, 2002, the department shall work with dentists and other interested parties to develop a pollution prevention plan for mercury from dental procedures that provides for reasonable measures to reduce mercury pollution from dental procedures and related sources. The plan must include options and strategies for implementing source reduction.

[2003, c. 301, §2 (NEW) .]

2. **Dental office defined.** For purposes of this section, "dental office" means any dental clinic, dental office or dental practice, but does not include the practice of oral and maxillofacial surgery.

[2003, c. 301, §2 (NEW) .]

3. **Amalgam separator system required.** No later than December 31, 2004, a dental office that, in the course of treating its patients, adds, removes or modifies dental amalgam must install an amalgam separator system in the wastewater line in accordance with the following:

A. Wastewater containing dental amalgam particles must pass through the amalgam separator system prior to discharge to either a publicly owned treatment works or a private septic or waste disposal system, and waste containing dental amalgam must be collected from the amalgam separator system and disposed of in a manner satisfactory to the department; [2003, c. 301, §2 (NEW).]

B. Once the amalgam separator system has been installed, the dental office must notify the department in writing:

(1) Of the type of system installed;

(2) That the system is certified as meeting the standards required in accordance with section 1661, subsection 1-A;

(3) Of the date upon which the system became operational; and

(4) Of the method of disposing of the material after removal from the separator system.

If the amalgam separator system is connected to a publicly owned treatment works, the dental office shall provide the same notification to the director or chief engineer of that facility; [2003, c. 301, §2 (NEW).]

C. Installation, operation and maintenance of an approved amalgam separator system by a dentist in accordance with manufacturer's recommendations must fulfill the requirements of this section. A dentist must demonstrate proper operation and maintenance by maintaining, for a period of 3 years, all shipping records for replacement filters sent to licensed recyclers and written documentation that demonstrates that the system has been properly inspected and maintained; and [2003, c. 301, §2 (NEW).]

D. The department, after receiving proper notification of the installation of the amalgam separator system and after being satisfied that it meets the requirements of this section, must provide the dentist or the dental practice with written confirmation of receipt of evidence of compliance with this section in a format suitable for display by the dental office. [2003, c. 301, §2 (NEW).]

[2003, c. 301, §2 (NEW) .]

SECTION HISTORY
1999, c. 779, §2 (NEW). 2003, c. 301, §2 (RPR).

§1668. EDUCATION PROGRAM

The department shall implement an education program relating to mercury-added products no later than January 1, 2001. The program must provide information to the public about labeled mercury-added products, the requirements of the law regarding the source separation of waste mercury-added products and collection programs that are available to the public. [2011, c. 655, Pt. GG, §19 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1999, c. 779, §2 (NEW). 2011, c. 655, Pt. GG, §19 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1669. TECHNICAL ASSISTANCE TO MUNICIPALITIES

The department shall assist interested municipalities and regional associations in developing collection programs for mercury-added products. [2011, c. 655, Pt. GG, §20 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1999, c. 779, §2 (NEW). 2011, c. 655, Pt. GG, §20 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1670. MERCURY PRODUCTS ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY
1999, c. 779, §2 (NEW). 2001, c. 373, §5 (AMD). 2003, c. 551, §19 (AMD). MRSA T. 38, §1670, sub-§9 (RP).

§1671. INTERSTATE CLEARINGHOUSE

The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of this chapter and to help coordinate reviews of the manufacturer notifications under section 1661-B, applications for alternative labeling under section 1662, education and outreach activities and any other activities related to the administration of this chapter. Notwithstanding section 1310-B, subsection 2, the department may provide the interstate clearinghouse with product information submitted to the department under section 1661-A and the department and the interstate clearinghouse may compile or publish analyses or summaries of such information provided the analyses or summaries do not identify any manufacturer or reveal any confidential information. [2001, c. 373, §6 (NEW).]

SECTION HISTORY
2001, c. 373, §6 (NEW).

§1672. MERCURY-ADDED LAMPS

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

A. "Manufacturer" means a person who manufactures a mercury-added lamp and has a presence in the United States or a person who imports a mercury-added lamp manufactured by a person who does not have a presence in the United States. [2009, c. 272, §1 (NEW).]

B. "Mercury-added lamp" means an electric lamp to which mercury is intentionally added during the manufacturing process, including, but not limited to, linear fluorescent, compact fluorescent, black light, high-intensity discharge, ultraviolet and neon lamps. [2009, c. 272, §1 (NEW).]

C. "Municipal collection site" means a solid waste disposal facility, transfer station, storage facility or recycling facility at which mercury-added lamps from households are collected for recycling that is municipally owned or operated or operated by a regional association. [2009, c. 272, §1 (NEW).]

D. "Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, government agency or other entity. [2009, c. 272, §1 (NEW).]

[2009, c. 272, §1 (NEW) .]

2. **Mercury content standards.** The following provisions govern mercury content standards.

A. The department shall adopt rules establishing mercury content standards for lamps sold or manufactured in the State on or after January 1, 2012. The standards must be based on mercury content standards for lamps established in California. If one or more categories of lamps are not covered by the mercury content standards established in California, the department may adopt standards minimizing the mercury content of lamps within those categories, including adoption of a no-mercury standard if a nonmercury alternative is available at a cost comparable to a mercury alternative. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 272, §1 (NEW).]

B. The rules adopted under paragraph A must provide that:

(1) A manufacturer of mercury-added lamps sold or being offered for sale in the State shall prepare and, at the request of the department, submit within 28 days of the date of the request technical documentation or other information showing that the manufacturer's mercury-added lamps sold or offered for sale in the State comply with the rules. If the manufacturer of a mercury-added lamp being sold or offered for sale does not provide the documentation requested, that manufacturer may not be allowed to sell or offer for sale mercury-added lamps in the State; and

(2) A manufacturer of mercury-added lamps sold or being offered for sale in the State shall provide upon request a certification to a person who sells or offers for sale a mercury-added lamp of that manufacturer. The certification must attest that the mercury-added lamp does not contain levels of mercury that would result in the prohibition of that lamp being sold or offered for sale in the State. If the manufacturer of a mercury-added lamp being sold or offered for sale does not provide the certification requested, that manufacturer may not be allowed to sell or offer mercury-added lamps for sale in the State. [2009, c. 272, §1 (NEW).]

[2009, c. 272, §1 (NEW) .]

3. **Mercury-added lamp purchasing.** When making purchasing decisions on mercury-added lamps and ballasts, the Department of Administrative and Financial Services, in consultation with the department and the Public Utilities Commission, shall request information on mercury content, energy use, lumen output and lamp life from potential suppliers and shall issue specifications and make purchasing decisions that favor models at comparable cost with high energy efficiency, lower mercury content and longer lamp life.

Information obtained on mercury content, energy use and lamp life must be made available by the Department of Administrative and Financial Services to other purchasers who purchase a large number of mercury-added lamps. This information must also be posted on the State's publicly accessible website.

[2009, c. 272, §1 (NEW) .]

4. **Manufacturer recycling programs for household mercury-added lamps.** Effective January 1, 2011, each manufacturer of mercury-added lamps sold or distributed for household use in the State on or after January 1, 2001 shall individually or collectively implement a department-approved program for the recycling of mercury-added lamps from households.

A. The recycling program required under this subsection must include:

(1) Convenient collection locations located throughout the State where residents can drop off their household lamps without cost, including but not limited to municipal collection sites and participating retail establishments;

(2) Handling and recycling equipment and practices in compliance with the universal waste rules adopted pursuant to section 1319-O, subsection 1, paragraph F, with subsection 6 if a crushing device is used and with all other applicable requirements;

(3) Effective education and outreach, including, but not limited to, point-of-purchase signs and other materials provided to retail establishments without cost; and

(4) An annual report to the department on the number of mercury-added lamps recycled under the manufacturer's program, the estimated percentage of mercury-added lamps available for recycling that were recycled under the program and the methodology for estimating the number of mercury-added lamps available for recycling, an evaluation of the effectiveness of the recycling program, recommendations for increasing the number of lamps recycled under the recycling program and an accounting of the costs associated with administering and implementing the recycling program. [2011, c. 275, §1 (AMD).]

B. A manufacturer required to implement a recycling program under this subsection shall submit its proposed recycling program for department review and approval. The department shall solicit public comment on the proposed program before approving or denying the program. [2009, c. 272, §1 (NEW).]

C. Beginning April 1, 2011, a manufacturer not in compliance with this section is prohibited from offering any mercury-added lamp for final sale in the State or distributing any mercury-added lamp in the State. A manufacturer not in compliance with this section shall provide support to retailers to ensure the manufacturer’s mercury-added lamps are not offered for sale, sold at final sale or distributed in the State. [2009, c. 272, §1 (NEW).]

D. Beginning April 1, 2011, a retailer may not offer for final sale a mercury-added lamp produced by a manufacturer not in compliance with this section. The department shall notify retailers of the manufacturers of mercury-added lamps not in compliance with this section. [2009, c. 272, §1 (NEW).]

E. Beginning in 2013, and biennially thereafter, the department shall calculate the percentage of mercury-added lamps recycled from households and report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on any modifications to the manufacturer recycling programs it intends to make to improve mercury-added lamp recycling rates and any recommendations for statutory changes needed to facilitate mercury-added lamp collection and recycling. The report may be included in the report required pursuant to section 1772, subsection 1. [2013, c. 315, §2 (AMD).]

F. The department may determine that a manufacturer's recycling program is in compliance with paragraph A, subparagraphs (1), (2) and (4) for the collection of compact fluorescent lamps from households if the manufacturer provides adequate financial support for the collection and recycling of such lamps to municipalities and a conservation program established pursuant to Title 35-A, section 10110 and implemented by the Efficiency Maine Trust. [2009, c. 2, §117 (COR).]

[2013, c. 315, §2 (AMD) .]

5. **Applicability.** The requirements of this section do not apply to motor vehicles as defined in Title 29-A, section 101, subsection 42 or watercraft as defined in Title 12, section 13001, subsection 28 or their component parts.

[2009, c. 272, §1 (NEW) .]

6. **Lamp crushing.** A recycling program required under subsection 4 may include the use of crushing devices in accordance with the provisions of this subsection.

A. The owner of the crushing device shall:

(1) Register the device with the department. The registration must include:

(a) The owner's name and contact information;

(b) The brand of device used;

(c) Anticipated usage of the device; and

(d) A statement that the operating manual required pursuant to subparagraph (2) is in place;

(2) Develop an operating manual specifying how to safely crush mercury-added lamps. The operating manual must be available to all operators of the device and must include:

(a) Procedures for operation and maintenance of the device in accordance with written procedures developed by the manufacturer of the device;

(b) Testing and monitoring procedures;

(c) Information concerning mercury hazards, crushing procedures, waste handling and emergency procedures;

(d) An assessment of whether surrounding areas will be negatively affected, either by physical proximity or air exchange with a heating, ventilation and air conditioning system;

(e) Proper waste management practices;

(f) Procedures for operator training to ensure operators have been trained in the operation and maintenance of equipment, including, but not limited to, engineering controls to mitigate mercury releases and personal protective equipment use; and

(g) Procedures to address emergency situations, including, but not limited to, procedures to address mercury hazards, waste handling and equipment failure;

(3) Document maintenance activities, retain maintenance logs, test data from the manufacturer and any additional test data acquired and make available a copy of these records to the department at its request;

(4) Meet all federal Occupational Safety and Health Administration requirements;

(5) Dispose of all material crushed in the device;

(6) Maintain on file an annual report for review by the department, at the discretion of the department, indicating the:

(a) Total volume of mercury-added lamps crushed;

(b) Volume and disposition of any carbon or other filter from the device; and

(c) Names of the destination facilities to which all crushed material was shipped; and

(7) Maintain testing and monitoring data. [2011, c. 275, §2 (NEW).]

B. The crushing device may be operated only in a closed system and in such a manner that any emission of mercury from the crushing device does not exceed 0.3 micrograms per cubic meter when measured on the basis of a time-weighted average over an 8-hour period. [2011, c. 275, §2 (NEW).]

C. The crushing device may be operated only in a secure, ventilated area and may not be operated in an area accessible to the general public. [2011, c. 275, §2 (NEW).]

[2011, c. 275, §2 (NEW) .]

SECTION HISTORY
RR 2009, c. 2, §117 (COR). 2009, c. 272, §1 (NEW). 2011, c. 275, §§1, 2 (AMD). 2013, c. 315, §2 (AMD).

Chapter 16-C: ARSENIC-TREATED WOOD PRODUCTS

§1681. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, "arsenic-treated wood" means lumber, timber, piles, poles, posts, plywood, shakes, shingles or other wood or forest products intended for outdoor use that have been pressure treated to reduce decay with a wood preservative containing inorganic arsenic or inorganic arsenic compounds, including, but not limited to, chromated copper arsenate, commonly referred to as "CCA," or similar arsenic-based wood-preserving chemical mixtures. [2003, c. 457, §2 (NEW).]

SECTION HISTORY
2003, c. 457, §2 (NEW).

§1682. RESTRICTION ON SALE

The following restrictions apply to the sale of arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003. [2003, c. 457, §2 (NEW).]

1. **Purchase of arsenic-treated wood by retail business.** Retail businesses that sell wood for residential use may not purchase arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003.

[2003, c. 457, §2 (NEW) .]

2. **Sale of arsenic-treated wood.** Beginning April 1, 2004, a person may not sell or offer for sale arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003. This prohibition does not apply to structures already built containing arsenic-treated wood that are included as part of a residential real estate transaction.

[2003, c. 457, §2 (NEW) .]

SECTION HISTORY
2003, c. 457, §2 (NEW).

§1683. STATUTE NOT ADMISSIBLE IN EVIDENCE

This chapter may not be admitted in evidence or offered as an exhibit for any purpose in any civil trial against any wholesaler, retailer or installer of arsenic-treated wood. This section does not apply in cases of enforcement actions brought by the State. [2003, c. 457, §2 (NEW).]

SECTION HISTORY
2003, c. 457, §2 (NEW).

Chapter 16-D: TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

§1691. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 643, §2 (NEW).]

1. **Alternative.** "Alternative" means a substitute process, product, material, chemical, strategy or combination of these that serves a functionally equivalent purpose to a chemical in a children's product.

[2007, c. 643, §2 (NEW) .]

2. **Chemical.** "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation or metabolism.

[2007, c. 643, §2 (NEW) .]

2-A. **Chemical of concern.** "Chemical of concern" means a chemical identified by the department pursuant to section 1693.

[2011, c. 319, §2 (NEW) .]

3. **Chemical of high concern.** "Chemical of high concern" means a chemical identified by the department pursuant to section 1693-A.

[2011, c. 319, §2 (AMD) .]

4. **Chemical of low concern.** "Chemical of low concern" means a chemical for which adequate toxicity and environmental data are available to determine that it is not a chemical of high concern, a chemical of concern, a chemical of potential concern or a chemical of unknown concern.

[2011, c. 319, §2 (AMD) .]

5. **Chemical of potential concern.** "Chemical of potential concern" means a chemical identified by an authoritative governmental entity on the basis of credible scientific evidence as being suspected of causing an adverse health or environmental effect listed in section 1693, subsection 1.

[2011, c. 319, §2 (AMD) .]

6. **Chemical of unknown concern.** "Chemical of unknown concern" means a chemical for which insufficient data are available to classify it as a chemical of high concern, a chemical of concern, a chemical of potential concern or a chemical of low concern.

[2011, c. 319, §2 (AMD) .]

7. **Children's product.** "Children's product" means a consumer product intended for, made for or marketed for use by children under 12 years of age, such as baby products, toys, car seats, personal care products and clothing, and any consumer product containing a chemical of high concern that when used or disposed of will likely result in a child under 12 years of age or a fetus's being exposed to that chemical.

[2011, c. 319, §2 (AMD) .]

8. **Consumer product.** "Consumer product" means any item sold for residential or commercial use, including any component parts and packaging, that is sold for:

A. An indoor use in a residence, child care facility or school; or [2011, c. 319, §2 (NEW).]

B. An outdoor residential use if a child under 12 years of age may have direct contact with the item. [2011, c. 319, §2 (NEW).]

"Consumer product" does not include a food or beverage or an additive to a food or beverage, a tobacco product or paper or forest products or a pesticide regulated by the United States Environmental Protection Agency. "Consumer product" also does not include a drug or biologic regulated by the United States Department of Health and Human Services, Food and Drug Administration or the packaging of a drug or biologic regulated by the Food and Drug Administration if the packaging is regulated by the Food and Drug Administration. "Consumer product" also does not include an item sold for outdoor residential use that consists of a composite material made from polyester resins.

[2011, c. 319, §2 (AMD) .]

8-A. **Credible scientific evidence.** "Credible scientific evidence" means the results of a study, the experimental design and conduct of which have undergone independent scientific peer review, that are published in a peer-reviewed journal or publication of an authoritative federal or international governmental agency, including but not limited to the United States Department of Health and Human Services, National Toxicology Program, Food and Drug Administration and Centers for Disease Control and Prevention; the United States Environmental Protection Agency; the World Health Organization; and the European Union, European Chemicals Agency.

[2011, c. 319, §2 (NEW) .]

8-B. **De minimis level.** "De minimis level" means:

A. For a chemical of high concern or priority chemical that is an intentionally added chemical in a component of a children's product, the practical quantification limit; or [2011, c. 319, §2 (NEW).]

B. For a chemical of high concern or priority chemical that is a contaminant present in a component of a children's product, a concentration of 100 parts per million. [2011, c. 319, §2 (NEW).]

[2011, c. 319, §2 (NEW) .]

9. **Distributor.** "Distributor" means a person who sells consumer products to retail establishments on a wholesale basis.

[2007, c. 643, §2 (NEW) .]

9-A. **Intentionally added chemical.** "Intentionally added chemical" means a chemical that was added during the manufacture of a product or product component to provide a specific characteristic, appearance or quality or to perform a specific function.

[2011, c. 319, §2 (NEW) .]

10. **Manufacturer.** "Manufacturer" means any person who manufactured a final consumer product or whose brand name is affixed to the consumer product. In the case of a consumer product that was imported into the United States, "manufacturer" includes the importer or first domestic distributor of the consumer product if the person who manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.

[2007, c. 643, §2 (NEW) .]

10-A. **Practical quantification limit.** "Practical quantification limit" means the lowest concentration of a chemical that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness and comparability during routine laboratory operating conditions. The practical quantification limit is based on scientifically defensible, standard analytical methods. The practical quantification limit for a given chemical may be different depending on the matrix and the analytical method used.

[2011, c. 319, §2 (NEW) .]

11. **Priority chemical.** "Priority chemical" means a chemical identified as such by the commissioner pursuant to section 1694, subsection 1.

[2007, c. 643, §2 (NEW) .]

12. **Safer alternative.** "Safer alternative" means an alternative that, when compared to a priority chemical that it could replace, would reduce the potential for harm to human health or the environment or that has not been shown to pose the same or greater potential for harm to human health or the environment as that priority chemical.

[2007, c. 643, §2 (NEW) .]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2011, c. 319, §2 (AMD).

§1692. DECLARATION OF POLICY

It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible. By enactment of this chapter, the Legislature confers upon the department the regulatory power to collect information on chemical use and prohibit the sale of children's products containing priority chemicals when safer alternatives are available. The policy represented in this chapter is in furtherance of the toxics use reduction policies under chapter 27. [2009, c. 579, Pt. B, §12 (AMD); 2009, c. 579, Pt. B, §13 (AFF).]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2009, c. 579, Pt. B, §12 (AMD). 2009, c. 579, Pt. B, §13 (AFF).

§1693. IDENTIFICATION OF CHEMICALS OF CONCERN

1. **Criteria.** By January 1, 2010, the department, in concurrence with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, shall publish a list of chemicals of high concern, referred to after September 1, 2011 as "the list of chemicals of concern." A chemical may be included on the list only if it has been identified by an authoritative governmental entity on the basis of credible scientific evidence as being:

A. A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor; [2011, c. 319, §3 (RPR).]

B. Persistent, bioaccumulative and toxic; or [2011, c. 319, §3 (RPR).]

C. Very persistent and very bioaccumulative. [2011, c. 319, §3 (RPR).]

[2011, c. 319, §3 (RPR) .]

2. **Revisions.** By January 1, 2012, the department, with input from interested persons and with the concurrence of the Department of Health and Human Services, Maine Center for Disease Control and Prevention, shall remove any chemical from the list published pursuant to subsection 1 that it finds is:

A. Used solely in an item that is not a consumer product, including, but not limited to, a food or beverage, drug or biologic, paper or forest product or pesticide; or [2011, c. 319, §3 (NEW).]

B. Used solely in a consumer product that is exempt from the requirements of this chapter pursuant to section 1697. [2011, c. 319, §3 (NEW).]

The department may periodically review and revise the list published pursuant to subsection 1. The department may add chemicals to the list if, in the judgment of the Department of Health and Human Services, Maine Center for Disease Control and Prevention, the chemical meets one or more of the criteria in subsection 1.

[2011, c. 319, §3 (RPR) .]

3. **Removal by petition.** A person may petition the department to remove a chemical from the list published pursuant to subsection 1. The department, in concurrence with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, may grant a petition if the person demonstrates to the satisfaction of the department that the chemical:

A. Does not meet the criteria for listing pursuant to subsection 1; or [2011, c. 319, §3 (NEW).]

B. Meets the criteria for removal from the list pursuant to subsection 2. [2011, c. 319, §3 (NEW).]

Upon receipt of a petition under this subsection, the department shall notify interested persons and provide an opportunity for review and comment on the evidence submitted by the petitioner. The department shall make a determination within 180 days of receipt of the petition and notify interested persons of the basis for its decision. If the petition is granted, the department shall immediately remove the chemical from the list published pursuant to subsection 1.

[2011, c. 319, §3 (NEW) .]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2011, c. 319, §3 (RPR).

§1693-A. IDENTIFICATION OF CHEMICALS OF HIGH CONCERN

1. **List.** By July 1, 2012, the department shall publish a list of no more than 70 chemicals of high concern. The Department of Health and Human Services, Maine Center for Disease Control and Prevention, in consultation with the department, shall develop the list. To be listed as a chemical of high concern, a chemical must be on the list of chemicals of concern pursuant to section 1693 and meet the eligibility criteria of subsection 2.

[2011, c. 319, §4 (NEW) .]

2. **Criteria.** A chemical of concern on the list of chemicals of concern pursuant to section 1693 may be included in the list published pursuant to subsection 1 if the department, in concurrence with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, determines that there is strong credible scientific evidence that the chemical is a reproductive or developmental toxicant, endocrine disruptor or human carcinogen, and there is strong credible scientific evidence that the chemical meets one or more of the following criteria:

A. The chemical has been found through biomonitoring studies to be present in human blood, human breast milk, human urine or other bodily tissues or fluids; [2011, c. 319, §4 (NEW).]

B. The chemical has been found through sampling and analysis to be present in household dust, indoor air or drinking water or elsewhere in the home environment; or [2011, c. 319, §4 (NEW).]

C. The chemical has been added to or is present in a consumer product used or present in the home. [2011, c. 319, §4 (NEW).]

[2011, c. 319, §4 (NEW) .]

3. **Updates.** The commissioner shall review the list published pursuant to subsection 1 at least every 3 years. The commissioner shall remove any chemical from the list of chemicals of high concern that has been designated as a priority chemical pursuant to section 1694 or that no longer meets any of the criteria of subsection 2. The commissioner may identify additional chemicals of high concern according to the criteria and requirements of this section. The list of chemicals of high concern may not consist of more than 70 or fewer than 10 chemicals of high concern, unless fewer than 10 chemicals of high concern meet any of the criteria under subsection 2.

[2011, c. 319, §4 (NEW) .]

4. **Rules.** The department shall adopt rules to implement the provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 319, §4 (NEW) .]

SECTION HISTORY
2011, c. 319, §4 (NEW).

§1694. IDENTIFICATION OF PRIORITY CHEMICALS

Effective July 1, 2012, a chemical is eligible for designation as a priority chemical only if that chemical has been identified and listed as a chemical of high concern pursuant to section 1693-A. [2011, c. 319, §5 (NEW).]

1. **Criteria.** The commissioner may designate a chemical of high concern as a priority chemical if the commissioner finds, in concurrence with the Department of Health and Human Services, Maine Center for Disease Control and Prevention:

A. The chemical has been found through biomonitoring to be present in human blood, including umbilical cord blood, breast milk, urine or other bodily tissues or fluids; [2007, c. 643, §2 (NEW).]

B. The chemical has been found through sampling and analysis to be present in household dust, indoor air or drinking water or elsewhere in the home environment; or [2011, c. 319, §5 (AMD).]

C. [2011, c. 319, §5 (RP).]

D. The chemical is present in a consumer product used or present in the home. [2011, c. 319, §5 (AMD).]

E. [2011, c. 319, §5 (RP).]

F. [2011, c. 319, §5 (RP).]

[2011, c. 319, §5 (AMD) .]

2. **Designation.** The commissioner shall designate at least 2 priority chemicals by January 1, 2011. The commissioner may designate additional priority chemicals if the commissioner finds that the chemicals meet one of the criteria listed in subsection 1.

[2011, c. 319, §5 (AMD) .]

The commissioner shall adopt rules to implement the provisions of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 643, §2 (NEW).]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2011, c. 319, §5 (AMD).

§1695. DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS

1. **Reporting of chemical use.** A person who is a manufacturer or distributor of a children's product for sale in the State that contains a priority chemical, as identified pursuant to section 1694, in an amount greater than a de minimis level shall notify the department in writing unless waived by the commissioner pursuant to this section or exempt from this chapter pursuant to section 1697. This written notice must be made within 180 days after a priority chemical is identified. If the sale of the children's product does not commence until after the 180-day reporting period ends, this written notice must be made within 30 days of sale of the children's product in the State. This written notice must identify the children's product, the number of units sold or distributed for sale in the State or nationally, the priority chemical or chemicals contained in the children's product, the amount of such chemicals in each unit of children's product and the intended purpose of the chemicals in the children's product.

[2013, c. 232, §1 (AMD) .]

2. **Supplemental information.** The manufacturer or distributor of a children's product that contains a priority chemical shall provide the following additional information if requested by the department:

A. Information on the likelihood that the chemical will be released from the children's product to the environment during the children's product's life cycle and the extent to which users of the children's product are likely to be exposed to the chemical; [2007, c. 643, §2 (NEW).]

B. Information on the extent to which the chemical is present in the environment or human body; and [2007, c. 643, §2 (NEW).]

C. An assessment of the availability, cost, feasibility and performance, including potential for harm to human health and the environment, of alternatives to the priority chemical and the reason the priority chemical is used in the manufacture of the children's product in lieu of identified alternatives. If an assessment acceptable to the department is not timely submitted, the department may assess a fee on the manufacturer or distributor to cover the costs to prepare an independent report on the availability of safer alternatives by a contractor of the department's choice. [2007, c. 643, §2 (NEW).]

The manufacturer or distributor of a children's product that contains a priority chemical may provide additional information to the department regarding the potential for harm to human health and the environment from specific uses of the priority chemical.

[2007, c. 643, §2 (NEW) .]

3. **Waiver of reporting; fee; extension of deadline.** The commissioner may waive all or part of the notification requirement under subsection 1 for one or more specified uses of a priority chemical if the commissioner determines that substantially equivalent information is already publicly available, that the information is not needed for the purposes of this chapter or that the specified use or uses are minor in volume. The department may assess a fee payable by the manufacturer or distributor upon submission of the notification to cover the department's reasonable costs in managing the information collected. The department may extend the deadline for submission of the information required under subsection 1 for one or more

specified uses of a priority chemical in a children's product if it determines that more time is needed by the manufacturer or distributor to comply with the submission requirement or if the information is not needed at that time.

[2007, c. 643, §2 (NEW) .]

4. **Rulemaking to determine fees.** If the department assesses a fee pursuant to subsection 2, paragraph C or subsection 3, the department shall determine the appropriate fee through major substantive rulemaking, as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 643, §2 (NEW) .]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2011, c. 319, §6 (AMD). 2013, c. 232, §1 (AMD).

§1696. SALES PROHIBITION; RULES; SAFER ALTERNATIVES TO PRIORITY CHEMICALS

1. **Authority.** The board may adopt rules prohibiting the manufacture, sale or distribution in the State of a children's product containing a priority chemical in an amount greater than a de minimis level if the board finds, after consideration of information filed under section 1695 and other relevant information submitted to or obtained by the board, that:

A. Distribution of the children's product directly or indirectly exposes children and vulnerable populations to the priority chemical; and [2007, c. 643, §2 (NEW).]

B. One or more safer alternatives to the priority chemical are available at a comparable cost. [2007, c. 643, §2 (NEW).]

If there are several available safer alternatives to a priority chemical, the board may prohibit the sale of children's products that do not contain the safer alternative that is least toxic to human health or least harmful to the environment.

A rule established pursuant to this subsection must specify the effective date of the prohibition, which may not be sooner than 12 months after notice of the proposed rule is published as required under Title 5, section 8053, subsection 5. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 319, §7 (AMD) .]

2. **Alternatives assessment; presumptions.** For the purpose of determining whether a safer alternative is available under subsection 1, paragraph B, the board may, in the absence of persuasive evidence to the contrary:

A. Presume that an alternative is a safer alternative if the alternative is not a chemical of concern; [2011, c. 319, §8 (AMD).]

B. Presume that a safer alternative is available if the sale of the children's product containing the priority chemical has been banned by another state within the United States based on the availability of a safer alternative; [2011, c. 319, §8 (AMD).]

C. Presume that a safer alternative is available if the children's product containing the priority chemical is an item of apparel or a novelty; and [2007, c. 643, §2 (NEW).]

D. Presume that a safer alternative is available if the alternative is sold in the United States. [2007, c. 643, §2 (NEW).]

[2011, c. 319, §8 (AMD) .]

3. **Implementation.** No later than 180 days prior to the effective date of a prohibition adopted under subsection 1, the manufacturer or distributor of a children's product that contains the priority chemical and that is subject to the prohibition at the time of adoption shall file a compliance plan with the commissioner or seek a waiver under subsection 5. A compliance plan must:

A. Identify the children's product that contains the priority chemical; [2007, c. 643, §2 (NEW).]

B. Specify whether compliance will be achieved by discontinuing the sale of the children's product in the State or by substituting a safer alternative in the product; and [2007, c. 643, §2 (NEW).]

C. If compliance is achieved by substitution of a safer alternative in the product, identify the safer alternative and the timetable for substitution. [2007, c. 643, §2 (NEW).]

[2007, c. 643, §2 (NEW) .]

4. **Responsibility.** A manufacturer or distributor of a children's product containing a priority chemical shall notify persons that offer the product for sale or distribution in the State of the requirements of this chapter.

[2007, c. 643, §2 (NEW) .]

5. **Waiver for specific uses.** The manufacturer or distributor of a children's product that contains a priority chemical and that is subject to a prohibition adopted pursuant to subsection 1 may apply to the commissioner for a waiver for one or more specific uses of the priority chemical. The waiver application must, at a minimum:

A. Identify the specific children's product use or uses for which the waiver is sought; [2007, c. 643, §2 (NEW).]

B. Identify the alternatives considered for substitution of the priority chemical; [2007, c. 643, §2 (NEW).]

C. Explain the basis for concluding that the use of an alternative is not feasible; and [2007, c. 643, §2 (NEW).]

D. Identify the steps that have and will be taken to minimize the use of the priority chemical. [2007, c. 643, §2 (NEW).]

The commissioner may grant a waiver with or without conditions upon finding that there is a need for the children's product in which the priority chemical is used and there are no technically or economically feasible alternatives for the use of the priority chemical in the children's product. Waivers may be granted for a term not to exceed 5 years and may be renewed for one or more additional 5-year terms upon written application demonstrating that technically or economically feasible alternatives remain unavailable. The commissioner shall deny or grant waiver requests within 60 days after receipt of a completed waiver application.

[2007, c. 643, §2 (NEW) .]

6. **Petitions.** If rulemaking to prohibit the sale of a children's product containing a priority chemical is initiated by petition under Title 5, section 8055, the department shall consider the information submitted in support of the petition but is not obligated to conduct a search of other sources of information on the chemical or its uses. The petitioner bears the burden of demonstrating that the criteria under subsection 1 for adoption of rules are met.

[2007, c. 643, §2 (NEW) .]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2011, c. 319, §§7, 8 (AMD).

§1697. APPLICABILITY

1. **Used products.** This chapter does not apply to chemicals in used products.

[2007, c. 643, §2 (NEW) .]

2. **Industry.** The requirements of this chapter do not apply to priority chemicals used in or for industry or manufacturing, including chemicals processed or otherwise used in or for industrial or manufacturing processes.

[2007, c. 643, §2 (NEW) .]

3. **Transportation.** The requirements of this chapter do not apply to motor vehicles as defined in Title 29-A, section 101, subsection 42 or watercraft as defined in Title 12, section 13001, subsection 28 or their component parts, except that the use of priority chemicals in detachable car seats is not exempt.

[2007, c. 643, §2 (NEW) .]

4. **Combustion.** The requirements of this chapter do not apply to priority chemicals generated solely as combustion by-products or that are present in combustible fuels.

[2007, c. 643, §2 (NEW) .]

5. **Retailers.** A retailer is exempt from the requirements of this chapter unless that retailer knowingly sells a children's product containing a priority chemical after the effective date of its prohibition for which that retailer has received prior notification from a manufacturer, distributor or the State.

[2007, c. 643, §2 (NEW) .]

6. **Mercury-added products.** The commissioner may designate mercury or a mercury compound as a priority chemical for the purpose of adopting rules under section 1696 to prohibit the manufacture, sale or distribution of a mercury-added product that is not regulated under section 1661-C or 1667 prior to the effective date of this section. The disclosure requirements of section 1695 do not apply to the manufacturer or distributor of a children's product that contains the designated mercury or mercury compound if the manufacturer has complied with the notification requirement under section 1661-A.

[2007, c. 643, §2 (NEW) .]

7. **Telecommunications.** The disclosure requirements of section 1695 do not apply to a service provider whose name appears on a telecommunications device unless the service provider is the actual manufacturer of the device. As used in this subsection, "service provider" has the meaning set out in Title 35-A, section 7107, subsection 1, paragraph C.

[2007, c. 643, §2 (NEW) .]

8. **Food and beverage packaging.** A container or packaging for a food or beverage product is exempt from the requirements of this chapter, unless that product is intentionally marketed or intended for the use of children under 3 years of age.

[2007, c. 643, §2 (NEW) .]

9. **Regulatory efficiency.** The department may, in exercising its discretionary authority under this chapter, consider the extent to which a chemical of high concern in a children's product is adequately regulated by the Federal Government or an agency of this State to reduce or prevent the same public health threats that would be the basis for addressing the chemical under this chapter.

[2011, c. 319, §9 (NEW) .]

10. **Inaccessible components.** The requirements of sections 1695 and 1696 do not apply to a priority chemical contained in a component of a children's product that during reasonably foreseeable use and abuse would not come into direct contact with a child's skin or mouth, such as inaccessible components of children's products. The department may adopt a rule, based on a case-by-case evaluation, to subject such components to the requirements of sections 1695 and 1696. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 319, §9 (NEW) .]

11. **Contaminants.** The requirements of sections 1695 and 1696 do not apply to a priority chemical that occurs in a product component only as a contaminant if the manufacturer had in place a manufacturing control program and exercised due diligence to minimize the presence of the contaminant in the component.

[2011, c. 319, §9 (NEW) .]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2011, c. 319, §9 (AMD).

§1698. INTERSTATE CLEARINGHOUSE TO PROMOTE SAFER CHEMICALS

The department is authorized to participate in an interstate clearinghouse to promote safer chemicals in consumer products in cooperation with other states and governmental entities. The department may cooperate with the interstate clearinghouse to classify existing chemicals in commerce into one of 5 categories: chemicals of high concern, chemicals of concern, chemicals of potential concern, chemicals of unknown concern and chemicals of low concern. [2011, c. 319, §10 (AMD).]

The department may also cooperate with the interstate clearinghouse in order to organize and manage available data on chemicals, including information on uses, hazards and environmental concerns; to produce and inventory information on safer alternatives to specific uses of chemicals of concern and on model policies and programs; to provide technical assistance to businesses and consumers related to safer chemicals; and to undertake other activities in support of state programs to promote safer chemicals. [2007, c. 643, §2 (NEW).]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2011, c. 319, §10 (AMD).

§1699. EDUCATION AND ASSISTANCE

As resources allow, the department shall develop a program to educate and assist consumers and retailers in identifying children's products that may contain priority chemicals. [2007, c. 643, §2 (NEW).]

SECTION HISTORY
2007, c. 643, §2 (NEW).

§1699-A. ENFORCEMENT AND IMPLEMENTATION

1. **Failure to provide notice.** A children's product containing a priority chemical may not be sold, offered for sale or distributed for sale in this State if the manufacturer or distributor has failed to provide information required under section 1695 by the date required in that section. The commissioner shall exempt a children's product from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product could pose an unreasonable risk to public health, safety or welfare.

[2007, c. 643, §2 (NEW) .]

2. **Certificate of compliance.** If there are grounds to suspect that a children's product is being offered for sale in violation of this chapter, the department may request the manufacturer or distributor of the product to provide a certificate of compliance with the provisions of this chapter. Within 30 days of receipt of a request under this subsection, the manufacturer or distributor shall:

A. Provide the department with the certificate attesting that the children's product does not contain the priority chemical; or [2007, c. 643, §2 (NEW).]

B. Notify persons who sell the product in this State that the sale of the children's product is prohibited and provide the department with a list of the names and addresses of those notified. [2007, c. 643, §2 (NEW).]

[2011, c. 319, §11 (AMD) .]

SECTION HISTORY
2007, c. 643, §2 (NEW). 2011, c. 319, §11 (AMD).

§1699-B. DONATIONS TO THE STATE

The department, through the Governor, may accept donations, grants and other funds to carry out the purposes of this chapter. [2007, c. 643, §2 (NEW).]

SECTION HISTORY
2007, c. 643, §2 (NEW).

Chapter 17: MAINE REFUSE DISPOSAL DISTRICT ENABLING ACT

Subchapter 1: GENERAL PROVISIONS

§1701. SHORT TITLE

This chapter may be cited as the "Maine Refuse Disposal District Enabling Act." [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1702. DECLARATION OF POLICY

1. **Policy.** It is the policy of the State to encourage the development of refuse disposal districts consisting of:

A. A municipality; or [1983, c. 820, §2 (NEW).]

B. Two or more municipalities, so that those districts may economically construct and operate refuse disposal systems to assist in the abatement of pollution and to enhance the public health, safety and welfare of the citizens of the State. For purposes of this chapter, a village corporation created by a private and special Act of the Legislature shall be considered a municipality, except that this Act shall not be construed as granting authority to any village corporation to enact ordinances. [1983, c. 820, §2 (NEW).]

[1983, c. 820, §2 (NEW) .]

2. **Formation of district.** A refuse disposal district may be formed where:

A. There is a need throughout a part or all of the territory embraced within the proposed district for the accomplishment of the purpose of providing an adequate, efficient system and means of collection, transporting and disposing of domestic, commercial and industrial solid wastes within the proposed district; [1983, c. 820, §2 (NEW).]

B. These purposes can be effectively accomplished therein on an equitable basis by a refuse disposal district if created; and [1983, c. 820, §2 (NEW).]

C. The creation and maintenance of such a district will be administratively feasible and in furtherance of the public health, safety and welfare. [1983, c. 820, §2 (NEW).]

[1983, c. 820, §2 (NEW) .]

3. **Furtherance of Maine Hazardous Waste, Septage and Solid Waste Management Act.** It is the policy of the State to encourage the development of refuse disposal districts that further the policy of the Maine Hazardous Waste, Septage and Solid Waste Management Act as it pertains to nonhazardous solid waste programs.

[1993, c. 1, §134 (COR) .]

SECTION HISTORY
1983, c. 820, §2 (NEW). RR 1993, c. 1, §134 (COR).

§1703. PURPOSES

The purposes of each district formed under this chapter are to construct, maintain, operate or otherwise provide for a system of solid waste management for domestic, commercial and industrial solid waste and, in conjunction, to foster resource conservation and resource recovery for public purposes and for the health, welfare, comfort and convenience of the inhabitants of the district. It is anticipated that, in the furtherance of the purpose and declaration of policy of this Act, each district may contract and otherwise act in conjunction with a variety of public, private and municipal firms, corporations and persons. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1704. EXEMPTION FROM TAXATION

1. **Exemption.** As formerly provided in section 1554, the property, both real and personal, rights and franchises, of any district formed under this chapter shall be exempt from taxation.

[1983, c. 820, §2 (NEW) .]

2. **Limitation.** Notwithstanding subsection 1, the land of any district formed under this chapter shall be subject to property taxation in the jurisdiction where the property is located.

[1983, c. 820, §2 (NEW) .]

3. **Payments in lieu of taxes.** A district may elect to make payments in lieu of taxes to communities in which its property is located or utilized.

[1983, c. 820, §2 (NEW) .]

4. **Service charges permitted.** A district shall be subject to service charges when these charges are calculated according to the actual cost of providing municipal services to the real property of the district and to the persons who use that property. These services shall include, but are not limited to:

A. Fire protection; [1983, c. 820, §2 (NEW).]

B. Police protection; [1983, c. 820, §2 (NEW).]

C. Road maintenance and construction, traffic control, snow and ice removal; [1983, c. 820, §2 (NEW).]

D. Water and sewer service; [1983, c. 820, §2 (NEW).]

E. Sanitation services; and [1983, c. 820, §2 (NEW).]

F. Any services other than education and welfare. [1983, c. 820, §2 (NEW).]

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1705. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 820, §2 (NEW).]

