# Core Laws of Maine's Coastal Program

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# Changes to the Core Laws of the Maine's Coastal Program

Maine Coastal Program
Maine State Planning Office

(Includes 1980 Changes)

38 M.R.S.A. §§361-372, 411-424, 451-452: PROTECTION & IMPROVEMENT OF WATERS

| Section | Changes | Year | Reference* |
|---|---|---|---|
| §361 | Deleted the 9th, 10th, 14th, and 15th paragraphs, regarding:1)the power of the commission to adopt, amend, or repeal regulations 2)conducting hearings, 3)limitations of authority of approval or disapproval | 1977 | Vol. 16A p. 257 (1977,c.300§§10-12) |
| | Changed "3" to "4" in 1st paragraph | 1977 | Vol.16A p.257(1977, c.596 §2) |
| §361-A | Added sub-§4-B re: surface waste water disposal system | 1977 | Vol. 16A p.260 (1977, c.271 §3) |
| | Added sub-§1-B re: agricultural activities and aquifers | 1979 | Vol.16A Supplement p.21(1979, c.380§1 and 1979 c.472§8) |
| | Added sub-§1-C re: aquifer recharge | 1979 | Vol.16A Sup. p.21 (1979,c.472 §§8,9) |
| | Added sub-§2-A re: ground water | 1979 | " " |
| | " " 4-A-1 re: snow dump | 1979 | Vol.16A Sup. p.21 (1979,c.296 §1) |
| §361-B, §361-C | Repealed sections re: processing applications and petitions for reconsiderations | 1977 | Vol.16A p.260 (1977,c.300§§13,14) |
| §361-D | New section, re: radio active waste facilities | 1979 | Vol.16A Sup. p.21 (1979,c.519 §2) |
| §362 | No change since 1975 | | |
| §362-A | No change since 1973 | | |
| §363 | 1)the 100 fecal level was reduced to 20 in the 2nd ¶, 2)in the 4th ¶, no discharge or deposits of any kind are now allowed. Existing discharges are expected to find practical alternatives. No new discharges are allowed. The last sentence permitting log driving was deleted. 3) In the 6th, 9th, and 13th ¶'s: the 3rd sentences were repealed. | 1977 | Vol.16A p.266 (1977,c.373§§1-5) |
| | 4) A change in the 4th ¶ now allows new discharges if they are equal or better than existing quality of receiving waters. The applicant must show the board that this discharge is necessary. | 1979 | Vol.16A Sup. p.22 (1979, c.529) |

* Each reference includes:

1) The volume and page of the specified Maine Revised Statues Annotated title where the section may be found (if any):

2) The year, chapter, and section of the public law responsible for the change.

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| §363-A | New section | 1977 | Vol.16A p.272 (1977,c.373 §6) |
| | Insertion in 2nd ¶: adds fish & wildlife habitat as a use | 1979 | Vol.16A Sup. p.26 (1979,c.495 §§1,2) |
| | Expanded 4th ¶ with no change in meaning | 1979 | " " |
| §363-B | New section re: standards of classification of ground water | 1979 | Vol. 16A Sup. p. 26 (1979,c.472§10) |
| §364 | Changed "15" to "14" & "50" to "43" in 3rd and 7th ¶'s | 1977 | Vol. 16A p.287 (1977,c.373 §§7-9) |
| §365 | Deleted part of 1st ¶ outlining requirements for public hearing | 1977 | Vol.16A p.287 (1977,c.300§15) |
| §366 | No change since 1971 | | |
| §367 | The commission may recommend classification changes to the Legislature | 1979 | Vol.16A Sup. p.26 (1979,c.127 §208 and c.495 §3) |
| §372 | No change since 1971 | | |
| §411 | No change since 1973 | | |
| §412 | Rewrote section to discuss grants by the State for planning | 1977 | Vol.16A p.375 (1977,c.81) |
| §412-A | New section re: technical and legal assistance | 1979 | Vol.16A Sup. p.29-30 (1979, c.243) |
| §413 | Added sub-§1-A re: license for surface waste water disposal systems | 1977 | Vol. 16A p.381 & 377 (1977,c.271§4) |
| | Change of section numbers cited in sub §6 | 1977 | Vol.16A p.381&378 (1977 c.300 §16) |
| | Added sub-§2-A re: exemptions for pesticide permits | 1977 | Vol.16A p.381&378 (1977 c.373§32) |
| | Added sub-§1-B re: license for subsurface disposal systems | 1979 | Vol.16A Sup. p.30-1 (1979,c.472 §13) |
| | Sub-§2: added A,B,C (outlining conditions for "exemptions") | 1979 | Vol.16A Sup. p.30-1 (1979, c.380 §2) |
| | Sub-§2-A amended and repealed | 1980 | (Public Law 1980, c.663 §229) |
| | Added sub-§2-B re: snow dumps exemption | 1979 | Vol.16A Sup.p.30-31(1979,c.541§3) |
| | Rewrote sub-§3 to discuss transfer of ownership | 1979 | Vol.16A Sup.p.30-31 (1979,c.444 §3) |
| §414 | Sub-§1 repealed re: classified waters | 1977 | Vol.16A p.381 (1977,c.300 §17) |
| | Sub-§7 repealed re: processing applications | 1977 | Vol. 16A p.381 (1977,c.300 §19) |
| | Rewrote sub-§2 so that all licenses are now for up to 5 years | 1979 | Vol.16A Sup.p.31 (1979,c.444 §4) |
| | Rewrote sub-§ 3with no change in meaning | | |

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|---|---|---|---|
| §414-A | Rewrote sub-§1,D to expand definition of "best practical treatment" | 1979 | Vol.16A Sup. p.32-3 (1979,c.444 §5) |
| | Added sub-§1,E re: pesticide discharge | 1979 | Vol.16A Sup. p.32-3 (1979,c.281 §4) |
| | Rewrote sub-§2 to include schedules for specific technologies that may be permitted to comply with Federal standards | 1979 | Vol.16A Sup. p.32-3 (1979,c.444 §6) |
| | Added ¶ to sub-§3 to discuss variances for innovative technology | 1979 | Vol.16A Sup. p.32-3 (1979,c.444 §7) |
| §414-B | Rewrote sub-§2 to allow the board to require identification of the character & volume of pollutants | 1979 | Vol.16A Sup. p.33 (1979,c.444 §8) |
| | Added sub-§2-A re: prohibited discharge | 1979 | Vol.16A Sup.p.33 (1979,c.444 §9) |
| §415 | Repealed section re: appeals | 1977 | Vol.16A p.389 (1977, c.300 §20) |
| §416 | Repealed section re: prohibition of oil discharge | 1977 | Vol.16A p.390 (1977, c.375 §1) |
| §417 | Added last ¶ re: exemptions | 1977 | Vol.16A p.391 (1977, c.373 §33) |
| §418 | Rewrote 4th ¶ to remove the $75 fee | 1977 | Vol.16A p.392 (1977,c.300 §21) |
| | Repealed last ¶ of sub-§2 re: notetaking at hearings | 1977 | Vol.16A p. 392 (1977, c.300 §22) |
| §419 | Repealed sub-§4 re: penalties | 1977 | Vol.16A p.393 (1977,c.300 §23) |
| §420 | Three changes in text 1)phrase "ground or surface waters" added, 2)sub-§1,B "commission" changed to "board", 3)reference section numbers changed | 1979 | Vol.16A Sup.p.33-4 (1979,c.472 §14) (1979,c.127 §210) |
| §412 | Added word "surface" | 1979 | Vol.16A Sup. p.34 (1979,c.472 §15) |
| §422 | Repealed section re: dredging permits | 1977 | Vol.16A p.396 (1977,c. 564 §137) |
| §423 | Repealed 3rd ¶ re: penalty | 1977 | Vol.16A p.397 (1977,c.300 §24) |
| | Changed "waste materials" to "pollutants" | 1979 | Vol.16A Supp.p.34 (1979,c.444 §10) |
| §424 | No change since 1973 | | |
| §451 | Sub-§2 repealed re: revocation, modification, or suspension of licenses | 1977 | Vol.16A p.400 (1977,c.300 §26) |
| | 1st,3rd,& 4th ¶'s amended 1)"sewage, industrial or other waste" changed to "pollutants", 2)"commission" changed to "board", 3) "said" changed to "those" 4) section reference number changed | 1980 | (PL 1980, c.663 §231) |

