Title 38: WATERS AND NAVIGATION

Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

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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(REPEALED)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).

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