1. **Board.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §275 (RP) .]

1-A. **Agency.**

[1995, c. 656, Pt. A, §27 (RP) .]

2. **Demolition and construction waste.** "Demolition and construction waste" means all solid waste generated in the demolition and construction of buildings and other structures, including stumps, brush, plaster, sheetrock, boards, bricks, mortar, concrete and roofing materials except asbestos.

[1983, c. 820, §2 (NEW) .]

3. **Department.**

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §275 (RP) .]

4. **Disposal.** "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water in a manner such that the solid waste, or any constituent of the solid waste, may enter the environment or be emitted into the air or discharged into any water, including ground waters.

[1983, c. 820, §2 (NEW) .]

5. **Disposal property.** "Disposal property" means property used for disposal.

[1983, c. 820, §2 (NEW) .]

6. **District.** "District" and "disposal district" means any district formed under this chapter.

[1983, c. 820, §2 (NEW) .]

7. **Generation.** "Generation" means the act or process of producing solid waste.

[1983, c. 820, §2 (NEW) .]

8. **Handle.** "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

[1983, c. 820, §2 (NEW) .]

9. **Municipal officer.** "Municipal officer" means municipal officer as defined in Title 30-A, section 2001, and includes the assessors of a plantation and county commissioners acting on behalf of the residents of any unorganized territory within their county under Title 30-A, chapter 305.

[1991, c. 517, Pt. B, §3 (AMD) .]

9-A. **Municipality.** "Municipality" means municipality as defined in Title 30-A, section 2001, and includes plantations and unorganized territories.

[1991, c. 517, Pt. B, §4 (NEW) .]

9-B. **Office.**

[2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 655, Pt. GG, §21 (RP) .]

10. **Resource conservation.** "Resource conservation" means the reduction of amounts of solid waste which is generated and the reduction of overall resource consumption.

[1983, c. 820, §2 (NEW) .]

11. **Resource recovery.** "Resource recovery" means the recovery of materials or substances that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes and the conversion of waste to energy.

[1983, c. 820, §2 (NEW) .]

12. **Revenues.** "Revenues" means the proceeds of bonds, all revenues, rates, tolls, assessments, rents, tipping fees, transportation charges and other charges and receipts derived by the district from the operation of a waste facility and other properties, including, but not limited to, investment earnings and the proceeds of insurance, condemnation, sale or other disposition of properties, and must include proceeds from assessments where the power of assessment has been granted to the district under section 1755.

[1993, c. 310, Pt. C, §1 (AMD) .]

13. **Solid waste.** "Solid waste" means useless, unwanted or discarded, nonhazardous solid materials with insufficient liquid content to be free flowing, including, but not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse. "Solid waste" does not include septic tank sludge or agricultural waste.

A. Solid waste from "residential activities" includes any solid waste generated by a household or apartment, including, but not limited to, food waste, packaging, newspaper and other paper products, glass, cans and plastic, and similar types of waste generated by employees of commercial and industrial activities. [1983, c. 820, §2 (NEW).]

B. Solid waste from "commercial activities" includes any solid waste generated by retail and wholesale establishments, including, but not limited to, food waste, corrugated containerboard, metals and plastics. [1983, c. 820, §2 (NEW).]

C. Solid waste from "industrial activities" includes any solid waste generated by an industry as part of the production process. Solid waste generated by employees and similar in composition to that generated by residential or commercial activities is excluded from this definition. [1983, c. 820, §2 (NEW).]

[1983, c. 820, §2 (NEW) .]

14. **Transport.** "Transport" means the movement of solid waste from the point of generation to any intermediate points and finally to the point of ultimate disposition.

[1983, c. 820, §2 (NEW) .]

15. **Waste facility.** "Waste facility" means any land area, structure, location or equipment, or combination of them, including landfills, used for handling solid waste and for resource conservation and resource recovery, when utilized.

[1983, c. 820, §2 (NEW) .]

16. **Waste management.** "Waste management" means purposeful, systematic and unified control of the handling, transportation and disposal of solid waste.

[1983, c. 820, §2 (NEW) .]

17. **Yard waste.** "Yard waste" means grass clippings, leaves and brush.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1987, c. 737, §§C98,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 869, §B1 (AMD). 1989, c. 890, §§A40,B275 (AMD). 1991, c. 517, §§B3,4 (AMD). 1993, c. 310, §C1 (AMD). 1995, c. 656, §§A27,28 (AMD). 2011, c. 655, Pt. GG, §21 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1706. RELATIONSHIP TO OTHER LAW

This chapter provides an additional and alternative method for carrying out the purposes of this chapter and is supplemental and additional to powers conferred by other laws, including the provisions of chapter 13, pertaining to solid waste, and is not in derogation of any powers now existing. The exercise of authority under this chapter is subject to any restriction imposed under chapter 24. [1989, c. 585, Pt. E, §36 (AMD).]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1989, c. 585, §E36 (AMD).

§1707. REIMBURSEMENT OF COSTS TO MUNICIPALITIES

At the sole discretion of the board of directors of the district, any municipality or municipalities which fall within a district formed under this chapter shall be entitled to reimbursement of reasonable incurred costs from that district when the financial position of the district allows. The term "costs," as used in this section, includes, but is not limited to, the following: Cost of preparation of an engineering study or studies; legal costs with relation to the application and presentation of any application for the formation of the district; other engineering costs that may not be included in a study; costs for financial advice; administrative expense; and such other expenses as may be necessary or incidental to the action of any municipality under this chapter, including funding provided pursuant to an agreement entered into pursuant to Title 30, chapter 203. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

Subchapter 2: ORGANIZATION

§1721. FORMATION

The formation of a disposal district is accomplished as follows. [1995, c. 656, Pt. A, §29 (AMD).]

1. **Application by municipal officers.** The municipal officers of the municipality or municipalities that desire to form a disposal district shall file an application with the department, after notice and hearing in each municipality, on a form or forms prepared by the department, setting forth the name or names of the municipality or municipalities and furnishing such other data as the department determines necessary and proper. The application must contain, but is not limited to, a description of the territory of the proposed district, the name proposed for the district that includes the words "disposal district," a statement showing the existence in that territory of the conditions requisite for the creation of a disposal district as prescribed in section 1702 and other documents and materials required by the department. The department may adopt rules under this chapter.

[2011, c. 655, Pt. GG, §22 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Public hearing.** Upon receipt of the application, the department shall hold a public hearing on the application within 60 days of the date of receipt of the application, at some convenient place within the boundaries of the proposed district. At least 14 days prior to the date of the hearing, the department shall publish notice of the hearing at least once in a newspaper of general circulation in the area encompassed by the proposed district.

[2011, c. 655, Pt. GG, §22 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

3. **Approval of application.** After the public hearing, on consideration of the evidence received, the department shall, in accordance with section 1702 and rules adopted by the department, make findings of fact and a determination of record whether or not the conditions requisite for the creation of a disposal district exist in the territory described in the application. If the department finds that the conditions do exist, it shall issue an order approving the proposed district as conforming to the requirements of this chapter and designating the name of the proposed district. The department shall give notice to the municipal officers within the municipality or municipalities involved of a date, time and place of a meeting of the representative of the municipality or municipalities involved. The municipal officers shall elect a representative to attend the meeting who may represent the municipality in all matters relating to the formation of the district. A return receipt properly endorsed is evidence of the receipt of notice. The notice must be mailed at least 10 days prior to the date set for the meeting.

[2011, c. 655, Pt. GG, §22 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

4. **Denial of application.** If the department determines that the creation of a disposal district in the territory described in the application is not warranted for any reason, it shall make findings of fact and enter an order denying its approval. The department shall give notice of the denial by mailing certified copies of the decision and order to the municipal officers of the municipality or municipalities involved. An application for the creation of a disposal district, consisting of exactly the same territory, may not be entertained within one year after the date of the issuance of an order denying approval of the formation of that disposal district, but this provision does not preclude action on an application for the creation of a disposal district embracing all or part of the territory described in the original application, as long as another municipality or fewer municipalities are involved.

[2011, c. 655, Pt. GG, §22 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

5. **Joint meeting.** The persons selected by the municipal officers, to whom the notice described in subsection 3 is directed, shall meet at the time and place appointed. When more than one municipality is involved, they shall organize by electing a chair and a secretary. An action may not be taken at any such meeting unless, at the time of convening, there are present at least a majority of the total number of municipal representatives eligible to attend and participate at the meeting, other than to report to the department that a quorum was not present and to request the department to issue a new notice for another meeting. A quorum is a simple majority of representatives eligible to attend the meeting. The purpose of the meeting is to determine the number of directors, subject to section 1724, to be appointed by and to represent each participating municipality and to determine the duration of terms to be served by the initial directors so that, in ensuing years, 1/3 of the directors and their alternates are appointed or reappointed each year, to serve until their respective successors are duly appointed and qualified. Subject to section 1724, the number of directors to represent each municipality is subject for negotiation among the municipal representatives. When a decision has been reached on the number of directors and the number to represent each municipality and the initial terms of the directors, subject to the limitations provided, this decision must be reduced to writing by the secretary and must be approved by a 2/3 vote of those present. The vote so reduced to writing and the record of the meeting must be signed by the chair, attested by the secretary and filed with the department. Any agreements among the municipal representatives that are considered essential prerequisites to the formation of the district, whether concerning payments in lieu of taxes to a municipality in which a waste facility is to be located, or any other matter, must be in writing and included in the record filed with the department. Subsequent to district formation, the board of directors of the district shall execute all documents necessary

to give full effect to the agreements reached by the municipal representatives and filed with the department. When a single municipality is involved, a copy of the vote of the municipal officers, duly attested by the clerk of the municipality, must be filed with the department.

[2011, c. 655, Pt. GG, §22 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

6. **Submission.** When the record of the municipality, or the record of the joint meeting, when municipalities are involved, is received by the department and found to be in order, the department shall order the question of the formation of the proposed disposal district and other questions relating to the formation to be submitted to the legal voters residing within the municipalities, except as provided in subsection 7, in which case the municipal officers may determine the questions. The order must be directed to the municipal officers of the municipality or municipalities that propose to form the disposal district, directing them to call, within 60 days of the date of the order, town meetings or city elections for the purpose of voting in favor of or in opposition to each of the following articles or questions, as applicable, in substantially the following form:

A. Whether the town (or city) of (name of town or city) will vote to incorporate as a disposal district to be called (name) Disposal District; [1991, c. 66, Pt. B, §8 (RPR).]

B. Whether the residents of (name of town or city) will vote to join with the residents of the (name of town or city) to incorporate as a disposal district to be called (name) Disposal District: (legal description of the bounds of the proposed disposal district). At a minimum, the district must consist of (names of essential municipalities); and [1991, c. 66, Pt. B, §8 (RPR).]

C. Whether the residents of (name of town or city) will vote to approve the total number of directors and the allocation of representation among the municipalities on the board of directors, as determined by the municipal officers and listed as follows: Total number of directors is (number of directors) and the residents of (town or city) are entitled to ( ) directors. (The number of directors to which each municipality is entitled must be listed.) [1991, c. 66, Pt. B, §8 (RPR).]

Directors must be chosen to represent municipalities in the manner provided in section 1725.

[2011, c. 655, Pt. GG, §22 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

7. **Determination by municipal officers.** In the event that the charters of the respective municipalities, or any one of them, consistent with such state laws as may otherwise be applicable, permit the municipal officers of the municipality or municipalities that propose to form the disposal district to vote to join such a district, the municipal officers may determine the question of the formation of the proposed disposal district and other questions relating to the formation without submission to the legal voters residing within the municipality.

[1995, c. 656, Pt. A, §29 (AMD) .]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1989, c. 869, §B2 (AMD). 1989, c. 890, §§A40,B276 (AMD). 1991, c. 66, §B8 (AMD). 1995, c. 656, §A29 (AMD). 2011, c. 655, Pt. GG, §22 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1722. APPROVAL AND ORGANIZATION

When the residents of the municipality, or each municipality when more than one is involved, or the municipal officers, as the case may be, have voted upon the formation of a proposed disposal district and all of the other questions submitted, the clerk of each of the municipalities shall make a return to the department in such form as the department may determine. If the department finds from the returns that each of the municipalities involved, voting on each of the articles and questions submitted to them, has voted in the affirmative, and that the municipalities have appointed the necessary directors and listed the names of the directors to represent each municipality, and that all other steps in the formation of the proposed disposal district are in order and in conformity with law, the department shall make a finding to that effect and record

the finding upon its records. When 3 or more municipalities are concerned in the voting, and at least 2 have voted to approve each of the articles and questions submitted, appointed the necessary directors and listed the names of the directors to represent each municipality, rejection of the proposed disposal district by one or more does not defeat the creation of a district composed of the municipalities voting affirmatively on the question, if the department determines and issues an order stating that it is feasible or practical to constitute the district as a geographic unit composed of the municipalities voting affirmatively, unless the vote submitted to the municipalities provided that specific participants or a minimum number of participants must approve the formation of the district. [2011, c. 655, Pt. GG, §23 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

The department, immediately after making its findings, shall issue a certificate of organization in the name of the disposal district in such form as the department determines. The original certificate must be delivered to the directors on the day that they are directed to organize and a copy of the certificate duly attested by the commissioner must be filed and recorded in the office of the Secretary of State. The issuance of the certificate by the department is conclusive evidence of the lawful organization of the disposal district. The disposal district is not operative until the date set by the directors under section 1726. [2011, c. 655, Pt. GG, §23 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1989, c. 869, §B3 (AMD). 1989, c. 890, §§A40,B277 (AMD). 1991, c. 66, §B9 (RPR). 1995, c. 656, §A30 (AMD). 2011, c. 655, Pt. GG, §23 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1723. TRANSFER OF PROPERTY AND ASSETS

When the territory of a municipality falls within a disposal district which has been issued its certificate of organization and has assumed the management of and responsibility for disposal services within its territorial limits, the directors of the disposal district shall determine what disposal property or properties, if any, owned by any municipality within the disposal district shall be necessary to carry on the functions of the disposal district and shall request in writing that the municipal officers of any municipality within the disposal district convey title to the disposal property to the disposal district and the municipal officers shall make the conveyance. The disposal district shall pay fair compensation for the property or properties. Any request by the directors of the district shall be made in writing within 2 years of the date of the certificate of organization or the effective date on which a new member joins the district, whichever is appropriate, and shall be limited to facilities existing as of the date of the certificate of organization or the effective date on which a new member joins the district, whichever is appropriate. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1724. DIRECTORS

1. **Authorization.** All of the affairs of a disposal district must be managed by an appointed board of directors that consists of not less than 3 directors. The exact number of directors must be determined in accordance with section 1721. Each director is entitled to the number of votes that corresponds to the level of population in that director's municipality as set forth in the following table, unless an alternative method of apportioning votes is approved by a majority vote of the municipal officers representing each member of the disposal district prior to or at the time of formation.

Population	No. of Votes
0 - 1,000	1
1,001 - 2,500	2
2,501 - 5,000	3
5,001 - 10,000	4
10,001 - 15,000	5

15,001 - 25,000	6
25,001 - 35,000	7
35,001 - 50,000	8
50,001 - 65,000	9
65,001 and over	10

A director may not split votes. In the event a municipality has more than one director, directors from that municipality shall share equally the number of votes for that municipality but may vote independently of each other. A determination of population must be made based upon the latest official Decennial Census of the United States by the United States Bureau of Census. A disposal district may alter the number of its directors by submitting the proposed alteration to the voters in the same manner as provided in section 1721, subsection 7. No municipality within any disposal district may have less than one director. A quorum of the directors may conduct the affairs of the district even if there is a vacancy on the board of directors. A quorum is defined as a simple majority of eligible and appointed directors, provided that a majority of the member municipalities are represented. A simple majority of directors voting, either in person or by written consent, may conduct the affairs of the district.

[1999, c. 557, §1 (AMD) .]

2. **Term.** Subject to section 1721, subsection 5, as to the duration of terms to be served by initial directors, all directors shall hold office for 3 years and until their successors are duly appointed and qualified. Any representative may be appointed to successive terms without limit.

[1983, c. 820, §2 (NEW) .]

3. **Vacancy.** Any vacancy on the board of directors shall be filled within 30 days after the vacancy occurs by appointment of the municipal officers of the municipality which he is to represent. An appointee to a vacancy shall serve until the expiration of the term of the representative to whose position the appointment was made and may be reappointed.

[1983, c. 820, §2 (NEW) .]

4. **Directors' retirement.** Directors shall not be eligible to join the Maine Public Employees Retirement System as a result of their selection as directors.

[1983, c. 820, §2 (NEW); 2007, c. 58, §3 (REV) .]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1993, c. 11, §1 (AMD). 1993, c. 597, §1 (AMD).
1999, c. 557, §1 (AMD). 1999, c. 557, §1 (AMD). 2007, c. 58, §3 (REV).

§1725. APPOINTMENT OF DIRECTORS AND ORGANIZATIONAL MEETING

Directors are appointed by the municipal officers of the municipality they represent. Alternate directors may be appointed by the municipal officers to act in the absence of a director. To the extent possible, the board of directors must include a mix of individuals with sufficient managerial, technical, financial or business experience to execute their duties efficiently and effectively. Appointments must be by vote of the municipal officers, attested to by the municipal clerk and presented to the clerk of the district. The municipal officers, by majority vote, may remove their appointed representatives during their term for stated reasons, but directors may not be removed except for neglect of duty, misconduct or other acts that indicate an unfitness to serve. Upon receipt of the names of all the directors, the department shall set a time, place and date for the first meeting of the directors, notice of the meeting to be given to the directors by certified or registered mail, return receipt requested and mailed at least 10 days prior to the date set for the meeting.
[2011, c. 655, Pt. GG, §24 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

The directors shall organize by election from their own members a chairman, a vice-chairman, a treasurer and a clerk, each of whom shall hold office for one year and until his successor is duly elected and qualified, and choose, employ and fix the compensation of any other necessary officers and agents who shall serve at their pleasure, and they shall adopt a corporate seal. Prior to the election of the officers, each director shall be sworn to the faithful performance of his duties by the respective municipal clerk. For the election of chairman, vice-chairman, treasurer and clerk, each director shall cast one vote regardless of the population of the municipality which he represents. [1983, c. 820, §2 (NEW).]

The power and authority of the district and the administration and the general supervision of all affairs of the district shall be vested in the directors of the district. [1983, c. 820, §2 (NEW).]

The directors may from time to time adopt, establish and amend bylaws consistent with the laws of the State, and necessary or reasonable for their own convenience and the proper management of the affairs of the district, and perform any other acts within the powers delegated to them by law. [1983, c. 820, §2 (NEW).]

After the original organizational meeting, the directors shall meet annually at a time determined by their bylaws for the purpose of electing from among the members a chairman, vice-chairman, treasurer and clerk to serve until the next annual election and until their successors are appointed and qualified. The treasurer shall furnish bond in such sum and with such sureties as the directors shall approve, but not less than 50% of the anticipated annual revenues of the district, the cost to be paid by the district. The chairman, vice-chairman, treasurer and clerk may receive such compensation for serving in these capacities as the directors shall determine. This compensation shall be in addition to the compensation payable to them as directors. The directors shall make and publish an annual report, including a report of the treasurer. [1983, c. 820, §2 (NEW).]

The directors shall receive compensation as recommended by them and approved by majority vote of the municipal officers in municipalities representing a majority of the population within the district. Certification thereof shall be recorded with the Secretary of State and recorded in the bylaws. Their compensation for duties as directors shall be on the basis of such specific amount as may be specified in the bylaws. [1983, c. 820, §2 (NEW).]

No member of the board of directors may be employed for compensation as an employee or in any other capacity by the district of which he is a director. [1983, c. 820, §2 (NEW).]

The board of directors may establish an executive board and grant authority as it may deem necessary. The board of directors may establish any and all committees as it may deem necessary. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1989, c. 869, §B4 (AMD). 1989, c. 890, §§A40,B278 (AMD). 1991, c. 66, §B10 (AMD). 1995, c. 656, §A31 (AMD). 2011, c. 655, Pt. GG, §24 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1726. RESPONSIBILITY TO ACCEPT SOLID WASTE

1. **Time of responsibility.** The district becomes responsible for providing a system for solid waste disposal when its board of directors declares the disposal system operational.

[1983, c. 820, §2 (NEW) .]

2. **Types of waste.** The district shall provide a system for disposal of all solid waste generated by residential and commercial activities within the member municipalities. To the extent requested by member municipalities, the district shall also provide for the disposal of compatible solid waste from industrial activities within a member municipality to the same extent the municipality is providing a system of solid waste disposal at the date of its vote to join the district, provided that the industrial waste is disposed of at no cost to other member municipalities. Following formation of the district, the board of directors may

allow for the disposal of the waste of any other industrial activities within a member municipality. The district may provide for the disposal of sludge through contract with a member municipality or quasi-municipal corporation serving the member municipality, provided that the sludge is disposed of at no cost to the other member municipalities. The district may provide for the disposal of any or all demolition and construction waste or yard waste from any member municipality. The district may contract with a nonmember municipality or a private entity for the disposal of solid waste generated within or outside the boundaries of the district. The district may provide for disposal of any hazardous waste generated from district operations.

[1983, c. 820, §2 (NEW) .]

3. **Collection sites or systems.** Each member municipality shall be responsible for providing a collection site or system for the solid waste generated within the member municipality and for the transportation of the solid waste to the waste facility designated by the district, together with all incident costs. Any member municipality may contract with the district to provide collection and transportation services.

[1983, c. 820, §2 (NEW) .]

4. **Refusal of material; damages.** The district may refuse to accept any material which does not meet the definition of solid waste from residential, commercial or industrial activities.

[1983, c. 820, §2 (NEW) .]

5. **Disposal.** Disposal shall be in accordance with the environmental statutes administered by the department.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1726-A. AGREEMENT TO PROVIDE LIMITED SERVICES

1. **Provision of limited waste disposal services.** If for any reason the board of directors of a district organized under this chapter has not declared a disposal system operational for the disposal of all solid waste generated by the residential and commercial activities within the member municipalities, the district may contract with all or any of the member municipalities of the district, and any member municipality may contract with the district to provide a system for the disposal of any portion or type of residential, commercial or industrial waste generated within a member municipality on such terms and conditions as the district and the member municipality may agree. Notwithstanding any law, charter or ordinance provisions to the contrary, the powers to contract with a refuse disposal district conferred upon a municipality pursuant to this section may be exercised by the municipal officers as defined in Title 30-A, section 2001, including the assessors of a plantation, only when authorized, in the case of a municipality with a city or town council, by action of the council or, in the case of a municipality without such a council, by action of the town meeting. This subsection applies and the action of the city council, town council or town meeting is effective whether it was taken before or after the effective date of this subsection.

[1989, c. 861, (NEW) .]

2. **Powers.** Except as provided in this section, all of the provisions of this chapter apply to a district providing limited waste disposal services pursuant to this section, including, but not limited to, the authority to issue bonds and notes in accordance with subchapter IV. The provisions of this section apply to all refuse disposal districts organized under this chapter, including refuse disposal districts organized prior to the effective date of this section.

[1989, c. 861, (NEW) .]

3. **Collection sites or systems.** Each member municipality that enters into a contract with a district pursuant to this section is responsible for providing a collection site or system for the portion or type of solid waste generated within that member municipality and, subject to the contract with the district, for the transportation of that solid waste to a waste facility designated by the district, together with all incidental costs. The member municipality may contract with the district to provide collection and transportation services.

[1989, c. 861, (NEW) .]

4. **Municipal assessments.** A district that proposes to provide limited waste disposal services may submit to the legal voters of the district a question with regard to granting the district assessment powers in substantially the form provided under section 1755. Authorized assessments must be shared by the member municipalities of the district under the same formula as guarantees are shared pursuant to section 1754.

A. When the question is submitted prior to the issuance of any indebtedness by the district, the directors may decide that approval of such an assessment article by the voters of a municipality is a condition of each municipality's continuance as a member of the district, in which case the ballots must include a statement that municipalities that fail to vote in favor of the proposed assessment article are no longer members of the district if the board determines that it is feasible or practical to constitute a district as a geographic unit made up of the municipalities voting in favor of the proposed assessment article. The ballots must also state the method to be used to allocate assessments among the member municipalities if the article is approved. The ballot may not contain a specific fractional share of the assessment to be borne by each member municipality. The votes must be counted in each municipality and the affirmative vote of a simple majority of votes cast in each municipality is required to grant the district assessment powers over all of the municipalities in the district. When 3 or more municipalities are involved in the voting and at least 2 have voted to approve the assessment article submitted to them, rejection of the proposed assessment article by one or more municipalities does not defeat the assessment power with respect to the municipalities voting in favor of it if the board determines that it is feasible or practical to constitute a district made up of the municipalities voting in favor of the article as a geographic unit. In that event, the board, immediately after making its findings, shall issue an amended certificate of organization in the name of the district for a district composed only of the municipalities voting in favor of the assessment article. Upon the issuance of a certificate the municipalities not approving the assessment article are no longer members of the district. The original of the amended certificate must be delivered to the directors of the district and a copy of the certificate attested by the commissioner must be filed and recorded in the office of the Secretary of State. The issuance of the certificate by the board is conclusive evidence of the lawful reorganization of the district. If the board determines that it is not feasible or practical to constitute the district as a geographic unit composed of the municipalities voting affirmatively on the article, the district continues to exist with no assessment power and the municipalities that did not approve the assessment article remain members of the district. [2011, c. 655, Pt. GG, §25 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

B. When the question is submitted after the issuance of any indebtedness by the district, the provisions of section 1755, subsection 2 apply. [1989, c. 861, (NEW).]

[2011, c. 655, Pt. GG, §25 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

5. **Guaranteed bonds.** If the district has been authorized to issue guaranteed notes and bonds pursuant to section 1754, a contract between the district and a member municipality pursuant to this section may authorize the district to issue notes and bonds that are guaranteed pro rata by that member municipality. If the district established the share of liability of each member municipality for guaranteed notes and bonds using the valuation method set forth in section 1754, subsection 4, paragraph A, the pro rata share of liability of each member municipality authorizing the district to issue guaranteed notes and bonds must be established in accordance with a fraction, the numerator of which is the most recent state valuation of all property of the member municipality authorizing the district to issue the guaranteed notes and bonds and the denominator of which is the most recent state valuation of all property located within all the member municipalities authorizing the district to issue the guaranteed notes and bonds. If the district established the share of liability of each member municipality for guaranteed notes and bonds using the per capita method set forth in section 1754, subsection 4, paragraph B, the pro rata share of liability of each member municipality authorizing the district to issue guaranteed notes and bonds must be established in accordance with a fraction, the numerator of which is the most recent census of all residents of the member municipality authorizing the district to issue the guaranteed notes and bonds and the denominator of which is the most recent census of all residents of all the member municipalities authorizing the district to issue the guaranteed notes and bonds. A member municipality's fractional share of liability for guaranteed notes and bonds authorized pursuant to these contracts may be different from that member municipality's fractional share of liability for guaranteed notes and bonds calculated pursuant to section 1754. The guarantee provisions of this section apply to districts providing limited waste disposal services under this section that have authority to issue bonds and notes guaranteed by member municipalities. A member municipality may not be required to guarantee any portion of the indebtedness issued by a district providing limited waste disposal services under this section unless the municipality has entered into a contract providing for such a guarantee pursuant to this section.

[1993, c. 11, §3 (AMD) .]

6. **General municipal powers.** In addition to the powers granted to municipalities under this chapter, the provisions of section 1304-B apply to the member municipalities of a district providing limited waste disposal services pursuant to this section and nothing contained in this section limits the powers of a municipality under section 1304-B.

[1989, c. 861, (NEW) .]

7. **Relationship to other laws.** The obligation of a municipality to pay any fees, assessments, contract costs or expenses, guaranteed amounts or any other payments in accordance with any agreement or contract entered into pursuant to this section does not constitute a debt or indebtedness of the municipality within the meaning of any statutory, charter, ordinance or other provision limiting the incurrence or the amount of municipal indebtedness. The authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation does not require or is not subject to any voter referendum or approval under any statutory, charter, ordinance or other provision. No contract entered into in accordance with this section may be deemed to be a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.

[1989, c. 861, (NEW) .]

SECTION HISTORY
1989, c. 861, (NEW). 1993, c. 11, §§2,3 (AMD). 1995, c. 656, §A32 (AMD). 2011, c. 655, Pt. GG, §25 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1727. ADMISSION OF NEW MEMBER MUNICIPALITIES

The board of directors may authorize the inclusion of additional member municipalities in the district upon the terms and conditions as the board, in its sole discretion, determines to be fair, reasonable and in the best interest of the district, except that on proper application any municipality that is host to a waste facility of

the district must be admitted on equal terms with existing members if the new member municipality assumes or becomes responsible for a proportionate share of liabilities of the district in a manner similar to that of existing municipalities. The legislative body of any nonmember municipality that desires to be admitted to the district shall make application for admission to the board of directors of the district. The directors shall determine the effects and impacts that are likely to occur if the municipality is admitted and shall either grant or deny authority for admission of the petitioning municipality. If the directors grant the authority, they shall also specify any terms and conditions, including, but not limited to, financial obligations upon which the admission is predicated. The petitioning municipality shall comply with the voting procedures specified in section 1721. The vote, if in the affirmative, must be certified by the clerk of that municipality to the board of directors and to the department. Upon satisfactory performance of the terms and conditions of admission, the municipality by resolution of the board of directors becomes and thereafter is a member municipality of the district. The clerk of the district shall promptly certify to the agency and the Secretary of State that the municipality has become a member of the district. The certification is conclusive evidence that the municipality is a lawful member of the district. Upon admission of a municipality to a district, the provisions of section 1724 determine the number of votes to be cast by the director or directors representing that municipality. [2011, c. 655, Pt. GG, §26 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1989, c. 869, §B5 (AMD). 1989, c. 890, §§A40,B279 (AMD). 1991, c. 66, §B11 (RPR). 1995, c. 656, §A33 (AMD). 2011, c. 655, Pt. GG, §26 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§1728. WITHDRAWAL OF MEMBER MUNICIPALITIES

Withdrawal of a member municipality may take place at any time prior to the commitment by the district, or any member municipality on behalf of the district, to issue any instrument of indebtedness, including, but not limited to, bonds and notes with a maturity of one year or more. The date upon which a district or member municipality is committed to issue the debt shall be established by a majority vote of the board of directors, at least 90 days in advance of that date. At the time of withdrawal, the withdrawing municipality shall remain liable for its proportionate share of district debts and operating expenses incurred prior to the date of withdrawal, and shall make provisions satisfactory to the board of directors to pay its share of the debt outstanding at the time of withdrawal. [1983, c. 820, §2 (NEW).]

After issuance of instruments of indebtedness with a maturity of one year or more, no member municipality may withdraw from the district while the indebtedness remains outstanding without the approval of a simple majority vote of the board of directors of the district. A withdrawing municipality shall make provisions satisfactory to the board of directors to pay its share of debt outstanding at the time of withdrawal. [1983, c. 820, §2 (NEW).]

In considering the request of a municipality to withdraw, the board of directors shall consider the effect of the proposed withdrawal on the ability of the district to continue operating its waste facility in a manner and at a cost to the remaining member municipalities which is reasonable in comparison with costs experienced by the member municipalities over the most recent 3 fiscal years. The board of directors shall consider the effect on tipping fees and other costs, as well as the effect on revenue from the sale of power caused by the loss of the amount of waste contributed by the withdrawing municipality. [1983, c. 820, §2 (NEW).]

If the withdrawal causes the costs of the other member municipalities to increase by reducing the efficiency of the waste facility, the withdrawing municipality may be required by the board of directors as a condition of withdrawal either to secure an alternate and equivalent source of waste for the district, both in quality and quantity, or to execute an agreement to make payments to the district for a period of 5 years following withdrawal, which will cause the cost of the other member municipalities to remain constant over that period, when adjusted annually for the effect of all other factors on such costs. [1983, c. 820, §2 (NEW).]

Subject to any required approval by the board of directors of the district, withdrawal by a municipality may be accomplished by a vote of the inhabitants of the municipality, or by determination of the municipal officers, in the same manner as the decision to join in the formation of the district under section 1721. The town meeting or city election, as the case may be, to consider withdrawal shall be called by the municipal officers upon receipt of a petition of 10% of the number of voters in the municipality who voted in the last gubernatorial election. The question to be voted upon shall be in substantially the following form:

> To see if the town (or city) of (name of town or city) will vote to withdraw from (name of disposal district).

[1983, c. 820, §2 (NEW).]

The number of votes required for passage shall be 2/3 of those voting. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1729. DISSOLUTION

1. **Method.** In the event all member municipalities vote to withdraw pursuant to section 1728, the board of directors shall vote to dissolve the district. The board of directors may, at any time by 2/3 vote, recommend to the member municipalities that the district be dissolved. If such a recommendation is made, the municipal officers in each member municipality shall cause the question of dissolving the district to be put to the voters in each municipality in referendum. If the voters in 2/3 of the municipalities vote to dissolve the district, the district shall be dissolved by the board of directors at a time fixed by the board of directors.

[1983, c. 820, §2 (NEW) .]

2. **Assets and liabilities.** Upon dissolution, the directors shall wind up the affairs of the district and shall liquidate the district's assets and liabilities as follows:

A. Pay all expenses and debts of the district; and [1983, c. 820, §2 (NEW).]

B. Distribute all assets and liabilities proportionately among the member municipalities in accordance with the formula contained in section 1754 for guarantees and assessments. [1983, c. 820, §2 (NEW).]

[1983, c. 820, §2 (NEW) .]

3. **Filing of articles of dissolution.** A copy of the articles of dissolution shall be filed with the Secretary of State by the board of directors.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

Subchapter 3: POWERS

§1731. POWERS

Each disposal district formed under this chapter shall have the power, within the district and without the district, to provide for the planning, construction, equipping, operation and maintenance of facilities for the handling of solid waste, including resource recovery and resource conservation; to provide for refuse collection services; to provide for conversion of waste to one or more forms of energy and for the transmission thereof; to generate revenues from those activities and to make contracts with persons, firms,

corporations, partnerships, limited partnerships and other entities, whether private, public or municipal, in relation thereto, all as may be necessary or proper; and, in general, to do any or all other things necessary or incidental for the exercise of its powers or to the accomplishment of the purposes of the district. [1983, c. 820, §2 (NEW).]

The power to make contracts includes, but is not limited to, the power: [1983, c. 820, §2 (NEW).]

1. **Contract with experts.** To contract with architects, engineers, financial and legal consultants and other experts for services;

[1983, c. 820, §2 (NEW) .]

2. **Contracts for operation.** To contract with persons, firms, corporations, limited partnerships, partnerships, associations, authorities and agencies for the operation of waste facilities and for services relating to the disposal of solid waste, resource conservation and resource recovery, including the conversion of waste to energy and the transmission thereof;

[1983, c. 820, §2 (NEW) .]

3. **Contracts for handling of waste.** To contract for the handling of solid waste on the basis of guaranteed amounts, whether delivered for disposal and accepted for disposal or not, of solid waste, with payments based on the guaranteed amounts, whether actually disposed of or not, which payments may be variable and may be determined by formulas expressed in those contracts;

[1983, c. 820, §2 (NEW) .]

4. **Contracts with government.** To contract with the State, the United States or any subdivision or agency thereof for services;

[1983, c. 820, §2 (NEW) .]

5. **Contracts with member municipalities.** To contract with any member municipality for the services of any officers or employees of that municipality useful to it;

[1983, c. 820, §2 (NEW) .]

6. **Real and personal property.** To purchase, sell, lease, acquire, convey, mortgage, improve and use real and personal property in connection with the purposes of the district;

[1983, c. 820, §2 (NEW) .]

7. **Energy.** To make agreements pertaining to the generation, transmission and sale of energy;

[1983, c. 820, §2 (NEW) .]

8. **Staff; employment.** To employ and establish salaries and qualifications for such professional, clerical and administrative staff personnel as may be necessary or convenient to the operation of the district; and

[1983, c. 820, §2 (NEW) .]

9. **Use of bidding processes.** To make contracts, to issue bonds, notes or other debt instruments under subchapter IV, and to deal generally with 3rd parties which shall include the power to use a negotiated or competitive bidding process or any other process which may be advantageous to the district, and determination of the process to be used shall be made by and at the discretion of the directors of the district.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1732. REAL AND PERSONAL PROPERTY AND RIGHT OF EMINENT DOMAIN

Each disposal district formed under this chapter may acquire and hold real and personal property which it deems necessary for its purposes, and is granted the right of eminent domain; and for those purposes may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, as for public uses any land, real estate, easements or interest therein, necessary for constructing, establishing, maintaining and operating refuse disposal, resource disposal, resource recovery and resource conservation facilities and may provide for the conversion of waste to energy and the transmission thereof. [1983, c. 820, §2 (NEW).]

No property may be so taken, except as may be necessary for the construction of steam and electric transmission lines, roads and communications equipment, unless the property is located within the disposal district. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1733. PROCEDURE IN EXERCISE OF RIGHT OF EMINENT DOMAIN

The right of eminent domain granted in section 1732 may only be exercised after complying with the following procedures. [1983, c. 820, §2 (NEW).]

1. **Notice to owner.** The district shall provide notice to the owner as follows.

A. The owner or owners of record shall be notified as follows:

(1) The determination of the directors that they will exercise the right of eminent domain;

(2) A description and scale map of the land or easement to be taken;

(3) The final amount offered for the land or easement to be taken, based on the fair value as estimated by the district; and

(4) Notice of the time and place of the hearing provided in subsection 4. [1983, c. 820, §2 (NEW).]

B. Notice may be made:

(1) By personal service in hand by an officer duly qualified to serve civil process in this State; or

(2) By certified mail, return receipt requested, to last known address of owner or owners. [1983, c. 820, §2 (NEW).]

C. If the owner or owners are not known or if they cannot be notified by personal service or certified mail, notice may be given by publication in the same manner as provided for in subsection 4. [1983, c. 820, §2 (NEW).]

[1983, c. 820, §2 (NEW) .]

2. **Notice to tenant.** Notice shall be given to any tenants in the same manner as for the owner of the property.

[1983, c. 820, §2 (NEW) .]

3. **Notice to the affected municipality.** Notice shall be given to the municipality in which the property to be acquired is located in the same manner as for the owner of the property and shall be addressed to the municipal officers.

[1983, c. 820, §2 (NEW) .]

4. **Hearing.** The directors of the district shall hold a public hearing on the advisability of the proposed exercise of the right of eminent domain. Notice of the hearing shall be made by publication in a newspaper of general circulation in the area of the taking and shall be given once a week for 2 successive weeks, the last publication to be at least 2 weeks prior to the time appointed in the hearing. The hearing notice shall include:

A. The time and place of the hearing; [1983, c. 820, §2 (NEW).]

B. A description of the land or easement taken; and [1983, c. 820, §2 (NEW).]

C. The name of the owners, if known. [1983, c. 820, §2 (NEW).]

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1734. CONDEMNATION PROCEEDINGS

Each disposal district formed under this chapter, in exercising from time to time the right of eminent domain conferred upon it by section 1732, shall file in the office of the county commissioners of the county in which the property to be taken is located and cause to be recorded in the registry of deeds in the county plans of the location of all lands, real estate, easements or interest therein, with an appropriate description and the names of the owners thereof, if known. When for any reason any such district fails to acquire property which it is authorized to take and which is described in that location, or if the location so recorded is defective and uncertain, it may, at any time, correct and perfect the location and file a new description. In that case, any such district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and any such district is not liable for any acts which would have been justified if the original taking had been lawful. No entry may be made on any private lands, except to make surveys, until the expiration of 10 days from the filing, whereupon, possession may be had of all the lands, real estate, easements or interests therein and other property and rights as aforesaid to be taken, but title shall not vest in the district until payment for the property. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1735. APPEAL

If any person sustaining damages by any taking by a disposal district under section 1732 does not agree with the district upon the sum to be paid, either party, upon petition to the county commissioners of the county in which the property is located, may have the damages assessed by them. The procedure and all subsequent proceedings and right of appeal shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways by the county commissioners, except that: [1983, c. 820, §2 (NEW).]

1. **Vesting of title.** Title to the lands, real estate, easements or interests therein and other property and rights to be taken shall not vest in the district until payment to the owner of the amount awarded therefor or, if the payment is refused upon tender, until tender thereof to the treasurer of the county in which lands and interest are located, for escrow at interest for the benefit of the owner, pending final determination of the amount to which the owner is entitled; and

[1983, c. 820, §2 (NEW) .]

2. **Appeal.** In the event of any appeal of the amount awarded as damages for that taking:

A. The petition for assessment of damages shall be filed with the clerk of the county commissioners, by either party, within 30 days following the filing and recording of plans of the location of all the property, facilities and rights taken; and [1983, c. 820, §2 (NEW).]

B. If the return of the county commissioners has not been made within 120 days following the filing of the petition for assessment, the county commissioners shall be conclusively presumed to have confirmed the award of damages by the district and either party may, within 30 days following that 120-day period, appeal the amount of the damages awarded by the district to the Superior Court. [1983, c. 820, §2 (NEW).]