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|---|---|---|---|
| §451-A | Added sub-§7 re: variances for single family dwelling | 1977 | Vol.16A p.409 (1977, c.185) |
| | Changed effective date | 1977 | Vol.16A p.409(1977, c.564 §§138,139) |
| §451-B | No change since 1975 | | |
| §452 | No change since 1971 | | |

## 38 M.R.S.A. §§471 to 478: ALTERATION OF COASTAL WETLANDS

| Section | Changes | Year | Reference |
|---|---|---|---|
| §471 | Rewrote section | 1979 | Vol.16A Sup. p.38 (1979, c.504 §1) |
| §472 | Added definitions of coastal sand dunes and coastal wetlands | 1979 | Vol.16A Sup. p.38 (1979, c.504 §2) |
| §473 | No change since 1975 | | |
| §474 | Expanded: wetlands permit, sand dunes permit, single permit | 1979 | Vol.16A Sup.p.38-39 (1979, c.504 §3) |
| §475-476 | No change since 1975 | | |
| §477 | Repealed section which authorized an injunction to compel restoration | 1977 | Vol.16A p.417 (1977, c.300 §29) |
| §478 | No change since 1975 | | |

## 12 M.R.S.A. §§4811 to 4814: MANDATORY ZONING AND SUBDIVISION CONTROL

| Section | Changes | Year | Reference |
|---|---|---|---|
| §4811 | No change since 1973 | | |
| §4811-A | No change since 1973 | | |
| §4812 | No change since 1973 | | |
| §4812-A | No change since 1975 | | |
| §4812-B | No change since 1975 | | |
| §4813 | 1st ¶, 2nd sentence re: a 1976 compliance date<br>Correction on section number | Added 1975<br>Deleted 1979<br>1979 | Vol.12 Sup. p.225 (1975,c.468 §1: 1979,c.128: 1979, c.541 §A,131) |
| §4814 | Added 2nd sentence in 2nd ¶ allowing the D.A. to enforce ordinances if requested by a local official | 1980 | (PL 1980 c.672 §49) |

## 12 M.R.S.A. §§681 to 689: LAND USE REGULATION

| Section | Changes | Year | Reference |
|---|---|---|---|
| §681 | No changes since 1975 | | |
| §682 | Sub-§4: added last sentence limiting the definition of a structure | 1980 | (PL 1980, c.631 §1) |
| §683 | Added last sentence to 1st ¶ requiring the Governor to consider residents of unorganized territories for the commission | 1979 | Vol.6 Sup. p.50 (1979, c.497 §1) |
| §684 | Slight textual changes: one cites a reference for procedures in conducting meetings | 1977 | Vol.6 Sup. p.50 (1977,c.360 §14: 1977,c.694 §221) |
| §685 | Textual changes: one change assigned the Commissioner the task of preparing the budget, rather than the commission | 1977 | Vol.6 Sup. p.51 (1977, c.360 §§15,16) |
| | Another deleted specific qualifications for the position of director | 1979 | Vol.6 p.51 (1979,c.541 §A,128) |
| §685-A | Numerous changes in text: 1) boundaries for land use standards and hearings for districts shall be determined by the commissioner according to a reference cited: 2) regulations for land use districts that become part of an organized municipality were expanded: 3) the time period in which interim standards shall be effective was extended to 48 months: 4) requirements for setting up protection districts relating to deer wintering habitats were established: 5) notice requirements for adoption of land use maps of standards were established: 6)permanent land use standards or amendments adopted will be effective but must be approved or modified by the next session of the Legislature. | 1977<br>1979 | Vol.6 Sup. p.55 (1977,c.327 §1,1-A, 2: c.390 §2:c. 694 §§222 to 227-B) (1979,c.127 §§65-67 c.497,§§2,3) |
| §685-B | 1) Amended sub-§1,C by expanding the list of requirements a development must meet to include Minimum Lot Size Law, Wetlands Law, Great Ponds Law and Stream Alteration Law: 2) amended sub-§ 2,B to state that application fees shall be $10 or 1/10 of 1% of total construction costs: 3) amended sub-§3:a) the commission must notify the petitioner, within 30 days of receipt of a request for a hearing, of time and place or denial, b) hearings shall be conducted in accordance with Title 5, chapter 375, subchapter II: 4) amended sub-§4,A to specify that applications shall not be approved unless adequate provisions have been made to comply with the Site Location of Development Law, Minimum Lot Size, Wetlands Law, Great Ponds Law and Stream Alteration Law: 5) amended | 1977 | Vol.6 Sup. p.57 (1977,c.213 §§1-3: c.360, §17 c.564, §51 c.694, §§228-232) |

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| | sub-§5 to allow the commission to amend, modify, or refuse to renew any approval or permit if they feel criteria set forth in sub-§4 are not or will not be satisfied· 6) the title and section numbers of the Great Ponds Law mentioned in sub-§1,C and §4,A were updated. | 1979 | Vol.6 Sup. p.57 (1979,c.127§§68,69) |
| §685-C | In sub-§1, 3 and 5: the reference for public hearing procedures, fees and additional rule adoption: respectively, was changed to Title 5 Chapter 375, Subchapter II. In sub-§8, the type of action that may be taken by the commission is outlined, with specific references to the Statues involved. | 1977 | Vol.6 Sup. p.59 (1977, c.694 §§233-235-A) |
| §689 | The section was condensed in 1977 and a reference to Title 5, Chapter 375, subchapter VII was made for procedure of any appeal to the commission concerning its final actions. Any rights of appeal shall not include rights mentioned in Title 5, section 8058, sub-§1. | 1977 | Vol.6 Sup. p.59 (1977,c.694 §236) |
| | In 1979, the phrase "the right" in the last sentence was changed to "this right". | 1979 | Vol.6 Sup. p.59 (1979,c.127 §70) |

## 30 M.R.S.A. §4956: LAND SUBDIVISIONS LAW

| Section | Changes | Year | Reference |
|---|---|---|---|
| §4956 | Add sub-§3,M re: ground water | 1979 | Vol.14A Sup. p.41-2 (1979 c.472 §7) |
| | Add sub-§3-A re: access to sunlight | 1979 | Vol.14A Sup. p.41-2 (1979, c.435) |
| | Last ¶ of section moved to last ¶ of sub-§4 | 1977 | Vol.14A Sup. p.41-2 (1977, c.696 §227) |

## 38 M.R.S.A. §§481-490: SITE LOCATION OF DEVELOPMENT

| Section | Changes | Year | Reference |
|---|---|---|---|
| §481 | Added last phrase | 1979 | Vol.16A Sup. p.40 (1979, c.466 §1) |
| §482 | Expanded 1st phrase | 1979 | Vol.16A Sup. p.40 (1979,c.541 §A,263) |
| | Sub-§2: 1st ¶ added phrase re: mining activity | 1979 | Vol.16A Sup. p.40 (1979,c.466§§12,13) |
| | New sub-§2-A, 2-B, 3-A, 4-A, 4-B re: exploration, mining activity, overburden, product, and reclamation | 1979 | Vol.16A Sup. p.40 (1979,c.466§§12,13) |
| §483 | No change since 1971 | | |
| §484 | Deleted end of 1st ¶ re: public notice | 1977 | Vol.16A p. 428-429 |
| | Added 9th & 10th ¶'s re: transmission lines of over 100 kilovolts or gas pipelines | | (1977, c.300 §30) (1977, c.374 §3) |
| | Added 5th ¶ re: conditions under which an electrical company must file a bond | | (1977, c.623) |
| | Changed number "125" to "100" in 4th ¶ | | (1977, c.696 §343) |
| §485 | Deleted phrase in 1st ¶ re: section 484 | 1977 | Vol.16A p.434-5 (1977,c.300§§31,32) |
| | Repealed 2nd & 3rd ¶'s re: the power of the A-G to stop construction or operation and requiring the land restored to prior condition | | |
| §486, §487 | Repealed sections re: enforcement and judicial review | 1977 | Vol.16A p.435 (1977,c.300§§33,34) |
| §488 | Changed "125" to "100" kilovolts | 1977 | Vol.16A p.435 (1977, c.374 §4) |
| | Added last phrase re: gas pipelines and transmission lines | | " " " |
| | Added ¶'s re: exemptions in unorganized and organized areas, standards, guidelines, definitions, and revisions | 1980 | (PL 1980, c.714) |
| §489 | No change since 1975 | | |
| §490 | New section re: reclamation | 1979 | Vol.16A Sup. p.41 (1979,c.466 §14) |

## 38 M.R.S.A. §§581-610: PROTECTION AND IMPROVEMENT OF AIR

| Section | Changes | Year | Reference |
|---|---|---|---|
| §581 | No change since 1969 | | |
| §582 | Added to 1st phrase | 1979 | Vol.16A Sup. p.44 (1979,c.541 §A,271) |
| | Sub-§2: minor changes in text: "building" to "buildings","all machinery" to "any machinery" | | Vol.16A Sup. p.45 (1979,c.127§§212-13) |
| | Sub-§5-B repealed section re: baseline concentration | 1980 | (PL 1980, c.718 §1) |
| | Sub-§6-B added section re: bulk gas terminal | 1979 | Vol.16A Sup. p.45 (1979,c. 385 §1) |
| | Sub-§7-A-1 added section re: external floating roof | 1979 | Vol.16A Sup. p.45 (1979,c.385 §1) |
| | Sub-§7-B added sentence explaining that "fuel burning equipment", doesn't include "solid waste fuel burning equipment" | | Vol.16A Sup. p.45 (1979,c.476§§1,2) |
| | Sub-§7-C repealed section re: fugitive dust | 1980 | (PL 1980, c.718 §2) |
| | Sub-§7-C-1 added section re: fugitive emissions | 1979 | Vol.16A Sup. p.45 (1979,c.381 §§1-5) |
| | Sub-§7-E: minor change in text: "Incinerators" to "Incinerator" | 1979 | Vol.16A Sup. p.45 (1979,c.127§§212-13) |
| | Sub-§7-E-1 added section re: major emitting source and internal floating roof | 1979 | Vol.16A Sup. p.46 (1979, c.381 §4 & c.385 §1) |
| | Repealed the 1st 7-E-1 re:major emitting source | 1980 | (PL 1980, c.718 §3) |
| | Sub-§7-F repealed section re: modification | 1980 | (PL 1980, c.718 §4) |
| | Sub-§9-B added section re: potential emissions and petroleum liquid | 1979 | Vol.16A Sup.p.46-47 (1979, c.381 §5 & c.385 §1) |
| | Repealed 1st definition re: potential emissions | 1980 | (PL 1980, c.718 §5) |
| | Sub-§11-A added section re: true vapor pressure and solid waste fuel | 1979 | Vol.16A Sup. p.47 (1979, c.385 §1 & c.476 §2) |
| | Sub-§11-B added section re: solid waste fuel burning equipment | 1979 | Vol.16A Sup. p.47 (1979, c.476 §2) |
| §583 | No change since 1975 | | |
| §583-A | Repealed section re: hearings and applications | 1977 | Vol.16A p.489 (1977, c.300 §39) |
| §583-B | New section re: classification of air quality control regions | 1979 | Vol.16A Sup. p.48 (1979,c.381 §6) |
| | Sub-§5 ¶ A repealed re: Indian lands | 1980 | (PL 1980,c.732 §28) |
| §584 | Minor textual change in 1st ¶ "herein" changed to "in this chapter" | 1979 | Vol.16A Sup. p.48 (1979,c.541 §A,272) |
| §584-A | Changed microgram numbers | 1979 | Vol.16A Sup. p.49 (1979, c.381 §6-A) |

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| §584-B | New section re: ambient increments Class I regions | 1979 | Vol.16A Sup. p.49 (1979, c.381 §7) |
| §584-C | New section re: Class II regions | 1979 | Vol.16A Sup. p.49 (1979, c.381 §7) |
| §584-D | New section re: Class III regions | 1979 | Vol.16A Sup. p.50 (1979, c.381 §7) |
| §584-E | New section re: exclusions | 1979 | Vol.16A Sup. p.50 (1979, c.381 §7) |
| §585 | Repealed 2nd sentence of 2nd ¶ re: public notice | 1977 | Vol.16A p.493 (1977, c.300 §40) |
| §585-A | Repealed 2nd sentence of 2nd ¶ re: public notice | 1977 | Vol.16A p.494 (1977, c.300 §41) |
| §586 | No change since 1971 | | |
| §587 | Changed reference number in last ¶ | 1977 | Vol.16A p.496 (1977,c.300 §42) |
| | Rewrote 1st ¶ including date requirements for a variance, added last ¶ re: variances under the Federal Clean Air Act | 1979 | Vol.16A Sup. p.50 (1979c.381§§8-11) |
| | Slight deletion in sub-§1: dropped "and" | " | " " " |
| | Slight addition in sub-§2: added "and" | | |
| | Sub-§3 added re: violation | | |
| §588 | Repealed section requiring transcript of all hearings | 1977 | Vol.16A p.496 (1977, c.300 §43) |
| §589 | Changed section reference number | 1977 | Vol.16A p. 497 (1977, c.300 §44) |
| §590 | Rewrote 2nd ¶ to remove all time limits and public notice requirements | 1979 | Vol.16A Sup. p.51-2 (1979,c.381§§12-14) |
| | Added 3rd ¶ re: the board's power to deny a license | | |
| §591 | No change since 1975 | | |
| §592-596 | Repealed section re: violations, appeals, and enforcement | 1977 | Vol.16A p.499 (1977,c.300§§45-8) |
| §597 | No change since 1969 | | |
| §598 | Expanded section to include specific emission levels and malfunction exemptions | 1980 | (PL 1980, c.718 §6) |
| §599 | Repealed sub-§5, 4th ¶, 3rd sentence | 1977 | Vol.16A p.504 (1977, c.300 §49) |
| | Rewrote sub-§2 so that recreational burning is now allowed without a permit if complying with specific requirements | 1979 | Vol.16A Sup. p.52 (1979, c.556 §8) |
| | Sub-§4 repealed re: reports | 1979 | Vol.16A Sup. p.52 (1979, c.127 §214) |