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1736. CROSSING OTHER PUBLIC UTILITIES

If any waste facility or portion of any waste facility of any disposal district formed under this chapter crosses the property or line of any public utility, unless consent is given by the public utility as to place, manner and conditions of the crossing within 30 days after consent is requested by the district, the Public Utilities Commission shall determine the place, manner and conditions of the crossing. All work on the property of the public utility shall be done under the supervision and to the satisfaction of the public utility, but at the expense of the district. If any facility or portion of any facility of any disposal district crosses the property or line of any railroad corporation, the procedure shall be the same as set out in this section, except that the Department of Transportation shall be substituted for the Public Utilities Commission. Nothing in this section authorizes any disposal district to take by right of eminent domain any of the property or facilities of any public utility used, or acquired, for future use by the owner, in the performance of a public duty, unless expressly authorized by a special Act of the Legislature. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1737. RULES

The directors may from time to time adopt rules to regulate the handling, collection, transportation, resource conservation, resource recovery and disposal of solid waste within the district. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1738. DELIVERY OF SOLID WASTE

Prior to a municipality becoming a member of a district or contracting with a district for disposal services, where a district waste facility meets the requirements of section 1304-B, at the discretion of the board of directors of the district, a municipality may be required to enact an ordinance controlling solid waste delivery in accordance with section 1304-B. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1739. SETTING FEES AND OTHER CHARGES

The directors may from time to time establish and adjust a structure for fees, including penalty charges, for collection services and transportation and for disposal of solid waste in and upon facilities operated by, on behalf of or under contract with, the district, subject to section 1752. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1740. ANNUAL AUDIT

Each year an audit shall be made of the accounts of the district, and for this purpose authorized agents of a certified public accounting firm appointed by the directors shall have access to all necessary papers, books and records. Upon the completion of each audit, a report shall be made to the chairman of the district board of directors and a copy shall be sent to the municipal officers of each member municipality. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1741. SURPLUS REVENUES

If, at the end of any fiscal year, the district has realized a surplus from operations for the fiscal year, after payment of or provision for all current expenses, current maintenance, repairs and replacements, current debt service on all outstanding bonds and notes of the district, all reserves for debt service, repairs and replacements, costs or current expenses as may be required by a trust agreement or resolution securing bonds or notes or as may otherwise be maintained by the district, and any other amounts which the district may be obligated by law or contract to pay or provide for, the district shall either: [1983, c. 820, §2 (NEW).]

1. **Reduction in charges.** Apply the surplus in the next following fiscal year to a reduction in the rates, fees, rents or other charges established by the district for services provided; or

[1983, c. 820, §2 (NEW) .]

2. **Reduction of capital debt.** Apply the surplus to the reduction or provision for reduction of its outstanding capital debt.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

Subchapter 4: BONDS AND NOTES

§1751. DISTRICT BONDS AND NOTES IN GENERAL

1. **Authorization of bonds.** Subject to the limitations in subsection 10 and sections 1754 and 1755, any district formed under this chapter may provide by resolution of its board of directors, without district vote, for the borrowing of money and the issuance from time to time of bonds and notes for any of its corporate purposes, including, but not limited to:

A. Paying and refunding its indebtedness; [1987, c. 737, Pt. C, §§99, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities, whether incurred by the district or any municipality in the district. The district may reimburse any municipality in the district for any such expenses incurred or paid by it; [1987, c. 737, Pt. C, §§99, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Paying costs directly or indirectly associated with acquiring properties, paying damages, constructing, maintaining and operating waste facilities, and making renewals, additions, extensions and improvements to the property or facilities, and covering interest payments during the period of construction and for such period as the directors may determine; [1987, c. 737, Pt. C, §§99, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. Providing such reserves for debt service, repairs and replacements or other capital or current expenses as may be required by a trust agreement or resolution securing bonds or notes; [1987, c. 737, Pt. C, §§99, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

E. Financing all or part of a waste facility for a user. The term "user," as used in this section, means one or more persons or entities, other than a district, acting as lessee, purchaser, mortgagor or borrower or contracting party; and [1987, c. 737, Pt. C, §§99, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

F. Any combination of these purposes. [1987, c. 737, Pt. C, §§99, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

Bonds may be issued by a district under this chapter as general obligations of the district or as special obligations payable solely from particular funds. The principal, premium and interest on all bonds shall be payable solely from the funds provided for that purpose from revenues. All bonds issued by a district under this chapter shall be legal obligations of the district, and all districts formed under this chapter are declared to be quasi-municipal corporations within the meaning of Title 30-A, section 5701. Bonds may be issued under this chapter without obtaining the consent of any commission, board, bureau or agency of the State or of any municipality encompassed by the district and without any other proceedings or the happening of other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter. Except as provided in this subchapter, bonds issued by a district under this chapter do not constitute a debt or liability of the State or of any municipality encompassed by the district or a pledge of the faith and credit of the State or any such municipality, and a statement to that effect shall be recited on the face of the bonds.

[1987, c. 737, Pt. C, §§99, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. **Notes.** Any district formed under this chapter may also provide by resolution of its board of directors, without district vote, for the issuance from time to time of:

A. Notes in anticipation of bonds authorized under this chapter; [1983, c. 820, §2 (NEW).]

B. Notes in anticipation of the revenues to be collected or received in any year; or [1983, c. 820, §2 (NEW).]

C. Notes in anticipation of the receipt of federal or state grants or other aid. The issuance of these notes shall be governed by the applicable provisions of this chapter relating to the issuance of bonds, provided that notes in anticipation of revenue must mature no later than one year from their respective dates and notes issued in anticipation of federal or state grants or other aid and renewals thereof must mature no later than the expected date, as determined by the board of directors, of receipt of those grants or aid. The board of directors may adjust the maturity date of notes issued in anticipation of federal or state grants or other aid to reflect changes in the expected date of receipt. Notes in anticipation of revenue issued to mature less than one year from their dates may be renewed from time to time by the issuance of other notes, provided that the period from the date of an original note to the maturity of any note issued to renew or pay the note or the interest thereon may not exceed one year. [1983, c. 820, §2 (NEW).]

Any such district may enter into agreements with the State or the United States, or any agency of either, or any municipality, corporation, commission or board authorized to grant or loan money or to otherwise assist in the financing of projects of the type which that district is authorized to carry out, and to accept grants and borrow money from any such government, agency, municipality, corporation, commission or board as may be necessary or desirable to accomplish the purposes of the district.

[1983, c. 820, §2 (NEW) .]

3. **Maturity; interest; form; temporary bonds.** The bonds issued under this chapter shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates as may be determined by the board of directors or determined pursuant to a formula approved by the board of directors or by a 3rd party rate-setting agent selected by the board of directors, and may be made redeemable before maturity, at the option of the district, at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the bonds. The board of directors shall determine the form of the bonds, including any interest coupons to be attached, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any financial institution having trust powers within or without the State. Bonds shall be executed in the name of the district by the manual or facsimile signature of such officer or officers as may be authorized in the resolution to execute the bonds, but at least one signature on each bond shall be a manual signature. Coupons, if any, attached to the bonds shall be executed with the facsimile signature of the officer or officers of the district designated in the resolution. In case any officer, whose signature or facsimile signature appears on any bonds or coupons, ceases to hold that office before the delivery of the bonds, the signature or its facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until the delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form, or both, as the board of directors may determine, and provision may be made for the registration of any coupon bonds as to principal alone and as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board of directors may sell the bonds in the manner, either at public or private sale, and for such price as they may determine to be for the best interests of the district. The proceeds of the bonds of each issue shall be used solely for the purpose for which those bonds have been authorized and shall be disbursed in such manner and under such restrictions as the board of directors may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds. The resolution providing for the issuance of bonds, and any trust agreement securing the bonds, may contain such limitations upon the issuance of additional bonds as the board of directors may deem proper, and these additional bonds shall be issued under such restrictions and limitations as may be prescribed by that resolution or trust agreement. Prior to the preparation of definitive bonds, the board of directors may,

under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery. The board of directors may provide for the replacement of any bond which is mutilated, destroyed or lost.

[1985, c. 337, §5 (AMD) .]

4. **Pledges and covenants, trust agreement.** In the discretion of the board of directors of any district, each or any issue of bonds may be secured by a trust agreement by and between the district and a corporate trustee, which may be any financial institution having trust powers within or without the State.

The resolution of the directors authorizing the issuance of the bonds or the trust agreement may pledge or assign, in whole or in part, the revenues and other moneys held or to be received by the district and any accounts and contract or other rights to receive the revenues or moneys, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the district and the proceeds thereof, and may convey or mortgage the waste facilities or any other properties of the district. The resolution may also contain provisions for protecting and enforcing the rights and remedies of the bondholders, including, but not limited to, covenants setting forth the duties of the district and the board of directors in relation to the acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of its waste facilities or any of its other properties; the fixing and revising of rates, tolls, assessments, rents, tipping fees and transportation charges and other charges; the application of the proceeds of bonds; the custody, safeguarding and application of revenues; the defining of defaults and providing for remedies in the event thereof, which may include the acceleration of maturities, the establishment of reserves and the making and amending of contracts. The resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition, the resolution or trust agreement may contain such other provisions as the board of directors may deem reasonable and proper for the security of the bondholders, including means by which the resolution or trust agreement may be amended. All expenses incurred in carrying out the resolution or trust agreement may be treated as a part of the cost of operation. The pledge by any such resolution or trust agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made. All revenues, moneys, rights and proceeds so pledged and thereafter received by the district shall immediately be subject to the lien of the pledge without any physical delivery or segregation thereof or further action under the Uniform Commercial Code or otherwise, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district irrespective of whether those parties have notice thereof.

The resolution authorizing the issuance of bonds under this chapter, or any trust agreement securing those bonds, may provide that all or a sufficient amount of revenues and assessments, after providing for the payment of the cost of repair, maintenance and operation and reserves therefor as may be provided in the resolution or trust agreement, shall be set aside at such regular intervals as may be provided in the resolution or trust agreement and deposited in the credit of a fund for the payment of the interest on and the principal of bonds issued under this chapter as the bonds shall become due, and the redemption price or purchase price of bonds retired by call or purchase. The use and disposition of moneys in or to the credit of the fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds and, except as may otherwise be provided in the resolution or trust agreement, the fund shall be a fund for the benefit of all bonds without distinction or priority of one over another.

[1983, c. 820, §2 (NEW) .]

5. **Trust funds.** Notwithstanding any other provision of law, all money set aside for payment of the bonds, or other purposes pursuant to the provisions of any trust agreement securing the bonds, shall be deemed to be trust funds, to be held and applied as provided by the trust agreement; provided that investment or deposit of those funds shall be subject to the provisions applicable to municipal funds under Title 30-A, chapter 223, subchapter III-A. The resolution authorizing the issuance of bonds or the trust agreement

securing the bonds shall provide that any officer to whom, or bank, trust company or other financial institution or fiscal agent to which, money shall be paid shall act as trustee of money and shall hold and apply the same for the purposes hereof, subject to such regulations as may be provided in the resolution or trust agreement or as may be required by this chapter.

[1987, c. 737, Pt. C, §§99, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

6. **Remedies.** Any holder of bonds issued under this chapter or of any of the coupons appertaining to those bonds, and the trustee under any trust agreement, except to the extent the rights given may be restricted by the resolution authorizing the issuance of those bonds or trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of a receiver to take possession and control of the properties of the district, protect and enforce any and all rights under the laws of the State or granted under this chapter or under the resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by the resolution or trust agreement to be performed by the district or by any officer of the district, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by the district, or if applicable, the making of any assessments against member municipalities under section 1756.

[1983, c. 820, §2 (NEW) .]

7. **Refunding bonds.** Any district formed under this chapter by resolution of its board of directors, without district vote, may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. The refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the board of directors deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of those bonds, the expenses of issuance of the refunding bonds, the expenses of redeeming the bonds being refunded and such reserves for debt service or other capital or current expenses from the proceeds of the refunding bonds as may be required by a trust agreement or resolution securing bonds. The issuance of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the district in respect of the same shall be governed by the applicable provisions of this chapter relating to the issuance of bonds other than refunding bonds.

[1983, c. 820, §2 (NEW) .]

8. **Tax exemption.** All bonds, notes or other evidences of indebtedness issued under this chapter, and their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the State.

[1983, c. 820, §2 (NEW) .]

9. **Bonds declared legal investments.** Bonds and notes issued by any district under this chapter are made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, retirement funds and other persons carrying on a banking business, and all other persons who are now, or may hereafter be, authorized to invest in bonds or other obligations of the State, may properly and legally invest funds, including capital in their control or belonging to them. The bonds and notes are made securities which may properly and legally be deposited

with and received by any state, municipal or public officer, or any agency or political subdivision of the State, for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

[1983, c. 820, §2 (NEW) .]

10. **Certain bond issues; notice; special meeting; vote.** In the event that the directors vote to authorize bonds or notes, for any of the corporate purposes of a refuse disposal district, excluding notes payable within one year, or notes in anticipation of the revenues to be collected or received in any year or notes in anticipation of bonds which have already been authorized in accordance with this chapter, or notes in anticipation of the receipt of approved federal or state grants, the authorized amount of which, singly or in the aggregate included in any one financing, is $1,000,000 or more, the directors shall provide notice to the general public:

A. Of the proposed bond or note issue and the purposes for which the debt is being incurred; and [1983, c. 820, §2 (NEW).]

B. Call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the amount of the debt so authorized. Notice of the proposed bond or note issue, the purposes for which the debt is being issued and the call of the special meeting shall be published at least once in a newspaper having general circulation in the district. [1983, c. 820, §2 (NEW).]

No debt may be incurred under the vote of the directors until the expiration of 7 full days following the date on which the special district meeting was held. If, prior to the expiration of that period, a petition signed by at least 5%, but not less than 50, of the registered voters of the district is filed with the clerk of the district requesting reference of the vote of the directors to referendum, the clerk of the district shall call and hold a special election of the voters of the district for the purpose of submitting to referendum vote the question of approving the vote of the directors. The vote of the directors shall be suspended until it has received approval by vote of a majority of the voters of the district voting on the question at the special election.

[1983, c. 820, §2 (NEW) .]

11. **Negotiated or competitive bidding process.** Any notes, bonds or other instruments of indebtedness may be the subject of a negotiated or competitive bidding process, or any other process which may be advantageous to the district, and determination of the process to be used shall be made by and at the discretion of the directors of the district.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1985, c. 337, §5 (AMD). 1987, c. 737, §§C99,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

§1752. CHARGES

All persons, firms and corporations, whether public, private or municipal, shall pay to the treasurer of any district formed under this chapter the rates, tolls, assessments, rents, tipping fees, transportation charges and other charges established by the directors for services provided by the district. In this subchapter, the words "other charges" shall include, but not be limited to, interest on delinquent accounts at a rate not to exceed the highest lawful rate set by the Treasurer of State for municipal taxes. The district may submit periodic bills directly to individual users or to member municipalities, as determined by the directors. [1983, c. 820, §2 (NEW).]

A district may establish schedules of charges by any method determined by the directors. [1983, c. 820, §2 (NEW).]

The rates, tolls, assessments, rents, tipping fees and transportation charges and other charges shall be so established as to provide revenue at least sufficient, together with any other moneys available therefor, to: [1983, c. 820, §2 (NEW).]

1. **Current operating expenses.** Pay the current expenses of operating and maintaining the waste facilities of the district;

[1983, c. 820, §2 (NEW) .]

2. **Payment of interest and principal.** Pay the principal, premium and interest on all bonds and notes issued by the district under this chapter when due and payable;

[1983, c. 820, §2 (NEW) .]

3. **Payments into reserve funds.** Create and maintain such reserves as may be required by any trust agreement or resolution securing bonds and notes;

[1983, c. 820, §2 (NEW) .]

4. **Repairs, replacements and renewals.** Provide funds for paying the cost of all necessary repairs, replacements and renewals of the waste facilities of the district; and

[1983, c. 820, §2 (NEW) .]

5. **Payment of obligations.** Pay or provide for any and all amounts which the district may be obligated to pay or provide for by law or contract, including any resolution or contract with or for the benefit of the holders of its bonds and notes.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1753. COLLECTION OF UNPAID CHARGES

The treasurer of the district may collect the rates, tolls, assessments, rents, tipping fees, transportation charges and other charges established by the district and those charges shall be committed to him. The treasurer may, after demand for payment, sue in the name of the district in a civil action for any rate, toll, rent, assessment, tipping fee, transportation charge or other charges remaining unpaid in any court of competent jurisdiction. In addition, the treasurer may order the termination of service for nonpayment of any amount owed to the district. [1983, c. 820, §2 (NEW).]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1754. GUARANTEE BY MUNICIPALITIES OF DISTRICT BONDS AND NOTES

1. **Guarantee of bonds and notes.** Subject to approval by a vote of the inhabitants of the district, as provided in subsection 2 or 3, the district board of directors may provide by resolution for the issuance, at one time or from time to time, of guaranteed notes and bonds of the district for any purpose for which the district may issue debt. Except as otherwise provided, notes and bonds issued by the district, in accordance with this section, must be authorized, issued and sold in the same manner as and subject to the other provisions of this subchapter relating to notes and bonds. The principal, premiums, if any, and interest on notes and bonds issued under this section must be guaranteed by the member municipalities of the district and the full faith and credit of the member municipalities must be pledged for the guarantee provided in this section. The

share of liability of each member municipality for the guaranteed notes and bonds must be established in accordance with either the valuation method established under subsection 4, paragraph A or the per capita method established under subsection 4, paragraph B.

[1993, c. 11, §4 (AMD) .]

2. **Application of guarantee.** The guarantee provided for under this section shall apply to notes and bonds of the district designated by the district board of directors under subsection 1, if, at the time of district formation under section 1721, the inhabitants of the proposed member municipalities of the district confer that authority upon the board of directors and establish a ceiling or limit on the aggregate amount of notes and bonds guaranteed by member municipalities which may be issued by the district under this section. The referendum ballot to form the district shall include a statement listing each member municipality's fractional share of liability for guaranteed notes and bonds which may be issued under this section.

The articles to be voted upon shall be in substantially the following form:

A. To see if the residents of the town (or city) of (name of town or city) will authorize the board of directors of (name of district or proposed district) to issue notes (or bonds) of the district which will be guaranteed in part by (name of municipality) and to which guarantee will be pledged the full faith and credit of (name of municipality). [1983, c. 820, §2 (NEW).]

B. To see if the residents of the town (or city) of (name of town or city) will establish a ceiling in the aggregate amount of $ on guaranteed notes (or bonds) which may be issued by (name of district or proposed district). [1983, c. 820, §2 (NEW).]

C. To see if the residents of the town (or city) of (name of town or city) will authorize the board of directors of (name of district or proposed district) to proportionally allocate liability for notes (or bonds) of the district based on the (most recent state valuation of property, or the most recent census of residents) of (name of town or city). [1993, c. 11, §5 (NEW).]

[1993, c. 11, §5 (AMD) .]

3. **Authority to issue guaranteed notes and bonds; referendum.** If the referendum vote establishing the district does not confer authority upon the board of directors to issue guaranteed notes and bonds, a subsequent referendum may be held in which these questions are submitted to the inhabitants of each municipality comprising the district for a vote. Where a vote is taken under this subsection after formation of the district, the votes shall be counted in each municipality and the affirmative vote of a simple majority of votes cast shall be required in each municipality in order for the article to pass. The referendum vote to form the district shall include a statement listing each member municipality's fractional share of liability for guaranteed notes and bonds which may be issued under this section.

The articles to be voted upon shall be in substantially the same form as the articles under subsection 2.

[1983, c. 820, §2 (NEW) .]

4. **Establishing share of liability among members.** A district shall establish the share of liability of each member municipality for guaranteed notes and bonds issued under this section as either:

A. A fraction, the numerator of which is the most recent state valuation of all property within the member municipality and the denominator of which is the most recent state valuation of all property located within the member municipalities of the district; or [1993, c. 11, §6 (NEW).]

B. A fraction, the numerator of which is the most recent census of all residents of the member municipality and the denominator of which is the most recent census of all residents of the member municipalities of the district. [1993, c. 11, §6 (NEW).]

The fractional method used to establish the share of liability for guaranteed notes and bonds must be the same for all of the district's member municipalities.

[1993, c. 11, §6 (NEW) .]

5. **Changes in method for sharing liability apply prospectively.** The fractional share of liability among member municipalities in effect at the time a guaranteed note or bond is issued is the fractional share of liability in effect for the term of that note or bond. An article authorizing a district to issue guaranteed notes or bonds may be amended to change the method used by that district to allocate liability for bonds and notes only by submitting that question to the inhabitants of the district in the same manner as that prescribed in this section. If a change in the method used to allocate liability for bonds and notes is approved by the inhabitants of the district, the new method of allocation is effective only for notes or bonds issued after the date the change is approved by the inhabitants of the district.

[1993, c. 1, §135 (COR) .]

SECTION HISTORY
1983, c. 820, §2 (NEW). RR 1993, c. 1, §135 (COR). 1993, c. 11, §§4-6 (AMD).

§1755. POWER OF ASSESSMENT FOR EXPENSES AND COSTS NOT COVERED BY OTHER DISTRICT REVENUES

1. **Power of assessment; question.** At such time as the question of the formation of the proposed district and other questions relating thereto are submitted to the legal voters of the various municipalities comprising the proposed district, an additional question may be submitted with regard to granting the district assessment power, which question shall be in substantially the following form:

> To see if the residents of the town (or city) of (name of town or city) will grant assessment authority to the directors of (name of district) over the member municipalities which are to comprise the district for the purpose of paying expenses and costs of the district which are not covered by other district revenues.

The assessments so authorized shall be shared by member municipalities of the district under the same formula as guarantees are shared pursuant to section 1754, and the referendum ballot shall include a statement listing the fractional share of the assessment to be borne by the member municipality.

[1983, c. 820, §2 (NEW) .]

2. **Subsequent question.** Subsequent to the formation of the district, if assessment authority was not conferred upon the district at the time of formation, the question may be addressed to the legal voters of the district in substantially the same form as prescribed pursuant to subsection 1.

Where a vote is taken under this subsection after formation of the district, the votes shall be counted in each municipality and the affirmative vote of a simple majority of votes cast shall be required in each municipality in order for the question to pass. The assessments so authorized shall be shared by member municipalities of the district under the same formula as guarantees are shared pursuant to section 1754, and the referendum ballot shall include a statement listing the fractional share of the assessment to be borne by the member municipality.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1756. DISTRICT ASSESSMENTS

Where assessment authority is granted to a district pursuant to section 1755, the district shall have that assessment power with respect to the member municipalities and any assessments made shall follow these procedures. [1983, c. 820, §2 (NEW).]

1. **Warrant.** In substantially the same form as a warrant of the Treasurer of State for taxes, the board of directors shall issue its warrants to the assessors of each member municipality requiring them to assess upon the taxable estates within the municipality an amount which is that municipality's share of the district's expenses and costs which are not covered by other revenues of the district, as determined by the board of directors after preparation of the district budget.

[1983, c. 820, §2 (NEW) .]

2. **Commitment.** The municipal assessors shall commit the assessment to the municipal constable or collector. Constables and collectors shall have the authority and power to collect the district's taxes as is vested in them by law to collect state, county and municipal taxes.

[1983, c. 820, §2 (NEW) .]

3. **Installments.** The board of directors shall notify the member municipalities of the monthly installments and the assessments that will become payable during the fiscal year.

[1983, c. 820, §2 (NEW) .]

4. **Payment.** Each member municipality shall pay the amount of the tax assessed in the fiscal year against the municipality to the treasurer of the district. The payments shall be paid in monthly installments on or before the 20th of each month.

[1983, c. 820, §2 (NEW) .]

5. **Enforcement.** If a member municipality fails to pay the installment due, or any part, on the dates required, the treasurer of the district may issue a warrant for the amount of the unpaid tax to the county sheriff requiring the sheriff to levy by distress and sale on the real and personal property of any of the inhabitants of the municipality where that default takes place. The sheriff or sheriff's deputies shall execute the warrant. In collecting taxes within member municipalities, the board of directors shall have the same power as county officials for the collection of county taxes under Title 36, chapter 105, subchapter IX.

[1983, c. 820, §2 (NEW) .]

SECTION HISTORY
1983, c. 820, §2 (NEW).

§1757. BONDS ISSUED BY MUNICIPALITIES

For the purpose of assisting a district in financing any solid waste facility authorized by this chapter, and notwithstanding any other provision of law, any individual municipality may issue general obligation bonds backed by the full faith and credit of the municipality. Proceeds of the bonds or any part thereof may be either loaned or contributed to a district of which a municipality is a member. The issuance of the bonds and the loaning or contributing of funds to a district formed under this chapter shall constitute a valid purpose for which a municipality may raise or appropriate money under Title 30-A, sections 5721 to 5728. General obligation bonds issued by a municipality under this section shall be a municipal security as defined in Title 30-A, section 5903, and shall be eligible for purchase by the Maine Municipal Bond Bank. Nothing in this section may be read or construed to prohibit a municipality acting under this section from levying user fees and charges and discharging its debt out of the funds generated by the fees and charges. A municipality

issuing bonds under this section and a district receiving the proceeds of the bonds may enter into such contracts and agreements as they may agree upon, both with each other and 3rd parties, establish trust or enterprise funds to provide for timely payment of the bonds, employ a trustee and do all things which may be necessary or convenient to the district or the municipality to make use of the bonds, as may be determined by the board of directors of the district and the municipal officers of the municipality. [1987, c. 737, Pt. C, §§100, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY
1983, c. 820, §2 (NEW). 1987, c. 737, §§C100,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

Chapter 18: PRODUCT STEWARDSHIP

§1771. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 516, §1 (NEW).]

1. **Brand.** "Brand" means a name, symbol, word or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand.

[2009, c. 516, §1 (NEW) .]

1-A. **Covered entity.** "Covered entity" means a household in this State, a business or nonprofit organization in this State exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3) that employs 100 or fewer individuals, an elementary school in this State or a secondary school in this State.

[2013, c. 315, §3 (NEW) .]

2. **Producer.** "Producer" means a person that:

A. Has legal ownership of the brand of a product sold in or into the State; [2009, c. 516, §1 (NEW).]

B. Imports a product branded by a person that meets the requirements of paragraph A and has no physical presence in the United States; or [2009, c. 516, §1 (NEW).]

C. Sells a product in the State at wholesale or retail, does not have legal ownership of the brand of the product and elects to fulfill the responsibilities of the producer for that product. [2009, c. 516, §1 (NEW).]

[2009, c. 516, §1 (NEW) .]

3. **Product.** "Product" means an item intended for sale within the State that is identified pursuant to section 1772 as appropriate for a product stewardship program.

[2009, c. 516, §1 (NEW) .]

4. **Product category.** "Product category" means a group of similar products designated pursuant to section 1772 for the purpose of establishing product stewardship programs.

[2009, c. 516, §1 (NEW) .]

5. **Product stewardship.** "Product stewardship" means a producer's taking responsibility for managing and reducing the life-cycle impacts of the producer's product, from product design to end-of-life management.

[2009, c. 516, §1 (NEW) .]

6. **Product stewardship program.** "Product stewardship program" means a program financed and either managed or provided by producers individually or collectively that includes, but is not limited to, the collection, transportation, reuse and recycling or disposal, or both, of unwanted products. "Product stewardship program" includes a program financed through an assessment paid by the producers to a stewardship organization.

[2011, c. 206, §33 (AMD) .]

7. **Recycling.** "Recycling" means the transforming or remanufacturing of an unwanted product or the unwanted product's components and by-products into usable or marketable materials. "Recycling" does not include landfill disposal, incineration or energy recovery or energy generation by means of combusting unwanted products, components and by-products with or without other waste.

[2009, c. 516, §1 (NEW) .]

8. **Reuse.** "Reuse" means a change in ownership of a product or component in a product for use in the same manner and purpose for which it was originally produced.

[2009, c. 516, §1 (NEW) .]

8-A. **Stewardship organization.** "Stewardship organization" means a corporation, nonprofit organization or other legal entity created by a producer or group of producers to implement a product stewardship program.

[2011, c. 206, §34 (NEW) .]

9. **Unwanted product.** "Unwanted product" means a product that is no longer wanted by its owner or that has been abandoned or discarded or is intended to be discarded by its owner.

[2009, c. 516, §1 (NEW) .]

SECTION HISTORY
2009, c. 516, §1 (NEW). 2011, c. 206, §§33, 34 (AMD). 2013, c. 315, §3 (AMD).

§1772. IDENTIFICATION OF CANDIDATE PRODUCTS; REPORT

1. **Policy; report.** It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to promote product stewardship to support the State's solid waste management hierarchy under chapter 24. In furtherance of this policy, the department may collect information available in the public domain regarding products in the waste stream and assist the Legislature in designating products or product categories for product stewardship programs in accordance with this chapter. By February 15, 2014, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report on products and product categories that when generated as waste may be appropriately managed under a product stewardship program. The report submitted under this subsection must include updates on the performance of existing product stewardship programs.

[2013, c. 315, §4 (AMD) .]

2. **Recommendations.** The report submitted under subsection 1 may include recommendations for establishing new product stewardship programs and changes to existing product stewardship programs. The department may identify a product or product category as a candidate for a product stewardship program if the department determines one or more of the following criteria are met:

A. The product or product category is found to contain toxics that pose the risk of an adverse impact to the environment or public health and safety; [2009, c. 516, §1 (NEW).]

B. A product stewardship program for the product will increase the recovery of materials for reuse and recycling; [2009, c. 516, §1 (NEW).]

C. A product stewardship program will reduce the costs of waste management to local governments and taxpayers; [2009, c. 516, §1 (NEW).]

D. There is success in collecting and processing similar products in programs in other states or countries; and [2009, c. 516, §1 (NEW).]

E. Existing voluntary product stewardship programs for the product in the State are not effective in achieving the policy of this chapter. [2009, c. 516, §1 (NEW).]

[2009, c. 516, §1 (NEW) .]

3. **Draft legislation.** The report submitted under subsection 1 must include draft legislation if any is necessary to implement a product stewardship program requirement for the product or product category.

[2009, c. 516, §1 (NEW) .]

4. **Public comments.** At least 30 days before submitting the report under subsection 1 to the joint standing committee of the Legislature having jurisdiction over natural resources matters, the department shall post the report on its publicly accessible website. Within that period of time, a person may submit to the department written comments regarding the report. The department shall submit all comments received to the committee with the report.

[2009, c. 516, §1 (NEW) .]

5. **Legislation to establish product stewardship programs.** Annually, after reviewing the report submitted by the department pursuant to subsection 1, the joint standing committee of the Legislature having jurisdiction over natural resources matters may submit a bill to implement recommendations included in the department's report to establish new product stewardship programs or revise existing product stewardship programs.

[2013, c. 315, §5 (NEW) .]

SECTION HISTORY
2009, c. 516, §1 (NEW). 2013, c. 315, §§4, 5 (AMD).

§1773. ESTABLISHMENT OF PRODUCT STEWARDSHIP PROGRAMS

(REPEALED)

SECTION HISTORY
2009, c. 516, §1 (NEW). 2013, c. 315, §6 (RP).

§1774. EXCLUSIONS

This chapter does not apply to: [2009, c. 516, §1 (NEW).]

1. **Motor vehicles and watercraft.** Motor vehicles as defined in Title 29-A, section 101, subsection 42 and watercraft as defined in Title 12, section 13001, subsection 28 or their component parts; and

[2009, c. 516, §1 (NEW) .]

2. **Pulp and paper manufacturers.** Pulp and paper manufacturers except conversion facilities for consumer product packaging.

[2009, c. 516, §1 (NEW) .]

SECTION HISTORY
2009, c. 516, §1 (NEW).

§1775. NO LIMITATION OF MUNICIPAL AUTHORITY

Nothing in this chapter changes or limits municipal authority to regulate collection of solid waste, including curbside collection of residential recyclable materials. [2009, c. 516, §1 (NEW).]

SECTION HISTORY
2009, c. 516, §1 (NEW).

§1776. PRODUCT STEWARDSHIP PROGRAM; PROGRAM REQUIREMENTS

A product stewardship program established for a product or product category designated by the Legislature for inclusion in a product stewardship program must be established and implemented in accordance with the provisions of this section. [2013, c. 315, §7 (NEW).]

1. **Program.** A producer selling a product in the State that is a designated product or that is in a designated product category is responsible individually, collectively or through a stewardship organization for the implementation and financing of a product stewardship program to manage the product at the end of the product's life in accordance with the priorities in section 2101.

A. The program must include a collection system that is convenient and adequate to serve the needs of covered entities in both rural and urban areas. [2013, c. 315, §7 (NEW).]

B. The program must provide for effective education and outreach to promote the use of the program and to ensure that collection options are understood by covered entities. [2013, c. 315, §7 (NEW).]

C. A producer or stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents that organize a product stewardship program under this chapter, is immune from liability for the producer's or stewardship organization's conduct under state laws relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or commerce only to the extent necessary to plan and implement the producer's or stewardship organization's chosen organized collection or recycling system. [2013, c. 315, §7 (NEW).]

[2013, c. 315, §7 (NEW) .]

2. **Requirement for sale.** One hundred eighty days after a product stewardship plan under subsection 5 is approved in accordance with subsection 8, a producer may not sell or offer for sale in the State the relevant product, unless the producer of the product participates individually, collectively or through a product stewardship program in accordance with an approved product stewardship plan.

[2013, c. 315, §7 (NEW) .]

3. **No fee.** A product stewardship program may not charge a fee at the time an unwanted product is delivered or collected for recycling or disposal.

[2013, c. 315, §7 (NEW) .]

4. **Costs.** Producers in a product stewardship program shall finance the collection, transportation and reuse, recycling or disposition of the relevant product.

[2013, c. 315, §7 (NEW) .]

5. **Requirement to submit a plan.** Within one year of a product's or product category's being designated for inclusion in a product stewardship program, the relevant producer or stewardship organization shall submit a product stewardship plan to the department for approval. The plan must include:

A. Identification and contact information for:

(1) The individual or entity submitting the plan;

(2) All producers participating in the product stewardship program;

(3) The owners of the brands covered by the program; and

(4) If using a stewardship organization, the stewardship organization, including a description of the organization and the tasks to be performed by the organization. The description must include information on how the organization is organized, including administration of the organization and management of the organization; [2013, c. 315, §7 (NEW).]

B. A description of the collection system, including:

(1) The types of sites or other collection services to be used;

(2) How all products covered under the product stewardship program will be collected in all counties of the State; and

(3) How the collection system will be convenient and adequate to serve the needs of all entities; [2013, c. 315, §7 (NEW).]

C. The names and locations of recyclers, processors and disposal facilities that may be used by the product stewardship program; [2013, c. 315, §7 (NEW).]

D. Information on how the product and product components will be safely and securely transported, tracked and handled from collection through final disposition; [2013, c. 315, §7 (NEW).]

E. If possible, a description of the method to be used to reuse, deconstruct or recycle the unwanted product to ensure that the product components are transformed or remanufactured to the extent feasible; [2013, c. 315, §7 (NEW).]

F. A description of how the convenience and adequacy of the collection system will be monitored and maintained; [2013, c. 315, §7 (NEW).]

G. A description of how the amount of product and product components collected, recycled, processed, reused and disposed of will be measured; [2013, c. 315, §7 (NEW).]

H. A description of the education and outreach methods that will be used to encourage participation; [2013, c. 315, §7 (NEW).]

I. A description of how education and outreach methods will be evaluated; [2013, c. 315, §7 (NEW).]

J. Any performance goals established by producers or a stewardship organization to show success of the program; and [2013, c. 315, §7 (NEW).]

K. A description of how the program will be financed. If the program is financed by a per unit assessment paid by the producer to a stewardship organization, a plan for an annual 3rd-party audit to ensure revenue from the assessment does not exceed the cost of implementing the product stewardship program must be included. [2013, c. 315, §7 (NEW).]

[2013, c. 315, §7 (NEW) .]

6. **Plan amendments.** A change to an approved product stewardship plan must be submitted to the department for review prior to the implementation of that change. If a change is not substantive, such as the addition of or a change to collection locations, or if an additional producer joins the product stewardship program, approval is not needed, but the producer or stewardship organization operating the program must inform the department of the change within 14 days of implementing the change. The department shall review plan amendments in accordance with subsection 8.

[2013, c. 315, §7 (NEW) .]

7. **Annual reporting.** By February 1st of the calendar year after the calendar year in which an approved product stewardship program is implemented, and annually thereafter, the producer or stewardship organization operating the program shall submit to the department a report on the program for the previous calendar year. The report must include, at a minimum:

A. The amount of product collected per county; [2013, c. 315, §7 (NEW).]

B. A description of the methods used to collect, transport and process the product; [2013, c. 315, §7 (NEW).]

C. An evaluation of the program, including, if possible, diversion and recycling rates together with certificates of recycling or similar confirmations; [2013, c. 315, §7 (NEW).]

D. A description of the methods used for education and outreach efforts and an evaluation of the convenience of collection and the effectiveness of outreach and education. Every 2 years, the report must include the results of an assessment of the methods used for and effectiveness of education and outreach efforts. The assessment must be completed by a 3rd party; [2013, c. 315, §7 (NEW).]

E. If applicable, the report of the 3rd-party audit conducted to ensure that revenue collected from the assessment does not exceed implementation costs pursuant to subsection 5, paragraph K; and [2013, c. 315, §7 (NEW).]

F. Any recommendations for changes to the product stewardship program to improve convenience of collection, consumer education and program evaluation. [2013, c. 315, §7 (NEW).]

[2013, c. 315, §7 (NEW) .]

8. **Department review and approval.** Within 20 business days after receipt of a proposed product stewardship plan, the department shall determine whether the plan complies with subsection 5. If the plan is approved, the department shall notify the submitter in writing. If the department rejects the plan, the department shall notify the submitter in writing stating the reason for rejecting the plan. A submitter whose plan is rejected must submit a revised plan to the department within 60 days of receiving a notice of rejection.

[2013, c. 315, §7 (NEW) .]

9. **Plan availability.** Within 30 days of approval by the department of a product stewardship plan under subsection 8, the department shall place the approved product stewardship plan on the department's publicly accessible website.

[2013, c. 315, §7 (NEW) .]

10. **Proprietary information.** Proprietary information submitted to the department in a product stewardship plan, in an amendment to a product stewardship plan or pursuant to reporting requirements of this section that is identified by the submittor as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

As used in this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available.

[2013, c. 315, §7 (NEW) .]

11. **Exceptions.** This section does not apply to products subject to section 1610, 1665-A, 1665-B, 1672, 2165 or 2166.

[2013, c. 315, §7 (NEW) .]

SECTION HISTORY
2013, c. 315, §7 (NEW).

Chapter 19: COASTAL MANAGEMENT POLICIES

§1801. FINDINGS AND DECLARATION OF COASTAL MANAGEMENT POLICIES

The Legislature finds that the Maine coast is an asset of immeasurable value to the people of the State and the nation, and there is a state interest in the conservation, beneficial use and effective management of the coast's resources; that development of the coastal area is increasing rapidly and that this development poses a significant threat to the resources of the coast and to the traditional livelihoods of its residents; that the United States Congress has recognized the importance of coastal resources through the passage of the United States Coastal Zone Management Act of 1972 and that in 1978 Maine initiated a coastal management program in accordance with this Act which continues to be of high priority; and that there are special needs in the conservation and development of the State's coastal resources that require a statement of legislative policy and intent with respect to state and local actions affecting the Maine coast. [1985, c. 794, Pt. A, §11 (NEW).]

The Legislature declares that the well-being of the citizens of this State depends on striking a carefully considered and well reasoned balance among the competing uses of the State's coastal area. The Legislature directs that state and local agencies and federal agencies as required by the United States Coastal Zone Management Act of 1972, PL 92-583, with responsibility for regulating, planning, developing or managing coastal resources, shall conduct their activities affecting the coastal area consistent with the following policies to: [1985, c. 794, Pt. A, §11 (NEW).]

1. **Port and harbor development.** Promote the maintenance, development and revitalization of the State's ports and harbors for fishing, transportation and recreation;

[1985, c. 794, Pt. A, §11 (NEW) .]

2. **Marine resource management.** Manage the marine environment and its related resources to preserve and improve the ecological integrity and diversity of marine communities and habitats, to expand our understanding of the productivity of the Gulf of Maine and coastal waters and to enhance the economic value of the State's renewable marine resources;

[1985, c. 794, Pt. A, §11 (NEW) .]

3. **Shoreline management and access.** Support shoreline management that gives preference to water-dependent uses over other uses, that promotes public access to the shoreline and that considers the cumulative effects of development on coastal resources;

[1985, c. 794, Pt. A, §11 (NEW) .]

4. **Hazard area development.** Discourage growth and new development in coastal areas where, because of coastal storms, flooding, landslides or sea-level rise, it is hazardous to human health and safety;

[1985, c. 794, Pt. A, §11 (NEW) .]

5. **State and local cooperative management.** Encourage and support cooperative state and municipal management of coastal resources;

[1985, c. 794, Pt. A, §11 (NEW) .]

6. **Scenic and natural areas protection.** Protect and manage critical habitat and natural areas of state and national significance and maintain the scenic beauty and character of the coast even in areas where development occurs;

[1985, c. 794, Pt. A, §11 (NEW) .]

7. **Recreation and tourism.** Expand the opportunities for outdoor recreation and encourage appropriate coastal tourist activities and development;

[1985, c. 794, Pt. A, §11 (NEW) .]

8. **Water quality.** Restore and maintain the quality of our fresh, marine and estuarine waters to allow for the broadest possible diversity of public and private uses; and

[1985, c. 794, Pt. A, §11 (NEW) .]

9. **Air quality.** Restore and maintain coastal air quality to protect the health of citizens and visitors and to protect enjoyment of the natural beauty and maritime characteristics of the Maine coast.

[1985, c. 794, Pt. A, §11 (NEW) .]

SECTION HISTORY
1985, c. 794, §A11 (NEW).

§1802. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 794, Pt. A, §11 (NEW).]

1. **Coastal area.** The "coastal area" encompasses all coastal municipalities and unorganized townships on tidal waters and all coastal islands. The inland boundary of the coastal area is the inland line of coastal town lines and the seaward boundary is the 3-nautical-mile line as shown on the most recently published Federal Government nautical chart.

[2007, c. 157, §2 (AMD) .]

2. **Coastal management.** "Coastal management" means the planning, development, conservation and regulation of coastal resource use by Federal, state, regional and local governments.

[1985, c. 794, Pt. A, §11 (NEW) .]

3. **Coastal resources.** "Coastal resources" means the coastal waters of the State and adjacent shorelands, their natural resources and related marine and wildlife habitat that together form an integrated terrestrial, estuarine and marine ecosystem.

[1985, c. 794, Pt. A, §11 (NEW) .]

SECTION HISTORY
1985, c. 794, §A11 (NEW). 2007, c. 157, §2 (AMD).

§1803. REPORT

(REPEALED)

SECTION HISTORY

1985, c. 794, §A11 (NEW). 2011, c. 655, Pt. EE, §30 (AFF). 2011, c. 655, Pt. EE, §24 (RP).

§1804. INTERAGENCY REVIEW OF COASTAL WATER ACCESS ISSUES

The Department of Agriculture, Conservation and Forestry and the Department of Marine Resources, within existing budgeted resources, shall convene a working group of staff from all state agencies that deal with coastal water access issues to share data, program activities and areas for collaboration on coastal water access issues. Each agency shall identify the coastal water access data that the agency has, the coastal water access data that the agency needs and potential funding sources for the collection of the needed data. Other stakeholders may be included as appropriate. The Department of Agriculture, Conservation and Forestry and the Department of Marine Resources shall submit a report of the working group's activities, including how the agencies can work cooperatively to make creative use of available funds to address both recreational and commercial access needs and to optimize projects that are multiuse in nature to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 15th of every odd-numbered year. [2011, c. 655, Pt. KK, §30 (AMD); 2011, c. 655, Pt. KK, §34 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY
2001, c. 595, §1 (NEW). 2011, c. 655, Pt. KK, §30 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 657, Pt. W, §5 (REV).

Chapter 20: PROTECTION OF MAINE LAKES

§1841. DECLARATION OF POLICY

Maine's great ponds are an important element of the State's economy and traditional way of life. Their abundance and relatively high water quality are precious resources in light of the growing inadequacy of water supplies and the deterioration of natural settings and habitat in many other states. The use of great ponds as a source for drinking water, recreation and power production is vital to the State. [1991, c. 838, §26 (NEW).]

To protect the public trust, the State's great ponds must be protected from degradation. They must be managed according to watershed boundaries, while a diversity of lake setting types within each region of the State is maintained. Potable water from the State's great ponds should require minimal treatment. [1991, c. 838, §26 (NEW).]

A primary goal of the protection of the State's great ponds is to ensure that consistent land use management policies and regulations are applied throughout the direct watershed of each great pond. [1991, c. 838, §26 (NEW).]

The State's goals in managing the surface uses of great ponds are to avoid or minimize conflicts among recreational users, energy producers, shoreland owners and other users; maintain traditional water-dependent businesses; and ensure that the intensity of use allowed on a great pond is in keeping with its capacity to accommodate that use. [1991, c. 838, §26 (NEW).]

SECTION HISTORY
1991, c. 838, §26 (NEW).

§1842. GREAT POND TASK FORCE

(REPEALED)

SECTION HISTORY
RR 1991, c. 2, §149 (COR). 1991, c. 838, §26 (NEW). 1993, c. 226, §C2 (AMD). MRSA T.38 ., §1842/4 (RP).

§1842-A. GREAT POND TASK FORCE

(REPEALED)

SECTION HISTORY
1995, c. 345, §5 (NEW). MRSA T.38 ., §1842A/5 (RP).

§1843. GREAT PONDS MANAGEMENT STRATEGY

(REPEALED)

SECTION HISTORY
1991, c. 838, §26 (NEW). 1993, c. 226, §C3 (AMD). MRSA T.38 ., §1843/4 (RP).

§1843-A. GREAT PONDS MANAGEMENT STRATEGY

(REPEALED)

SECTION HISTORY
1995, c. 345, §6 (NEW). MRSA T.38 ., §1843A/5 (RP).

Chapter 20-A: PROGRAM TO PREVENT INFESTATION OF AND TO CONTROL INVASIVE AQUATIC PLANTS

§1861. DEFINITIONS

As used in this chapter and chapter 20-B, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 434, Pt. A, §7 (NEW).]

1. **Invasive aquatic plant.** "Invasive aquatic plant" means a species of aquatic plant described in section 410-N.

[2001, c. 434, Pt. A, §7 (NEW) .]

2. **Nuisance species.** "Nuisance species" means an aquatic or terrestrial nonindigenous species that threatens the diversity or abundance of native species, the ecological stability of infested waters or commercial, agricultural, aquacultural or recreational activity dependent on such waters as identified by the department through rulemaking.

[2001, c. 434, Pt. A, §7 (NEW) .]

3. **Watercraft.** "Watercraft" has the same meaning as in Title 12, section 13001, subsection 28.

[2003, c. 414, Pt. B, §72 (AMD); 2003, c. 614, §9 (AFF) .]

SECTION HISTORY
2001, c. 434, §A7 (NEW). 2003, c. 414, §B72 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 614, §9 (AFF).

§1862. PROGRAM TO PREVENT INFESTATION OF AND TO CONTROL INVASIVE AQUATIC PLANTS

1. **Program.** The commissioner and the Commissioner of Inland Fisheries and Wildlife jointly shall implement a program to inspect watercraft, watercraft trailers and outboard motors at or near the border of the State and at boat launching sites for the presence of invasive aquatic plants and to provide educational materials to the public and to watercraft owners regarding invasive aquatic plants.

[2001, c. 434, Pt. A, §7 (NEW) .]

2. **Other inspection stations allowed.** The program established under this section also may include inspections at boat launching sites on inland waters that are already infested and at boat launching sites on the inland waters that have been identified as most at risk of introduction of invasive aquatic plants.

[2001, c. 434, Pt. A, §7 (NEW) .]

3. **Informational material to be provided.** The program established under this section must provide for the distribution of informational material on invasive aquatic plants, including a guide to identifying those plants, information on how to prevent the spread of those plants and information on the potential environmental impact and other impacts of infestation.

[2001, c. 434, Pt. A, §7 (NEW) .]

4. **Program implementation.** During the 2001 boating season, the department and the Department of Inland Fisheries and Wildlife shall spend at least 5,000 person hours inspecting watercraft, watercraft trailers and outboard motors at selected boat launching sites and at no fewer than 10 roadside locations at or near the state border. In 2001, the program established under this section also must include an extensive educational effort involving a variety of media with the goal of informing the public of the risks posed by invasive aquatic plants, how to inspect watercraft, watercraft trailers and outboard motors for the presence of invasive aquatic plant material and how to properly dispose of that material. The program also must include other invasive aquatic plant-related inspection or educational efforts considered appropriate by the commissioner and the Commissioner of Inland Fisheries and Wildlife.

The program in 2002 and subsequent years must be at a level of effort determined by the commissioner and the Commissioner of Inland Fisheries and Wildlife in consultation with the Interagency Task Force on Invasive Aquatic Plant and Nuisance Species, as established in section 1871.

[2001, c. 434, Pt. A, §7 (NEW) .]

SECTION HISTORY
2001, c. 434, §A7 (NEW).

§1863. INVASIVE AQUATIC PLANT AND NUISANCE SPECIES FUND

The Invasive Aquatic Plant and Nuisance Species Fund, referred to in this section as the "fund," is created within the department as a nonlapsing fund. The fund is administered by the commissioner. The fund is funded from a portion of the fees collected for lake and river protection stickers issued under Title 12, section 13058, subsection 3 and from other funds accepted for those purposes by the commissioner or allocated or appropriated by the Legislature. Money in the fund may be used only for costs related to conducting inspections under section 1862, conducting invasive aquatic plant prevention, containment, eradication and management activities and reimbursing agencies as necessary for costs associated with conducting or enforcing the provisions of this chapter and chapter 20-B. The commissioner may also use funds to contract with municipalities or other entities to conduct inspection, prevention or eradication programs to protect the inland waters of the State from invasive aquatic plant and nuisance species. The commissioner shall use at least 20% of the money in the fund for eradication activities. [2013, c. 580, §4 (AMD).]

SECTION HISTORY
2001, c. 434, §A7 (NEW). 2003, c. 414, §B73 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 614, §9 (AFF). 2013, c. 580, §4 (AMD).

§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).

§1865. PUBLIC WATER SUPPLIES

If an infested water body pursuant to section 1864 is a public drinking water supply, public notification by the commissioner and the Commissioner of Inland Fisheries and Wildlife is required prior to any response action that proposes the use of a chemical control agent. Public notification must include, at a minimum, notification of adjoining municipalities, property owners, drinking water suppliers who use that water supply and other affected persons, and must provide adequate time for public review and comment on the proposed emergency action. Chemical control agents may not be used on a water body that is a public water supply without the prior written consent of each public water supplier using that water body. [2003, c. 551, §21 (NEW).]

SECTION HISTORY
2003, c. 551, §21 (NEW).

Chapter 20-B: INVASIVE AQUATIC PLANTS AND NUISANCE SPECIES CONTROL

§1871. INTERAGENCY TASK FORCE ON INVASIVE AQUATIC PLANTS AND NUISANCE SPECIES

The Interagency Task Force on Invasive Aquatic Plants and Nuisance Species, as established by Title 5, section 12004-D, subsection 6 and referred to in this chapter as the "task force," is established to advise the department on matters pertaining to research, control and eradication of invasive aquatic plants and nuisance species. [2013, c. 300, §16 (AMD).]

1. **Membership.** The task force consists of 16 members as follows:

A. The following 4 ex officio voting members:

(1) The commissioner or the commissioner's designee, who serves as the chair of the task force;

(2) The Commissioner of Inland Fisheries and Wildlife or the commissioner's designee;

(3) The Commissioner of Health and Human Services or the commissioner's designee; and

(4) The Commissioner of Agriculture, Conservation and Forestry or the commissioner's designee; and

[2011, c. 657, Pt. X, §8 (AMD).]

B. Twelve members representing the public appointed by the Governor:

(1) One representative of the State's lake associations;

(2) One representative of a statewide recreational watercraft owners association;

(3) One representative of a statewide organization of marina owners;

(4) One representative of a lakes education program;

(5) One representative of public drinking water utilities;

(6) One representative of commercial tree and garden nurseries;

(7) One representative of home gardeners;

(8) One representative of municipal government;

(9) One representative of a statewide sporting association;

(10) One representative of a statewide outdoor recreational group;

(11) One person with demonstrated expertise in lake ecology; and

(12) One public member who has demonstrated experience or interest in the area of threats to fish and wildlife posed by invasive aquatic plants and nuisance species. [2001, c. 434, Pt. B, §2 (NEW).]

[2011, c. 657, Pt. X, §8 (AMD) .]

2. **Terms.** Members appointed by the Governor serve 4-year terms, except that, as determined by the Governor, of the initial appointments, 4 must be for 3 years, including the public member, and 4 must be for 2 years. Members serve until their successors are appointed. A vacancy must be filled for the remainder of the unexpired term. If after 6 months of a vacancy on the task force in a position listed in subsection 1,

paragraph B the Governor cannot fill that vacancy, the Governor may appoint a member who does not meet the qualifications of subsection 1, paragraph B, but who has demonstrated experience or interest in the area of threats to fish and wildlife posed by invasive aquatic plants and nuisance species.

[2011, c. 47, §3 (AMD) .]

3. **Advisory group of federal agency representatives.** The task force may form an advisory group of federal agency representatives that may include, but is not limited to, representatives of the United States Department of the Interior, United States Fish and Wildlife Service and National Park Service assigned to Acadia National Park; the United States Department of Agriculture; the United States Forest Service within the United States Department of Agriculture; and the United States Environmental Protection Agency.

[2001, c. 434, Pt. B, §2 (NEW) .]

4. **Duties.** The task force may make recommendations to the department on:

A. The importation and transportation of invasive aquatic plants and nuisance species; [2001, c. 434, Pt. B, §2 (NEW).]

B. Monitoring and educational programs aimed at the control of invasive aquatic plants and nuisance species; [2001, c. 434, Pt. B, §2 (NEW).]

C. A comprehensive state invasive aquatic plants and nuisance species management plan that meets the requirements of the National Invasive Species Act of 1996, 16 United States Code, Section 4722; [2001, c. 434, Pt. B, §2 (NEW).]

D. A statewide inventory of invasive aquatic plants and nuisance species; [2001, c. 434, Pt. B, §2 (NEW).]

E. Methods to improve cooperation of state, provincial, federal and nongovernmental agencies in the area of invasive aquatic plants and nuisance species prevention and control; [2001, c. 434, Pt. B, §2 (NEW).]

F. Recommendations on the feasibility of implementing lake protection assessment districts that allow residents and owners of land within 250 feet of inland waters to assess themselves to raise funds to assist in the prevention and control of invasive aquatic plants; and [2001, c. 434, Pt. B, §2 (NEW).]

G. Other recommendations as necessary to control the introduction of invasive aquatic plants and nuisance species in the State. [2001, c. 434, Pt. B, §2 (NEW).]

[2013, c. 300, §17 (AMD) .]

5. **Regional cooperation.** The task force shall work with representatives from federal, state and local agencies and private environmental and commercial interests in the northeastern United States to form a northeastern regional panel to establish priorities and coordinate activities to prevent the spread of milfoil and other invasive aquatic plants and nuisance species in the Northeast.

[2001, c. 434, Pt. B, §2 (NEW) .]

6. **Staff.** The department shall provide staff support to the task force.

[2001, c. 434, Pt. B, §2 (NEW) .]

SECTION HISTORY
2001, c. 434, §B2 (NEW). 2003, c. 689, §B7 (REV). 2011, c. 47, §3 (AMD). 2011, c. 657, Pt. X, §8 (AMD). 2013, c. 300, §§16, 17 (AMD).

§1872. ACTION PLAN TO PROTECT STATE'S INLAND WATERS

The task force shall also recommend to the department an action plan to protect the State's inland waters from invasive aquatic plants and nuisance species. That plan may include, but is not limited to: [2013, c. 300, §18 (AMD).]

1. **Identification of inland waters known to be infested.** Identification of inland waters of the State that are known to be infested with invasive aquatic plants and nuisance species;

[2001, c. 434, Pt. B, §2 (NEW) .]

2. **Vulnerability assessment.** Recommendations on conducting a preliminary vulnerability assessment of the State's largest inland waters to identify the largest inland waters in the State most at risk of infestation by invasive aquatic plants and nuisance species. That assessment may include such factors as the proximity of the inland water body to other infested waters, proximity of major transportation routes, presence of a public watercraft launch, use of the inland water body by transient boaters, the number of lakefront property owners and other factors as the commissioner may determine to be appropriate. The assessment also must identify the most probable vectors or pathways of introduction of invasive aquatic plants and nuisance species and identify those inspection locations most likely to result in identification and prevention of new introductions;

[2001, c. 434, Pt. B, §2 (NEW) .]

3. **Lake monitoring program.** Recommendations on a program to monitor inland waters in the State for new introductions of invasive aquatic plants and nuisance species, including recommendations on implementing that program and methods to provide for the periodic inspection of inland waters for new introductions of invasive aquatic plants and nuisance species, particularly in areas close to public watercraft launch facilities;

[2001, c. 434, Pt. B, §2 (NEW) .]

4. **Response program.** Recommendations on a response program to deal with new introductions of invasive aquatic plants and nuisance species in inland waters in the State; and

[2001, c. 434, Pt. B, §2 (NEW) .]

5. **Training and public information materials.** Recommendations on the development and distribution of training materials and public information materials for use by the public, lake monitors and persons authorized to inspect boats for invasive aquatic plants and nuisance species.

[2001, c. 434, Pt. B, §2 (NEW) .]

SECTION HISTORY
2001, c. 434, §B2 (NEW). 2013, c. 300, §18 (AMD).

Chapter 21: COASTAL BARRIER RESOURCES SYSTEM

§1901. FINDINGS AND DECLARATION OF POLICY

The Legislature finds that Maine's coastal barriers and the adjacent wetlands, marshes, estuaries, inlets and nearshore waters contain resources of extraordinary scenic, scientific, recreational, natural, historic, archeological and economic importance that may be irretrievably damaged and lost due to development on and adjacent to those barriers; that Maine's coastal barriers provide habitats for migratory birds and other wildlife and habitats which are essential spawning, nursery, nesting and feeding areas for commercially and recreationally important species of finfish and shellfish, as well as other aquatic organisms; that Maine's coastal barriers serve as natural storm protective buffers and are generally unsuitable for development because they are vulnerable to hurricane and other storm damage and because natural shoreline recession and the movement of unstable sediments undermine manmade structures; and that the United States Congress has recognized the importance of coastal barriers through the United States Coastal Barrier Resources Act of 1982, United States Code, Title 16, Section 3509, established a detailed process to identify coastal barriers and prohibited the expenditure of federal funds that support activities incompatible with the ability of these fragile areas to accommodate those activities. [1985, c. 794, Pt. A, §11 (NEW).]

The Legislature declares that certain areas of the Maine coast, because of their fragile nature, valuable habitat and their storm buffering abilities should be protected and conserved in their natural state and that it is inappropriate to use state funds to encourage or support activities incompatible with the ability of these areas to sustain these activities. [1985, c. 794, Pt. A, §11 (NEW).]

SECTION HISTORY
1985, c. 794, §A11 (NEW).

§1902. LIMITATIONS ON STATE EXPENDITURES AFFECTING THE SYSTEM

Except as provided in section 1903, no state funds or state financial assistance may be expended for development activities within the coastal barrier resource system, including, but not limited to: [1985, c. 794, Pt. A, §11 (NEW).]

1. **Structures.** The construction or purchase of any structure, appurtenance, facility or related infrastructure;

[1985, c. 794, Pt. A, §11 (NEW) .]

2. **Roads, airports, boat landings.** The construction of any road, airport, boat-landing facility or other facility on or bridge or causeway to, any coastal barrier; and

[1985, c. 794, Pt. A, §11 (NEW) .]

3. **Erosion.** The carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline or inshore area.

[1985, c. 794, Pt. A, §11 (NEW) .]

SECTION HISTORY
1985, c. 794, §A11 (NEW).

§1903. EXCEPTION TO STATE PROHIBITION

1. **Expenditure of state funds for coastal barriers for the following activities.** State funds may be expended on coastal barriers for the following activities:

A. The maintenance, replacement, reconstruction or repair, but not the expansion, except where expansion is necessary in order to meet minimum design requirements, of state-owned or state-operated roads, structures or facilities; and [1985, c. 794, Pt. A, §11 (NEW).]

B. Any of the following actions or projects provided they are consistent with the purposes of this chapter:

(1) The study, management, protection or enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands and stabilization projects for fish and wildlife habitats;

(2) Recreational uses that do not involve an irretrievable commitment of natural resources;

(3) Scientific research, including, but not limited to, geologic, marine and fish and wildlife; and

(4) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance or restore natural stabilization systems. [1985, c. 794, Pt. A, §11 (NEW).]

[1985, c. 794, Pt. A, §11 (NEW) .]

2. **Authorization of state expenditures.** The Governor may, after consultation with the appropriate state agencies and the affected community, approve state expenditures or financial assistance available within the coastal barrier resources system for assistance for emergency actions essential to the saving of lives, the protection of property and the public health and safety.

[1985, c. 794, Pt. A, §11 (NEW) .]

SECTION HISTORY
1985, c. 794, §A11 (NEW).

§1904. MAINE COASTAL BARRIER SYSTEM

The Maine Coastal Barrier System shall include the following coastal barriers: [1985, c. 794, Pt. A, §11 (NEW).]

1. **Carrying Place Cove.** Carrying Place Cove; Town: Harrington;

[1985, c. 794, Pt. A, §11 (NEW) .]

2. **Birch Point.** Birch Point; Town: Perry;

[1985, c. 794, Pt. A, §11 (NEW) .]

3. **Lubec Barriers.** Lubec Barriers; Town: Lubec;

[1985, c. 794, Pt. A, §11 (NEW) .]

4. **Baileys Mistake.** Baileys Mistake; Town: Lubec and Trescott;

[1985, c. 794, Pt. A, §11 (NEW) .]

5. **Grassy Point.** Grassy Point; Town: Cutler;

[1985, c. 794, Pt. A, §11 (NEW) .]

6. **Seal Cove.** Seal Cove; Town: Cutler;

[1985, c. 794, Pt. A, §11 (NEW) .]

7. **Sprague Neck.** Sprague Neck; Town: Cutler;

[1985, c. 794, Pt. A, §11 (NEW) .]

8. **Jasper.** Jasper; Town: Machiasport;

[1985, c. 794, Pt. A, §11 (NEW) .]

9. **Starboard.** Starboard; Town: Machiasport;

[1985, c. 794, Pt. A, §11 (NEW) .]

10. **Bare Cove.** Bare Cove; Town: Roque Bluffs;

[1985, c. 794, Pt. A, §11 (NEW) .]

11. **Roque Bluffs.** Roque Bluffs; Town: Roque Bluffs;

[1985, c. 794, Pt. A, §11 (NEW) .]

12. **Popplestone/Roque Island.** Popplestone/Roque Island; Town: Jonesport;

[1985, c. 794, Pt. A, §11 (NEW) .]

13. **Flake Point.** Flake Point; Town: Steuben;

[1985, c. 794, Pt. A, §11 (NEW) .]

14. **Over Point.** Over Point; Town: Steuben;

[1985, c. 794, Pt. A, §11 (NEW) .]

15. **Pond Island.** Pond Island; Town: Deer Isle;

[1985, c. 794, Pt. A, §11 (NEW) .]

16. **Thrumcap.** Thrumcap; Town: Cranberry Isles;

[1985, c. 794, Pt. A, §11 (NEW) .]

17. **Seven Hundred Acre Island.** Seven Hundred Acre Island; Town: Isleboro;

[1985, c. 794, Pt. A, §11 (NEW) .]

18. **Nash Point.** Nash Point; Town: Owls Head;

[1985, c. 794, Pt. A, §11 (NEW) .]

19. **Little River.** Little River; Town: Georgetown;

[1985, c. 794, Pt. A, §11 (NEW) .]

20. **Hunnewell Beach.** Hunnewell Beach; Town: Phippsburg;

[1985, c. 794, Pt. A, §11 (NEW) .]

21. **Small Point Beach.** Small Point Beach; Town: Phippsburg;

[1985, c. 794, Pt. A, §11 (NEW) .]

22. **Head Beach.** Head Beach; Town: Phippsburg;

[1985, c. 794, Pt. A, §11 (NEW) .]

23. **Stover Point.** Stover Point; Town: Harpswell;

[1985, c. 794, Pt. A, §11 (NEW) .]

24. **Jenks Landing/Waldo Point.** Jenks Landing/Waldo Point; Town: Cumberland;

[1985, c. 794, Pt. A, §11 (NEW) .]

25. **Cape Elizabeth.** Cape Elizabeth; Town: Cape Elizabeth;

[1985, c. 794, Pt. A, §11 (NEW) .]

26. **Crescent Beach.** Crescent Beach; Town: Cape Elizabeth;

[1985, c. 794, Pt. A, §11 (NEW) .]

27. **Scarborough Beach.** Scarborough Beach; Town: Scarborough;

[1985, c. 794, Pt. A, §11 (NEW) .]

28. **Etherington Pond.** Etherington Pond; Town: Biddeford;

[1985, c. 794, Pt. A, §11 (NEW) .]

29. **Crescent Surf.** Crescent Surf; Town: Kennebunk;

[1985, c. 794, Pt. A, §11 (NEW) .]

30. **Ogunquit Beach.** Ogunquit Beach; Town: Ogunquit;

[1985, c. 794, Pt. A, §11 (NEW) .]

31. **Phillips Cove.** Phillips Cove; Town: York; and

[1985, c. 794, Pt. A, §11 (NEW) .]

32. **Sea Point.** Sea Point; Town: Kittery.

[1985, c. 794, Pt. A, §11 (NEW) .]

SECTION HISTORY
1985, c. 794, §A11 (NEW).

§1905. MAINE COASTAL BARRIER RESOURCES SYSTEM MAPS

1. **Maps; coastal barriers identified.** Maine's coastal barriers are identified on maps, available for public review, at the Department of Agriculture, Conservation and Forestry, Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey office in Augusta. They are referred to as the Maine Coastal Barrier Resources Systems and are numbered consistent with the United States Coastal Barriers Resource Act.

[2013, c. 405, Pt. C, §24 (AMD) .]

2. **Maps filed in county registry of deeds.** As soon as practicable after the enactment of this chapter, the maps referred to in subsection 1, shall be filed, in the appropriate county registry of deeds.

[1985, c. 794, Pt. A, §11 (NEW) .]

3. **Copies of maps provided to agencies.** As soon as practicable after the date of enactment of this chapter, the Commissioner of Conservation shall provide copies of the maps, referred to in subsection 1, and a summary of this legislation to:

A. The chief elected official of each community in which a system is located; [1985, c. 794, Pt. A, §11 (NEW).]

B. All state agencies responsible for planning and managing coastal resources; [1985, c. 794, Pt. A, §11 (NEW).]

C. State agencies responsible for administering state funding programs affected by the prohibitions of this chapter; and [1985, c. 794, Pt. A, §11 (NEW).]

D. Coastal regional planning agencies. [1985, c. 794, Pt. A, §11 (NEW).]

[1985, c. 794, Pt. A, §11 (NEW) .]

SECTION HISTORY
1985, c. 794, §A11 (NEW). 1995, c. 502, §E32 (AMD). 1999, c. 556, §40 (AMD). 2011, c. 655, Pt. KK, §31 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2013, c. 405, Pt. C, §24 (AMD).

Chapter 23: COASTAL AND LAKE WATERSHED DISTRICTS

§2001. WATERSHED DISTRICTS AUTHORIZED

Watershed districts may be created pursuant to this section to protect, restore and maintain the natural functions and values of coastal wetlands; freshwater wetlands; rivers, streams and great ponds; coastal harbors; bays; estuaries and marine waters and to manage and conserve the land and water resources of watersheds of those resources within the jurisdictions of these districts. The natural functions and values of those resources include water quality, water quality maintenance, aquatic and wildlife habitat, scenic quality and floodwater storage and conveyance. The term "participating water district," as used in this chapter, means a water district, as defined by Title 35-A, section 6101, subsection 3, included in the application provided for by section 2002. [1993, c. 721, Pt. E, §2 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

SECTION HISTORY
1987, c. 711, (NEW). 1989, c. 106, §1 (AMD). 1993, c. 721, §E2 (AMD). 1993, c. 721, §H1 (AFF).

§2002. FORMATION

1. **Initiation.** The municipal officers of the municipality or municipalities, or portions of the municipality or municipalities, or the residents of unorganized territory who desire to form a watershed district shall file a statement of intent to organize on a form or forms to be prepared by the commissioner, setting forth the name or names of the municipality or municipalities, or portions of the municipality or municipalities or, in the case of residents of unorganized territory, the names of those residents that propose to be included in the district and they shall furnish such other data as the commissioner determines necessary and proper. The application must contain, but is not limited to, a description of the territory of the proposed district, the names of water districts that utilize water from surface or ground water supplies within the territory of the proposed district, the name proposed for the district, which must include the words "watershed district" or "management district."

[1993, c. 721, Pt. E, §3 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

2. **Initiation by referendum.** Residents of a municipality or municipalities, or portions thereof, that desire to form a watershed district may petition the municipal officers to file a statement of intent to form a watershed district with the commissioner. The petition must contain a description of the territory of the proposed district.

Upon receipt of a written petition signed by at least 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in that proposed district, the municipal officers shall submit the question to the voters of the proposed district at the next general, primary or special election within the proposed district. The referendum question must read as follows:

> "Shall the municipal officers representing the proposed watershed district, consisting of (describe the territory of the proposed district), initiate proceedings to form the proposed district?"

If the referendum question is approved by a majority of the legal voters voting at the election, provided that the total number of votes cast for and against the referendum question equals or exceeds 20% of the total number of votes cast in the proposed district in the last gubernatorial election, the municipal officers representing the residents of the proposed watershed district shall file a statement of intent to form the proposed district in accordance with subsection 1.

[1993, c. 721, Pt. E, §3 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

3. **Public hearing.**

[1993, c. 721, Pt. E, §3 (RP); 1993, c. 721, Pt. H, §1 (AFF) .]

4. **Commissioner convenes joint meeting.** Upon receiving a complete statement of intent to form a watershed district, the commissioner shall give notice to participating water districts, the municipal officers within the municipality or municipalities involved and, when unorganized territory is involved, to the persons signing the application described in subsection 1 and the commissioners of the county in which the unorganized territory is located of a date, time and place of a meeting of the municipal officers of the municipality or municipalities involved and, when unorganized territory is involved, a joint meeting of all the persons signing the application described in subsection 1 and the commissioners of the county in which the unorganized territory is located. The notice must be in writing and sent by registered or certified mail, return receipt requested, to the addresses shown on the application described in subsection 1 and, in the case of county commissioners, to the addresses of those commissioners obtained from the county clerk. A return receipt properly endorsed is evidence of the receipt of notice. The notice must be mailed at least 10 days prior to the date set for the meeting.

[1993, c. 721, Pt. E, §3 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

5. **Denial of application.**

[1993, c. 721, Pt. E, §3 (RP); 1993, c. 721, Pt. H, §1 (AFF) .]

6. **Joint meeting.** The persons to whom the notice described in subsection 4 is directed shall meet at the time and place appointed. When more than one municipality or unorganized territory is involved, the persons shall organize by electing a chair and a secretary. An action may not be taken at any such meeting unless, at the time the meeting is convened, there are present at least 1/2 of the total number of municipal officers eligible to attend and participate at the meeting and, when the proposed district includes or is composed solely of unorganized territory, at least 2/3 of the persons signing the application described in subsection 1 and at least 2 commissioners of the county in which the unorganized territory is located, other than to report to the commissioner that a quorum was not present and to request the commissioner to issue a new notice for another meeting. The purposes of the meeting are to develop a declaration of district responsibilities and to determine a fair and equitable number of trustees, subject to section 2004, to be elected by and represent each participating municipality or, in the case of unorganized territory, the residents of that territory within the bounds of the proposed district. The declaration of district responsibilities must list the powers and duties of the proposed watershed district. These powers and duties are limited to those authorized under section 2007. The declaration must also include a method of determining each municipality's proportional share, and where unorganized territory is involved, that unorganized territory's share, of the proposed district's annual budget. When a decision has been reached on a declaration of district responsibilities, the number of trustees and the number to represent each municipality or the residents of the unorganized territory within the bounds of the proposed district, subject to the limitations provided, this decision must be reduced to writing by the secretary and must be approved by a 2/3 vote of those present. When 2 or more municipalities are, or unorganized territory is, involved, the vote so reduced to writing and the record of the meeting must be signed by the chair and attested by the secretary and filed with the commissioner. When a single municipality is involved, a copy of the vote of the municipal officers duly attested by the clerk of the municipality must be filed with the commissioner.

[1993, c. 721, Pt. E, §3 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

6-A. **Water district representation.** The trustees of each participating water district shall annually appoint one water district official or staff person to serve as a trustee of the watershed district for a one-year term.

[1989, c. 106, §3 (NEW) .]

7. **Submission.** When the record of the municipality or the record of the joint meeting, when municipalities are, or unorganized territory is, involved, has been received by the commissioner and found by the commissioner to be in order, the commissioner shall order the question of the formation of the proposed watershed district and other related questions to be submitted to the legal voters residing within that portion of the municipality, municipalities or unorganized territory that falls within the proposed watershed district. The order must be directed to the municipal officers of the municipality or municipalities which propose to form the watershed district and, when the proposed watershed district includes or is composed solely of unorganized territory, to the commissioners of the county in which the unorganized territory is located, directing them to call town meetings, city elections or a meeting of the residents of the unorganized territory within the bounds of the proposed watershed district for the purpose of voting in favor of or in opposition to each of the following articles or questions, as they may apply, in substantially the following form:

A. To see if the town (or city) of (name of town or city) will vote to incorporate as a watershed district to be called (name) Watershed District; [1987, c. 711, (NEW).]

B. To see if the residents of the following described section of the town (or city) of (name of town or city) will vote to incorporate as a watershed district to be called (name) Watershed District: (legal description of the bounds of section to be included); [1987, c. 711, (NEW).]

C. To see if the residents of the (following described section of) (name of town or city) (unorganized territory) will vote to join with the residents of the (following described section of) (name of town or city) (unorganized territory) to incorporate as a watershed district to be called (name) Watershed District: (legal description of the bounds of the proposed watershed district, except where the district is to be composed of entire municipalities); [1987, c. 711, (NEW).]

D. To see if the inhabitants of the following described section of that unorganized territory known as Township (number), Range (number) will vote to incorporate as a watershed district to be called (name) Watershed District: (legal description of the bounds of the proposed watershed district); [1987, c. 711, (NEW).]

E. To see if the residents of (the above described section of) (name of town or city) will vote to approve the total number of trustees and the allocation of representation among the municipalities (and included section of unorganized territory) on the board of trustees as determined by the municipal officers (and the persons representing the included area of unorganized territory) and listed as follows:

Total number of trustees is ..... and the residents of (the above described section of) (town or city) are entitled to ..... trustees (and the residents of the above described section of unorganized territory are entitled to ..... trustees); [1993, c. 721, Pt. E, §3 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

F. To choose (number) trustees to represent the residents of (the above described section) of (town or city) (unorganized territory) on the board of trustees of the (name) Watershed District; and [1993, c. 721, Pt. E, §3 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

G. To see if the residents of (the above described section of) (name of town or city or included section of unorganized territory) will vote to adopt a declaration of district responsibilities that describes and restricts the powers of the (name) Watershed District. [1993, c. 721, Pt. E, §3 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]

[1993, c. 721, Pt. E, §3 (NEW); 1993, c. 721, Pt. H, §1 (AFF) .]

At any such town meeting, city election or election by the residents of the proposed watershed district, trustees must be chosen to represent the municipality or the unorganized territory within the proposed watershed district in the manner provided in section 2005. [1993, c. 721, Pt. E, §3 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

SECTION HISTORY

1987, c. 711, (NEW). 1989, c. 106, §§2,3 (AMD). 1989, c. 890, §§A40,B280- 283 (AMD). 1993, c. 721, §E3 (AMD). 1993, c. 721, §H1 (AFF).

§2003. APPROVAL AND ORGANIZATION

When the residents of the municipality or each municipality, when more than one is involved, or the unorganized territory within the proposed watershed district have voted upon the formation of a proposed watershed district and all of the other questions submitted therewith, the clerk of each municipality and, when the proposed district includes unorganized territory, the county clerk shall make a return to the commissioner in such form as the commissioner determines. If the commissioner finds from the returns that a majority of the residents within each of the municipalities involved and, when the proposed district includes unorganized territory, that a majority of the residents of the unorganized territory within the proposed watershed district, voting on each of the articles and questions submitted to them, have voted in the affirmative and have elected the necessary trustees and the names of those elected to represent each municipality, or the residents of the unorganized territory within the proposed watershed district, that each participating water district has appointed a trustee as provided by section 2002, subsection 6-A, and that all other steps in the formation of the proposed watershed district are in order and in conformity with law, the commissioner shall make a finding to that effect and record the same upon departmental records. The commissioner shall, immediately after making findings, issue a certificate of organization in the name of the watershed district in such form as the commissioner determines. The original certificate must be delivered to the trustees on the day that they are directed to organize and a copy of the certificate duly attested by the commissioner must be filed and recorded in the Office of the Secretary of State. The issuance of that certificate by the commissioner is conclusive evidence of the lawful organization of the watershed district. The watershed district is not operative until the date set by the commissioner under section 2006. [1989, c. 106, §4 (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §284 (AMD).]

SECTION HISTORY
1987, c. 711, (NEW). 1989, c. 106, §4 (AMD). 1989, c. 890, §§A40,B284 (AMD).

§2004. TRUSTEES

1. **Authorization.** All the affairs of a watershed district shall be managed by a board of trustees. The board shall consist of not less than 3 trustees, or not less than 5 trustees in watershed districts involving more than one municipality or one or more municipalities and residents of an unorganized territory. In addition, the board shall consist of one trustee representing each participating water district. Trustees, other than those representing participating water districts, shall be elected in accordance with this chapter. The exact number of trustees shall be determined in accordance with section 2002. A watershed district may alter the number of trustees by submitting the proposed alteration to the voters in the same manner as provided in section 2002, subsection 7. No municipality nor unorganized territory within any watershed district may have less than one trustee. A quorum of the trustees may conduct the affairs of the district even if there is a vacancy on the board of trustees.

[1989, c. 106, §5 (AMD) .]

2. **Recall.** Trustees may be recalled under the following provisions.

A. The qualified electors of the watershed district may petition for the recall of any trustee after the first year of the term for which the trustee is elected by filing a petition with the municipal clerk, or the county commissioners in unorganized territory, demanding the recall of the trustee. A trustee may be subject to recall for misfeasance, malfeasance or nonfeasance in office. The petition shall be signed by electors of the political subdivision which that trustee represents equal to at least 25% of the vote cast

for the office of Governor at the last gubernatorial election within the political subdivision of the trustee being recalled. The recall petition shall state the reason for which removal is sought. [1987, c. 711, (NEW).]

B. Within 3 days after the petition is offered for filing, the official with whom the petition is left shall determine by careful examination whether the petition is sufficient and so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, it shall again be carefully examined to determine sufficiency and a certificate stating the findings shall be attached. Immediately upon finding an original or amended petition sufficient, the official shall file the petition and call a special election to be held not less than 40 days nor more than 45 days from the filing date. The official shall notify the trustee, against whom the recall petition is filed, of the special election. [1987, c. 711, (NEW).]

C. The trustee against whom the recall petition is filed shall be a candidate at the special election without nomination, unless the trustee resigns within 10 days after the original filing of the petition. There shall be no primary. Candidates for the office may be nominated under the usual procedure of nomination for a primary election by filing nomination papers, not later than 5 p.m., 4 weeks preceding the election and have their names placed on the ballot at the special election. [1987, c. 711, (NEW).]

D. The trustee against whom a recall petition has been filed shall continue to perform the duties of office until the result of the special election is officially declared. The person receiving the highest number of votes at the special election shall be declared elected for the remainder of the term. If the incumbent receives the highest number of votes, the incumbent shall continue in office. If another receives the highest number of votes, that person shall succeed the incumbent, if qualified, within 10 days after receiving notification. [1987, c. 711, (NEW).]

E. After one recall petition and special election, no further recall petition may be filed against the same trustee during the term for which the trustee was elected. [1987, c. 711, (NEW).]

[1987, c. 711, (NEW) .]

SECTION HISTORY
1987, c. 711, (NEW). 1989, c. 106, §5 (AMD).

§2005. ELECTION OF TRUSTEES

Except for trustees representing participating water districts, whose selection is governed by section 2002, subsection 6-A, trustees shall be nominated and elected in the same manner as municipal officers are nominated and elected under Title 30-A, or in accordance with a municipal charter, whichever is applicable; or, in the case of unorganized territory, in accordance with the procedure for the organization of larger townships set forth in Title 30-A, section 7001. Upon receipt of the names of all the trustees, the commissioner shall set a time, place and date for the first meeting of the trustees, notice of the meeting to be given to the trustees by certified or registered mail, return receipt requested, mailed at least 10 days prior to the date set for the meeting, to determine the length of their terms. Except for trustees representing water districts whose term is set by section 2002, subsection 6-A, the terms must be determined by lot in accordance with the following table:

TERM			
Total number of trustees	1 year	2 years	3 years
5	1	2	2
6	2	2	2
7	2	2	3
8	2	3	3
9	3	3	3

10	3	3	4
11	3	4	4
12	4	4	4
13	4	4	5
14	4	5	5
15	5	5	5
16	5	5	6
17	5	6	6
18	6	6	6

The trustees shall enter on their records the determination so made. The trustees shall serve their terms as determined at the organizational meeting, except that, in the case of trustees representing a municipality, those trustees shall serve an additional period until the next regular election of the municipality and, thereafter, those trustees' terms of office shall date from the time of each regular municipal election; and except that, in the case of trustees representing residents of unorganized territory, those trustees shall serve until an election to fill the vacancies caused by the expiration of their terms shall be called by the county commissioners. The commissioners shall call the election in the same manner provided for the initial election of trustees and cause that election to be held on a date as closely following the date upon which the terms expire.

They shall organize by election from their own members a chairman, a vice-chairman, a treasurer and a clerk and choose, employ and fix the compensation of other necessary officers and agents who shall serve at their pleasure and they shall adopt a corporate seal. Prior to the election of the officers, each trustee shall be sworn to the faithful performance of the trustee's duties. [1987, c. 711, (NEW).]

At the first organizational meeting, the trustees shall determine the percentage of the watershed district's operating budget to which each participating water district shall contribute. Any contributions paid by a participating water district shall be recovered, with carrying costs, in the district's next rate case. The agreed upon contribution of a participating water district may not be changed during the fiscal year unless the participating water district approves the change. The percentage contribution of a participating water district may be reviewed and changed by the trustees at the end of the fiscal year. [1989, c. 106, §7 (NEW).]

The trustees may from time to time adopt, establish and amend through bylaws consistent with the laws of the State and necessary for their own convenience and the proper management of the affairs of the district and perform any other acts within the powers delegated to them by law. [1987, c. 711, (NEW).]

After the original organizational meeting, the trustees shall meet annually at a time determined by their bylaws for the purpose of electing from among the members a chairman, vice-chairman, treasurer and clerk to serve until the next annual election and until their successors are elected and qualified. The treasurer shall furnish bond in such sum and with such sureties as the trustees approve, the cost of the bond to be paid by the district. The chairman, vice-chairman, treasurer and clerk may receive compensation for serving in these capacities as the trustees determine. This compensation shall be in addition to the compensation payable to them as trustees. The trustees shall make and publish an annual report including a report of the treasurer. [1987, c. 711, (NEW).]