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| §600 | Textual changes in sub-§1 to include solid waste fuel-burning equipment<br>Expanded sub-§2 to discuss allowing higher emission rates if they don't affect air quality | 1979 | Vol.16A Sup. p.53 (1979, c.476 §§4,5) |
| §601 | Deleted sub-§1, paragraph C | 1977 | Vol.16A p.507 (1977, c.602 §§1-3) |
| | Sub-§4 and §5 added re: ambient monitoring system, and start-up and burn-down | | |
| | Minor textual change in sub-§4: "quantity" changed to "quality" | 1977 | Vol.16A Sup. p.507 (1977, c.696 §345) |
| §602 | No change since 1973 | | |
| §603 | No change since 1975 | | |
| §604,605 | No change since 1973 | | |
| §606 | No change since 1975 | | |
| §607 | Rewrote sub-§1 to give DEP the authority to set emission standards and assist municipalities | 1979 | Vol.16A Sup. p.53 (1979, c.535) |
| §608 | Repealed section re: performance standards | 1979 | Vol.16A Sup. p.53 (1979, c.381 §15) |
| §609 | New section re: petroleum liquid storage vapor control | 1979 | Vol.16A Sup. p.53 (1979, c.385 §2) |
| §610 | New section re: petroleum liquid transfer vapor recovery | 1979 | Vol.16A Sup. p.53 p.54(1979,c.385 §2) |

38 M.R.S.A. Chapter 13 §§1301-1319-A: SOLID WASTE MANAGEMENT

| Section | Changes | Year | Reference |
|---|---|---|---|
| §1301 | New title | 1979 | Vol.16A Sup. p.79 (1979, c.383 §1) |
| §1302 | Added phrase "hazardous waste, septage and solid waste" through-out | 1979 | Vol.16A Sup. p.79 (1979, c.383 §1) |
| §1303 | Repealed sub-§2 defining commissioner | 1977 | Vol.16A p.616 (1977, c.78 §208) |
| | Rewrote section | 1979 | Vol.16A Sup. p.80 (1979, c.383) |
| | Added definitions: conveyances, handle | 1980 | (PL 1980 c.663§§234 235 and c.699§§3-8) |
| | Rewrote definitions: hazardous waste, resource conservation& recovery, transport, waste and facility & management | | |
| §1303-A | New section re: hazardous waste handling and transporting | 1980 | (PL 1980 c.699 §9) |
| §1304 | 1) deleted 4th sentence of 1st ¶ of sub-§1 | 1977 | Vol.16A p.617 (1977, c.300 §52) |
| | 2) deleted last sentence of 1st ¶ of sub-§1 | | (1977, c.300 §53) |
| | 3) amended sub-§1, amended sub-§2: changed "regulations" to "rules", dropped "solid" | 1979 | Vol.16A Sup. p.80-1 (1977, c.383 §3 & 1977, c.472 §16) |
| | 4) amended sub-§4: dropped "solid" & added last phrase | | p. 81 (1977, c.383) |
| | 5) added sub-§4-A re: right of entry | | " " " |
| | 6) sub-§5 rewritten re: planning grants | | |
| | 7) sub-§§6,7,8 added re: Study, Hazardous Waste Plan, Licenses | | |
| | 8) sub-§1 rewritten | 1980 | (PL 1980 c.663§236) |
| | 9) sub-§§6,7,8 rewritten | 1980 | (PL 1980 c.699 §11) |
| §1305 | 1) deleted the phrase "the provisions of" from sub-§2 | 1979 | Vol.16A Sup. p.83 (1979,c.541 §A,277) |
| | 2) added sub-§6 re: municipal septage sites | | (1979, c.383 §9) |
| §1306 | Rewritten and expanded | 1979 | Vol.16A Sup. p.83 (1979, c.383 §10) |
| | Sub-§2: word change | 1980 | (PL 1980 c.663§237) |
| | Repealed section re: prohibited acts | 1980 | (PL 1980 c.699 §13) |
| §1306-A | New section re: criminal provisions | 1980 | (PL 1980 c.699 §14) |
| §1306-B | New section re: forfeiture: civil liability | 1980 | (PL 1980 c.699 §15) |
| §1307 | Repealed section re: violations | 1977 | Vol.16A p.618 (1977, c.300 §54) |

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| §1308 | No change since 1973. | | |
| §1309 | New section re: interstate co-operation | 1979 | Vol.16A Sup. p.83 (1979, c.383 §11) |
| §1310 | New section re: emergency | 1979 | Vol.16A Sup. p.84 (1979, c.383 §11) |
| | Rewritten | 1980 | (PL 1980 c.699 §16) |
| §1310-A | New section re: municipal hazardous waste control (was §1311 originally and changed in 1980) | 1979 | Vol.16A Sup. p.84 (1979, c.383 §11) |
| §1310-B | New section re: confidential information | 1980 | (PL 1980,c.699 §17) |
| §1311 | New section re: findings, intent of subsidy | 1979 | Vol.16A Sup. p.84 (1979, c.511 §2) |
| | Added last ¶ requiring the State to pay 50% of cost of maintaining and operating solid waste disposal facilities | 1980 | (PL 1980 c.640 §1) |
| §1312 | New section re: solid waste subsidy | 1979 | Vol.16A Sup. p.84-5 (1979, c.511 §2) |
| | Rewritten | 1980 | (PL 1980 c.640 §2) |
| §1313 | New section re: eligible facilities | 1979 | Vol.16A Sup. p. 85 (1979, c.511 §2) |
| | Rewritten | 1980 | (PL 1980 c.640 §3) |
| §1314 | New section re: eligible costs | 1979 | Vol.16A Sup. p.85 (1979, c.511 §2) |
| | Sub-§6B: phrase added | 1980 | (PL 1980 c.640 §4) |
| | Added sub-§9 re: exclusions | 1980 | (PL 1980 c.640 §6) |
| §1315 | New section re: administration | 1979 | Vol.16A Sup. p.86 (1979, c.511 §2) |
| | Rewritten | 1980 | (PL 1980 c.640 §7) |
| §1316 | No Section | | |
| §1317 | New section re: definitions | 1980 | (PL 1980 c.730 §2) |
| §1317-A | New section re: discharge prohibited | 1980 | (PL 1980 c.730 §2) |
| §1318 | New section re: mitigation of penalties | 1980 | (PL 1980 c.730 §2) |
| §1318-A | New section re: recovery by State for expenditures | 1980 | (PL 1980 c.730 §2) |
| §1318-B | New section re: procecedures for removal of hazardous matter | 1980 | (PL 1980 c.730 §2) |
| §1319 | New section re: powers of the board | 1980 | (PL 1980 c.730 §2) |
| §1319-A | New section re: duties of the commissioner | 1980 | (PL 1980 c.730 §2) |

12 M.R.S.A. §§2206-2212 now 7776-7779: ALTERATION OF RIVERS, STREAMS & BROOKS

Entire section moved by (1979, c.420 §1, effective 12/31/79)

Changes in wording and structure but no changes in meaning.