At the expiration of the terms, the vacancy shall be filled for a term of 3 years and the trustees shall notify the municipal officers of the municipalities within the watershed district before the annual town meeting or before the regular city election if a city falls within the watershed district; or, in the case of unorganized territory, the trustees shall notify the commissioners of the county in which the unorganized territory, encompassed by the watershed district, is located of the fact that a vacancy will occur so that the municipal officers in these municipalities or the county commissioners may provide for the election of a trustee or trustees to fill the vacancy that will occur. All trustees shall serve until their successors are elected and qualified. The trustees shall receive compensation as recommended by them and approved by majority vote of the municipal officers in municipalities representing a majority of the population within the district, including compensation for any duties they perform as officers as well as for their duties as trustees. Certification thereof shall be recorded with the Secretary of State and recorded in the bylaws. Their compensation for duties as trustees shall be based on the amount specified in the bylaws, each meeting

actually attended and reimbursement for travel and expenses, with the total not to exceed the amount specified in the bylaws. Compensation schedules in effect on January 1, 1988 shall continue in effect until changed. [1987, c. 711, (NEW).]

When a vacancy on the board of trustees occurs by reason of death, resignation or otherwise, the municipal officers of the municipality that the trustee represented shall fill the vacancy by electing a trustee from the municipality to serve until the municipality shall fill the vacancy at its next annual town meeting or next regular city election. In the case of a vacancy in the office of a trustee representing unorganized territory, the commissioners of the county in which the unorganized territory is located shall fill the vacancy by electing a trustee from the unorganized territory and resident within the boundaries of the watershed district until the next election of trustees is held. The person so chosen shall serve until a successor is elected and qualified. If any member of the board of trustees moves from the municipality represented, or, in the case of a trustee representing unorganized territory, if that trustee moves outside the boundaries of the watershed district, a vacancy shall be declared to exist by the board of trustees and the municipal officers or the county commissioners shall choose another trustee as provided. [1987, c. 711, (NEW).]

No member of the board of trustees may be employed for compensation or in any other capacity by the watershed district of which the member is a trustee, except as otherwise provided. [1987, c. 711, (NEW).]

SECTION HISTORY
1987, c. 711, (NEW). 1989, c. 106, §§6,7 (AMD). 1989, c. 106, §6 (AMD). 1989, c. 890, §§A40,B285 (AMD). 1989, c. 890, Pt. A, §40 (AFF). 1989, c. 890, Pt. B, §285 (AMD).

§2006. OPERATIONAL DATE OF WATERSHED DISTRICTS

On the date set by the commissioner as provided in section 2005, the watershed district becomes operative. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §286 (AMD).]

SECTION HISTORY
1987, c. 711, (NEW). 1989, c. 890, §§A40,B286 (AMD).

§2007. POWERS

A watershed district has the following powers. [1987, c. 711, (NEW).]

1. **General.** Any district organized under this chapter may sue and be sued; make contracts; accept gifts, purchase, lease, devise or otherwise acquire, hold or dispose of real or personal property; disburse money; contract debt; adopt rules; and do such other acts as necessary to carry out the purposes of the district.

[1987, c. 711, (NEW) .]

2. **Security required.** The district may require that a contracting party give adequate security to assure performance of the contract and to pay all damages which may arise from inadequate performance.

[1987, c. 711, (NEW) .]

3. **Responsibilities.** The district is responsible for those activities listed in the declaration of district responsibilities as approved in accordance with section 2002. The activities are limited to the following:

A. Initiating and coordinating research and surveys for the purpose of gathering data on wetlands, water bodies, related shorelands and watersheds within the territory of the district; [1993, c. 721, Pt. E, §4 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

B. Planning natural resource restoration projects; [1993, c. 721, Pt. E, §4 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

C. Contacting and attempting to secure the cooperation of municipal officials and state agencies for the purpose of enacting and enforcing ordinances and regulations necessary to further the purposes of the district; [1987, c. 711, (NEW).]

D. Adopting and implementing natural resource protection, management and restoration plans; [1993, c. 721, Pt. E, §4 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

E. Adopting and implementing plans and programs to facilitate coordination of water level management and surface water use on great ponds within the territory of the district; and [1993, c. 721, Pt. E, §4 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

F. Entering into agreements with a municipality or group of municipalities that are wholly or partially within the district to administer the land use ordinances of that municipality or group of municipalities. [1993, c. 721, Pt. E, §4 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]

[1993, c. 721, Pt. E, §4 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

4. **Limits on jurisdiction.** The limits on jurisdiction regarding the regulation of water level are as follows.

A. The district has no authority to set a water level regime for a body of water impounded by a dam that is exempt, under section 840, subsection 1, from the authority of the commissioner to set water level regimes. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §287 (AMD).]

B. The district's authority to set a water level regime for any water body within its boundaries and over any dams within its boundaries is subordinate to the authority of a municipality under Title 30-A, chapter 187, subchapter VI and to the authority of the Department of Environmental Protection under chapter 5, subchapter I, article 1, subarticle 1-B, article 3-A and article 4. [1993, c. 721, Pt. E, §5 (AMD); 1993, c. 721, Pt. H, §1 (AFF).]

[1993, c. 721, Pt. E, §5 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

SECTION HISTORY
1987, c. 711, (NEW). 1989, c. 890, §§A40,B287 (AMD). 1993, c. 721, §§E4,5 (AMD). 1993, c. 721, §H1 (AFF).

§2008. BUDGET MEETING

The trustees of a watershed district shall annually before June 1st call a district budget meeting to approve the operating budget, reserve fund for a capital outlay purpose or capital outlay appropriations in the following manner. [1987, c. 711, (NEW).]

1. **Call and notice.** Each district budget meeting shall be called by a warrant signed by a majority of the trustees. The warrant shall specify the time and place of the meeting and shall set forth the proposed budget and any other items of business. The warrant shall be directed to any resident of the district, by name, ordering that resident to notify all voters within the district to assemble at the time and place appointed. An attested copy of the warrant shall be posted by the person to whom it is directed in some conspicuous place in each of the municipalities within the district at least 7 days before the meeting. The person who gives notice of the meeting shall make a return on the warrant, stating the manner of notice in each municipality and the time when it was given.

[1987, c. 711, (NEW) .]

2. **Voting list.** The trustees shall appoint a resident of the district to serve as registration clerk and to make and keep a voting list of all residents in the district eligible to vote. The registration clerk shall compile the district voting list from the voting lists of all municipalities and the portions of unorganized territory lying within the district. At least 14 days before any budget meeting, the registration clerk shall bring that voting list up to date by comparing the list with those voting lists found in the municipalities and the portions of unorganized territory within the district and by making such additions and deletions as necessary. Additions or deletions may not be made within the 14-day period prior to the meeting.

[1993, c. 721, Pt. E, §6 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

3. **Quorum; meeting rules.** Each person whose name appears on the district voting list may attend and vote at a district budget meeting. Twenty-five registered voters constitute a quorum. When a quorum of voters is present, the chairman of the trustees shall open the meeting by calling for the election of a moderator, receiving and counting votes for moderator and swearing in the moderator. As soon as a moderator has been elected and sworn, the moderator shall preside at the meeting. The secretary of the district shall record accurately all votes of the meeting.

[1987, c. 711, (NEW) .]

4. **Budget approval.** The trustees shall thoroughly explain the proposed budget and the voters of the district shall be given an opportunity to be heard. At the district budget meeting, only those items dealing with the expenses necessary to operate the district, appropriations for a reserve fund and capital outlay shall be subject to change by the voters. The initial budget submitted by the trustees of the watershed district following the district's formation and organization must be approved by the voters at the district budget meeting. If the initial budget is not approved by July lst, the trustees shall make as many revisions and conduct as many meetings as necessary to secure budget approval by the voters. If a budget for the operation of the district is not approved prior to July 1st in any following year, the previous fiscal year's budget shall automatically be considered the approved budget for that fiscal year.

[1989, c. 106, §8 (AMD) .]

SECTION HISTORY
1987, c. 711, (NEW). 1989, c. 106, §8 (AMD). 1993, c. 721, §E6 (AMD). 1993, c. 721, §H1 (AFF).

§2009. EXEMPTION

The property, both real and personal, rights and franchises of any watershed district formed under this chapter and held within the boundaries of the district is forever exempt from taxation. [1987, c. 711, (NEW).]

SECTION HISTORY
1987, c. 711, (NEW).

§2010. ASSESSMENTS

Assessments shall be made as follows. [1987, c. 711, (NEW).]

1. **Method.** Following adoption of the district budget, the trustees shall issue their warrants, in substantially the same form as the warrant of the Treasurer of State, for taxes to each participating municipality and, in the case of unorganized territory, to the commissioner's of the county within which that territory lies, requiring it to pay its proportionate part of the district budget. Each municipality's proportionate part of the budget or, in the case of unorganized territory, each county's proportionate share, must be based

upon its percentage of shoreline frontage on the great ponds and marine waters within the district's territory, or an alternative method as described in the declaration of district responsibilities and approved at referendum under section 2003.

[1993, c. 721, Pt. E, §7 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

2. **Fiscal year; payments.** The fiscal year of the district is July 1st to June 30th. In the fiscal year in which the assessment is levied, the treasurer of each municipality and, in the case of unorganized territory, the county treasurer, shall pay the amount of the assessment in 3 equal installments to the treasurer of the district. Installments must be paid by August 1st, December 1st and March 31st.

[1993, c. 721, Pt. E, §8 (AMD); 1993, c. 721, Pt. H, §1 (AFF) .]

3. **Water utility benefiting.** Any water utility benefiting from the services of this district has the right to contribute funds to the district as a utility operating expense.

[1987, c. 711, (NEW) .]

SECTION HISTORY
1987, c. 711, (NEW). 1989, c. 106, §9 (AMD). 1993, c. 721, §§E7,8 (AMD). 1993, c. 721, §H1 (AFF).

§2011. LIABILITY

Any watershed district formed under this chapter is a governmental entity for the purposes of Title 14, chapter 741. [1987, c. 711, (NEW).]

SECTION HISTORY
1987, c. 711, (NEW).

§2012. STATE AGENCY ASSISTANCE

The Department of Economic and Community Development, the Department of Environmental Protection and other state agencies with expertise in watershed management shall, to the extent practicable, develop advisory guidelines, models and other technical assistance materials on the watershed planning process for municipalities, interested citizens and others. These agencies shall, upon request and as resources allow, provide assistance to watershed districts in the development and implementation of watershed management plans. [1993, c. 721, Pt. E, §9 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]

SECTION HISTORY
1993, c. 721, §E9 (NEW). 1993, c. 721, §H1 (AFF).

§2013. PRIORITY WATERSHED PROTECTION GRANTS PROGRAM

A priority watershed protection grants program is established, to be administered by the department, for the purpose of providing financial assistance to entities to conduct projects that implement best management practices or other management measures in order to reduce or eliminate nonpoint source pollution in surface waters of the State. Funding may not be used to pay salaries of state agency staff. [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

1. **Project elements.** Each project proposal must either create a watershed management plan or implement an existing plan. A plan must include the following elements:

A. An assessment of water quality and uses of water bodies within the watershed; [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

B. An inventory of the types of land uses and the types and severity of nonpoint source pollution in the watershed; [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

C. An evaluation of the types and severity of other factors that may be affecting water quality; [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

D. A determination of nonpoint source pollution controls and measures necessary to improve or protect water quality; [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

E. An implementation strategy to address nonpoint sources of pollution in the watershed that includes costs and schedules for implementing best management practices or other management measures and agreements outlining responsibilities for meeting this strategy; [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

F. Actions to inform eligible landowners of the importance of utilizing best management practices on a voluntary or cost-shared basis; [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

G. An objective evaluation of the plan following implementation; and [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

H. Actions to achieve self-sustaining financial support of the plan. [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

[1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF) .]

2. **Project approval.** The board shall approve funding for projects based on the following preferences, considering public comments on project proposals that have been submitted to the board:

A. [2011, c. 655, Pt. EE, §30 (AFF); 2011, c. 655, Pt. EE, §25 (RP).]

B. Projects that demonstrate extensive local support in either funding or services; [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

C. Projects that seek to solve current pollution problems and plan for future protection of resources; and [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

D. Projects that create techniques, products or information that can be of use in more than one setting or in other projects in the State. [1997, c. 519, Pt. B, §1 (NEW); 1997, c. 519, Pt. B, §3 (AFF).]

[2011, c. 655, Pt. EE, §25 (AMD); 2011, c. 655, Pt. EE, §30 (AFF) .]

SECTION HISTORY
1997, c. 519, §B1 (NEW). 1997, c. 519, §B3 (AFF). 2011, c. 655, Pt. EE, §25 (AMD). 2011, c. 655, Pt. EE, §30 (AFF).

§2014. ALTERNATIVE METHOD

This chapter may not be construed to limit a municipality's home rule authority or its ability to form a watershed district through its interlocal cooperation authority under Title 30-A, chapter 115 but provides an additional and alternative method for the formation of a watershed district and provides powers supplemental and additional to powers conferred by other laws, and may not be regarded as in derogation of or repealing any powers existing under any other law, either general, special or local. [2009, c. 506, §2 (NEW); 2009, c. 506, §3 (AFF).]

SECTION HISTORY
2009, c. 506, §2 (NEW). 2009, c. 506, §3 (AFF).

Chapter 23-A: COASTAL WATERSHED DISTRICTS

§2021. COASTAL WATERSHED DISTRICTS

(REPEALED)

SECTION HISTORY
1989, c. 900, §1 (NEW). 1993, c. 721, §H1 (AFF). 1993, c. 721, §E10 (RP).

§2022. POWERS

(REPEALED)

SECTION HISTORY
1989, c. 900, §1 (NEW). 1993, c. 721, §H1 (AFF). 1993, c. 721, §E10 (RP).

Chapter 24: SOLID WASTE MANAGEMENT AND RECYCLING

Subchapter 1: GENERAL PROVISIONS
HEADING: PL 1995, C. 465, PT. A, §27 (RPR)

§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 for solid waste generated in this State and solid waste imported into this State, which must be based on the following order of priority:

A. Reduction of waste generated at the source, including both amount and toxicity of the waste; [1989, c. 585, Pt. A, §7 (NEW).]

B. Reuse of waste; [1989, c. 585, Pt. A, §7 (NEW).]

C. Recycling of waste; [1989, c. 585, Pt. A, §7 (NEW).]

D. Composting of biodegradable waste; [1989, c. 585, Pt. A, §7 (NEW).]

E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and [2007, c. 583, §7 (AMD).]

F. Land disposal of waste. [1989, c. 585, Pt. A, §7 (NEW).]

It is the policy of the State to use the order of priority in this subsection as a guiding principle in making decisions related to solid waste management.

[2007, c. 583, §7 (AMD) .]

2. **Waste reduction and diversion.** It is the policy of the State to actively promote and encourage waste reduction measures from all sources and maximize waste diversion efforts by encouraging new and expanded uses of solid waste generated in this State as a resource.

[2007, c. 192, §2 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 2007, c. 192, §2 (AMD). 2007, c. 583, §7 (AMD).

§2101-A. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 465, Pt. A, §28 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

1. **Agency.**

[1995, c. 656, Pt. A, §34 (RP) .]

2. **Office.**

[2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 655, Pt. GG, §27 (RP) .]

3. **Bureau.** "Bureau" means the Bureau of General Services within the Department of Administrative and Financial Services as authorized pursuant to Title 5, section 1742.

[2011, c. 655, Pt. GG, §28 (NEW); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1995, c. 465, §A28 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A34 (AMD). 2011, c. 655, Pt. GG, §§27, 28 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2102. ESTABLISHMENT OF THE MAINE WASTE MANAGEMENT AGENCY

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A29 (RP).

§2103. POWERS AND DUTIES OF THE AGENCY

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 890, §§A40,B288 (AMD). 1991, c. 517, §§B5,6 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A30 (RP).

§2104. WASTE MANAGEMENT ADVISORY COUNCIL

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

§2105. PAYMENT IN LIEU OF TAXES

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

§2106. ANNUAL AUDIT

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

§2107. STAFF EMPLOYEES; CONFLICT OF INTEREST

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

§2108. INDEMNIFICATION

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

§2109. SUNSET

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

§2110. CONFIDENTIAL INFORMATION

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

§2111. ACQUISITION OF SOLID WASTE AND RESIDUE HAULING ASSETS

(REPEALED)

SECTION HISTORY
1999, c. 773, §1 (NEW). 2001, c. 42, §§1,2 (AMD).

§2112. SMALL CONTAINER CONTRACT RESTRICTIONS

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

A. "Small container" means a 2- to 10-cubic-yard container or dumpster. [2003, c. 338, §1 (NEW).]

B. "Small containerized solid waste hauling service" means providing solid waste hauling service to customers by providing the customer with a small container or dumpster that is picked up and emptied mechanically using a front-loading or rear-loading truck. "Small containerized solid waste hauling service" does not include hand pickup service or service using a compactor that is attached to or part of a small container. [2003, c. 338, §1 (NEW).]

C. "Solid waste hauling service" means the collection, removal and transportation to a solid waste transfer station or disposal site of trash and garbage. As used in this paragraph, trash and garbage do not include construction and demolition debris, medical waste, hazardous waste, organic waste, special waste such as contaminated soil or sludge or recyclable materials. [2003, c. 338, §1 (NEW).]

[2003, c. 338, §1 (NEW) .]

2. **Contracts.** Contracts for the provision of small containerized solid waste hauling service to customers located in this State are governed by the following provisions.

A. If a contract under this subsection contains an automatic renewal provision, the contractor shall notify the customer by mail between 60 and 90 days prior to the contract termination date that if the customer does not, within 60 days of receipt of the contractor's notification, notify the contractor of the customer's

intention to terminate the contract, the contract will be automatically renewed. Notice of termination by the customer may be by any reasonable method, including mail, electronically transmitted facsimile and e-mail. A contract may not contain terms that require a customer to provide notice of termination prior to the time frames provided for in this paragraph. [2003, c. 338, §1 (NEW).]

B. The financial charge for early termination of a contract under this subsection may not exceed 3 times the current monthly charge. [2003, c. 338, §1 (NEW).]

C. A contract under this subsection may not require the customer to inform a contractor concerning prices or other terms offered by competitors or require the customer to afford the contractor an opportunity to match or respond to a competitor's offer. [2003, c. 338, §1 (NEW).]

[2005, c. 220, §1 (AMD) .]

SECTION HISTORY
2003, c. 338, §1 (NEW). 2005, c. 220, §1 (AMD).

Subchapter 2: SOLID WASTE PLANNING
HEADING: PL 1995, C. 465, PT. A, §32 (RPR)

§2121. OFFICE OF PLANNING

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A33 (RP).

§2122. STATE WASTE MANAGEMENT AND RECYCLING PLAN

The department shall prepare an analysis of, and a plan for, the management, reduction and recycling of solid waste for the State. The plan must be based on the priorities and recycling goals established in sections 2101 and 2132. The plan must provide guidance and direction to municipalities in planning and implementing waste management and recycling programs at the state, regional and local levels. [2011, c. 655, Pt. GG, §29 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Consultation.** In developing the state plan the department shall solicit public input and may hold hearings in different regions of the State.

[2011, c. 655, Pt. GG, §29 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Revisions.** The department shall revise the analysis by January 1, 2014 and every 5 years after that time to incorporate changes in waste generation trends, changes in waste recycling and disposal technologies, development of new waste generating activities and other factors affecting solid waste management as the department finds appropriate.

[2011, c. 655, Pt. GG, §29 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 528, §E40 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §E40 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A34 (RPR). 1995, c. 588, §2 (AMD). 2011, c. 655, Pt. GG, §29 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2123. PLAN CONTENTS

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 517, §C1 (AMD). 1993, c. 310, §A3 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A35 (RP).

§2123-A. STATE PLAN CONTENTS

The state plan includes the following elements. [1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

1. **Waste characterization.** The state plan must be based on a comprehensive analysis of solid waste generated, recycled and disposed of in the State. Data collected must include, but not be limited to, the source, type and amount of waste currently generated; and the costs and types of waste management employed including recycling, composting, landspreading, incineration or landfilling.

[1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

2. **Waste reduction and recycling assessment.** The state plan must include an assessment of the extent to which waste generation could be reduced at the source and the extent to which recycling can be increased.

[1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

3. **Determination of existing and potential disposal capacity.** The state plan must identify existing solid waste disposal and management capacity within the State and the potential for expansion of that capacity.

[1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

4. **Projected demand for capacity.** The state plan must identify the need in the State for current and future solid waste disposal capacity by type of solid waste, including identification of need over the next 5-year, 10-year and 20-year periods.

[1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

SECTION HISTORY
1995, c. 465, §A36 (NEW). 1995, c. 465, §C2 (AFF).

§2123-B. REVIEW OF POLICY

(REPEALED)

SECTION HISTORY
1995, c. 588, §3 (NEW). 1999, c. 527, §1 (AMD). 2007, c. 192, §3 (RP).

§2123-C. SOLID WASTE MANAGEMENT ADVISORY COUNCIL

(REPEALED)

SECTION HISTORY
2007, c. 192, §4 (NEW). 2011, c. 655, Pt. EE, §30 (AFF). 2011, c. 655, Pt. EE, §26 (RP).

§2124. REPORTS

The department shall submit the plan and subsequent revisions to the Governor and the joint standing committee of the Legislature having jurisdiction over natural resource matters. [2011, c. 655, Pt. GG, §30 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §A37 (AMD). 1995, c. 465, §C2 (AFF). 2011, c. 655, Pt. GG, §30 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2124-A. SOLID WASTE GENERATION AND DISPOSAL CAPACITY REPORT

By January 1, 2013 and annually thereafter, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the Governor setting forth information on statewide generation of solid waste, statewide recycling rates and available disposal capacity for solid waste. [2011, c. 655, Pt. GG, §31 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

The report submitted under this section must include an analysis of how changes in available disposal capacity have affected or are likely to affect disposal prices. When the department determines that a decline in available landfill capacity has generated or has the potential to generate supracompetitive prices, the department shall include this finding in its report and shall include recommendations for legislative or regulatory changes as necessary. [2011, c. 655, Pt. GG, §31 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

The report submitted under this section must include an analysis of how the rate of fill at each solid waste landfill has affected the expected lifespan of that solid waste landfill and an analysis of consolidation of ownership in the disposal, collection, recycling and hauling of solid waste. [2013, c. 300, §19 (AMD).]

The joint standing committee of the Legislature having jurisdiction over solid waste matters may report out legislation related to the report submitted pursuant to this section. [2007, c. 583, §8 (NEW).]

SECTION HISTORY
1995, c. 588, §4 (NEW). 2003, c. 338, §2 (AMD). 2007, c. 192, §5 (AMD). 2007, c. 583, §8 (AMD). 2011, c. 655, Pt. GG, §31 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2013, c. 300, §§19, 20 (AMD).

§2125. EVALUATION OF MUNICIPAL IMPLEMENTATION OF SOLID WASTE MANAGEMENT HIERARCHY

(REPEALED)

SECTION HISTORY
RR 1993, c. 1, §136 (COR). 1993, c. 298, §1 (NEW). 1995, c. 465, §A38 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A35 (RP).

Subchapter 3: WASTE REDUCTION AND RECYCLING
HEADING: PL 1995, C. 465, PT. A, §39 (RPR)

§2131. OFFICE OF WASTE REDUCTION AND RECYCLING; ESTABLISHED

(REPEALED)

SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A40 (RP).

§2132. STATE GOALS

1. **State recycling goal.** It is the goal of the State to recycle or compost, by January 1, 2014, 50% of the municipal solid waste tonnage generated each year within the State.

[2011, c. 655, Pt. GG, §32 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

1-A. **State waste reduction goal.** It is the goal of the State to reduce the biennial generation of municipal solid waste tonnage by 5% beginning on January 1, 2009 and by an additional 5% every subsequent 2 years. This reduction in solid waste tonnage, after January 1, 2009, is a biennial goal. The baseline for calculating this reduction is the 2003 solid waste generation data gathered by the former State Planning Office.

[2011, c. 655, Pt. GG, §32 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Goal revision.** The department shall recommend revisions, if appropriate, to the state recycling goal and waste reduction goal established in this section. The department shall submit its recommendations and any implementing legislation to the joint standing committee of the Legislature having jurisdiction over natural resource matters.

[2011, c. 655, Pt. GG, §32 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

3. **Beneficial use of waste.** The use of waste paper, waste plastics, waste wood, including wood from demolition debris, used motor vehicle tires or corrugated cardboard as a fuel in industrial boilers or waste-to-energy facilities for the generation of heat, steam or electricity constitutes recycling only for the purposes of determining whether the goals in subsection 1 are met and for determining municipal progress as provided in section 2133. In order for the use of waste under this subsection to constitute recycling, the department must determine that there is no reasonably available market in the State for recycling that waste and the wastes must be incinerated as a substitute for, or supplement to, fossil or biomass fuels incinerated in the industrial boiler or waste-to-energy facility.

[2011, c. 655, Pt. GG, §32 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

4. **Reduction in dioxin.** It is the policy of the State to reduce the total release of dioxin and mercury to the environment with the goal of its continued minimization and, where feasible, ultimate elimination.

[2001, c. 277, §3 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 492, §3 (AMD). 1991, c. 517, §B7 (AMD). 1995, c. 23, §1 (AMD). 1995, c. 465, §§A41,42 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 552, §1 (AMD). 2001, c. 22, §§2,3 (AMD). 2001, c. 277, §3 (AMD). 2005, c. 220, §§2-4 (AMD). 2011, c. 655, Pt. GG, §32 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2133. MUNICIPAL RECYCLING

1. **Technical and financial assistance program.**

[1995, c. 465, Pt. A, §43 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

1-A. **Recycling progress.** Municipalities are not required to meet the state recycling goal in section 2132, but they must demonstrate reasonable progress toward that goal. The department shall determine reasonable progress.

[2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Recycling feasibility studies.**

[1995, c. 465, Pt. A, §45 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

2-A. **Assistance with managing solid waste.** The department shall assist municipalities with managing solid waste. The department may also provide planning assistance to municipalities and regional organizations for managing municipal solid waste. Planning assistance may include cost and capacity analysis and education and outreach activities. The department shall provide assistance pursuant to this subsection in accordance with the waste management hierarchy in section 2101. Preference in allocating resources under this section must be given to municipalities that take advantage of regional economies of scale.

[2013, c. 300, §21 (AMD) .]

2-B. **Household hazardous waste collection.** The department may, within available resources, award grants to eligible municipalities, regional associations, sanitary districts and sewer districts for household hazardous waste collection and disposal programs. In implementing this program, the department shall attempt to:

A. Coordinate the household hazardous waste collection programs with overall recycling and waste management; [1995, c. 465, Pt. A, §46 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

B. Encourage regional economies of scale; [1995, c. 465, Pt. A, §46 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

C. Coordinate programs between private and public institutions; [1999, c. 779, §3 (AMD).]

D. Maximize opportunities for federal grants and pilot programs; and [1999, c. 779, §3 (AMD).]

E. By January 1, 2002 and as necessary thereafter, fund capital improvements and operating expenses to facilitate the development of collection programs throughout the State for hazardous waste that is universal waste, as identified in board rules, generated by households, small-quantity generators, public schools and municipalities. [1999, c. 779, §3 (NEW).]

At a minimum, the department shall award grants to public schools and municipalities for reasonable costs incurred as a result of managing waste mercury-added products generated by those public schools and municipalities, in compliance with the requirements in sections 1663 and 1664, that would not otherwise be incurred by complying with existing laws, rules or regulations as of July 15, 2002.

[2013, c. 300, §22 (AMD) .]

2-C. **Business technical assistance program.** The department may, as resources allow, assist the business community to develop state programs and services that are designed to promote the solid waste hierarchy and that are desired by and financially supported by the business community. The department shall coordinate these efforts in conjunction with the department.

[2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2-D. **Preference for other state grants and investments.**

[2013, c. 300, §23 (RP) .]

3. **Recycling capital investment grants.** The department may make grants to eligible municipalities, regional associations, sanitary districts and sewer districts for the construction of public recycling and composting facilities and the purchase of recycling and composting equipment. The department may establish requirements for local cost sharing of up to 50% of the total grant amount.

[2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

4. **Recycling incentives.** The department shall develop and implement a program of incentives to encourage public recycling programs to reach maximum feasible levels of recycling and to meet the recycling goal of section 2132.

A. [1993, c. 298, §2 (RP).]

B. [1995, c. 465, Pt. A, §48 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

[2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

5. **Access to state waste disposal services.**

[1995, c. 465, Pt. A, §49 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

6. **Recycling demonstration grants.** The department may make demonstration grants to eligible municipalities, regional associations or other public organizations to pilot waste reduction, recycling and composting programs and to test their effectiveness and feasibility.

[2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

7. **Recycling progress reports.** Municipalities shall report annually, on forms provided by the department, on their solid waste management and recycling practices. The annual report must include how much of each type of solid waste is generated and how that solid waste is managed. The department shall assist municipal reporting by developing a municipal waste stream assessment model. The model must rely on actual waste data whenever possible, but incorporate default generation estimates when needed. Default generation estimates must incorporate factors such as commercial activity, geographical differences and municipal population.

[2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 517, §§B8-11 (AMD). 1993, c. 298, §2 (AMD). 1995, c. 465, §§A43-50 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §§A36-38 (AMD). 1997, c. 672, §4 (AMD). 1999, c. 385, §§4,5 (AMD). 1999, c. 779, §3 (AMD). 2001, c. 626, §21 (AMD). 2003, c. 567, §§1,2 (AMD). 2011, c. 655, Pt. GG, §33 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2013, c. 300, §§21-23 (AMD).

§2134. MARKETING ASSISTANCE

The department shall provide marketing assistance, which may include the following elements:
[2011, c. 655, Pt. GG, §34 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Collection.**

[1995, c. 465, Pt. A, §51 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

2. **Incentive program.**

[1995, c. 465, Pt. A, §51 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

3. **Information clearinghouse.** An information clearinghouse on recycling markets to improve the marketing of materials to be recycled. The department shall maintain a current list of municipal recycling programs, together with a description of the recyclable materials available through the programs. The department shall also maintain listings of brokers, handlers, processors, transporters and other persons providing services and potential markets for recyclable materials. The department shall actively promote the services of the clearinghouse and shall seek to match programs with appropriate recycling businesses. The department shall make its information on recycling services available to public and private solid waste generators seeking markets or services for recyclable materials. The department shall make its technical reports and planning documents available to municipalities and regional associations on a timely basis; and

[2011, c. 655, Pt. GG, §35 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

4. **Brokering service.** Provision for marketing and brokering services for materials when municipal and regional association efforts to market the material and the information clearinghouse are inadequate.

[1995, c. 656, Pt. A, §39 (AMD) .]

5. **Marketing development plan.**

[1995, c. 465, Pt. A, §51 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

6. **Reuse of waste.**

[1995, c. 656, Pt. A, §39 (RP) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §A51 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A39 (AMD). 2011, c. 655, Pt. GG, §§34, 35 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2135. SPECIAL SERVICES

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A52 (RP).

§2135-A. TIRE MANAGEMENT PROGRAM

(REPEALED)

SECTION HISTORY
1991, c. 517, §A3 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A53 (RP).

§2136. SCRAP METAL TRANSPORTATION COST SUBSIDY

(REPEALED)

SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A54 (RP).

§2137. STATE GOVERNMENT RECYCLING AND WASTE REDUCTION

The Department of Administrative and Financial Services shall assess the status of recycling efforts undertaken directly by the State for its own solid waste and shall evaluate existing programs and develop necessary new programs for recycling to reduce the generation of solid waste by the State. [1995, c. 656, Pt. A, §40 (AMD).]

1. **Waste reduction and recycling plan.**

[1995, c. 465, Pt. A, §55 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

2. **Capitol complex recycling program.**

[1995, c. 465, Pt. A, §55 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

3. **Recycling.** Each state agency shall establish and implement a source separation and collection program for recyclable materials produced as a result of agency operations, including, at a minimum, high grade paper and corrugated paper. The source separation and collection program must include, at a minimum, procedures for collecting and storing recyclable materials, bins or containers for storing materials, and contractual and other arrangements with buyers. Each agency shall appoint a recycling coordinator for every 50 employees at a minimum and shall conduct educational programs for its employees on the recycling program.

[1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

4. **Waste reduction.** Each state agency shall establish and implement a waste reduction program for materials used in the course of agency operations. The program must be designed and implemented to achieve the maximum feasible reduction of waste generated as a result of agency operations.

[1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

5. **University of Maine System.** The following provisions apply to the University of Maine System.

A. [1995, c. 465, Pt. A, §55 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

B. Each campus of the University of Maine System shall establish and implement a source separation and collection program for recyclable materials, including at a minimum high grade paper, corrugated paper and glass. The source separation and collection program must include procedures for collecting and storing recyclable materials, bins or containers for storing materials and contractual and other arrangements with buyers. Each campus shall appoint a recycling coordinator and shall conduct educational programs for students and employees on the recycling program. [1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

C. Each campus of the University of Maine System shall establish and implement a waste reduction program for materials used in the course of its operations. The program must be designed and implemented to achieve the maximum feasible reduction of waste. [1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

D. Each campus of the University of Maine System shall establish a leaf composting program. [1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

E. Each campus of the University of Maine System shall assess the status of its recycling efforts, evaluate existing programs and, within available resources, develop necessary new programs for recycling to reduce the generation of solid waste by the campus. [1995, c. 465, Pt. A, §55 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

[1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §A55 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A40 (AMD).

§2138. OFFICE PAPER RECYCLING PROGRAM

1. **Office paper recycling mandated.** Any person employing 15 or more people at a site within the State shall implement an office paper and corrugated cardboard recycling program.

A. [1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

B. [1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

C. [1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

The department may provide technical and marketing assistance and direction to entities within the State to assist with meeting this requirement. Municipalities and regional associations may assist employers in attaining the objectives of this section.

[2011, c. 655, Pt. GG, §36 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Office paper.** For the purposes of this section, "office paper" includes, but is not limited to, ledger, computer and bond paper.

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Certification of tax credit.**

[2011, c. 548, §34 (RP) .]

4. **Technical and financial assistance programs.**

[1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

5. **Industrial waste reduction.**

[1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

6. **Beneficial use of office paper.**

[1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 492, §4 (AMD). 1995, c. 465, §A56 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A41 (AMD). 2011, c. 548, §34 (AMD). 2011, c. 655, Pt. GG, §36 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2139. PUBLIC EDUCATION

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 700, §A170 (AMD). 1995, c. 465, §A57 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A42 (RP).

§2140. INTERSTATE AND NATIONAL INITIATIVES

The department may participate in interstate and national initiatives to adopt uniform state laws when practicable, and to enter compacts between the State and other states for the improved management, recycling and reduction of solid waste. [2011, c. 655, Pt. GG, §37 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 656, §A43 (AMD). 2011, c. 655, Pt. GG, §37 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2141. WASTE REDUCTION AND RECYCLING LABELING PROGRAM

(REPEALED)

SECTION HISTORY
1991, c. 463, (NEW). 1991, c. 644, §§2-4 (AMD). 1993, c. 310, §A4 (RP).

§2142. ADVERTISING AND MARKETING CLAIMS; WASTE REDUCTION AND RECYCLING

A person who labels, advertises or promotes a product in violation of guidelines for the use of environmental marketing claims published by the Federal Trade Commission in 16 Code of Federal Regulations, Part 260 (1993), as amended, commits a violation of the Maine Unfair Trade Practices Act. [1993, c. 310, Pt. A, §5 (NEW).]

SECTION HISTORY
1993, c. 310, §A5 (NEW).

§2143. CELLULAR TELEPHONE RECYCLING

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

A. "Cellular telephone" means a mobile wireless telephone device that is designed to send or receive transmissions through a cellular radiotelephone service as defined in 47 Code of Federal Regulations, Section 22.99 (2005). "Cellular telephone" does not include a wireless telephone device that is integrated into the electrical architecture of a motor vehicle. [2007, c. 343, §1 (NEW).]

B. "Cellular telephone service provider" means a provider of wireless voice or data retail service. [2007, c. 343, §1 (NEW).]

C. "Retailer" means a person, firm or corporation that sells or offers to sell a cellular telephone to a consumer at retail. [2007, c. 343, §1 (NEW).]

[2007, c. 343, §1 (NEW) .]

2. **Collection system.** Effective January 1, 2008, a retailer shall accept, at no charge, used cellular telephones from any person. A retailer required to accept used cellular telephones under this subsection shall post, in a prominent location open to public view, a notice printed in boldface type and containing the following language: "We accept used cellular telephones at no charge."

[2007, c. 343, §1 (NEW) .]

3. **Disposal ban.** Effective January 1, 2008, a person may not dispose of a cellular telephone in solid waste for disposal in a solid waste disposal facility.

[2007, c. 343, §1 (NEW) .]

4. **Reports.** By January 1, 2009, and every year thereafter, a cellular telephone service provider shall report to the department the number of cellular telephones collected pursuant to this section and how the collected cellular telephones were disposed of, reused or recycled. Annually, the department shall report on the collection system to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report may be included in the report required pursuant to section 1772, subsection 1.

[2013, c. 315, §8 (AMD) .]

SECTION HISTORY
2007, c. 343, §1 (NEW). 2013, c. 315, §8 (AMD).

§2144. STEWARDSHIP PROGRAM FOR ARCHITECTURAL PAINT

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

A. "Architectural paint" or "paint" means interior and exterior architectural coatings sold in containers of 5 gallons or less and does not mean industrial, original equipment or specialty coatings. [2013, c. 395, §1 (NEW).]

B. "Consumer" means a purchaser or user of architectural paint. [2013, c. 395, §1 (NEW).]

C. "Distributor" means a business that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in the State. [2013, c. 395, §1 (NEW).]

D. "Energy recovery" means recovery in which all or a part of solid waste materials is processed in order to use the heat content or other forms of energy of or from the materials. [2013, c. 395, §1 (NEW).]

E. "Environmentally sound management practices" means procedures for the collection, storage, transportation, reuse, recycling and disposal of post-consumer paint to be implemented by a producer or a representative organization to ensure compliance with all applicable federal, state and local laws, regulations, rules and ordinances and protection of human health and the environment. Such procedures must address adequate record keeping, tracking and documenting the fate of materials within the State and beyond and adequate environmental liability coverage for professional services and for the operations of the contractors working on behalf of the producer or the representative organization. [2013, c. 395, §1 (NEW).]

F. "Final disposition" means the point beyond which no further processing takes place and paint has been transformed for direct use as a feedstock in producing new products or is disposed of, including for energy recovery, in permitted facilities. [2013, c. 395, §1 (NEW).]

G. "Paint stewardship assessment" means the amount added to the purchase price of architectural paint sold in the State necessary to cover the cost of collecting, transporting and processing post-consumer paint statewide under a paint stewardship program. [2013, c. 395, §1 (NEW).]

H. "Paint stewardship program" or "program" means a program for management of post-consumer paint to be operated by a producer or a representative organization. [2013, c. 395, §1 (NEW).]

I. "Plan" means a plan to establish a paint stewardship program. [2013, c. 395, §1 (NEW).]

J. "Population center" means an urbanized area or urban cluster as defined by the United States Department of Commerce, Bureau of the Census to identify areas of high population density and urban land use with a population of 2,500 or greater. [2013, c. 395, §1 (NEW).]

K. "Post-consumer paint" means architectural paint not used and no longer wanted by a consumer. [2013, c. 395, §1 (NEW).]

L. "Producer" means a manufacturer of architectural paint that sells, offers for sale, or distributes that paint in the State under the producer's own name or brand. [2013, c. 395, §1 (NEW).]

M. "Recycling" means any process by which discarded products, components and by-products are transformed into new, usable or marketable materials in a manner in which the original products may lose their identity but does not include energy recovery or energy generation by means of combusting discarded products, components and by-products with or without other waste products. [2013, c. 395, §1 (NEW).]

N. "Representative organization" means a nonprofit organization created by producers to operate a paint stewardship program. [2013, c. 395, §1 (NEW).]

O. "Retailer" means a person that offers architectural paint for sale at retail in the State. [2013, c. 395, §1 (NEW).]

P. "Reuse" means the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product's identity. [2013, c. 395, §1 (NEW).]

Q. "Sell" or "sale" means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogues or the Internet or any other similar electronic means. [2013, c. 395, §1 (NEW).]

[2013, c. 395, §1 (NEW) .]

2. **Establishment of a paint stewardship program.** By April 1, 2015, a producer, a group of producers or a representative organization shall submit a plan for the establishment of a paint stewardship program to the commissioner for approval. The plan must include:

A. A description of how the program will collect, transport, recycle and process post-consumer paint from entities covered by the program for end-of-life management to meet the following goals:

(1) A reduction in the generation of unwanted paint and the promotion of its reuse and recycling;

(2) Provision of convenient and available statewide collection of post-consumer paint from entities covered by the program in all areas of the State;

(3) Management of post-consumer paint using environmentally sound management practices in an economically sound manner, including following the paint waste management hierarchy of source reduction, reuse, recycling, energy recovery and disposal;

(4) Establishment of a process for managing paint containers collected under the program, including recycling all recyclable containers;

(5) Negotiation and execution by the operator of agreements to collect, transport, reuse, recycle, burn for energy recovery and dispose of post-consumer paint using environmentally sound management practices; and

(6) Provision of education and outreach efforts by the operator to promote the program. The education and outreach efforts must include strategies for reaching consumers in all areas of the State and the method the program will use to evaluate the effectiveness of its education and outreach efforts; [2013, c. 395, §1 (NEW).]