38 M.R.S.A. §§344-9, 541-57, 560: OIL DISCHARGE PREVENTION & POLLUTION CONTROL

| Section | Changes | Year | Reference |
|---|---|---|---|
| §344 | Enacted 1977 | | Vol.16A p.236 (1977, c.300 §9) |
| | Change "registered" to "certified" in sub-§3 | 1977 | Vol.16A p.236 (1977, c.694 §753) |
| | Textual change in 3rd ¶, sub-§5: dropped references to section 346 | 1977 | Vol.16A p.237 (1977, c.694 §754) |
| §345 | Enacted 1977 | | p.238-9 (1977, c.300 §9) |
| | Textual changes 1) sub-§2,A: changed time requirements, 2) sub-§2,C: changed "calendar" to "past, 3) sub-§6: changed "registered" to "certified" | 1977 | Vol.16A p.238-9 (1977, c.694 §755-757) |
| §346 | Enacted 1977 | | Vol.16A p.240 (1977, c.300 §9) |
| | Rewrote sub-§1 | 1977 | (1977, c.694 §758) |
| | Repealed sub-§2 re: appeal | 1977 | (1977, c.694 §759) |
| | Added sub-§2-A re: appeal | 1977 | (1977, c.696 §342) |
| §347 | Enacted 1977 | | Vol.16A p. 241 (1977, c.300 §9) |
| | Rewrote 1st ¶ of sub-§3 | 1977 | Vol.16A p. 246 (1977, c.694 §760) |
| | Rewrote 1st ¶ of sub-§3: 1) dropped phrase "to the licensee", 2) changed "initiate proceedings in" to "act in accordance with" | 1979 | Vol.16A Sup. p. 20 (1979, c.444 §1) |
| | Added B-1 & B-2 to sub-§3 re: 1) a discharge posing a threat to humans, 2) a license incorrectly issued | 1979 | Vol.16A Sup. p. 20 (1979, c.444 §2) |
| §348 | Enacted 1977 | | Vol.16A p.247-8 (1977, c.300 §9) |
| §349 | Enacted 1977 | | Vol.16A p.248-9 (1977, c.300 §9) |
| | Textual change in sub-§1 & 3 | 1977 | (1977,c.510 §89,80) |
| | Rewrote sub-§4 re: violations | 1977 | (1977,c.510 §91) |
| | Rewrote sub-§4,J: changed section reference number | 1979 | Vol.16A Sup. 20 (1979, c.127 §207) |
| | Textual changes in sub-§1: 1) added section 1306-A as reference, 2) "the Department of Environmental Protection" changed to "the department", 3) "the Board of Environmental Protection" changed to "the board" | 1980 | (PL 1980,c.699§1,2) |
| | Repealed sub-§4, ¶ F re: mining reclamation | 1980 | (PL 1980,c.663§226) |
| §541 | Corrections: 1) dropped "herein" before "set forth" in last sentence of 3rd ¶, 2) "State's" changed to "state's" in last ¶ | 1979 | Vol.16A Sup. p.42 (1979,c.541§A,264-5) |

| | | | |
|---|---|---|---|
| §542 | Rewrote 1st phrase in sub-§6<br>Sub-§7: dropped phrases "petroleum products and their by-products": "tidal" before "waters": and expanded last sentence | 1977 | Vol.16A p.456-7<br>(1977, c.375§§2,3) |
| | Rewrote sub-§9 re: person | 1977 | Vol.16A p. 456-7<br>(1977, c.375 §4) |
| §543 | Two phrase deletions in 1st ¶ | 1977 | Vol.16A p.457<br>(1977, c.375 §5) |
| §544 | No change since 1971 | | |
| §545 | Rewrote sub-§1 & 4: 1) licenses are now for a 1-2 year period but may be issued for shorter periods, 4) subsection was expanded and clarified with no change in meaning | 1977 | Vol.16A p.458-9<br>(1977, c.375§§6,7) |
| §546 | Repealed sub-§1 to 3 and 1st ¶ re: procedure, emergency and enforcement | 1977 | Vol.16A p.460-1<br>(1977,c.300§§35,36) |
| §547 | No change since 1973 | | |
| §548 | Corrections in 2nd ¶, 2nd sentence: dropped phrases "hereinafter provided for" and "the provisions of" | 1979 | Vol.16A Sup. p.43<br>(1979,c.541 §A,266) |
| §549 | Corrections in 1st sentence: dropped phrase "the provisions of" | 1979 | Vol.16A Sup. p.43<br>(1979, c.541 A,267) |
| §550 | Rewrote section | 1977 | Vol.16A p.464-5<br>(1977, c.375 §9) |
| §551 | Deletions & additions in 1st ¶: 1) the fund limit is increased, 2) the board shall collect funds according to sub-§4<br>Sub-§2: changes in 1st sentence: 1) dropped phrase "petroleum products or their by-products", 2) person suffering damages called "the claimant"<br>Added ¶ E re: awarding of funds to claimant<br>Rewrote ¶'s A & B to include situation where person causing the damage is not known<br>Added sub-§2-A re: exemptions with no change in essential meaning but also includes the situation where the person causing damages is not known<br>Sub-§3: rewrote ¶ B<br>Sub-§4: rewritten to cover a situation where existing funds are inadequate, and the procedures to handle the sums received are outlined<br>Sub-§6: rewritten· 1) 1st ¶: the board will not seek recovery of funds if the amount is too small or success of recovery is slight, 2) ¶'s A & B rewritten to involve disbursements made pursuant to sub-§5, ¶'s B, D, and E, 3) ¶ D added allowing the board to file with federal agencies for recovery of funds | 1977 | Vol.16A p.465<br>(1977,c.375 §10-16) |

| | | | |
|---|---|---|---|
| | Sub-§1: dropped phrase "the provisions of" | 1979 | Vol.16A Sup. p.44 (1979,c.541 §A,268) |
| | Sub-§4, ¶ A: raised license fees | 1980 | (PL 1980, c.708) |
| §552 | Rewrote sub-§2: 1) the list of liable is expanded to include person or vessel, 2) reference is made to section 551, sub-§5, ¶'s B,D,& E | 1977 | Vol.16A p.473-4 (1977, c.375 §17) |
| §552-A | Enacted re: detention of vessels | 1977 | Vol.16A p. 475 (1977, c.375 §18) |
| §553 | No change since 1969 | | |
| §554 | No change since 1971 | | |
| §555 | Corrections in 1st sentence: dropped phrase "the provisions of" | 1979 | Vol.16A Sup. p.44 (1979,c.541 §A,269) |
| §556 | Corrections: dropped "however" and "the provisions of" | 1979 | Vol.16A Sup. p.44 (1979,c.541 §A,270) |
| §557 | No change since 1971 | | |
| §558,559 | Blank | | |
| §560 | Textual changes in sub-§1,3,5<br>Rewrote sub-§9<br>Repealed sub-§8 last sentence<br>Repealed sub-§9 | 1977 | Vol.16A p.477-9<br>(1979, c.78 §203-6)<br>(1977, c.300 §37)<br>(1977, c.300 §38) &<br>(1977,c.546 §139-A) |

12 M.R.S.A. §§6171, 6191, 6192, 6193, 6022: MARINE RESOURCE MANAGEMENT

| Section | Changes | Year | Reference |
|---|---|---|---|
| §3504 became | §6171 | 1979 | Vol.6 Sup. p.248-9 (1977, c. 661 §5) (1979, c.404) |
| Add | sub-§2-A re: management plans | | |
| §3505 became | §6191<br>§6192<br>§6193 | 1979 | Vol.6 Sup. p.250-1 (1977, c.661 §5) |
| §3506 became | §6022 | 1979 | Vol. 6 Sup. p.235-6 (1977, c.661 §5) |

# Core Laws
# of
# Maine's Coastal Program

Prepared for the Maine State Planning Office
by Susan MacPherson

September, 1980

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Dear Reader,

This publication, The Core Laws of Maine's Coastal Program, is part of a continuing effort of the State Planning Office to keep Federal agencies and private industry informed of all revisions or additions in Maine State Laws that may affect their activities.

These laws guide the Coastal Program in determining policies for developments and conservation decisions affecting the coast. The book includes the most current version of the laws, incorporating any changes made during the 1980 legislative session.

We hope you find this book both informative and useful.

Allen Pease

Allen Pease,
Director

# INTRODUCTION

Maine's Coastal Program, developed pursuant to the Coastal Zone Management Act of 1972, was approved in October 1978. Referred to as the "Maine's Coastal Program," it is a balanced effort to strengthen the functions of the existing laws and to enhance coastal resource utilization through local and state coastal projects.