B. Contact information for all persons that will be responsible for the operation of the paint stewardship program and a list of paint brands and producers covered under the program; [2013, c. 395, §1 (NEW).]

C. Goals as may be practical to reduce the generation of post-consumer paint, to promote the reuse and recycling of post-consumer paint, for the overall collection of post-consumer paint and for the proper end-of-life management of post-consumer paint. The goals may be revised by a representative organization based on information collected annually; [2013, c. 395, §1 (NEW).]

D. A list of all potential processors that will be used to manage post-consumer paint collected by the paint stewardship program, a list of each collection site name and location that will accept post-consumer paint under the program and a list of all processors that will be used for final disposition; [2013, c. 395, §1 (NEW).]

E. A method to determine the number and geographic distribution of paint collection sites based on the use of geographic information modeling. The plan must provide that at least 90% of state residents have a permanent paint collection site within a 15-mile radius of their residences, unless the commissioner determines that the 90% requirement is not practicable due to geographical constraints. If the commissioner determines the 90% requirement is not practicable, the commissioner may approve a plan that includes a geographic distribution of paint collection sites that is practicable. The distribution of paint collection sites must include at least one additional paint collection site for each 30,000 residents in a population center that is located to provide convenient and reasonably equitable access for residents within the population center unless otherwise approved by the commissioner; [2013, c. 395, §1 (NEW).]

F. Identification of the ways in which the program will coordinate with existing solid waste collection programs and events, including strategies to reach the State's residents that do not have a permanent paint collection site within a 15-mile radius of their residences and to ensure adequate coverage of service center communities as defined in Title 30-A, section 4301, subsection 14-A; [2013, c. 395, §1 (NEW).]

G. A time frame for accomplishing the geographical coverage required under paragraphs E and F; [2013, c. 395, §1 (NEW).]

H. An anticipated budget for operation of the paint stewardship program, including the suggested method of funding the program, which must include the method of calculating a paint stewardship assessment that meets the requirements of subsection 4; [2013, c. 395, §1 (NEW).]

I. A description of how post-consumer paint collected under this section will be managed at each collection site, including how post-consumer paint will be labeled and provisions for secondary containment; [2013, c. 395, §1 (NEW).]

J. A description of how consolidation facilities in the State accepting materials under this section will meet applicable requirements for the consolidation of universal waste in accordance with rules adopted by the department; and [2013, c. 395, §1 (NEW).]

K. For a consolidation facility where post-consumer paint may be transferred out of the post-consumer paint's original container, an environmental monitoring plan and a closure plan with financial assurance and proof of liability insurance. [2013, c. 395, §1 (NEW).]

[2013, c. 395, §1 (NEW) .]

3. **Approval of plan.** The commissioner shall review a plan submitted under subsection 2 and make a determination of whether to approve the plan within 120 days of receipt. The commissioner shall make the plan available for public review for at least 30 days prior to making a determination of whether to approve the

plan. The commissioner shall approve a plan if the commissioner determines that the plan demonstrates the ability of the paint stewardship program to meet the goals specified in subsection 2, paragraph A and meets the other requirements for submission of a plan under subsection 2. The commissioner's approval of a plan must include approval of the method by which the program will be funded. The commissioner shall require the person submitting the plan to provide an independent audit indicating the appropriateness of the proposed paint stewardship assessment.

If a plan is rejected, the commissioner shall provide the reasons for rejecting the plan to the person submitting the plan. The person submitting the plan may submit an amended plan within 60 days of a rejection.

[2013, c. 395, §1 (NEW) .]

4. **Funding of paint stewardship program.** An operator of a paint stewardship program shall administer a paint stewardship assessment for all architectural paint sold in the State. The amount of the paint stewardship assessment must be approved by the commissioner under subsection 3 and must be sufficient to recover, but may not exceed, the cost of the paint stewardship program. If the funds generated by the program exceed the amount necessary to operate the program, excess funds must be used to reduce future paint stewardship assessments or improve services under the program.

A. A paint stewardship assessment must be added to the cost of all architectural paint sold to retailers and distributors in the State. A retailer or distributor shall add the paint stewardship assessment to the consumer's purchase price of the architectural paint sold by that retailer or distributor. A producer or a representative organization may not charge a paint stewardship assessment at the time of post-consumer paint collection. The collection of the paint stewardship assessment must commence no later than the implementation date established in subsection 5, paragraph A. [2013, c. 395, §1 (NEW).]

B. An architectural paint producer participating in a representative organization shall remit to the representative organization payment of the paint stewardship assessment for each container of architectural paint it sells in the State. [2013, c. 395, §1 (NEW).]

[2013, c. 395, §1 (NEW) .]

5. **Operation of paint stewardship program.** A paint stewardship program must be operated as follows.

A. Unless an earlier implementation date is proposed in a plan and approved by the commissioner, beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under subsection 3, whichever occurs later, a producer or a representative organization shall implement the plan. If an earlier implementation date is proposed in a plan and approved by the commissioner, a producer or representative organization shall implement the plan beginning on that date. [2013, c. 483, §1 (AMD).]

B. Upon implementation of the plan, a producer may not sell or offer for sale architectural paint in the State unless the producer or a representative organization of which the producer is a member participates in a paint stewardship program. A representative organization shall notify the department of all producers participating in a paint stewardship program operated by the representative organization. [2013, c. 395, §1 (NEW).]

C. A producer or a representative organization shall provide consumers and retailers with educational materials regarding the paint stewardship assessment and paint stewardship program. Such materials must include, but are not limited to, information regarding available end-of-life management options for architectural paint offered through the paint stewardship program, promoting waste prevention, reuse and recycling and notifying consumers that a charge for the operation of the paint stewardship program is included in the purchase price of all architectural paint sold in the State. These materials may include, but are not limited to, the following:

(1) Signage that is prominently displayed and easily visible to the consumer;

(2) Printed materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of purchase or delivery;

(3) Advertising or other promotional materials that include references to the paint stewardship program; and

(4) A manual for paint retailers providing collection site procedures to ensure the use of environmentally sound management practices when handling architectural paints. [2013, c. 395, §1 (NEW).]

D. A producer or a representative organization that organizes the collection, transportation and processing of post-consumer paint, in accordance with a paint stewardship program, is immune from liability for any claim of a violation of antitrust, restraint of trade or unfair trade practice, including claims pursuant to Title 10, chapter 201, arising from conduct undertaken in accordance with the paint stewardship program. [2013, c. 395, §1 (NEW).]

E. By October 15, 2016, and annually thereafter, the operator of a paint stewardship program shall submit a report to the commissioner regarding the paint stewardship program. If implementation of a plan begins before December 31, 2014, the commissioner may establish an earlier date for submission of the initial report. The report must include, but is not limited to:

(1) A description of the methods used to collect, transport, reduce, reuse and process post-consumer paint in the State;

(2) The volume of post-consumer paint collected in the State;

(3) The volume and type of post-consumer paint collected in the State by method of disposition, including reuse, recycling and other methods of processing;

(4) The total cost of implementing the paint stewardship program, as determined by an independent financial audit funded from the paint stewardship assessment. The report of total cost must include a breakdown of administrative, collection, transportation, disposition and communication costs;

(5) A summary of outreach and educational activities undertaken and samples of educational materials provided to consumers of architectural paint;

(6) The total volume of post-consumer paint collected by the paint stewardship program and a breakdown of the volume collected at each collection site;

(7) Based on the paint stewardship assessment collected by the paint stewardship program, the total volume of architectural paint sold in the State during the preceding year;

(8) A list of all processors used to manage post-consumer paint collected by the paint stewardship program in the preceding year up to the paint's final disposition, the volume each processor accepted and the disposition method used by each processor; and

(9) An evaluation of the effectiveness of the paint stewardship program compared to prior years and anticipated steps, if any are needed, to improve performance throughout the State. [2013, c. 483, §2 (AMD).]

F. Reports submitted to the department under this section must be made available to the public on the department's publicly accessible website, except that proprietary information submitted to the department in a plan, in an amendment to a plan or pursuant to reporting requirements of this section that is identified by the submittor as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

As used in this paragraph, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. [2013, c. 395, §1 (NEW).]

G. A producer or representative organization shall submit to the department for approval a request to amend an approved plan if the producer or representative organization proposes to:

(1) Change the paint stewardship assessment;

(2) Cover an additional product under the plan; or

(3) Modify the goals of the plan. [2013, c. 395, §1 (NEW).]

[2013, c. 483, §§1, 2 (AMD) .]

6. **Administration and enforcement of program.** The department shall enforce this section and may adopt rules as necessary for the purposes of implementing, administering and enforcing this section. The department shall charge a reasonable fee to be paid by an applicant for approval of a paint stewardship program for review of the plan. The department may establish a reasonable annual fee to cover the actual costs for annual report review, oversight, administration and enforcement. Fees established under this subsection may not exceed the greater of $82,000 per year and 1% of total program costs as set forth in the independent financial auditing report required under subsection 5.

[2013, c. 395, §1 (NEW) .]

7. **Retailers.** Unless an earlier implementation date is approved by the commissioner pursuant to subsection 5, paragraph A, beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under subsection 3, whichever occurs later, a retailer may not sell architectural paint unless, on the date the retailer orders the architectural paint from the producer or its agent, the producer or the paint brand is listed on the department's publicly accessible website as implementing or participating in an approved paint stewardship program. A retailer may participate as a paint collection point pursuant to the paint stewardship program on a voluntary basis and pursuant to all applicable laws and rules. A retailer that collects post-consumer paint must follow a collection site procedure manual developed by a producer or representative organization to ensure the use of environmentally sound management practices when handling architectural paints at collection locations. If an earlier implementation date is approved by the commissioner pursuant to subsection 5, paragraph A, the provisions of this subsection apply with respect to the plan as of that date.

[2013, c. 483, §3 (AMD) .]

8. **List of producers and brands.** The department shall post on its publicly accessible website a list of the producers participating and the brands included in a paint stewardship program.

[2013, c. 395, §1 (NEW) .]

9. **Relationship to other product stewardship program laws.** A paint stewardship program established pursuant to this section is governed by the provisions of this section and is exempt from any requirements related to product stewardship programs established under chapter 18 unless otherwise specifically provided.

[2013, c. 395, §1 (NEW) .]

10. **Rules.** The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 395, §1 (NEW) .]

SECTION HISTORY
2013, c. 395, §1 (NEW). 2013, c. 483, §§1-3 (AMD).

Subchapter 4: FACILITY SITING AND DEVELOPMENT
HEADING: PL 1995, C. 465, PT. A, §58 (RPR)

§2151. OFFICE OF SITING AND DISPOSAL OPERATIONS

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A59 (RP).

§2151-A. INDEMNIFICATION

The department shall defend and indemnify any employee of the bureau and any former employee of the former State Planning Office including the director and any member of the former Facility Siting Board against expenses actually and necessarily incurred by the person in connection with the defense of any action or proceeding in which the person is made party by reason of past or present association with the bureau or former State Planning Office with regard to the powers and duties set forth in this article. [2011, c. 655, Pt. GG, §38 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1995, c. 465, §A60 (NEW). 1995, c. 465, §C2 (AFF). 2011, c. 655, Pt. GG, §38 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2152. FACILITY SITING BOARD

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §A61 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 502, §E32 (AMD). 1999, c. 556, §41 (AMD). 2001, c. 352, §16 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 655, Pt. GG, §39 (RP).

§2153. SITING CRITERIA

1. **Siting criteria.** With regard to state-owned facilities, the bureau shall administer rules adopted by the former Maine Waste Management Agency, Office of Siting and Disposal Operations and subsequently administered by the former State Planning Office pursuant to this subsection for siting criteria for solid waste disposal facilities. The bureau may revise rules as necessary based on the following factors.

A. A site may be located anywhere within the State and need not be in proximity to the site of waste generation. [1991, c. 794, §2 (AMD).]

A-1. Sites for the disposal of special waste may not be located within a 5-mile radius of an existing commercial special waste landfill or a commercial incineration facility. [1995, c. 465, Pt. A, §62 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

B. To the extent possible, a site must be located in proximity to the transportation systems, including existing or potential railroad systems, that are used to convey waste to the site or to convey residuals and materials to be recycled from the site. [1991, c. 794, §2 (AMD).]

C. The capacity or size of a site must be consistent with the projected demand as determined in the state plan. [1989, c. 585, Pt. A, §7 (NEW).]

D. A site and its considered use must be consistent with, and actively support, other waste management objectives, including waste reduction and recycling. [1989, c. 585, Pt. A, §7 (NEW).]

E. The projected price for site development, construction and operation must be fair and reasonable. [1989, c. 585, Pt. A, §7 (NEW).]

F. A site must meet preliminary environmental standards developed jointly by the department and the Maine Land Use Planning Commission, including ground water standards, geological standards and standards to protect public drinking water supplies. [1991, c. 794, §2 (AMD); 2011, c. 682, §38 (REV).]

G. Existing uses on adjacent properties, including public or private schools, may not be in significant conflict with or significantly jeopardized by the use of a site. [1991, c. 794, §2 (AMD).]

[2011, c. 655, Pt. GG, §40 (AMD); 2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 682, §38 (REV) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 794, §2 (AMD). 1995, c. 465, §A62 (AMD). 1995, c. 465, §C2 (AFF). 2011, c. 655, Pt. GG, §40 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 682, §38 (REV).

§2154. SITE SELECTION

1. **Initial site screening.** The bureau shall conduct a site screening and selection process to identify solid waste disposal capacity sufficient to meet the projected needs identified in the state planning process under section 2123-A, subsection 4. The bureau shall consider the need for geographic distribution of facilities to adequately serve all regions of the State. The bureau also shall consider in its site selection process the need for landfill capacity to dispose of incinerator ash resulting from the combustion of domestic and commercial solid waste generated within its jurisdiction. Prior to recommending a site, the bureau shall hold a public hearing in every municipality or plantation identified in the screening process as a potential site. For potential sites within an unincorporated township, the bureau shall hold a public hearing within the vicinity of the proposed site. Prior to submitting a recommended site to the department for review, the bureau must find that the recommended site meets the standards adopted under section 2153.

[2011, c. 655, Pt. GG, §41 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Siting; general.** Subsequent to the siting process under subsection 1, the bureau shall identify additional sites as requested by the department and as capacity needs are identified in the state plan. The bureau shall employ the same criteria and considerations employed under subsection 1. The bureau shall hold a public hearing in each municipality within which the bureau may recommend the location of any solid waste disposal or refuse-derived fuel processing facility.

[2011, c. 655, Pt. GG, §41 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

3. **Municipal reimbursement.** At the conclusion of proceedings before the bureau conducted pursuant to subsection 1, the bureau shall reimburse a municipality for eligible expenses incurred as a result of that municipality's direct, substantive participation in proceedings before the bureau. The amount reimbursed under this subsection may not exceed $50,000 for any municipality. For the purposes of this subsection, "eligible expenses" has the same meaning as "expenses eligible for reimbursement" under section 1310-S, subsection 4 and any rules adopted by the Board of Environmental Protection pursuant to that section.

[2011, c. 655, Pt. GG, §41 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 243, §1 (AMD). 1991, c. 794, §§3,4 (AMD). 1991, c. 794, §9 (AFF). 1995, c. 465, §A63 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §§A44,45 (AMD). 2011, c. 655, Pt. GG, §41 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2155. NOTIFICATION

The bureau shall notify the municipal officers of any municipality within which a waste disposal facility site is recommended under this subchapter of that recommendation. The bureau shall notify the municipal officers by certified mail within 30 days of making the recommendation. If the proposed site is located within the jurisdiction of the Maine Land Use Planning Commission, the bureau shall notify the Maine Land Use Planning Commission and the county commissioners in lieu of the municipal officers. [2011, c. 655, Pt. GG, §42 (AMD); 2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 682, §38 (REV).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 2011, c. 655, Pt. GG, §42 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 682, §38 (REV).

§2156. FACILITY DEVELOPMENT

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 243, §2 (AMD). 1991, c. 517, §C2 (AMD). 1991, c. 794, §5 (AMD). 1995, c. 465, §§A64,65 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 588, §5 (RP).

§2156-A. FACILITY DEVELOPMENT

1. **Planning for development.** The bureau, in consultation with the department, shall plan for the development of facilities sufficient to meet needs for municipal solid waste identified in the state plan and any revisions to the plan and to serve all geographic areas of the State. The bureau, in consultation with the department, may plan for the development of facilities sufficient to meet needs for special waste identified in the state plan and any revisions to the plan and to serve all geographic areas of the State.

[2011, c. 655, Pt. GG, §43 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Recommendation for development.** When the bureau finds that 6 years or less of licensed and available disposal capacity for municipal solid waste or special waste remains within the State, the bureau shall submit a report recommending the construction and operation of a state-owned solid waste disposal facility for the disposal of the type of waste for which capacity is needed to the joint standing committee of the Legislature having jurisdiction over natural resource matters. The report must recommend which state agency or department will own the facility and how it will be operated. The report must also include a review of disposal options outside of the State; a review of existing efforts to reduce, reuse, recycle, compost and incinerate the affected municipal solid waste and special waste streams and the impact of these efforts on capacity requirements; a thorough economic analysis of the facility's expected costs; and commitments from entities to utilize the facility and projected revenues. It is the intent of the Legislature that the facility be operated by a private contractor. A state-owned solid waste disposal facility may not be constructed or operated unless authorized by legislation pursuant to subsection 3.

[2011, c. 655, Pt. GG, §43 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

3. **Authorization for development.** The joint standing committee of the Legislature having jurisdiction over natural resource matters may report out legislation authorizing construction and operation of a state-owned solid waste disposal facility in response to a report submitted pursuant to subsection 2.

[1995, c. 588, §6 (NEW) .]

4. **Ownership, construction and operation.** The bureau shall maintain ownership of a site acquired for construction and operation of a state-owned solid waste disposal facility until the Legislature authorizes transfer of the site to another state department or agency, except that this subsection does not prohibit any lease or transfer of the site pursuant to an agreement entered into before the effective date of this subsection or pursuant to any amendment to such an agreement entered into before or after the effective date of this subsection.

[2011, c. 655, Pt. GG, §43 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

5. **Development by others.** This section does not preclude a municipality or regional association from developing and operating solid waste disposal facilities on its own initiative.

[1995, c. 588, §6 (NEW) .]

SECTION HISTORY
1995, c. 588, §6 (NEW). 1999, c. 736, §1 (AMD). 2007, c. 192, §6 (AMD). 2011, c. 655, Pt. GG, §43 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2157. REVIEW OF PROPOSED WASTE FACILITIES

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 869, §C11 (AMD). 1989, c. 890, §§A40,B289 (AMD). 1991, c. 66, §A41 (AMD). 1991, c. 517, §B12 (AMD). 1993, c. 732, §B3 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A66 (RP).

§2158. FUTURE COMMERCIAL SOLID WASTE DISPOSAL FACILITIES

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 890, §§A40,B290 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A67 (RP).

§2159. REAL AND PERSONAL PROPERTY; RIGHT OF EMINENT DOMAIN

The bureau may acquire and hold real and personal property that it considers necessary for its purposes, is granted the right of eminent domain and, for those purposes, may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, for public use, any land, real estate, easements or interest therein, necessary for constructing, establishing, maintaining, operating and the closure of solid waste disposal facilities. [2011, c. 655, Pt. GG, §44 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 656, §A46 (AMD). 2011, c. 655, Pt. GG, §44 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2160. PROCEDURE IN EXERCISE OF RIGHT OF EMINENT DOMAIN

The right of eminent domain granted in section 2159 may only be exercised after complying with the following procedures. [1989, c. 585, Pt. A, §7 (NEW).]

1. **Notice to owner.** The bureau shall provide to the owner or owners of record notice of the following:

A. The determination of the bureau that it proposes to exercise the right of eminent domain; [2011, c. 655, Pt. GG, §45 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

B. A description and scale map of the land or easement to be taken; [1989, c. 585, Pt. A, §7 (NEW).]

C. The final amount offered for the land or easement to be taken, based on the fair value as estimated by the bureau; and [2011, c. 655, Pt. GG, §45 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

D. Notice of the time and place of the hearing provided in subsection 4. [1989, c. 585, Pt. A, §7 (NEW).]

Notice may be made by personal service in hand by an officer duly qualified to serve civil process in this State or by certified mail, return receipt requested, to the last known address of the owner or owners. If the owner or owners are not known or can not be notified by personal service or certified mail, notice may be given by publication in the manner provided in subsection 4.

[2011, c. 655, Pt. GG, §45 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Notice to tenant.** Notice shall be given to any tenant in the same manner notice is given to the owner of the property.

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Notice to the affected municipality.** Notice shall be given to the municipality in which the property to be acquired is located in the same manner notice is given to the owner of the property and shall be addressed to the municipal officers.

[1989, c. 585, Pt. A, §7 (NEW) .]

4. **Hearing.** The bureau shall hold a public hearing on the advisability of its proposed exercise of the right of eminent domain. Notice of the hearing must be made by publication in a newspaper of general circulation in the area of the taking and published once a week for 2 successive weeks, the last publication to be at least 2 weeks before the time appointed in the hearing. The hearing notice must include:

A. The time and place of the hearing; [1989, c. 585, Pt. A, §7 (NEW).]

B. A description of the land or easement to be taken; and [1989, c. 585, Pt. A, §7 (NEW).]

C. The name of the owners, if known. [1989, c. 585, Pt. A, §7 (NEW).]

[2011, c. 655, Pt. GG, §46 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 656, §A47 (AMD). 2011, c. 655, Pt. GG, §§45, 46 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2161. CONDEMNATION PROCEEDINGS

At the time the bureau sends the notice in section 2160, the bureau shall file in the county commissioner's office in which the property to be taken is located and cause to be recorded in the registry of deeds in the county plans of the location of all lands, real estate, easements or interest therein, with an appropriate description and the names of the owners thereof, if known. When for any reason the bureau fails to acquire property that it is authorized to take, which is described in that location, or if the location so recorded is defective and uncertain, it may, at any time, correct and perfect the location and file a new description. In that case, the bureau is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the bureau is not liable for

any acts that would have been justified if the original taking had been lawful. No entry may be made on any private lands, except to make surveys, until the expiration of 10 days from the filing, whereupon, possession may be had of all the lands, real estate, easements or interests therein and other property and rights as aforesaid to be taken, but title may not vest in the bureau until payment for the property is made. [2011, c. 655, Pt. GG, §47 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 656, §A48 (AMD). 2011, c. 655, Pt. GG, §47 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2162. ASSISTANCE IN REGIONAL ASSOCIATION SITING

1. **Technical assistance.** Upon request by a regional association, the bureau may provide technical assistance to that regional association in the establishment of approved waste facilities, including assistance in planning, location, acquisition, development and operation of the site. The regional association shall describe fully the need and justification for the request. The bureau may request information from the regional association necessary to provide assistance.

[2011, c. 655, Pt. GG, §48 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Submission of report recommending construction of state-owned facility.** When the bureau, in consultation with a regional association, finds that disposal capacity is projected to be needed for bulky wastes, construction or demolition waste or land-clearing debris and that the regional association is not able to pursue the siting, establishment and operation of a waste facility, the bureau may submit a report recommending the construction and operation of a state-owned solid waste disposal facility that will fulfill the disposal need to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must include a review of disposal options outside of the State; a review of existing efforts to reduce, reuse, recycle, compost and incinerate the affected waste streams and the impact of these efforts on capacity requirements; a thorough economic analysis of the facility's expected costs; and commitments from entities to utilize the facility and projected revenues. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out legislation authorizing the construction and operation of a state-owned solid waste disposal facility in response to a report submitted pursuant to this subsection.

[2011, c. 655, Pt. GG, §48 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1999, c. 736, §2 (RPR). 2011, c. 655, Pt. GG, §48 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2163. EXEMPT FACILITIES

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A68 (RP).

§2164. HOUSEHOLD AND SMALL GENERATOR HAZARDOUS WASTE

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 517, §B13 (AMD). 1991, c. 808, §1 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A69 (RP).

§2165. REGULATION OF CERTAIN DRY CELL BATTERIES

1. **Definitions.** As used in this section and section 2166, the following terms have the following meanings.

A. "Industrial, communications or medical facility" means a structure or site where 15 or more people are employed and:

(1) Where articles are assembled, manufactured or fabricated;

(2) Are included in major group 48 of the federal Office of Management and Budget, Standard Industrial Codes; or

(3) Where medical services are provided. [1991, c. 808, §2 (NEW).]

B. "Rechargeable battery" means any nickel-cadmium or sealed lead-acid battery that is designed for reuse and is capable of being recharged after repeated use. [1991, c. 808, §2 (NEW).]

[1991, c. 808, §2 (NEW) .]

2. **Disposal ban.** A person employed directly or indirectly by a government agency, or an industrial, communications or medical facility may not knowingly dispose of a dry cell mercuric oxide battery or a rechargeable battery in a manner that is not part of a collection system established under subsection 4.

[1991, c. 808, §2 (NEW) .]

3. **User responsibility.** A government agency or industrial, communications or medical facility shall collect and segregate, by chemical type, the batteries that are subject to the disposal prohibition under subsection 2 and return each segregated collection either to the supplier that provided the facility with that type of battery or to a collection facility designated by the manufacturer of that battery or battery-powered product.

[1991, c. 808, §2 (NEW) .]

4. **Manufacturer responsibility.** A manufacturer of dry cell mercuric oxide or rechargeable batteries that are subject to subsection 1 shall:

A. Establish and maintain a system for the proper collection, transportation and processing of waste dry cell mercuric oxide and rechargeable batteries for purchasers in this State; [1991, c. 808, §2 (NEW).]

B. Clearly inform each purchaser that intends to use these batteries of the prohibition on disposal of dry cell mercuric oxide and rechargeable batteries and of the available systems for proper collection, transportation and processing of these batteries; [1991, c. 808, §2 (NEW).]

C. Identify a collection system through which mercuric oxide and rechargeable batteries must be returned to the manufacturer or to a manufacturer-designated collection site; and [1991, c. 808, §2 (NEW).]

D. Include the cost of proper collection, transportation and processing of the waste batteries in the sales transaction or agreement between the manufacturer and any purchaser. [1991, c. 808, §2 (NEW).]

[1991, c. 808, §2 (NEW) .]

5. **Supplier responsibility.** A final supplier of mercuric oxide and rechargeable batteries or battery-operated products is responsible for informing the purchasers that intend to use these batteries of the purchaser's responsibilities under this section.

[1991, c. 808, §2 (NEW) .]

6. **Mercury content.**

[2011, c. 206, §35 (RP) .]

7. **Effective date.** Except as otherwise indicated, this section takes effect January 1, 1994.

[1991, c. 808, §2 (NEW) .]

8. **Penalty.** A violation of subsection 2 is a civil violation for which a forfeiture of not more than $100 per battery disposed of improperly may be adjudged. A violation of subsection 4 is a civil violation for which a forfeiture of not more than $100 may be adjudged. Each day that a violation continues or exists constitutes a separate offense.

[2011, c. 206, §36 (AMD) .]

9. **Battery management plan.**

[1995, c. 656, Pt. A, §49 (RP) .]

SECTION HISTORY
RR 1991, c. 2, §150 (COR). 1991, c. 808, §2 (NEW). 1995, c. 656, §A49 (AMD). 2009, c. 86, §2 (AMD). 2011, c. 206, §§35, 36 (AMD).

§2166. RECHARGEABLE CONSUMER PRODUCTS

1. **Nonremoveable battery requirements.** A person may not sell, distribute or offer for sale in this State any product powered by a rechargeable battery primarily used or purchased to be used for personal, family or household purposes unless:

A. The battery may be easily removed by the consumer or is contained in a battery pack that is separate from the product and may be easily removed; and [1991, c. 808, §2 (NEW).]

B. The product, the battery itself and the package containing the product are all labeled, in a manner that is clearly visible to the consumer, indicating that the battery must be recycled or disposed of properly and that the type of electrode used in the battery is clearly identifiable. [1991, c. 808, §2 (NEW).]

[1991, c. 808, §2 (NEW) .]

2. **Exemption.**

[1995, c. 656, Pt. A, §50 (RP) .]

3. **Effective date.** Except as otherwise indicated, this section takes effect January 1, 1994.

[1991, c. 808, §2 (NEW) .]

4. **Penalty.** A violation of this section is a civil violation for which a forfeiture of not more than $100 per battery sold, distributed or offered for sale may be adjudged. Each day that a violation continues or exists constitutes a separate offense.

[1991, c. 808, §2 (NEW) .]

SECTION HISTORY
1991, c. 808, §2 (NEW). 1995, c. 656, §A50 (AMD).

Subchapter 5: HOST COMMUNITY COMPENSATION AND FACILITY OVERSIGHT HEADING: PL 1993, C. 310, PT. B, §1 (RPR)

§2170. HOST COMMUNITY BENEFITS; APPLICATION LIMITED TO FACILITIES OWNED OR OPERATED BY THE BUREAU

This subchapter applies only to solid waste disposal facilities owned or operated by the bureau. Wherever in this subchapter the term "solid waste disposal facility" or "facility" is used, those terms may be construed only to mean a solid waste disposal facility owned or operated by the bureau. [2011, c. 655, Pt. GG, §49 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1993, c. 310, §B2 (NEW). 1995, c. 656, §A51 (AMD). 2011, c. 655, Pt. GG, §49 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2170-A. HOST COMMUNITY AGREEMENTS

The provisions of this section apply to a solid waste disposal facility owned or operated by the bureau. [2011, c. 655, Pt. GG, §50 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Issuance of license.** The department may not issue a license for a solid waste disposal facility unless a host community agreement is in place in accordance with this section.

[2007, c. 406, §3 (NEW) .]

2. **Agreement required.** A solid waste disposal facility must have in place a host community agreement with all applicable host communities during the development and operation and through closure of that facility. A host community agreement for the purposes of this section must, when applicable, include provisions relating to the impact payments set forth in section 2176.

[2007, c. 406, §3 (NEW) .]

SECTION HISTORY
2007, c. 406, §3 (NEW). 2011, c. 655, Pt. GG, §50 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2171. CITIZEN ADVISORY COMMITTEE

The municipal officers of each municipality identified by the bureau as a potential site for a waste disposal facility and each contiguous municipality that may be affected by the construction or operation of that facility shall jointly establish a single citizen advisory committee within 60 days of notification pursuant to section 2155. [2011, c. 655, Pt. GG, §51 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Membership.** The committee must be comprised of citizens from each affected municipality, appointed by the municipal officers, including, but not limited to: a local health officer; a municipal officer; and at least 3 additional residents of the municipality, including abutting property owners and residents potentially affected by pollution from the facility. In addition, each committee may include members representing any of the following interests: environmental and community groups; labor groups; professionals with expertise relating to landfills or incinerators; experts in the areas of chemistry, epidemiology, hydrogeology and biology; and legal experts.

[2007, c. 598, §15 (AMD) .]

2. **Meetings.** The committee shall meet as soon as practical following appointment of its members and shall select a chair from among its members. The committee shall establish procedures for the conduct of meetings.

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Responsibilities.** Each committee established under this section may:

A. Review proposed contracts, site analyses, applications and other documents relating to the location, construction, permitting and operation of the facility; [1993, c. 310, Pt. B, §5 (AMD).]

B. Hold periodic public meetings to solicit the opinions of residents concerning the facility and any permit applications, contracts or other provisions relating to the facility and the regional plan; [1993, c. 310, Pt. B, §5 (AMD).]

C. Provide the project developer and department with any alternative contract provisions, permit conditions, plans or procedures it considers appropriate; and [1993, c. 310, Pt. B, §5 (AMD).]

D. Serve as a liaison between the community and the project developer or the commissioner to facilitate communications during the development and operation of the facility, and provide residents with updated information about the project, including providing explanations of any technical terms. [1993, c. 310, Pt. B, §5 (AMD).]

[1993, c. 310, Pt. B, §5 (AMD) .]

4. **Unincorporated townships and plantations.** For the purposes of this subchapter, county commissioners shall act as municipal officers for unincorporated townships and assessors of plantations shall act as municipal officers for plantations.

[1989, c. 585, Pt. A, §7 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 869, §A12 (AMD). 1989, c. 890, §§A40,B291 (AMD). 1993, c. 310, §§B3-5 (AMD). 2007, c. 598, §15 (AMD). 2011, c. 655, Pt. GG, §51 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2172. DISPUTE RESOLUTION

In the event that the bureau and a host community cannot agree on the terms of a host community agreement pursuant to section 2170-A, the parties shall submit the dispute for resolution in accordance with this section. [2011, c. 655, Pt. GG, §52 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Mediation.** The parties shall submit the dispute for mediation. The commissioner shall present to the parties a list of 5 experienced and qualified mediators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged

person on the list must be appointed by the commissioner as the mediator assigned to mediate the dispute. In assembling the list of proposed mediators, the commissioner may consider the panel of mediators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B.

[2007, c. 406, §4 (NEW) .]

2. **Arbitration.** If mediation fails to result in an agreement between the parties, the parties shall submit the dispute for arbitration. The commissioner shall present to the parties a list of 5 experienced and qualified arbitrators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the arbitrator assigned to determine the dispute. In assembling the list of proposed arbitrators, the commissioner may consider the panels of arbitrators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B or by the American Arbitration Association or its successor organization.

A. Both the bureau and the host community will be bound by the decision of the arbitrator. [2011, c. 655, Pt. GG, §53 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

B. Unless otherwise provided for in this subsection, the arbitration must be conducted in accordance with the rules of the American Arbitration Association or its successor organization for the conduct of commercial arbitration proceedings. [2007, c. 406, §4 (NEW).]

C. Costs associated with the arbitration must be shared equally between the parties. [2007, c. 406, §4 (NEW).]

D. The arbitrator shall submit the decision to the commissioner. [2007, c. 406, §4 (NEW).]

E. Either party may appeal the decision of the arbitrator to the Superior Court. [2007, c. 406, §4 (NEW).]

[2011, c. 655, Pt. GG, §53 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1993, c. 310, §B6 (AMD). 1995, c. 656, §A52 (AMD). 2007, c. 406, §4 (RPR). 2011, c. 655, Pt. GG, §§52, 53 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2173. MUNICIPAL JURISDICTION OVER REGIONAL ASSOCIATION DISPOSAL FACILITIES

A municipality may adopt a local ordinance authorizing the municipal officers to issue a local permit containing the same findings, conclusions and conditions contained in the license issued by the department for a solid waste disposal facility located within the municipality's jurisdiction. The municipal officers may also attach to the permit additional conditions for the operation of the solid waste disposal facility on any issues not specifically addressed in any condition of the department's license. These conditions may not unreasonably restrict the operation of the facility and must be attached to the local permit by the municipal officers within 90 days of issuance of the department's license or within 30 days of a final decision by the department to relicense the facility. [1993, c. 310, Pt. B, §7 (AMD).]

An enforcement action brought by the municipality to enforce local permit conditions does not preclude the State from bringing an action to enforce the conditions of any license issued by the State or any other provision of law. In addition, the State has a right to intervene in any enforcement action brought by a municipality under this section. A municipality that has adopted local permit conditions described in this section shall employ an inspector certified under section 2174 to enforce permit conditions. [2011, c. 655, Pt. GG, §54 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY

1989, c. 585, §A7 (NEW). 1993, c. 310, §B7 (AMD). 1995, c. 656, §A53 (AMD). 2011, c. 655, Pt. GG, §54 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2174. LOCAL INSPECTION AND ENFORCEMENT

1. **Certification.**

[1993, c. 355, §62 (RP) .]

2. **Information.** The host municipality of a solid waste disposal facility has a right to all information from the department and the bureau pursuant to Title 1, chapter 13, subchapter 1. All information provided under this subsection must be made available to the citizen advisory committee and the public by the host municipality.

A. The commissioner shall provide all of the following information to the municipal officers of the host municipality:

(1) Copies of any inspection report of the facility within 5 working days of the preparation of the report;

(2) Prompt notification of all enforcement or emergency orders for those facilities, including, but not limited to, abatement orders, cessation orders, final civil penalty assessments, consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data collected by the commissioner at such facilities, including leachate and ash testing results, within 5 working days after complete laboratory analysis becomes available to the commissioner; and

(4) Copies of all analyses of the data under subparagraph (3). [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §292 (AMD).]

B. The operator of the facility shall provide the host municipality copies of all air, soil and water quality monitoring data, including leachate and ash testing results, conducted by or on behalf of the operator, within 5 days after that information becomes available to the operator. [1989, c. 585, Pt. A, §7 (NEW).]

C. The municipality shall provide all of the following information to the commissioner:

(1) Copies of any inspection report of the facility within 5 working days of the preparation of the report;

(2) Prompt notification of all enforcement or emergency orders for those facilities, including, but not limited to, abatement orders, cessation orders, final civil penalty assessments, consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data collected by the municipality at such facilities, including leachate and ash testing results, within 5 working days after complete laboratory analysis becomes available to the municipality; and

(4) Copies of all analyses of the data under subparagraph (3). [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §292 (AMD).]

[2011, c. 655, Pt. GG, §55 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

3. **Inspection; emergency orders.**

[1993, c. 680, Pt. A, §38 (RP) .]

4. **Commissioner inspections.** Whenever any host municipality notifies the commissioner of an order issued pursuant to a local permit requirement under section 2173 and gives the commissioner reason to believe that any solid waste disposal facility is in violation of any law or regulation administered by the department, or any order or the condition of any permit issued pursuant to any law or rule administered by the department, the commissioner shall promptly conduct an inspection of the facility.

If the commissioner finds that there is insufficient information to believe that there is a violation, the commissioner shall, within 10 working days of a municipality's request for an inspection, provide to the municipality a written explanation of the commissioner's decision not to conduct an inspection.

[1993, c. 310, Pt. B, §8 (AMD) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 890, §§A40,B292 (AMD). 1993, c. 310, §B8 (AMD). 1993, c. 355, §62 (AMD). 1993, c. 680, §A38 (AMD). 1995, c. 656, §A54 (AMD). 2011, c. 655, Pt. GG, §70 (AMD). 2011, c. 655, Pt. GG, §55 (AMD).

§2175. PROPERTY VALUE OFFSET

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 794, §6 (RP).

§2175-A. PROPERTY VALUE OFFSET

Owners of property, the value of which has been affected by a solid waste disposal facility, are eligible for reimbursement from the bureau for loss in property value directly attributable to the construction and operation of the facility. The bureau shall adopt rules to establish the formula and procedure for reimbursement, including, without limitation, definition of the impact area, a process for establishing baseline real estate values, a time frame within which the property value offset program will be in effect and an accounting of real estate trends in the area. [2011, c. 655, Pt. GG, §56 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1991, c. 794, §7 (NEW). RR 1993, c. 1, §137 (COR). 1993, c. 310, §B9 (AMD). 1995, c. 656, §A55 (AMD). 2011, c. 655, Pt. GG, §56 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2175-B. PAYMENT IN LIEU OF TAXES

The bureau shall annually pay a municipality an amount in lieu of taxes equal to the amount of property taxes on a solid waste disposal facility owned or operated by the bureau not paid to that municipality during the previous calendar year. In the case of an unorganized territory, the bureau shall annually pay the amount to the State Tax Assessor who shall deposit that amount in the Unorganized Territory Education and Services Fund established in Title 36, chapter 115. If the bureau disagrees with the amount determined to be due in lieu of taxes under this section, it may appeal to the State Board of Property Tax Review as provided in Title 36, section 271. [2011, c. 655, Pt. GG, §57 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1995, c. 465, §A70 (NEW). 1995, c. 465, §C2 (AFF). 2011, c. 655, Pt. GG, §57 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2176. IMPACT PAYMENTS

In addition to payment in lieu of taxes provided in section 2175-B, the bureau shall make impact payments to a municipality in which a solid waste disposal facility is located or, in the case of an unorganized territory, to the State Tax Assessor upon request by the community involved or by the State Tax Assessor. The bureau shall base its impact payments on measurable criteria including, without limitation: [2011, c. 655, Pt. GG, §58 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Roads.** Improvement, maintenance and repair of local roads directly affected by traffic to and from the facility;

[1993, c. 310, Pt. B, §11 (AMD) .]

2. **Emergency response.** Development and maintenance of adequate local emergency response capacity;

[2007, c. 406, §5 (AMD) .]

3. **Monitoring.** Financial support for on-site, municipally employed personnel or for other means determined necessary to enable the municipality to monitor the facility's compliance with state and local requirements; and

[2007, c. 406, §6 (AMD) .]

4. **Other issues.** Other issues determined on a case-specific basis by the applicant and bureau to be appropriate given the nature of the proposed facility.

[2011, c. 655, Pt. GG, §59 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1993, c. 310, §§B10,11 (AMD). 1995, c. 465, §A71 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A56 (AMD). 2007, c. 406, §§5-7 (AMD). 2011, c. 655, Pt. GG, §§ 58, 59 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2177. WATER SUPPLY MONITORING AND PROTECTION

Upon written request from persons owning land contiguous to a solid waste disposal facility, the bureau shall have quarterly sampling and analysis conducted of private water supplies used by the requestors for drinking water. The sampling and analysis must be conducted in a manner specified by and that meets criteria developed by the department. [2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

If a facility 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 commissioner, the bureau shall restore the affected supply at no cost to the consumer or replace the affected supply with an alternative source of water that is of like quantity and quality to the original supply at no cost to the consumer. [2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Extent of analysis.** Water supplies must be analyzed for all parameters or chemical constituents determined by the commissioner to be indicative of typical contamination from solid waste disposal facilities. The laboratory performing the sampling and analysis shall provide written copies of sample results to the bureau, the landowner and to the commissioner.