The State Planning Office, advised by the Governor's Advisory Committee on Coastal Development and Conservation selected the following eleven resource management laws as the legal foundation or "core laws" of Maine's Coastal Program:

- The Protection of Waters Act
- Shoreland Zoning Act
- Municipal Subdivision Law
- Protection and Improvement of Air Act
- Stream Alteration Act
- Marine Resource Law
- Coastal Wetlands Act
- Land Use Regulation Commission
- Site Location Act
- Solid Waste Management Act
- Oil Discharge Prevention and Pollution Control Act

These laws also serve as basic standards for the state's federal consistency review, provided in Section 307 of the Act. Because of their importance to the Coastal Program we have printed the 11 laws plus their regulations in this book to provide an easy reference guide.

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FOR FURTHER INFORMATION SEE:

Guide to Federal Consistency Under Maine's Coastal Program

Coastal Zone Management Act (PL92-583, PL 94-3270)

Maine's Coastal Program FEIS, August 1978

Federal Register, Vol. 43, No. 49, PP. 10510-10533)

Changes to the Core Laws of Coastal Program, 1980

# PROTECTION AND IMPROVEMENT OF WATERS

MAINE REVISED STATUTES ANNOTATED
Title 38 §§ 361-372, 411-424,
451-452

## § 361. Organization; compensation; meetings; duties

The Board of Environmental Protection, as heretofore established and hereinafter in this subchapter called the "board," shall consist of 10 members appointed by the Governor, subject to review by the Joint Standing Committee on Natural Resources and to confirmation by the Legislature and the Commissioner of Environmental Protection ex officio. The Commissioner of Environmental Protection shall be a nonvoting member of the board. Members of the board shall be chosen to represent the broadest possible interest and experience which can be brought to bear in the implementation of this Title and all other laws which the board is charged with the duty of administering. The members shall be appointed for a term of 4 years and until their successors are appointed and duly qualified.

The members appointed by the Governor shall receive $40 per day for their services at meetings or hearings and all members shall receive necessary traveling expenses for attending any meetings of the board or for any other travel in connection with the official business of the board and under the specific authority of the board, which traveling expenses shall be paid out of the General Fund.

Meetings of the board shall be held at such time and place as shall be determined by the board but not less than 2 meetings per year shall be held. The board shall in October of each year elect a secretary who need not be chosen from among the members of the board. Six members of the board shall constitute a quorum, except for the purpose of conducting any hearing.

The Commissioner of Environmental Protection with the prior approval of the board may obtain the services of consultants on a contractual basis or otherwise as may be necessary to carry out this subchapter.

It shall be the duty of the board, exercising the police power of the State, to control, abate and prevent the pollution of the air, waters, coastal flats and prevent diminution of the highest and best use of the natural environment of the State. The board shall make recommendations to each subsequent Legislature with respect to the classification of the waters and coastal flats and sections thereof within the State, based upon reasonable standards of quality and use.

The board shall make recommendations to each Legislature with respect to the control, abatement and prevention of pollution of the air, waters, coastal flats and other aspects of the natural environment within the State for the benefit of the citizens of this State.

The board shall consult with and advise the authorities of municipalities, persons and businesses having, or about to have, systems of drainage, sewerage or industrial wastes except purely storm water systems located in or on or draining from public ways, as to the best methods of disposing of the drainage, sewage or industrial wastes with reference to the existing and future needs of the municipality, other municipalities, persons or businesses which may be affected thereby. It may consult with and advise with persons or corporations engaged or intending to engage in any manufacturing or other business whose drainage, sewage or industrial wastes may tend to pollute any waters under the jurisdiction of the board, as to the best methods of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drain-

age, sewage and industrial wastes. Municipalities, sewer districts, quasi-municipal corporations, firms, persons, state agencies and other legal entities shall submit to said board for its advice and approval the plans and specifications for any proposed new system of drainage, sewage disposal, sewage treatment or industrial waste disposal into any waters of the State, except purely storm water systems located in or on or draining from public ways and any alterations in existing facilities.

The board is authorized to establish and conduct a continuous planning process in cooperation with appropriate federal, state, regional and municipal officers and agencies, consistent with the requirements of the Federal Water Pollution Control Act, as amended.[1]

The board after a public hearing may adopt, amend and repeal such reasonable fees not to exceed $500 for licenses, permits and approvals that require continuing surveillance.

At such time as the State applies for and receives authority to issue permits under the appropriate provisions of the Federal Water Pollution Control Act, as amended, no person may serve as a board member who receives, or during the 2 years prior to his appointment has received, a significant portion of his income directly or indirectly from license or permit holders or applicants for a license or permit.

## § 361-A. Definitions

Unless the context otherwise indicates, the following words when used in any statute administered by the Department of Environmental Protection shall have the following meanings:

**1. Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

**1-A. Coastal streams.** "Coastal streams" means those waters of the State which drain directly or indirectly into tidal waters, except portions of streams subject to the rise and fall of the tide and those waters listed and classified in sections 368 and 370.

**1-B. Agricultural activities.** "Agricultural activities" means the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm woodlot products, including Christmas trees.

**1-B. Aquifer.** "Aquifer" means a geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water, as identified by the Maine Geological Survey.

**1-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.

(Note: This conflict in numbering should be resolved during the next legislative session.)

**2. Fresh surface waters.** "Fresh surface waters" means all waters of the State other than tidal waters.

**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.

**3. Municipality.** "Municipality" means a city, town, plantation or unorganized township.

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

4-A. **Pollutant.** "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

4-A-1. **Snow dump.** "Snow dump" means a facility that is used for the storage of snow and incidental materials collected from public or private ways.

4-B. **Surface waste water disposal system.** "Surface waste water disposal system" shall mean any system for disposal of waste waters on the surface of the earth, including, but not limited to, holding ponds, surface application and injection systems.

5. **Tidal waters.** "Tidal 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 368 and 369.

6. **Transfer of ownership.** "Transfer of ownership" means a sale, a lease, a sale of over 50% of the stock of a corporation to one legal entity or a merger or consolidation where the surviving corporation is other than the original licensee.

7. **Waters of the State.** "Waters of the State" means any and all surface and subsurface waters which are contained within, flow through, or under or border upon this State or any portion thereof, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

## § 361-B. Repealed. 1977, c. 300, § 13

## § 361-C. Repealed. 1977, c. 300, § 14

### § 361-D. Radioactive waste facilities

1. **Definitions.** For the purposes of this section, unless the context otherwise indicates, the following terms shall have the following meanings.

A. "Permanent radioactive waste repository" means a facility, whether above or below the ground, where radioactive waste materials are to be stored or disposed of in such a way as to be permanently isolated from the biosphere.

B. "Radioactive waste material" means any solid, liquid or gas residue, including spent fuel assemblies prior to reprocessing, remaining after the primary usefulness of the radioactive material has been exhausted and containing nuclides that spontaneously disintegrate or exhibit ionizing radiations.

C. "Temporary radioactive waste repository" means only a facility which is used for the temporary storage or disposal of spent nuclear fuel elements or the by-products of reprocessing spent nuclear fuel elements.

2. **Notification.** Any person intending to construct or operate any temporary or permanent radioactive waste repository shall, at least one year prior to commencing any construction or operation, notify the board in writing of his intent and of the nature and location of the facility, together with any other information the board may require.