[2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Additional sampling required.** If the analysis indicates possible contamination from a solid waste disposal facility, the commissioner shall conduct, or require the bureau to conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination. The commissioner shall, if necessary, require this sampling beyond the boundaries of the contiguous property.

[2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

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 bureau shall provide owners of contiguous land with written notice of their rights under this section on a form prepared by the commissioner.

[2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 890, §§A40,B293 (AMD). 1991, c. 517, §B14 (AMD). 1993, c. 310, §B12 (AMD). 1995, c. 656, §A57 (AMD). 2011, c. 655, Pt. GG, §60 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

Subchapter 6: LIABILITY AND LIMITATIONS

§2181. EFFECT ON TORT CLAIMS

Nothing in this chapter may be construed or understood as in any way increasing any liability that may otherwise arise or be limited under Title 14, chapter 741. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2182. ABILITY TO INDEMNIFY

Nothing in this subchapter may be construed to prevent any host municipality, regional association or the State from obtaining or giving such indemnities as may be appropriate in connection with the ownership, operation or control of a municipal solid waste facility. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2183. EFFECT ON EXISTING CONTRACTS AND FACILITIES

Except as otherwise provided, nothing in this chapter may be construed to impair any contract in force upon the effective date of this chapter. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2184. MUNICIPAL CONTRACTS

A municipality may contract with any person to carry out its duties for the recycling, transportation, collection and storage of municipal waste and source-separated materials to be recycled, if the recycling, transportation, collection or storage activity or facility is conducted or operated in a manner that is consistent with the provisions of this chapter, the state plan and the rules promulgated pursuant to this chapter. [1989, c. 585, Pt. A, §7 (NEW).]

1. **Existing contracts.** Except as otherwise provided in this chapter, nothing in this chapter may be construed to interfere with, or in any way modify, the provisions of any contract for municipal waste disposal, processing or collection with any regional association or municipality in force upon the effective date of this chapter or prior to the adoption of the state plan.

[1989, c. 585, Pt. A, §7 (NEW) .]

2. **Renewals.** No renewal of any existing contract upon the expiration or termination of the original term of the contract, and no new contract for municipal waste disposal, processing or collection may be entered into after the effective date of this chapter, if the renewal or new contract fails to conform to the applicable provisions of this chapter or interferes with the implementation of the state plan.

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Recycling activities; limited liability.** When the owner, lessee or occupant of premises as defined in Title 14, section 159-B undertakes recycling activities, as defined in Title 14, section 159-B on the premises, liability is limited as provided in Title 14, section 159-B.

[1991, c. 487, §2 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1991, c. 487, §2 (AMD).

Subchapter 7: FINANCE, FEES AND CONTRACTS HEADING: PL 1989, C. 585, PT. A, §7 (NEW)

Article 1: FEES AND CONTRACTS HEADING: PL 1989, C. 585, PT. A, §7 (NEW)

§2191. FEES

The bureau shall establish reasonable fees for waste disposal services provided by the bureau. [2011, c. 655, Pt. GG, §61 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 656, §A58 (AMD). 2011, c. 655, Pt. GG, §61 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2192. PURPOSES OF THE FEES

The fees charged to users of state-owned facilities and established by the bureau under this article, by rule, provide revenue for the following purposes: [2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Current expenses.** To pay the current expenses, either incurred directly or through contractual agreements with another party or parties, for operating and maintaining a facility or delivering a service and to provide for normal maintenance and replacement of equipment. Current expenses also include costs incurred under subchapter 5;

[2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

2. **Interest.** To provide for the payment of interest on the indebtedness created or assumed by the bureau;

[2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

3. **Indebtedness.** To provide an annual sum equal to not less than 2% nor more than 10% of the term indebtedness represented by the issuance of bonds created or assumed by the bureau, which sum must be turned into a sinking fund and there maintained to provide for the extinguishment of term indebtedness. The money set aside in this sinking fund must be devoted to the retirement of the term obligations of the bureau and may be invested in such securities as savings banks in the State are allowed to hold;

[2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

4. **Principal payments.** To provide for annual principal payments on serial indebtedness created or assumed by the bureau;

[2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

5. **Contingency reserve fund allowance.** To provide for a contingency reserve fund allowance by providing rates to reflect up to a 5% addition to yearly revenues over that required to operate the facility;

[1989, c. 585, Pt. A, §7 (NEW) .]

6. **Closing reserve fund.** To provide for a closing and monitoring reserve fund by providing rates which, over the expected life span of the facility including the post-closure monitoring period, will generate the amount determined to be necessary by the department in its licensing process under chapter 13; and

[1989, c. 585, Pt. A, §7 (NEW) .]

7. **Compliance costs.** To provide for the costs associated with licensing, compliance and enforcement efforts of the department.

[1989, c. 585, Pt. A, §7 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 656, §§A59,60 (AMD). 2011, c. 655, Pt. GG, §62 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2193. HOST MUNICIPALITY FEES

The bureau may set fees under this article for the host municipality at a level lower than the fees charged to other municipalities or users, as long as the lower fees are set in a manner consistent with the rules adopted by the bureau. [2011, c. 655, Pt. GG, §63 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 656, §A61 (AMD). 2011, c. 655, Pt. GG, §63 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

Article 2: MAINE SOLID WASTE MANAGEMENT FUND HEADING: PL 1989, C. 585, PT. A, §7 (NEW)

§2201. MAINE SOLID WASTE MANAGEMENT FUND ESTABLISHED

The Maine Solid Waste Management Fund, referred to in this section as the "fund," is established as a nonlapsing fund to support programs administered by the bureau and the Department of Environmental Protection. The fund must be segregated into 2 subsidiary accounts. The first subsidiary account, called operations, receives all fees established and received under article 1. The 2nd subsidiary account, called administration, receives all fees established under this article and under Title 36, chapter 719 and all funds

recovered by the department as reimbursement for departmental expenses incurred to abate imminent threats to public health, safety and welfare posed by the illegal disposal of solid waste. [2011, c. 655, Pt. GG, §64 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

Money in the fund not currently needed to meet the obligations of the department or bureau must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund. [2011, c. 655, Pt. GG, §64 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

Funds related to administration may be expended only in accordance with allocations approved by the Legislature for administrative expenses directly related to the bureau's and the department's programs, including actions by the department necessary to abate threats to public health, safety and welfare posed by the disposal of solid waste. Funds related to fees imposed on the disposal of construction and demolition debris and residue from the processing of construction and demolition debris may be expended only for the state cost share to municipalities under the closure and remediation cost-sharing program for solid waste landfills established in section 1310-F. Funds related to operations may be expended only in accordance with allocations approved by the Legislature and solely for the development and operation of publicly owned facilities owned or approved by the bureau and for the repayment of any obligations of the bureau incurred under article 3. These allocations must be based on estimates of the actual costs necessary for the bureau and the department to administer their programs, to provide financial assistance to regional associations and to provide other financial assistance necessary to accomplish the purposes of this chapter. Beginning in the fiscal year ending on June 30, 1991 and thereafter, the fund must annually transfer to the General Fund an amount necessary to reimburse the costs of the Bureau of Revenue Services incurred in the administration of Title 36, chapter 719. Allowable expenditures include "Personal Services," "All Other" and "Capital Expenditures" associated with all bureau activities other than those included in the operations account. [2011, c. 655, Pt. GG, §64 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 596, §H (AMD). 1989, c. 927, §7 (AMD). 1991, c. 517, §B15 (AMD). 1991, c. 528, §§R12,13 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§R12,13 (AMD). 1991, c. 824, §A88 (RPR). 1993, c. 410, §C8 (AMD). 1995, c. 395, §P8 (AMD). 1995, c. 395, §P11 (AFF). 1995, c. 465, §A72 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §§A62,63 (AMD). 1997, c. 1, §E2 (AMD). 1997, c. 24, §C15 (AMD). 1997, c. 526, §14 (AMD). 2001, c. 315, §5 (AMD). 2005, c. 618, §21 (AMD). 2011, c. 429, §7 (AMD). 2011, c. 544, §1 (AMD). 2011, c. 655, Pt. GG, §64 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2201-A. SUNSET; LEGISLATIVE INTENT

(REPEALED)

SECTION HISTORY
1989, c. 927, §8 (NEW). 1993, c. 410, §EE1 (RP).

§2202. FEES

1. **Fees established.** The department shall establish procedures to charge fees specified in this article and pursuant to the requirements of this article. All fees collected by the department under this article must be deposited into the Maine Solid Waste Management Fund.

[1995, c. 465, Pt. A, §73 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

2. **Application.**

[2011, c. 544, §2 (RP) .]

3. **Payment.** A person who delivers solid waste to a solid waste disposal facility shall pay all fees established under this article to the operator of the solid waste disposal facility.

[1993, c. 310, Pt. C, §2 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1993, c. 310, §C2 (AMD). 1995, c. 465, §A73 (AMD). 1995, c. 465, §C2 (AFF). 2011, c. 544, §2 (AMD).

§2203. FEE ON SPECIAL WASTE

(REPEALED)

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 869, §§A13,20 (RPR). 1991, c. 517, §B16 (AMD). 1995, c. 465, §A74 (AMD). 1995, c. 465, §C2 (AFF). 1999, c. 385, §6 (RP).

§2203-A. WASTE HANDLING FEES

1. **Fees.** Fees are imposed in the following amounts to be levied for solid waste that is disposed of at commercial, municipal, state-owned and regional association landfills.

Asbestos	$5 per cubic yard
Oil-contaminated soil, gravel, brick, concrete and other aggregate	$25 per ton
Waste water facility sludge	$5 per ton
Ash, coal and oil	$5 per ton
Paper mill sludge	$5 per ton
Industrial waste	$5 per ton
Sandblast grit	$5 per ton
All other special waste	$5 per ton
Municipal solid waste ash	$1 per ton
Front end process residue (FEPR)	$1 per ton
Beginning January 1, 2013 and ending December 31, 2013, construction and demolition debris and residue from the processing of construction and demolition debris	$1 per ton
Beginning January 1, 2014, construction and demolition debris and residue from the processing of construction and demolition debris	$2 per ton

[2011, c. 544, §3 (AMD) .]

2. **Exceptions.** Notwithstanding subsection 1:

A. A municipal or regional association landfill that has accepted 12,000 tons or more of special waste, other than municipal solid waste ash, asbestos and oil-contaminated soil, gravel, brick, concrete and other aggregate, in calendar year 1998 shall continue to pay $2 per ton to the department for those categories of waste accepted in that calendar year; [1999, c. 385, §7 (NEW).]

B. A municipal or regional association landfill shall continue to pay $2 per ton to the department on all categories of special waste other than municipal solid waste ash, asbestos and oil-contaminated soil, gravel, brick, concrete and other aggregate that was generated by the municipality or regional association and accepted for disposal in its landfill in calendar year 1998; [2011, c. 544, §3 (AMD).]

C. A municipal or regional association landfill that has accepted 550 tons or more of oil-contaminated soil, gravel, brick, concrete and other aggregate in calendar year 1998 shall pay $5 per ton for that category of waste; and [2011, c. 544, §3 (AMD).]

D. A fee may not be imposed under this section on construction and demolition debris or residue from the processing of construction and demolition debris disposed of at a municipal or regional association landfill that is less than 6 acres in size and accepts only inert fill, construction and demolition debris, debris from land clearing and wood wastes. [2011, c. 544, §3 (NEW).]

[2011, c. 544, §3 (AMD) .]

SECTION HISTORY
1999, c. 385, §7 (NEW). 1999, c. 564, §1 (AMD). 2011, c. 544, §3 (AMD).

§2204. MUNICIPAL SOLID WASTE DISPOSAL SURCHARGE

The department shall impose a fee of $2 per ton on any municipal solid waste disposed of at a commercial, municipal or regional association landfill, except that there is no fee on municipal solid waste generated by a municipality that owns the landfill accepting it or that has entered into a contract with a term longer than 9 months for disposal of municipal solid waste in that landfill facility. [1999, c. 385, §8 (AMD).]

1. **Landfill surcharge.**

[1999, c. 385, §8 (RP) .]

2. **Recycling progress.**

[1995, c. 465, Pt. A, §75 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

3. **Imported municipal solid waste.**

[1999, c. 385, §8 (RP) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 869, §§A14,20 (AMD). 1991, c. 517, §B17 (RPR). 1993, c. 85, §§1,2 (AMD). 1993, c. 310, §C3 (AMD). 1995, c. 465, §§A75,76 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A64 (AMD). 1999, c. 385, §8 (AMD).

§2205. FEE PAYMENTS

Each operator of a solid waste disposal facility shall make the fee payment quarterly. The fee must be paid to the department on or before the 20th day of April, July, October and January for the 3 months ending the last day of March, June, September and December. [1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

1. **Quarterly reports.** Each fee payment must be accompanied by a form prepared and furnished by the department and completed by the operator. The form must state the total weight or volume of solid waste disposed of at the facility during the payment period and provide any other aggregate information determined necessary by the department to carry out the purposes of this chapter. The form must be signed by the operator.

[1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

2. **Timeliness of payment.** The operator is deemed to have made a timely payment of the fee if the operator complies with all of the following:

A. The enclosed payment is for the full amount owed pursuant to this section and no further department action is required for collection; [1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

B. The payment is accompanied by the required form and the form is complete and accurate; and [1989, c. 585, Pt. A, §7 (NEW).]

C. The letter transmitting the payment that is received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received, unless an alternative date is agreed upon in writing by the operator and the department. [1999, c. 385, §9 (AMD).]

[1999, c. 385, §9 (AMD) .]

3. **Discount.** Any operator that makes a timely payment of the fee as provided in this section is entitled to apply against the fee payable a discount of 1% of the amount of the fee collected.

[1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

4. **Refunds.** Any operator who believes the fee was overpaid by the operator may file a petition for refund to the department. If the department determines that the operator has overpaid the fee, the department shall refund to the operator the amount due the operator, together with interest at a rate established by the department.

[1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

5. **Alternative proof of payment.** For purposes of this section, presentation of a receipt indicating that the payment was mailed by registered or certified mail on or before the due date is evidence of timely payment.

[1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

6. **Interest.** If an operator fails to make a timely payment of the fee, the operator shall pay interest on the unpaid amount due at the rate established by the department from the last day for timely payment to the date paid.

[1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

7. **Additional penalty.** In addition to the interest provided in subsection 6, if an operator fails to make timely payment of the fee, 5% of the amount of the fee must be added to the amount actually due if the failure to file a timely payment is for not more than one month, with an additional 5% for each additional month, or fraction of a month, during which the failure continues, not exceeding 25% in the aggregate.

[1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

8. **Assessment notice.** If the department determines that any operator has not made a timely payment of the fee, the department shall send the operator a written notice of the amount of the deficiency, within 30 days of determining the deficiency. When the operator has not provided a complete and accurate statement of the weight or volume of waste received at the facility for the payment period, the department may estimate the weight or volume in the notice.

The operator charged with the deficiency has 30 days to pay the deficiency in full or, if the operator wishes to contest the deficiency, forward the amount of the deficiency to the department for placement in an escrow account with the Treasurer of State or any bank in the State, or post an appeal bond in the amount of the

deficiency. The bond must be executed by a surety licensed to do business in the State and be satisfactory to the department. Failure to forward the money or appeal bond to the department within 30 days results in a waiver of all legal rights to contest the deficiency.

If, through the administrative or judicial review of the deficiency, it is determined that the amount of deficiency must be reduced, the department shall within 30 days remit the appropriate amount to the operator, with any interest accumulated by the escrow deposit.

The amount determined after administrative hearing or after waiver of administrative hearing is payable to the department and is collectible.

If any amount due under this subsection remains unpaid 30 days after receipt of notice of the deficiency, the department may order the operator of the facility to cease receiving any solid waste until the amount of the deficiency is completely paid.

[1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

9. **Filing of appeals.** Notwithstanding any other provision of law, all appeals of final department actions concerning the fee must be filed with the department pursuant to section 2206.

[1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §A77 (AMD). 1995, c. 465, §C2 (AFF). 1999, c. 385, §9 (AMD).

§2206. HEARINGS AND APPEALS

The department shall establish rules governing procedures for hearings and appeals under this article consistent with Title 5, chapter 375. [1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §A77 (AMD). 1995, c. 465, §C2 (AFF).

Article 3: REVENUE OBLIGATION SECURITIES AND MORTGAGE LOANS HEADING: PL 1989, C. 585, PT. A, §7 (NEW)

§2211. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 585, Pt. A, §7 (NEW).]

1. **Bond.** "Bond" means revenue obligation security.

[1989, c. 585, Pt. A, §7 (NEW) .]

1-A. **Agency.** "Agency" means the Finance Authority of Maine.

[1995, c. 465, Pt. B, §6 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

2. **Cost of project.** "Cost of project" means the cost or value of land, buildings, real estate improvements, labor, materials, machinery and equipment, property rights, easements, franchises, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies and

other expenses as may be necessary or incidental to the development, construction, acquisition, financing and placing in operation of an eligible project. In addition to these costs, reserves for payment of future debt on any revenue obligation securities may be included as part of the cost of the project.

Any obligation or expenses incurred by the State, the agency, a regional association, a municipality or any private person in connection with any of the items of cost specified in this subsection related to revenue obligation securities may be included as part of the cost and reimbursed to the State, the agency, regional association, municipality or person out of the proceeds of the securities issued.

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Eligible collateral.** "Eligible collateral" means an eligible project.

[1989, c. 585, Pt. A, §7 (NEW) .]

4. **Eligible project.** "Eligible project" means any waste facility or the capital costs of any waste disposal service including, but not limited to, real property, personal property, machinery and equipment and related expenses.

[1989, c. 585, Pt. A, §7 (NEW) .]

5. **Facility.** "Facility" means an eligible project or eligible collateral.

[1989, c. 585, Pt. A, §7 (NEW) .]

6. **Financial document.** "Financial document" means a lease, installment sale agreement, conditional sale agreement, note, mortgage, loan agreement or other instrument pertaining to an extension of financial assistance.

[1989, c. 585, Pt. A, §7 (NEW) .]

7. **Financing assistance.** "Financing assistance" or "financial assistance" means guarantees, leases, insurance, financing credits, loans or the purchase or discounts thereof, letters of credit, financing assistance payments, grants or other financial aid.

[1989, c. 585, Pt. A, §7 (NEW) .]

8. **Financing institution.** "Financing institution" or "financial institution" means any bank, trust company, national banking association, savings bank, savings and loan association, federal savings and loan association, industrial bank, mortgage company, insurance company, credit union, local development corporation or any other institution or entity authorized to do business in this State, or any state or federal agency that customarily provides financing assistance.

[1989, c. 585, Pt. A, §7 (NEW) .]

9. **Lease.** "Lease" means a contract providing for the use of a project or portions of a project for a term of years for a designated or determinable rent. A lease may include an installment sale contract. A lease may include other terms as the agency may permit or require.

[1989, c. 585, Pt. A, §7 (NEW) .]

10. **Lessee.** "Lessee" means a tenant under a lease and may include an installment purchaser.

[1989, c. 585, Pt. A, §7 (NEW) .]

11. **Loan.** "Loan" or "mortgage loan" means an extension of credit made in consideration of a written promise of repayment or any other conditions which may be established by the agency, performance of which may be secured by a mortgage.

[1989, c. 585, Pt. A, §7 (NEW) .]

12. **Maturity date.** "Maturity date" means the date on which final payment is due as provided in a note, revenue obligation security or other financial document.

[1989, c. 585, Pt. A, §7 (NEW) .]

13. **Mortgage.** "Mortgage" means an agreement granting a lien on, or a security interest in, eligible collateral with certain conditions and includes, but is not limited to, a mortgage of real estate, an assignment of rents, a pledge or a security agreement.

[1989, c. 585, Pt. A, §7 (NEW) .]

14. **Mortgagee.** "Mortgagee" means a grantee or obligee under, or a transferee or successor of a grantee or obligee under, a mortgage.

[1989, c. 585, Pt. A, §7 (NEW) .]

15. **Mortgage payments.** "Mortgage payments" means payments required by or received on account of a mortgage or any other financial document, including, but not limited to, payments covering interest, installments of principal, taxes, assessments, loan insurance premiums and hazard insurance premiums.

[1989, c. 585, Pt. A, §7 (NEW) .]

16. **Mortgagor.** "Mortgagor" means the grantor or party giving rights to eligible collateral pursuant to a mortgage and includes the successors or assigns of a mortgagor.

[1989, c. 585, Pt. A, §7 (NEW) .]

17. **Note.** "Note" means an evidence of indebtedness and includes a revenue obligation security.

[1989, c. 585, Pt. A, §7 (NEW) .]

18. **Rent or rental.** "Rent or rental" means payments under a lease.

[1989, c. 585, Pt. A, §7 (NEW) .]

19. **Revenue obligation security.** "Revenue obligation security" or "security" means a note, bond, interim certificate, debenture or other evidence of indebtedness, payment of which is secured by a pledge of revenues, as provided in this article or by assignment or pledge of other eligible collateral.

[1989, c. 585, Pt. A, §7 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1995, c. 465, §B6 (AMD). 1995, c. 465, §C2 (AFF).

§2212. GENERAL POWERS

The agency may, in addition to its other powers and in furtherance of the purposes of this chapter, assist itself or applicants, who shall be limited to municipalities and regional associations, in the financing of eligible projects by issuing revenue obligation securities; by issuing or providing securities for mortgage loans; drafting financial documents, trust agreements and other contracts; and arranging the financing and negotiating for the sale of the securities. The agency may contract with the Finance Authority of Maine to administer the provisions of this article. [1989, c. 585, Pt. A, §7 (NEW).]

The agency may also: [1989, c. 585, Pt. A, §7 (NEW).]

1. **Kinds of projects.** Acquire, construct, reconstruct, maintain, renew, replace or provide financing assistance for eligible waste facilities, waste disposal services or recycling projects;

[1989, c. 585, Pt. A, §7 (NEW) .]

2. **Securities for projects.** Issue revenue obligation securities to pay the cost of or to provide financial assistance for acquisition, construction, reconstruction, renewal or replacement of eligible projects. Any single issue of securities may provide for the cost of, or for financial assistance for, acquisition, construction, reconstruction, renewal or replacement of any one or more eligible projects which may be separate, unconnected and distinct. Any issue, the proceeds of any issue, or any revenue obligation securities shall, except as specifically authorized by the Legislature, meet the requirements of the Internal Revenue Code of 1986, as amended, relating to exempt facility bonds;

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Acquire securities.** Issue revenue obligation securities to acquire one or more issues of revenue obligation securities issued by municipalities or to acquire any other bond not eligible for purchase pursuant to Title 30-A, chapter 225. Any single issue of securities may provide funds for the acquisition of revenue obligation securities of one or more municipalities or of bonds for one or more eligible projects which may be separate, unconnected and distinct;

[1989, c. 585, Pt. A, §7 (NEW) .]

4. **Refunding securities.** Issue revenue refunding obligation securities as provided to refund any outstanding revenue obligation securities issued under this article;

[1989, c. 585, Pt. A, §7 (NEW) .]

5. **Serve as broker or agent.** Serve as a broker, agent or other financial intermediary for the secondary marketing of obligations issued or incurred in connection with the financing of eligible projects and for the encouragement of the flow of private funds for capital investment;

[1989, c. 585, Pt. A, §7 (NEW) .]

6. **Facilities.** Plan, carry out, acquire, lease and operate facilities and provide for the construction, reconstruction, improvement, alteration or repair of any facility or any part of a facility;

[1989, c. 585, Pt. A, §7 (NEW) .]

7. **Acquisition and disposal of property.** Acquire or enable an applicant to acquire, upon reasonable terms from funds provided under this article, the lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands under water and riparian rights, that are located within the State and considered necessary or convenient for the construction or operation of any eligible waste project, and dispose of them;

[1989, c. 585, Pt. A, §7 (NEW); 1989, c. 869, Pt. A, §15 (AMD) .]

8. **Contracts.** Make and enter into all financial documents and other contracts and trust agreements securing revenue obligation securities issued under this article, provided all expenses are payable solely from funds made available under this article;

[1989, c. 585, Pt. A, §7 (NEW) .]

9. **Consent to modification of contracts, lease or agreement.** To the extent not forbidden under its contract with the holders of bonds, consent to any modification of any contract, lease or agreement of any kind to which the agency is a party;

[1989, c. 585, Pt. A, §7 (NEW) .]

10. **Employment of specialists.** Employ consulting and other engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other necessary employees and agents and fix their compensation, provided all expenses are payable solely from funds made available under this subchapter;

[1989, c. 585, Pt. A, §7 (NEW) .]

11. **Government contracts.** Enter into contracts with regional associations, municipalities, the State or a federal agency relating to any eligible solid waste project;

[1989, c. 585, Pt. A, §7 (NEW) .]

12. **Government aid.** Accept loans or grants for the planning, construction or acquisition of any eligible solid waste project from a municipality, an authorized agency of the State or a federal agency and enter into agreements with the agency respecting the loans or grants. In the case of all loans, grants or other aid involving pollution-control facilities, the consent of the commissioner must first be obtained, notwithstanding section 362;

[1989, c. 585, Pt. A, §7 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §294 (AMD) .]

13. **Private aid.** Receive and accept aid and contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which these loans, grants and contributions may be made;

[1989, c. 585, Pt. A, §7 (NEW) .]

14. **Applicability.** Provide financial assistance by means of leases that are not subject to Title 14, section 6010. Leases made under this section may provide that obligations of the lessees are unconditional; and

[1989, c. 585, Pt. A, §7 (NEW) .]

15. **Application.** Provide financial assistance by means of revenue obligation securities which are not subject to Title 32, chapter 135, relating to dealers in securities.

[2005, c. 65, Pt. C, §20 (AMD) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 869, §A15 (AMD). 1989, c. 890, §§A40,B294 (AMD). 2005, c. 65, §C20 (AMD).

§2213. ISSUANCE OF REVENUE OBLIGATION SECURITIES

1. **Notice of intent to issue bonds; actions to contest validity.** The agency may provide, at one time or from time to time, for the issuance of revenue obligation securities of the agency for the purposes authorized in this chapter. No revenue obligation securities of the agency may be issued until:

A. The project has been determined to be consistent with the state plan pursuant to section 1310-AA, if applicable, and the necessary permits have been obtained from the department; [1995, c. 465, Pt. A, §78 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

B. A notice of the intent of the agency to issue the securities is published at least once in a newspaper of general circulation in the region in which the project is to be located:

(1) No later than 14 days after the date on which the agency decides to issue revenue obligation securities under this subchapter;

(2) Describing the general purpose or purposes for which the securities are to be issued;

(3) Stating the maximum principal amount of the proposed securities; and

(4) Including a statement as to the time within which any petition to contest the issuance of the securities must be commenced. [1989, c. 585, Pt. A, §7 (NEW); 1989, c. 869, Pt. A, §16 (AMD).]

Any action or proceeding in any court to contest the issuance of the securities must be started within 30 days after the date of the publication required by paragraph B and otherwise shall be governed by Title 5, chapter 375, subchapter VII. For the purposes of this subchapter and the Maine Administrative Procedure Act, Title 5, chapter 375, the later date of newspaper publication required by paragraph B shall constitute the final agency action with respect to the issuance of the securities. After the expiration of the 30-day period of limitation, no right of action or defense founded upon the invalidity of the issuance of the securities may be opened to question in any court upon any grounds.

[1995, c. 465, Pt. A, §78 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

2. **Treasurer of State as agent.** The Treasurer of State shall, at the direction of the agency, act as the agency's agent for the sale and delivery of revenue obligation securities and anticipatory notes. The Treasurer of State shall assist the agency in the preparation, issuance, negotiation and sale of the securities and notes and provide reasonable advice and management assistance. The agency may employ further counsel or assistants or act in its own behalf, provided that the sale and delivery of revenue obligation securities and anticipatory notes shall be carried out at the agency's direction with and through the Treasurer of State.

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Conclusive authorization.** All revenue obligation securities of the agency shall be conclusively presumed to be fully authorized and issued under the laws of the State, and any person or governmental unit shall be estopped from questioning their authorization, sale, issuance, execution or delivery by the agency.

[1989, c. 585, Pt. A, §7 (NEW) .]

4. **Maturity; interest.** The securities of each issue of revenue obligation securities shall be dated, mature at a time or times not exceeding 20 years from the date of the securities and bear interest at a rate or rates determined by the agency. At the option of the agency, the securities may be made redeemable before maturity at a price or prices and under terms and conditions fixed prior to issuance.

[1989, c. 585, Pt. A, §7 (NEW) .]

5. **Form.** The agency shall determine the form of the securities, including any attached interest coupons, the manner of execution of the securities, the denomination or denominations of the securities and the place or places for payment of principal and interest, which may be at any financial institution within or without the State. Revenue obligation securities shall be executed in the name of the agency by the manual or facsimile signature of the authorized official or officials. Any attached coupons shall be executed with the manual or facsimile signature of the authorized official or officials. Signatures and facsimiles of signatures on securities and coupons are valid for all purposes even if the authorized official ceases to hold office before delivery of the securities. The securities may be issued in coupon or registered form or both as the agency may determine. Provision may be made for the registration of any coupon securities to principal alone and to both principal and interest, and for the reconversion into coupon securities of any securities registered to both principal and interest. In addition to this subsection, the agency may provide for transfer of registration of the agency's registered revenue obligation securities by book entry on the records of the entity designated for that purpose and may enter into such contractual arrangements as may be necessary to accomplish these purposes. In the event a book entry method of transfer is used, principal of and interest on those registered securities shall be payable to the registered owner shown in the book entry, the owner's legal representatives, successors or transferees.

[1989, c. 585, Pt. A, §7 (NEW) .]

6. **Sale.** The agency may sell the securities at a public or private sale, in a manner and at a price the agency determines to be in the best interest of the agency. The agency shall not sell the securities to any firm, partnership, corporation or association, including an affiliate or subsidiary, which is a party to any contract pertaining to the financed project or which is to rent, purchase, lease or otherwise occupy premises constituting part of the project. The agency may sell the securities to a seller of the project if the project is to be used and operated by a 3rd party.

[1989, c. 585, Pt. A, §7 (NEW) .]

7. **Proceeds.** The proceeds of each issue shall be used solely for the authorized purposes and shall be disbursed as provided in the securing trust agreement or other document. Administration costs incurred by the agency under this program may be drawn from those proceeds. If the proceeds are less than the cost of the project, by error in the estimate or otherwise, additional securities may be issued in a like manner to provide the amount of the deficit and, unless otherwise provided in the securing trust agreement or other document, the additional securities are deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the securities first issued for the same purpose. The agency may place limits or restrictions on the issuance of additional revenue obligation securities through the securing trust agreement or other document. The agency may provide for the replacement of mutilated, destroyed or lost securities. Revenue obligation securities may be issued under this subchapter without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the occurrence of any conditions or things other than those proceedings, conditions or things which are specifically required by this subchapter. Notwithstanding any of the other provisions of this subchapter, or of any recitals in any securities issued under this subchapter, all such securities are deemed to be negotiable instruments issued under the laws of this State.

[1989, c. 585, Pt. A, §7 (NEW) .]

8. **Credit not pledged.** Except as provided in this subsection, securities issued under this subchapter shall not constitute any debt or liability of the State or of any municipality in the State or any political subdivision of the State, or of the agency or a pledge of the faith and credit of the State or of any such municipality or political subdivision, but shall be payable solely from the revenues of the project or projects for which the securities are issued or from other eligible collateral or the revenues or proceeds of other eligible collateral pledged to the payment of the revenue obligation securities and all such securities shall contain on the securities' face a statement to that effect. The issuance of securities under this subchapter shall not directly or indirectly or contingently obligate the State or any municipality or political subdivision to levy or to pledge any form of taxation whatever or to make any appropriation for payment.

[1989, c. 585, Pt. A, §7 (NEW) .]

9. **Anticipatory borrowing.** In anticipation of the sale of securities under this article, the agency may issue temporary notes and renewal notes, the total face amount of which does not exceed at any one time outstanding the authorized amount of the securities. The period of anticipatory borrowing shall not exceed 3 years and the time within which the securities are to become due shall not be extended by the anticipatory borrowing beyond the term permitted by law.

[1989, c. 585, Pt. A, §7 (NEW) .]

10. **Environmental protection.** Revenue obligation securities of the agency may not be issued for a project until the commissioner certifies to the agency that all licenses required by the department with respect to the project are issued or that none are required. Any subsequent enlargement or addition to the project for which approval is sought from the agency requires certification by the commissioner.

[1989, c. 585, Pt. A, §7 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §295 (AMD) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 869, §A16 (AMD). 1989, c. 890, §§A40,B295 (AMD). 1995, c. 465, §A78 (AMD). 1995, c. 465, §C2 (AFF).

§2214. TRUST AGREEMENTS OR OTHER DOCUMENTS

1. **Trust agreements or other documents.** At the discretion of the agency, revenue obligation securities may be issued under this subchapter pursuant to a trust agreement or other document. The trust agreement or other document may:

A. Pledge or assign the revenues or proceeds of the project or projects or other eligible collateral; [1989, c. 585, Pt. A, §7 (NEW).]

B. Set forth the rights and remedies of the security holders and other persons and contain any reasonable and legal provisions for protecting the rights and remedies of the security holders; [1989, c. 585, Pt. A, §7 (NEW).]

C. Restrict the individual right of action by security holders; and [1989, c. 585, Pt. A, §7 (NEW).]

D. Include covenants setting forth the duties of the agency and user in relation to:

(1) Acquisition of property or eligible collateral;

(2) Construction, reconstruction, renewal, replacement and insurance of the project or eligible collateral;

(3) Rents to be charged or other payments to be made for use;

(4) Payment for the project or eligible collateral; and

(5) Custody, safeguarding and application of all money. [1989, c. 585, Pt. A, §7 (NEW).]

Any financial institution may furnish indemnifying bonds or pledge the securities as may be required by the agency.

[1989, c. 585, Pt. A, §7 (NEW) .]

2. **Mortgages.** To further secure the payment of the revenue obligation securities, the trust agreement or other document may mortgage or assign the mortgage of the project, or any part of the project, and create a lien on or security interest in any or all of the project. In the event of a default with respect to the revenue obligation securities, the trustee, mortgagee or other person may be authorized by the trust agreement or other document containing a mortgage or assignment of a mortgage to take possession of, hold, manage and operate all or any part of the mortgaged property and, with or without taking possession, to sell or from time to time lease the property in accordance with law. Any security interest granted by the authority under this chapter may be created and perfected in accordance with the Uniform Commercial Code, Title 11, Article 9-A.

[1999, c. 699, Pt. D, §29 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

3. **Additional provisions.** Any trust agreement or other document may contain provisions which shall be a part of the contract with holders of revenue obligation securities as to:

A. Pledging any specified revenues or assets of the agency to secure the payment of the securities, subject to agreements with existing holders of securities; [1989, c. 585, Pt. A, §7 (NEW).]

B. Pledging all or any part of the unencumbered revenues or assets of the agency to secure the payment of securities, subject to agreements with existing holders of securities; [1989, c. 585, Pt. A, §7 (NEW).]

C. Setting aside, regulating and disposing of reserves or sinking funds; [1989, c. 585, Pt. A, §7 (NEW).]

D. Limitations on the purpose to which the proceeds of sale of securities may be applied and the pledge of the proceeds to secure the payment of the securities or of any issue of securities; [1989, c. 585, Pt. A, §7 (NEW).]

E. Limitations on the issuance of additional securities; [1989, c. 585, Pt. A, §7 (NEW).]

F. The terms on which additional securities may be issued and secured and the refunding of outstanding or other securities; [1989, c. 585, Pt. A, §7 (NEW).]

G. The procedure, if any, by which the terms of any contract with holders of securities may be amended or abrogated, including the proportion of the holders which must consent and the manner in which the consent may be given; [1989, c. 585, Pt. A, §7 (NEW).]

H. Limitations on the amount of money to be expended by the agency for operating expenses of the agency; [1989, c. 585, Pt. A, §7 (NEW).]

I. Vesting in a trustee or trustees such property, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the holders of the securities under this subchapter, and limiting or abrogating the right of the holders of the securities to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee; [1989, c. 585, Pt. A, §7 (NEW).]

J. Defining the acts or omissions to act which will constitute a default in the obligations and duties of the agency to the holders of the securities and providing for the rights and remedies of the holders of the securities in the event of default, including, as a matter of right, the appointment of a receiver, but only if the rights and remedies are not inconsistent with the laws of the State and other provisions of this subchapter; and [1989, c. 585, Pt. A, §7 (NEW).]

K. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the securities. [1989, c. 585, Pt. A, §7 (NEW).]

[1989, c. 585, Pt. A, §7 (NEW) .]

4. **Expenses; pledges.** All expenses incurred in carrying out a trust agreement or financial document may be treated as a part of the cost of the operation of the project. All pledges of revenue or eligible collateral under this subchapter shall be valid and binding from the time when the pledge is made. All the revenues or eligible collateral pledged and later received by the agency shall immediately be subject to the lien of the pledges without any physical delivery or further action under the Uniform Commercial Code or otherwise. The lien of the pledges shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, against the agency, irrespective of whether the parties have notice thereof.

[1989, c. 585, Pt. A, §7 (NEW) .]

5. **Other provisions.** A trust agreement or financial document may contain other provisions the agency deems reasonable and proper for the security of the security holders.

[1989, c. 585, Pt. A, §7 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1999, c. 699, §D29 (AMD). 1999, c. 699, §D30 (AFF).

§2215. RENTALS AND REVENUES

1. **Provisions.** Before issuing revenue obligation securities, the agency shall determine that there shall at all times be revenues and funds sufficient to:

A. Pay the principal and interest of the securities as they become due and payable and, in its discretion, to create and maintain reserves for that purpose; and [1989, c. 585, Pt. A, §7 (NEW).]

B. Pay the cost of maintaining and, where applicable, repairing the project unless provision is made in the financial document or other contract for maintenance and, where applicable, repair. [1989, c. 585, Pt. A, §7 (NEW).]

[1989, c. 585, Pt. A, §7 (NEW) .]

2. **Sinking fund.** All project rentals and other revenues, except those required in subsection 1, paragraph B or to provide reserves for maintenance and, where applicable, repair, may be set aside at regular intervals as provided in the trust agreement or other document and deposited to the credit of a sinking fund charged with payment of the interest and principal of the securities as they fall due, any necessary charges of paying agents for paying principal and interest and the redemption price or the purchase price of securities retired by call or purchase. Use of money deposited to the credit of the sinking fund shall be subject to regulations prescribed in the trust agreement or other document. Except as may otherwise be provided in the trust agreement or other document, the sinking fund shall be a fund for the benefit of all securities issued for the project or projects without distinction or priority of one over another.

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Trust funds.** All money received under this subchapter shall be deemed trust funds, to be held and applied solely as provided in this subchapter. Any officer to whom, or any bank, trust company or other fiscal agency or trustee to which, the money shall be paid shall act as trustees of the money and shall hold and apply it for the purposes of this subchapter, subject to the requirements of this subchapter, the trust agreement or other applicable document.

[1989, c. 585, Pt. A, §7 (NEW) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2216. REMEDIES

Any holder of revenue obligation securities or coupons issued under this subchapter and the trustee under any trust agreement, except as restricted by the trust agreement or applicable document, may, by appropriate legal action, protect and enforce any and all rights under the laws of this State or granted under this subchapter, the trust agreement or other document, including the appointment of a receiver, and may enforce and compel the performance of all duties required by this subchapter, the trust agreement or other document to be performed by the agency, including the collecting of rates, fees and charges for the use of the project. Any proceeding shall be brought for the benefit of all holders of the securities and any coupons. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2217. REVENUE REFUNDING SECURITIES

The agency may provide for the issuance of revenue refunding securities of the agency to refund any outstanding revenue securities issued under this subchapter or to refund any obligations or securities of any municipality, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption, and, if deemed advisable for the agency, to construct or enable the construction of improvements, extensions, enlargements or additions of the original project. The agency may provide for the issuance of revenue obligation securities of the agency for the combined purpose of refunding any outstanding revenue obligation securities or revenue refunding securities issued under this subchapter or to refund any obligations or securities of any municipality, including the payment of redemption premiums and interest accrued or to accrue and paying all or any part of the cost of acquiring or constructing or enabling the acquisition or construction of any additional project or part of any improvements, extensions, enlargements or additions of any project. The issuance of the securities, the maturities and other details, the rights and remedies of the holders and the rights, powers, privileges, duties and obligations of the agency shall be governed by the provisions of this subchapter insofar as they are applicable. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2218. TAX EXEMPTION

Revenue obligation securities issued under this article shall constitute a proper public purpose and the securities, their transfer and the income from them, including any profits made on their sale, shall at all times be exempt from taxation within the State, whether or not those securities, their transfer or the income from them, including any profits on their sale, are subject to taxation under the United States Internal Revenue Code. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2219. LEASEHOLD OR OTHER INTERESTS OF LESSEE TAXABLE

The interest of the user of any project is subject to taxation in the manner provided for similar interests in Title 36, section 551, subject to Title 36, sections 655 and 656. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2220. BONDS AS LEGAL INVESTMENTS

The revenue obligation securities of the agency and any loan or extension of credit issued under this article shall be legal investments in which all public officers and public bodies of the State, its political subdivisions, all regional associations and municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons who are now or may later be authorized to invest bonds or other obligations of the State, may properly and legally invest funds, including capital, in their control or belonging to them. The revenue obligation securities and any loan or extension of credit which is issued under this subchapter are also made securities, which may properly and legally be deposited with all public officers and bodies of the State or any agency or political subdivisions and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the State is now or may later be authorized by law. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

§2221. CAPITAL RESERVE FUNDS; OBLIGATION OF STATE

1. **Capital reserve fund.** The agency may create and establish one or more capital reserve funds and may pay into any such capital reserve fund any money appropriated and made available by the State for the purposes of any such fund, any proceeds of sale by the agency of revenue obligation securities to the extent determined by the agency and any other money available to the agency. For purposes of this section, the amount of any letter of credit, insurance contract, surety bond, indemnification agreement or similar financial undertaking available to be drawn on and applied to obligations to which money in any such fund may be applied shall be deemed to be and counted as money in the capital reserve fund.

[1989, c. 585, Pt. A, §7 (NEW) .]

2. **Application.** Money in any capital reserve fund created pursuant to subsection 1, except as provided in this section, shall be used solely with respect to revenue obligation securities or mortgage loans, repayment of which is secured by any such fund and solely for the payment of principal, accrued interest and costs and expenses chargeable to the mortgage loan or securities, the purchase or redemption of the securities, including any fees or premiums or the payment of interest on the securities. Money in excess of the reserve requirement set forth in subsection 3 may be transferred to other funds and accounts of the agency.

[1989, c. 585, Pt. A, §7 (NEW) .]

3. **Reserve requirement.** The agency may provide that money in any such fund shall not be withdrawn at any time in an amount which would reduce the amount of any such fund to less than the maximum amount of principal and interest becoming due and payable under any applicable trust agreement or other agreement

in the next succeeding 12-month period, the amount being referred to as the capital reserve requirement, except for the purpose of paying the amount due and payable with respect to revenue obligation securities or mortgage loans, repayment of which is secured by any such fund.

[1989, c. 585, Pt. A, §7 (NEW) .]

4. **Issuance limit.** The agency may provide that it shall not issue revenue obligation securities if the capital reserve requirement with respect to securities outstanding and then to be issued and secured by any such fund will exceed the amount of any such fund, including the amount available to be drawn on any letter of credit given to secure the capital reserve requirement, at the time of issuance, unless the agency, at the time of issuance of the securities, shall deposit in any such fund from proceeds of the securities to be issued, or from other sources, an amount which, together with the amounts then in any such fund and amounts available to be drawn under any letter of credit, will not be less than the capital reserve requirement.

[1989, c. 585, Pt. A, §7 (NEW) .]

5. **Security for mortgage loans.** With respect to any mortgage loans which may be secured under this article, the agency may provide that such mortgage loans shall be secured by one or more capital reserve funds established pursuant to subsection 1. Any commitment with respect to a mortgage loan executed and delivered pursuant to this section shall be conclusive evidence of the eligibility of the mortgage loan for capital reserve fund security and the validity of any such commitment or contract shall be incontestable in the hands of a mortgage lender except for fraud or misrepresentation on the part of the mortgage lender. Mortgages secured by capital reserve funds under this section are made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, savings and loan associations, executors, trustees and other fiduciaries, public and private pension or retirement funds and other persons.

[1989, c. 585, Pt. A, §7 (NEW) .]

6. **Appropriation.** On or before December 1st, annually, the agency shall certify to the Governor the amount, if any, necessary to restore the amount in any capital reserve fund, to which this subsection is stated in any written agreement, the trust agreement or other document to apply, to the capital reserve requirement. The Governor shall pay directly from the State Contingent Account to any such fund as much of the amount as is available in that account, as determined by the Governor, and shall transmit directly to the Legislature certification and a statement of the amount, if any, remaining to be paid. The certified amount shall be appropriated and paid to the agency during the current state fiscal year.

[1989, c. 585, Pt. A, §7 (NEW) .]

7. **Obligations and securities outstanding.** The agency may not have at any one time outstanding obligations or revenue obligation securities to which subsection 6 is stated in any agreement or the trust agreement or other document to apply in principal amount exceeding an amount equal to $50,000,000. This subsection constitutes specific legislative approval to issue up to $50,000,000 in tax-exempt revenue obligation securities. The amount of revenue obligation securities issued to refund securities previously issued may not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the agency that may at any time be outstanding for any purpose, the amount of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments shall be valued as of any date of calculation at their then current accreted value rather than their face value.

[1989, c. 585, Pt. A, §7 (NEW); 1989, c. 869, Pt. A, §17 (AMD) .]

SECTION HISTORY
1989, c. 585, §A7 (NEW). 1989, c. 869, §A17 (AMD).

§2222. TAXABLE BOND OPTION

With respect to all or any portion of any issue of any bonds or any series of bonds which the agency may issue in accordance with the limitations and restrictions of this subchapter, the agency may covenant and consent that the interest on the bonds shall be includable, under the United States Internal Revenue Code of 1986, as amended, or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law. The foregoing grant of power shall not be construed as limiting the inherent power of the State or its agencies under any other provision of law to issue debt, the interest on which is includable in the gross income of the holders of the interest under the United States Internal Revenue Code or any subsequent law. [1989, c. 585, Pt. A, §7 (NEW).]

SECTION HISTORY
1989, c. 585, §A7 (NEW).

Subchapter 8: INCINERATION PLANT FINANCIAL STATEMENTS HEADING: PL 1991, C. 676, §1 (NEW)

§2231. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 676, §1 (NEW).]

1. **Incineration facility.** "Incineration facility" means a facility that accepts municipal solid waste for consideration and disposes of the waste through combustion, including combustion for the generation of heat, steam or electricity. A facility that incinerates municipal solid waste in amounts that constitute less than 2% by weight of its fuel is not an incineration facility.

[1991, c. 676, §1 (NEW) .]

2. **Solid waste.** "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including, but not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse. "Solid waste" includes fuel, whether solid, liquid or gas, derived from materials such as those listed.

[1991, c. 676, §1 (NEW) .]

3. **Tipping fee.** "Tipping fee" means any fee, rate, toll or other charge that an incineration facility charges for disposal of solid waste from the facility's customers.

[1991, c. 676, §1 (NEW) .]

4. **Waste source.** "Waste source" means any entity that pays a tipping fee to an incineration facility.

[1991, c. 676, §1 (NEW) .]

SECTION HISTORY
1991, c. 676, §1 (NEW).

§2232. REPORTING

An incineration facility shall submit an annual report to the department no later than 90 days after the end of the incineration facility's fiscal year. For reasonable cause shown and upon written application by an incineration facility, the department may grant an extension of the 90-day period. The report must be certified by an appropriate executive officer of the incineration facility as being complete and accurate. The

department may prescribe the form of the annual report and the number of copies that must be submitted. The report must include the following information: [2011, c. 655, Pt. GG, §65 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

1. **Waste.** The total weight in tons of all solid waste received by the incineration facility in the last completed fiscal year and each month of that year and a breakdown of these totals according to the waste sources;

[1991, c. 676, §1 (NEW) .]

2. **Tipping fee.** A schedule of various tipping fees imposed by the incineration facility on the incineration facility's municipal and commercial customers over the last completed fiscal year including an identification of all changes in those fees and a similar schedule of fees to be imposed on municipal and commercial customers for the next fiscal year. The tipping fees for commercial customers must be set out separately by each rate charged to each category of commercial customer;

[1991, c. 676, §1 (NEW) .]

3. **Revenue.** The total revenue of the incineration facility from all sources for the last completed fiscal year and each month of that year. Revenue figures must identify revenues from each revenue source, including, but not limited to, tipping fees and any revenue from sales of electricity to transmission and distribution utilities;

[1999, c. 657, §27 (AMD) .]

4. **Expenditures.** The total expenditures of the incineration facility during the last completed fiscal year including details of those expenditures as required by the department; and

[2011, c. 655, Pt. GG, §66 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

5. **Other information.** Any other information required by the department.

[2011, c. 655, Pt. GG, §66 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

SECTION HISTORY
1991, c. 676, §1 (NEW). 1995, c. 656, §§A65,66 (AMD). 1999, c. 657, §27 (AMD). 2011, c. 655, Pt. GG, §§65, 66 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2233. CIVIL VIOLATION

A person that violates any requirement of section 2232 commits a civil violation for which a forfeiture not to exceed $200 may be adjudged. Each day of a violation is considered a separate offense. [1991, c. 676, §1 (NEW).]

SECTION HISTORY
1991, c. 676, §1 (NEW).

§2234. CIVIL PENALTY

A person that certifies a report under section 2232 as being complete and accurate and who knows that the report is either incomplete or inaccurate is subject to a civil penalty not to exceed $500, payable to the State. This penalty is recoverable in a civil action. [1991, c. 676, §1 (NEW).]

SECTION HISTORY

1991, c. 676, §1 (NEW).

§2235. USE OF FILES

The department shall keep on file for public inspection and use all reports submitted under this subchapter. [2011, c. 655, Pt. GG, §67 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1991, c. 676, §1 (NEW). 1995, c. 656, §A67 (AMD). 2011, c. 655, Pt. GG, §67 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

§2236. LIMITATION

Nothing in this subchapter may be construed to create or expand any authority of the department over financial, organizational or rate regulation of incineration facilities. [2011, c. 655, Pt. GG, §68 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

SECTION HISTORY
1991, c. 676, §1 (NEW). RR 1993, c. 1, §138 (COR). 1995, c. 656, §A68 (AMD). 2011, c. 655, Pt. GG, §68 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

Chapter 26: TOXICS USE AND HAZARDOUS WASTE REDUCTION

§2301. DEFINITIONS

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §§6-9 (AMD). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2302. TOXICS USE REDUCTION AND HAZARDOUS WASTE MANAGEMENT POLICY

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §10 (AMD). 1993, c. 732, §A12 (AMD). 1999, c. 348, §§1-4 (AMD). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2303. TOXICS USE, TOXICS RELEASE AND HAZARDOUS WASTE REDUCTION GOALS

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §§11,12 (AMD). 1999, c. 348, §5 (AMD). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2304. REGULATED COMMUNITY

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §13 (RPR). 1993, c. 355, §§63,64 (AMD). 1995, c. 493, §§16-18 (AMD). 1999, c. 348, §6 (RP). 2009, c. 579, Pt. A, §2 (RP).

§2304-A. REGULATED COMMUNITY

(REPEALED)

SECTION HISTORY
1999, c. 348, §7 (NEW). 1999, c. 779, §§4,5 (AMD). 2001, c. 212, §§7,8 (AMD). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2305. POLLUTION PREVENTION PLANS

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §14 (AMD). 1999, c. 348, §8 (AMD). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2305-A. PROGRESS REPORTS

(REPEALED)

SECTION HISTORY
1999, c. 348, §9 (NEW). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2306. EMPLOYEE AND HOST MUNICIPALITY NOTIFICATION

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §15 (AMD). 1999, c. 348, §10 (AMD). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2307. REPORTING REQUIREMENTS

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §16 (AMD). 1999, c. 348, §11 (RP). 2009, c. 579, Pt. A, §2 (RP).

§2307-A. AUTHORITY TO REVIEW; MODIFICATION

(REPEALED)

SECTION HISTORY
1999, c. 348, §12 (NEW). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2308. CROSS-MEDIA POLLUTION CONTROL

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §17 (AMD). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2309. PROGRAM; POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §§18,19 (AMD). 1999, c. 348, §§13,14 (AMD). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2310. TOXICS REDUCTION ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 377, §22 (AMD). 1991, c. 520, §§20,21 (AMD). 1991, c. 804, §C4 (RP). 1991, c. 824, §A89 (AMD). 1993, c. 226, §A3 (RP). 1993, c. 349, §72 (AMD). 2009, c. 579, Pt. A, §2 (RP).

§2311. FEES

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §§22,23 (AMD). 1993, c. 309, §1 (AMD). 1993, c. 732, §A13 (AMD). 1995, c. 493, §19 (AMD). 1997, c. 643, §L1 (AMD). 1999, c. 348, §15 (RP). 2009, c. 579, Pt. A, §2 (RP).

§2311-A. FEES

(REPEALED)

SECTION HISTORY
1999, c. 348, §16 (NEW). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

§2312. ENFORCEMENT; PENALTIES

(REPEALED)

SECTION HISTORY
1989, c. 929, §7 (NEW). 1991, c. 520, §§24,25 (AMD). 1999, c. 348, §17 (RP). 2009, c. 579, Pt. A, §2 (RP).

§2313. PENALTIES

(REPEALED)

SECTION HISTORY
1999, c. 348, §18 (NEW). 2009, c. 579, Pt. A, §6 (AFF). 2009, c. 579, Pt. A, §2 (RP).

Chapter 27: PRIORITY TOXIC CHEMICAL USE REDUCTION

§2321. TOXIC CHEMICAL REDUCTION POLICY; DEPARTMENT DUTY

It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens and the quality of the environment, to continually and as expeditiously as practicable reduce the use of toxic chemicals, particularly those identified by the State as being priority toxic chemicals, by commercial and industrial facilities through comprehensive environmental management practices, the use of inherently safer products, the use of materials and processes that are reasonably available and the more efficient use of resources. The department shall work with commercial and industrial facilities to establish goals to reduce the use of priority toxic chemicals based on the reasonable availability of safer alternatives and other factors. The policy represented in this chapter is consistent with the reduction of toxic chemicals in children's products under chapter 16-D. [2009, c. 579, Pt. A, §3 (NEW).]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW).

§2322. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 579, Pt. A, §3 (NEW).]

1. **Alternative.** "Alternative" means a substitute process, product, material, chemical, strategy or a combination of these that serves a purpose functionally equivalent to that of a priority toxic chemical used by a commercial and industrial facility.

[2009, c. 579, Pt. A, §3 (NEW) .]

2. **Commercial and industrial facility or facility.** "Commercial and industrial facility" or "facility" means an entity:

A. With an economic sector or industry code under the North American Industry Classification System of the United States Department of Commerce, United States Census Bureau; and [2009, c. 579, Pt. A, §3 (NEW).]

B. Located in the State. [2009, c. 579, Pt. A, §3 (NEW).]

[2009, c. 579, Pt. A, §3 (NEW) .]

3. **Environmental management system.** "Environmental management system" means a part of an overall management system of a facility and includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the environmental policy of the facility through documented systematic procedures.

[2009, c. 579, Pt. A, §3 (NEW) .]

4. **Priority toxic chemical.** "Priority toxic chemical" means a chemical that has been identified by the department pursuant to section 2323.

[2009, c. 579, Pt. A, §3 (NEW) .]

5. **Reasonably available.** "Reasonably available" means practicable based on cost, efficacy, availability and other factors as determined by the department.

[2009, c. 579, Pt. A, §3 (NEW) .]

6. **Safer alternative.** "Safer alternative" has the same meaning as in section 1691, subsection 12.

[2009, c. 579, Pt. A, §3 (NEW) .]

7. **SARA.** "SARA" means the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

[2009, c. 579, Pt. A, §3 (NEW) .]

8. **Toxic chemical.** "Toxic chemical" means a chemical that has been identified as a chemical of concern pursuant to section 1693 or a chemical the use or release of which is subject to reporting under the SARA, Title III, Section 312 or 313.

[2011, c. 319, §12 (AMD) .]

9. **Use.** "Use" means to manufacture, process or otherwise use a priority toxic chemical or to use a product or material that contains a priority toxic chemical if so designated by the department in rules adopted under this chapter.

[2009, c. 579, Pt. A, §3 (NEW) .]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW). 2011, c. 319, §12 (AMD).

§2323. IDENTIFICATION OF PRIORITY TOXIC CHEMICALS

1. **Identification of chemicals.** By July 1, 2011, the department, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, shall establish by rule a list of no more than 10 priority toxic chemicals.

A. A chemical may be included on the list only if it has been identified on the basis of credible scientific evidence by an authoritative state or federal governmental agency, or on the basis of other scientific evidence considered authoritative by the department, as being known as or reasonably anticipated to be:

(1) A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor;

(2) Persistent, bioaccumulative and toxic; or

(3) Very persistent and very bioaccumulative. [2009, c. 579, Pt. A, §3 (NEW).]

B. In determining whether to include a chemical on the list, the department may consider the following factors:

(1) The risk of worker exposure to the chemical;

(2) The threat posed to human health and the environment;

(3) The threat to the health and safety of a community if the chemical is released accidentally;

(4) The pervasiveness of the chemical's use in the State; and

(5) The existence of a reasonably available safer alternative. [2009, c. 579, Pt. A, §3 (NEW).]

[2009, c. 579, Pt. A, §3 (NEW) .]

2. **Review and revision of list.** The department shall review and revise the list under subsection 1 every 3 years, except that the department may revise the list more frequently if it determines that the addition of a toxic chemical to the list of priority toxic chemicals is necessary to protect human health and the environment or if more credible and recent scientific evidence justifies deletion of a chemical from the list.

[2009, c. 579, Pt. A, §3 (NEW) .]

3. **Identification of products and materials containing priority toxic chemical.** The department, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, may identify by rule products and materials containing a priority toxic chemical and may specify that use of those products and materials is subject to the requirements of this chapter.

[2009, c. 579, Pt. A, §3 (NEW) .]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW).

§2324. REPORTING USE OF PRIORITY TOXIC CHEMICALS

Beginning July 1, 2013, a commercial and industrial facility that uses in excess of 1,000 pounds of a priority toxic chemical during any calendar year shall file a report with the department pursuant to this section. The department may establish a different reporting threshold for a particular priority toxic chemical. [2009, c. 579, Pt. A, §3 (NEW).]

1. **Calculation of threshold.** In making the calculation of the threshold under this section, the facility is not required to include quantities of the priority toxic chemical in a mixture or trade name product at less than 1.0%, unless the chemical is a carcinogen as determined under 29 Code of Federal Regulations, Part 1910, Section 1200(d)(4) (2009). If the chemical is a carcinogen under 29 Code of Federal Regulations, Part 1910, Section 1200(d)(4) (2009), the facility is not required to include quantities of the chemical at less than 0.1%.

A. The identity of a priority toxic chemical in a mixture or trade name product must be determined using the specific name of the chemical with a corresponding chemical abstracts service registry number that appears on the material safety data sheet required under 29 Code of Federal Regulations, Part 1910, Section 1200 (2009) referred to in this subsection as "the material safety data sheet." [2009, c. 579, Pt. A, §3 (NEW).]

B. To quantify the amount of a priority toxic chemical, a commercial and industrial facility may rely on the material safety data sheet or other information that is in the possession of the facility, unless the facility knows or it is generally known in the industry based on widely disseminated industry information that the material safety data sheet or other information is inaccurate or incomplete, based on existing reliable test data or other reliable published scientific evidence. A facility is not required to test or perform file searches to identify or quantify the amount of a priority toxic chemical in a mixture or trade name product. A facility is not required to evaluate a chemical unless the facility does not rely on the evaluation performed by the preparer of the material safety data sheet. [2009, c. 579, Pt. A, §3 (NEW).]

[2009, c. 579, Pt. A, §3 (NEW) .]

2. **Reports.** Reports required under this section must be filed annually by July 1st and must include information for the prior calendar year. The department may not require reports under this section less than 18 months after a priority toxic chemical has been identified pursuant to section 2323. The department shall prepare a reporting form that requires submission of the following information:

A. The amount of a priority toxic chemical used by the facility in its manufacture or production process during the reporting period; [2009, c. 579, Pt. A, §3 (NEW).]

B. The increase or decrease in use of a priority toxic chemical by the facility since 2010, unless the facility has set another baseline year subsequent to the year 2005, which baseline year must be specified; [2009, c. 579, Pt. A, §3 (NEW).]

C. Beginning with reporting year 2014, the increase or decrease in use of a priority toxic chemical by the facility since the prior reporting period and an explanation for any increase in use of any priority toxic chemical that exceeds 15%; [2009, c. 579, Pt. A, §3 (NEW).]

D. A written certification signed by a senior official with management responsibility that the owner or operator of the facility has prepared a pollution prevention plan under section 2325 or has implemented an environmental management system and that the plan or environmental management system is available on site for the department's inspection in accordance with section 2325; and [2009, c. 579, Pt. A, §3 (NEW).]

E. A statement that employees have been notified of and involved in the pollution prevention plan or environmental management system under section 2325. [2009, c. 579, Pt. A, §3 (NEW).]

[2009, c. 579, Pt. A, §3 (NEW) .]

3. **Confidentiality.** Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions in section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.

[2009, c. 579, Pt. A, §3 (NEW) .]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW).

§2325. POLLUTION PREVENTION PLANS AND REDUCTION GOALS

Unless otherwise provided in this section, an owner or operator of a facility subject to the reporting requirements in section 2324 shall develop by July 1, 2012 and update at least every 2 years thereafter a pollution prevention plan. [2009, c. 579, Pt. A, §3 (NEW).]

1. **Plan requirements.** A pollution prevention plan must include, at a minimum, the following:

A. A statement of facility-wide management policy regarding toxics use reduction; [2009, c. 579, Pt. A, §3 (NEW).]

B. Identification, characterization and accounting of the types and amounts of all priority toxic chemicals used at the facility; [2009, c. 579, Pt. A, §3 (NEW).]

C. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, chemical alternatives, equipment or production changes that may be used by the facility to reduce the amount or toxicity of priority toxic chemicals used including a financial analysis of the costs and benefits of reducing the amount of priority toxic chemicals used; [2009, c. 579, Pt. A, §3 (NEW).]

D. A strategy and schedule for implementing practicable reduction options for each priority toxic chemical; [2009, c. 579, Pt. A, §3 (NEW).]

E. A program for maintaining records on priority toxic chemical use and management costs, such as the costs of personal protection equipment, liability insurance, training, chemical storage and disposal; [2009, c. 579, Pt. A, §3 (NEW).]

F. The facility's goal for reducing use of priority toxic chemicals and products and materials containing such chemicals; [2009, c. 579, Pt. A, §3 (NEW).]

G. An employee awareness and training program that informs employees of the use of priority toxic chemicals by the facility and involves employees in achieving the established reduction goal under this subsection; and [2009, c. 579, Pt. A, §3 (NEW).]

H. An assessment of alternatives explored to reduce use of priority toxic chemicals that is prepared according to standard methods or guidelines for conducting alternatives assessments made available by the department. [2009, c. 579, Pt. A, §3 (NEW).]

[2009, c. 579, Pt. A, §3 (NEW) .]

2. **Environmental management system.** A facility that has an environmental management system that is audited by a 3rd party or reviewed by the department and that includes a plan to reduce use of priority toxic chemicals and of products and materials containing priority toxic chemicals meets the planning requirements of this section.

[2009, c. 579, Pt. A, §3 (NEW) .]

3. **Plan retention.** A pollution prevention plan must be finalized, approved and signed by a senior official with management responsibility. An owner or operator of a facility shall keep a complete copy of the pollution prevention plan or environmental management system and any backup data on the premises of that facility for at least 5 years and make the copy and data available to employees of the department for inspection during business hours upon request. The department may require the owner or operator of a facility to make any modifications to a plan or environmental management system to maintain consistency with the policy of this chapter.

[2009, c. 579, Pt. A, §3 (NEW) .]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW).

§2326. TECHNICAL ASSISTANCE AND RECOGNITION PROGRAMS

The department shall develop a technical assistance program for commercial and industrial facilities that use priority toxic chemicals and products and materials containing priority toxic chemicals. The goal of a technical assistance program must be to reduce use of priority toxic chemicals by such facilities and to help these facilities achieve the reduction goals established in their environmental management systems or pollution prevention plans under section 2325. The department shall determine the facilities most in need of technical assistance and shall establish priorities based on a number of factors, including, but not limited to, the availability of safer alternatives, the toxicity of the chemical used by particular facilities, the size and resources of those facilities and the resources available to the department. [2009, c. 579, Pt. A, §3 (NEW).]

The department may develop a recognition program to promote the reduction in use of priority toxic chemicals and to recognize commercial and industrial facilities in the State for their achievements in reducing their use of priority toxic chemicals. [2009, c. 579, Pt. A, §3 (NEW).]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW).

§2327. PENALTIES

The owner or operator of a facility subject to the requirements of this chapter that fails to meet any requirement of this chapter is subject to penalties under section 349. [2009, c. 579, Pt. A, §3 (NEW).]

SECTION HISTORY

2009, c. 579, Pt. A, §3 (NEW).

§2328. EXEMPTIONS

The department may exempt classes of facilities and specific uses of priority toxic chemicals by commercial and industrial facilities from the requirements of this chapter if the department determines that no reasonably available safer alternative exists, that the chemical is naturally occurring or that application of this chapter is unlikely to result in the reduction of the use of a priority toxic chemical. [2009, c. 579, Pt. A, §3 (NEW).]

A facility subject to the requirements of this chapter may file an application for an exemption from some or all of the requirements of this chapter on a form developed by the department. The department shall rule on a request for an exemption within 120 days of receipt of an application. [2009, c. 579, Pt. A, §3 (NEW).]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW).

§2329. RULES

The department shall adopt rules to implement this chapter. Rules adopted by the department pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 579, Pt. A, §3 (NEW).]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW).

§2330. FEES

The commissioner shall deposit all money received in payment of fees under this section in a separate nonlapsing account within the Maine Hazardous Waste Fund to cover expenses incurred by the department in the administration of this chapter. [2009, c. 579, Pt. A, §3 (NEW).]

1. **Facilities subject to reporting under SARA, Title III, Section 312.** An owner or operator of a facility that is required to report the presence of extremely hazardous substances under the SARA, Title III, Section 312 shall submit $100 for each extremely hazardous substance reported by the facility to the department annually by October 1st. For purposes of this subsection, "extremely hazardous substance" has the same meaning set forth in the SARA, Title III, Section 302 and listed in 40 Code of Federal Regulations, Part 355.

[2009, c. 579, Pt. A, §3 (NEW) .]

2. **Facilities subject to reporting under SARA, Title III, Section 313.** An owner or operator of a facility that is required to report the release of chemicals under the SARA, Title III, Section 313 shall submit $100 for each toxic release inventory chemical reported by the facility to the department annually by October 1st. For purposes of this subsection, "toxic release inventory chemical" means any substance in a gaseous, liquid or solid state listed pursuant to the SARA, Title III, Section 313 and listed in 40 Code of Federal Regulations, Part 372.65.

[2009, c. 579, Pt. A, §3 (NEW) .]

3. **Hazardous waste generators.** Generators that ship 661 pounds or more of hazardous waste in a calendar year shall pay the following fees to the department annually by October 1st: for generators that ship 5,000 pounds or more of hazardous waste in a calendar year, the fee is $1,000; for generators that ship

between 2,640 pounds and 4,999 pounds per calendar year, the fee is $500; and for generators that ship between 661 pounds and 2,639 pounds per calendar year, the fee is $100. Generators that ship less than 661 pounds of hazardous waste in a calendar year are not required to pay fees under this section.

[2009, c. 579, Pt. A, §3 (NEW) .]

4. **Fee limitation.** A facility subject to fees under this section may not be assessed more than $1,000 per year.

[2009, c. 579, Pt. A, §3 (NEW) .]

5. **Effective date.** This section takes effect July 1, 2012.

[2009, c. 579, Pt. A, §3 (NEW) .]

SECTION HISTORY
2009, c. 579, Pt. A, §3 (NEW).

Chapter 28: MOTOR VEHICLE EMISSION INSPECTION PROGRAM

§2401. DEFINITIONS

(CONFLICT)

(REPEALED)

SECTION HISTORY
1991, c. 818, §2 (NEW). 1993, c. 418, §3 (AMD). 1995, c. 49, §2 (RP). 1995, c. 50, §2 (RP). 1995, c. 65, §A151 (AMD). 1995, c. 65, §§A153,C15 (AFF). 2007, c. 466, Pt. A, §73 (RP).

§2402. INSPECTION REQUIREMENT

(REPEALED)

SECTION HISTORY
1991, c. 818, §2 (NEW). RR 1993, c. 2, §38 (COR). 1993, c. 418, §§4-8 (AMD). 1993, c. 683, §B4 (AMD). 1993, c. 683, §B5 (AFF). 1995, c. 49, §2 (RP). 1995, c. 50, §2 (RP). 1995, c. 65, §A152 (AMD). 1995, c. 65, §§A153,C15 (AFF). 2007, c. 466, Pt. A, §74 (RP).

§2403. MOTOR VEHICLE EMISSION INSPECTION PROGRAM

(REPEALED)

SECTION HISTORY
1991, c. 818, §2 (NEW). 1993, c. 418, §§9,10 (AMD). 1995, c. 49, §2 (RP). 1995, c. 50, §2 (RP).

§2404. PUBLIC EMISSION INSPECTION STATIONS; CONTRACT

(REPEALED)

SECTION HISTORY
1991, c. 818, §2 (NEW). 1995, c. 49, §2 (RP). 1995, c. 50, §2 (RP).

§2405. FLEET EMISSION INSPECTION STATIONS; LICENSE

(REPEALED)

SECTION HISTORY
1991, c. 818, §2 (NEW). 1993, c. 418, §11 (RP).

§2406. PROHIBITED ACTS

(REPEALED)

SECTION HISTORY
1991, c. 818, §2 (NEW). 1995, c. 49, §2 (RP). 1995, c. 50, §2 (RP).

§2407. INSPECTION FEE

(REPEALED)

SECTION HISTORY

1991, c. 818, §2 (NEW). 1993, c. 418, §12 (AMD). 1995, c. 49, §2 (RP). 1995, c. 50, §2 (RP).

§2408. MOTOR VEHICLE EMISSION INSPECTION FUND

(REPEALED)

SECTION HISTORY
1991, c. 818, §2 (NEW). 1993, c. 418, §13 (AMD). 1995, c. 49, §2 (RP). 1995, c. 50, §2 (RP).

Chapter 30: ACE SERVICE CENTER

§2451. ACE SERVICE CENTER

1. **Establishment.** The ACE Service Center, referred to in this section as "the center," is established within the department to provide certain administrative services to the Department of Agriculture, Conservation and Forestry and the Department of Environmental Protection, which are referred to in this section as "the departments." Administrative services include, but are not limited to, support services in financial and human resources, inventory management, courier services and such other functions as may be determined jointly by the commissioners of the departments. The center's purpose is to provide administrative services in an efficient and cost-effective manner to the departments. The center is under the authority of the Commissioner of Environmental Protection, who shall provide for the administration of the center. The Commissioner of Environmental Protection shall establish service level agreements with the departments and shall provide for the equitable sharing of the cost of the center and its administration among the departments.

[2003, c. 673, Pt. LL, §1 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

2. **Transfer of property.** The commissioners of the departments shall approve the transfer of such property and equipment as needed for the operation of the center.

[1995, c. 502, Pt. K, §1 (NEW); 1995, c. 502, Pt. K, §2 (AFF) .]

SECTION HISTORY
1995, c. 502, §K1 (NEW). 1995, c. 502, §K2 (AFF). 2003, c. 673, §LL1 (AMD). 2011, c. 657, Pt. W, §5 (REV).

Chapter 31: UNIFORM ENVIRONMENTAL COVENANTS ACTS

§3001. SHORT TITLE

This chapter may be known and cited as the Uniform Environmental Covenants Act. [2005, c. 370, §1 (NEW).]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 370, §1 (NEW).]

1. **Activity and use limitations.** "Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.

[2005, c. 370, §1 (NEW) .]

2. **Agency.** "Agency" means the department or any legal successor or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

[2005, c. 370, §1 (NEW) .]

3. **Common interest community.** "Common interest community" means a condominium, cooperative or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums or for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.

[2005, c. 370, §1 (NEW) .]

4. **Environmental covenant; covenant.** "Environmental covenant" or "covenant" means a servitude arising under an environmental response project and documented in a recordable instrument that imposes activity and use limitations. "Environmental covenant" does not include a municipal ordinance, a voluntary or other remedial action plan or a condition added thereto or an administrative or judicial order, whether unilateral or by consent, that may impose activity or use limitations.

[2005, c. 370, §1 (NEW) .]

5. **Environmental response project.** "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

A. Under a federal or state program governing environmental remediation of real property, including, but not limited to, remediation under the laws governing uncontrolled hazardous substance sites, pursuant to chapter 13-B, or the voluntary response action program under Title 38, section 343-E; or [2005, c. 370, §1 (NEW).]

B. Incident to closure of a solid, special or hazardous waste management unit if the closure is conducted with approval of the department under the laws governing hazardous waste, septage and solid waste management, pursuant to chapter 13. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

6. **Holder.** "Holder" means the grantee of an environmental covenant as specified in section 3003, subsection 1.

[2005, c. 370, §1 (NEW) .]

7. **Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, instrumentality or any other legal or commercial entity.

[2005, c. 370, §1 (NEW) .]

8. **Record.** "Record," the noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2005, c. 370, §1 (NEW) .]

9. **State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3003. NATURE OF RIGHTS

1. **Holder.** Any person, including a person that owns an interest in the real property, the agency or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property. When the department is the agency determining or approving the environmental response project pursuant to which an environmental covenant is created, the department shall identify all holders of the environmental covenant and may identify the department as a holder, notwithstanding any other provision of law. Notwithstanding section 568, subsection 5-A and section 1364, subsection 7 or any other provision of law, the department may be a holder of an environmental covenant and approval of the board is not required.

[2005, c. 370, §1 (NEW) .]

2. **Right of agency.** A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

[2005, c. 370, §1 (NEW) .]

3. **Obligations.** An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights or protections granted or imposed under law other than this chapter except as provided in the covenant.

[2005, c. 370, §1 (NEW) .]

4. **Priority of recorded interests.** The priority of recorded interests is governed by other law, including law relating to the police powers of the State and public policies protecting health and the environment, and is unaffected by this Act, except as provided in section 3009, subsection 3 for tax liens.

[2005, c. 370, §1 (NEW) .]

5. **Signature on record.** If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing boards of the owners' association.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3004. CONTENTS OF ENVIRONMENTAL COVENANT

1. **Required contents.** An environmental covenant must:

A. State that the instrument is an environmental covenant executed pursuant to this chapter; [2005, c. 370, §1 (NEW).]

B. Contain a legally sufficient description of the real property subject to the covenant; [2005, c. 370, §1 (NEW).]

C. Describe the activity and use limitations on the real property; [2005, c. 370, §1 (NEW).]

D. Identify every holder; [2005, c. 370, §1 (NEW).]

E. Be signed by the agency, every holder and unless waived by the agency, every owner of the fee simple of the real property subject to the covenant, except that the agency may not waive signature by an owner of the fee simple who is the current occupant of the real estate, if any; and [2005, c. 370, §1 (NEW).]

F. Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

2. **Permissible contents.** In addition to the information required by subsection 1, an environmental covenant may contain other information, restrictions and requirements agreed to by the persons that signed it, including:

A. Any requirements for notice following transfer of a specified interest in the property subject to the covenant, or concerning proposed changes in use of, applications for building permits for or proposals for any site work affecting any contamination on the property subject to the covenant; [2005, c. 370, §1 (NEW).]

B. Any requirements for periodic reporting describing compliance with the covenant; [2005, c. 370, §1 (NEW).]

C. Any rights of access to the property granted in connection with implementation or enforcement of the covenant; [2005, c. 370, §1 (NEW).]

D. A brief narrative description of any contamination and its remedy, including the contaminants of concern, the pathways of exposure, limits on exposure and the location and extent of the contamination; [2005, c. 370, §1 (NEW).]

E. Any limitation on amendment or termination of the covenant in addition to those contained in sections 3009 and 3010; and [2005, c. 370, §1 (NEW).]

F. Any rights of the holder in addition to the holder's right to enforce the covenant pursuant to section 3011. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

3. **Additional signatories.** In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3005. VALIDITY; EFFECT ON OTHER INSTRUMENTS

1. **Runs with land.** An environmental covenant that complies with this chapter runs with the land.

[2005, c. 370, §1 (NEW) .]

2. **Valid and enforceable.** An environmental covenant that is otherwise effective is valid and enforceable even if:

A. It is not appurtenant to an interest in real property; [2005, c. 370, §1 (NEW).]

B. It can be or has been assigned to a person other than the original holder; [2005, c. 370, §1 (NEW).]

C. It is not of a character that has been recognized traditionally at common law; [2005, c. 370, §1 (NEW).]

D. It imposes a negative burden; [2005, c. 370, §1 (NEW).]

E. It imposes an affirmative obligation on a person having an interest in the real property or on the holder; [2005, c. 370, §1 (NEW).]

F. The benefit or burden does not touch or concern real property; [2005, c. 370, §1 (NEW).]

G. There is no privity of estate or contract; [2005, c. 370, §1 (NEW).]

H. The holder dies, ceases to exist, resigns or is replaced; or [2005, c. 370, §1 (NEW).]

I. The owner of an interest subject to the environmental covenant and the holder are the same person. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

3. **Instrument recorded prior to effective date of chapter.** An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of this chapter is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection 2 or because it was identified as an easement, servitude, deed restriction or other interest. This chapter does not apply in any other respect to such an instrument.

[2005, c. 370, §1 (NEW) .]

4. **Not invalidate or render unenforceable.** This chapter does not invalidate or render unenforceable any interest, condition, declaration, covenant or environmental covenant, regardless of how designated, that is otherwise enforceable under the law of this State, whether created before or after the adoption of this chapter, including, without limitation, those adopted pursuant to section 343-E.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY

2005, c. 370, §1 (NEW).

§3006. RELATIONSHIP TO OTHER LAND-USE LAW

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter. [2005, c. 370, §1 (NEW).]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3007. NOTICE

1. **Provision of copy.** A copy of an environmental covenant must be provided by the persons and in the manner required by the agency to:

A. Each person who signed the covenant; [2005, c. 370, §1 (NEW).]

B. Each person holding a recorded interest in the real property subject to the covenant; [2005, c. 370, §1 (NEW).]

C. Each person in possession of the real property subject to the covenant; [2005, c. 370, §1 (NEW).]

D. Each municipality or other unit of local government in which real property subject to the covenant is located; and [2005, c. 370, §1 (NEW).]

E. Any other person the agency requires. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

2. **Effect of failure to provide copy.** The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3008. RECORDING

1. **Recording required.** An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder must be treated as a grantee.

[2005, c. 370, §1 (NEW) .]

2. **Subject to laws governing recording priority.** Except as otherwise provided in section 3009, subsection 3, an environmental covenant is subject to the laws of this State governing recording and priority of interests in real property.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3009. DURATION; AMENDMENT BY COURT ACTION

1. **Perpetual duration.** An environmental covenant is perpetual unless it is:

A. By its terms limited to a specific duration or terminated by the occurrence of a specific event; [2005, c. 370, §1 (NEW).]

B. Terminated by consent pursuant to section 3010; [2005, c. 370, §1 (NEW).]

C. Terminated pursuant to subsection 2; [2005, c. 370, §1 (NEW).]

D. Terminated by operation of other laws of this State governing priority of interests; or [2005, c. 370, §1 (NEW).]

E. Terminated or modified in an eminent domain proceeding, but only if:

(1) The agency that signed the covenant is a party to the proceeding;

(2) All persons identified in section 3010, subsections 1 and 2 are given notice of the pendency of the proceeding; and

(3) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

2. **Intended benefits can no longer be realized.** If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in section 3010, subsections 1 and 2 have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.

[2005, c. 370, §1 (NEW) .]

3. **Extinguished, limited or impaired.** Except as otherwise provided in subsections 1 and 2, an environmental covenant may not be extinguished, limited or impaired through issuance of a tax deed or foreclosure of a tax lien or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement or acquiescence or a similar doctrine.

[2005, c. 370, §1 (NEW) .]

4. **Laws governing marketable title and dormant mineral interests.** An environmental covenant may not be extinguished, limited or impaired by application of laws governing marketable title and dormant mineral interests.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3010. AMENDMENT OR TERMINATION BY CONSENT

1. **Amendment or termination.** An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

A. The agency; [2005, c. 370, §1 (NEW).]

B. Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant; [2005, c. 370, §1 (NEW).]

C. Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and [2005, c. 370, §1 (NEW).]

D. The holder, unless the holder waived in a signed record the right to consent or except as otherwise provided in subsection 4, paragraph B. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

2. **Effect of amendment of covenant.** If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

[2005, c. 370, §1 (NEW) .]

3. **Assignment to new holder.** Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

[2005, c. 370, §1 (NEW) .]

4. **Assignment by holder; removal and replacement of holder.** Except as otherwise provided in an environmental covenant:

A. A holder may not assign its interest without consent of the other parties; and [2005, c. 370, §1 (NEW).]

B. A holder may be removed and replaced by agreement of the other parties specified in subsection 1. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

5. **Vacancy filled by court.** A court of competent jurisdiction may fill a vacancy in the position of holder.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3011. ENFORCEMENT OF ENVIRONMENTAL COVENANT

1. **Civil action.** A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

A. A party to the covenant unless the agency determines otherwise for good cause at the time the environmental covenant is created, but in that event the party has no liability for any violation of the covenant by others; [2005, c. 370, §1 (NEW).]

B. The agency or, if it is not the agency, the department; [2005, c. 370, §1 (NEW).]

C. Any person to whom the covenant expressly grants power to enforce; [2005, c. 370, §1 (NEW).]

D. A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or [2005, c. 370, §1 (NEW).]

E. A municipality or other unit of local government in which the real property subject to the covenant is located. [2005, c. 370, §1 (NEW).]

[2005, c. 370, §1 (NEW) .]

2. **Effect or regulatory authority.** This chapter does not limit the regulatory authority of the agency or the department under any law other than this chapter with respect to an environmental response project.

[2005, c. 370, §1 (NEW) .]

3. **Liability for environmental remediation.** A person is not responsible for or subject to liability for environmental remediation solely because the person has the right to enforce an environmental covenant.

[2005, c. 370, §1 (NEW) .]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3012. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2005, c. 370, §1 (NEW).]

SECTION HISTORY
2005, c. 370, §1 (NEW).

§3013. RELATION TO FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq. but does not modify, limit or supersede Section 101 of that Act, 15 United States Code, Section 7001(a) or authorize electronic delivery of any of the notices described in Section 103 of that Act, 15 United States Code, Section 7003(b). [2005, c. 370, §1 (NEW).]

SECTION HISTORY
2005, c. 370, §1 (NEW).

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