3. **Hearing.** Within 30 days of receipt of the notification, the board shall schedule a public hearing in the general area of the proposed project. At the hearing, the board, exercising its investigative authority and the police power of the State, shall solicit and receive testimony to determine whether the project will be subject to section 413, waste discharge licenses, section 590, air emission licensing, and any other laws administered by the board that may be applicable.

4. **Findings.** Within 90 days after the board adjourns any hearing held under this section, it shall make findings of fact and conclude that the project is or is not subject to each of the laws which were addressed at the hearing.

5. **Exemption.** This section shall not apply to the storage of spent nuclear fuel elements at spent fuel element pools when those spent nuclear fuel elements are from the operation of existing nuclear generating facilities within this State and when located within the confines of the site of such a facility.

## § 362. Authority to accept federal funds

The board is designated the public agency of the State of Maine for the purpose of accepting federal funds in relation to water pollution control, water resources and air pollution studies and control. The board is authorized, subject to the approval of the Governor, to 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 such 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 board.

## § 362-A. Experiments and scientific research in the field of pollution and pollution control

Notwithstanding any other law administered or enforced by the department, the department is authorized to permit persons to discharge, emit or place any substances on the land or in the air or waters of the State, in limited quantities and under the strict control and supervision of the department or its designees, exclusively for the purpose of scientific research and experimentation in the field of pollution and pollution control. The research and experimentation conducted under this section shall be subject to such terms and conditions as the department deems necessary in order to protect the public's health, safety and general welfare, and may be terminated by the department at any time upon 24 hours' written notice.

## § 363. Standards of classification of fresh waters

The board shall have 4 standards for the classification of fresh surface waters.

Class A shall be the highest classification and shall be of such quality that it can be used for recreational purposes, including bathing, and for public water supplies after disinfection. The dissolved oxygen content of such waters shall not be less than 75% saturation or as naturally occurs, and contain not more than 20 fecal coliform bacteria per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which would impart color, turbidity, taste or odor other than that which naturally occurs in said waters, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters or contain chemical constituents which would be harmful or offensive to humans or which would be harmful to animal or aquatic life. No radioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

There shall be no discharge of sewage or other pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of sewage or other pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New discharges will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

Class B, the 2nd highest classification, shall be divided into 2 designated groups as B–1 and B–2.

**B–1.** Waters of this class shall be considered the higher quality of the Class B group and shall be acceptable for recreational purposes, including water contact recreation, for use as potable water supply after adequate treatment and for a fish and wildlife habitat. The dissolved oxygen of such waters shall be not less than 75% of saturation, and not less than 5 parts per million at any time. The fecal coliform bacteria shall not exceed 60 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animals or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substances shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

**B–2.** Waters of this class shall be acceptable for recreational purposes including water contact recreation, for industrial and potable water supplies after adequate treatment, and for a fish and wildlife habitat. The dissolved oxygen of such waters shall not be less than 60% of saturation, and not less than 5 parts per million at any time. The fecal coliform bacteria is not to exceed 200 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life, or which adversely affect any other water use in this class. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range. No

radioactive matter or substance shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

Class C waters, the 3rd highest classification, shall be of such a quality as to be satisfactory for recreational boating and fishing, for a fish and wildlife habitat and for other uses except potable water supplies and water contact recreation, unless such waters are adequately treated.

The dissolved oxygen content of such waters shall not be less than 5 parts per million, except in those cases where the board finds that the natural dissolved oxygen of any such body of water falls below 5 parts per million, in which case the board may grant a variance to this requirement. In no event shall the dissolved oxygen content of such waters be less than 4 parts per million. The fecal coliform bacteria is not to exceed 1,000 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion content of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affect any other water use in this class. No radioactive material or substance shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

Class D waters shall be assigned only where a higher water classification cannot be attained after utilizing the best practicable treatment or control of sewage or other wastes. Waters of this class may be used for power generation, navigation and industrial process waters after adequate treatment. Dissolved ox-

ygen of these waters shall not be less than 2.0 parts per million. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the board, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters to impair the usages of this classification. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification. Treated wastes discharging to these waters shall not create a public nuisance as defined in Title 17, section 2802, by the creation of odor-producing sludge banks and deposits or other nuisance conditions.

With respect to all classifications hereinbefore set forth, the board may take such actions as may be appropriate for the best interest of the public, when it finds that any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow.

## § 363-A. Standards of classification of great ponds

The board shall have 2 standards for the classification of great ponds.

Class GP-A shall be the highest classification and shall be of such quality that it can be used for recreational purposes, including bathing, fish and wildlife habitat and for public water supplies after disinfection.

Such waters shall have a Secchi disk transparency of not less than 2.0 meters or as naturally occurs, and contain not more than 20 fecal coliform bacteria per 100 milliliters. Total phosphorus concentration shall not exceed 15 parts per billion, and chlorophyll A concentration shall not exceed 8 parts per billion as measured in samples taken at or near the surface of the water.

These waters shall be free from sludge deposits, solid refuse, floating solids, oils, grease and scum. No radioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

There shall be no direct or indirect discharge of sewage, pollutants or other substances harmful to water quality or aquatic life into waters of this classification except as provided in sections 371-A and 413. No materials shall be placed on the shores or banks thereof in such a manner that the same may fall or be washed into the waters or in such a manner that the drainage therefrom may flow or leach into those waters.

Class GP-B, the 2nd highest classification, shall be acceptable for recreational purposes, including water contact recreation, for use as potable water supply after adequate treatment, and for a fish and wildlife habitat. The fecal coliform bacteria count is not to exceed 60 per 100 milliliters. The total phosphorus concentration shall not exceed 50 parts per billion as measured in samples taken at or near the surface of the water.

These waters shall be free from sludge deposits, solid refuse and floating solids, such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the "pH" of these waters to fall outside of the 5.5 to 8.5 range. There shall be no disposal of any substance that contains chemical constituents which are harmful to humans, animals or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substances shall be discharged to these waters which will raise the radionuclide concentrations above the standards established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents, including, but not limited to, solids, color, turbidity, taste, odor and toxic material, such that these treated wastes will not cause any violation of water quality standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or cause it to be dangerous for human consumption. There shall be no additional discharge of phosphorus to waters of this classification, which discharge does not employ the best available technology for phosphorus removal.

**§ 363-B. Standards of classification of ground water**

The board shall have 2 standards for the classification of ground water.

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.

Class GW-B, the 2nd highest classification, shall be suitable for all usages other than public water supplies.

## § 364. —tidal or marine waters

The board shall have 5 standards for classification of tidal waters:

Class SA, shall be suitable for all clean water usages, including water contact recreation, and fishing. Such waters shall be suitable for the harvesting and propagation of shellfish and for a fish and wildlife habitat. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area or non-shellfish growing area shall not be in excess of 70 per 100 milliliters, nor shall more than 10% of the samples exceed 230 coliform bacteria per 100 milliliters.

The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area or nonshellfish growing area shall not be in excess of 14 per 100 milliliters, nor shall more than 10% of the samples exceed 43 fecal coliform bacteria per 100 milliliters.

There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other waste or heated liquids discharged to waters of this classification either singly or in combinations with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters assigned to this class. There shall be no discharge which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.7 to 8.5 range.

There shall be no disposal of any matter or substances that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish or shellfish if indigenous to the area.

Class SB–1 shall be suitable for all clean water usages including water contact recreation, and fishing. Such waters shall be suitable for the harvesting and propagation of shellfish, and for a fish and wildlife habitat. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 70 per 100 milliliters, nor shall more than 10% of the samples exceed 230 coliform bacteria per 100 milliliters. The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 14 per 100 milliliters, nor shall more than 10% of the samples exceed 43 fecal coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of coliform bacteria in a series of samples representative of the waters shall not exceed 240 per 100 milliliters, nor shall more than 10% of the samples exceed 500 coliform bacteria per 100 milliliters. In a non-shellfish growing area the medi-

an numbers of fecal coliform bacteria in a series of samples representative of the waters shall not exceed 50 per 100 milliliters, nor shall more than 10% of the samples exceed 150 fecal coliform bacteria per 100 milliliters.

There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification, either singly or in combination with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters which are assigned to this class. There shall be no waste discharge which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.7 to 8.5 range. There shall be no disposal of matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material or which interferes with the propagation of fish or shellfish if indigenous to the area.

Class SB–2 shall be suitable for recreational usages, including water contact, and fishing. Such waters shall be suitable for the harvesting and propagation of shellfish, for a fish and wildlife habitat, and suitable for industrial cooling and process uses. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 70 per 100 milliliters, nor shall more than 10% of the samples exceed 230 coliform bacteria per 100 milliliters. The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 14 per 100 milliliters, nor shall more than 10% of the samples exceed 43 fecal coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of coliform bacteria in a series of samples representative of the waters shall not exceed 500 per 100 milliliters, nor shall more than 10% of the samples exceed 1,000 coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of fecal coliform bacteria

in a series of samples representative of the waters shall not exceed 100 per 100 milliliters, nor shall more than 10% of the samples exceed 200 fecal coliform bacteria per 100 milliliters. There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification either singly or in combination with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters assigned to this class. There shall be no waste discharge which will cause the hydrogen-ion concentration or "pH" of the receiving waters to fall outside of the 6.7 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish or shellfish if indigenous to this area.

Class SC, the 4th highest classification, shall be of such quality as to be satisfactory for recreational boating, fishing and other similar uses except primary water contact. Such waters may be used for the propagation of indigenous shellfish to be harvested for depuration purposes, for a fish and wildlife habitat, and for industrial cooling and process uses. The dissolved oxygen content of such waters shall not be less than 5 parts per million at any time. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 700 per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 coliform bacteria per 100 milliliters. The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 150 per 100 milliliters, nor shall more than 10% of the samples exceed 500 fecal coliform bacteria per 100 milliliters. In a non-shellfish growing area the median number of coliform bacteria in a series of samples representative of the waters shall not exceed 1,500 per 100 milliliters nor shall more than 10% of the samples exceed 5,000 coliform bacteria per 100 milliliters.

In a non-shellfish growing area the median numbers of fecal coliform bacteria in a series of samples representative of the waters shall not exceed 300 per 100 milliliters, nor shall more than 10% of the samples exceed 1,000 fecal coliform bacteria per 100 milliliters.

There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes, and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic materials, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification either singly or in combinations with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, or odor thereof or impair the waters for any other usage ascribed to waters of this classification. There shall be no waste discharge which will cause the hydrogen-ion concentration or "pH" of the receiving waters to fall outside the 6.7 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animals or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

Class SD waters shall be assigned only where a higher water classification cannot be attained after utilizing the best practicable treatment or control of sewage or other wastes. Waters of this class may be used for power generation, navigation, industrial process waters or cooling waters, and for migration of fish. Dissolved oxygen of these waters shall not be less than 3.0 parts per million at any time. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the board, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters so as to impair the usages of this classification. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which

would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification. Treated wastes discharging to these waters shall not create a public nuisance as defined in Title 17, section 2802, by the creation of odor-producing sludge banks and deposits or other nuisance conditions.

With respect to all classifications hereinbefore set forth, the board may take such actions as may be appropriate for the best interests of the public, when it finds that any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow.

## § 365. Classification procedure

The board, having made its studies and investigations of given drainage area or portion thereof, shall call public hearings in the area or reasonably adjacent thereto, for the purpose of presenting to all interested people the proposed classification for the particular body of surface waters or tidal flats.

Within a reasonable time following the hearing the board shall give public notice of the proposed classification arrived at after considering the results of the hearing.

## § 366. Cooperation with other departments and agencies

The board is authorized to cooperate with other departments or agencies of this State and with any other state or states and with the Federal Government for the purpose of carrying out this subchapter relating to air, and rivers and waters which run through this State and any other state or states. Said board is authorized to cooperate with the Federal Government for the purpose of carrying out this subchapter relating to any and all rivers and waters which, in whole or in part, are located in or run through this State.

## § 367. Classification of surface waters

The surface waters in sections 368 to 371-A shall be classified in accordance with this subchapter.

The commission may, after careful consideration, public hearings and in consultation with other state agencies and, where appropriate, federal and interstate water pollution control agencies, and the municipalities and industries involved, recommend to the Legislature the classification or change in classification of any fresh surface or tidal waters, or portions thereof.

Sections 368 through 371-A are not included here. To find the classification of a specific body of water in the State of Maine, refer to sections 368 through 371-A of Title 38 in the Maine Revised Statues Annotated.

## § 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.

## § 411. State contribution to pollution abatement

The department is authorized to pay an amount at least 15%, but not to exceed 25%, of the expense of a municipal or quasi-municipal pollution abatement construction program which has received federal approval and federal funds for construction. State grant-in-aid participation under this section shall be limited to grants for waste treatment facilities, interceptor systems and outfalls. The word "expense" shall not include costs relating to land acquisition or debt service.

All proceeds of the sale of bonds for the construction and equipment of pollution abatement facilities to be expended under the direction and supervision of the Department of Environmental Protection shall be segregated, apportioned and expended as provided by the Legislature.

## § 412. Grants by State for planning

**1. Grants by State for planning.** The Department of Environmental Protection is authorized to pay an amount at least 15%, but not to exceed 25%, of the expense incurred by a municipality or quasi-municipal corporation in preliminary or final planning of a pollution abatement program in the form of a grant. Such amount may not be paid until the governing body of the municipality or the quasi-municipal corporation duly votes to proceed with preliminary or final planning of a pollution abatement program, as appropriate.

**A.** For the purposes of this section, "preliminary planning" means engineering studies which 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.

**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 regulations. All proceeds from the sale of bonds for the planning of pollution abatement facilities to be expended under the direction and supervision of the Department of Environmental Protection shall be segregated, apportioned and expended as provided by the Legislature.

### § 412-A. Technical and legal assistance

At the request of any recipient of state funds under section 411 or 412, the department is authorized to provide technical assistance and, through the Attorney General, legal assistance in the administration or enforcement of any contract entered into, by or for the benefit of the recipient in connection with wastewater treatment works or other facilities assisted by these funds.

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 department for the same purposes, which may be properly awarded as actual damages in an action alleging negligence or breach of contract.

## § 413. Waste discharge licenses

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

**1-A. License required for surface waste water disposal systems.** No person shall install, operate or maintain a surface waste water disposal system without first obtaining a license therefor from the board.

**1-B. License required for subsurface waste water disposal systems.** No person shall install, operate or maintain a subsurface waste water disposal system without first obtaining a license therefor from the board, except that a license shall not be required for systems designed and installed in conformance with the State of Maine Plumbing Code, as promulgated under Title 22, section 42.

**2. Exemption.** No person shall be deemed to be in violation of subsection 1 for any discharge as it existed on October 3, 1973 provided that application has been made for a license for such discharge on or before December 31, 1973. The exemption provided by this subsection shall expire upon final administrative disposition of such application or 180 days after the date of such application, whichever occurs first.

No person shall be deemed in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to agricultural activities, subject to the following conditions.

**A.** The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates.

**B.** The board has certified that the plan meets the objectives of this chapter.

**C.** The department determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan.

2-A. Repealed. 1980, c.663, §229.

**2-B. Exemptions; snow dumps.** The Board of Environmental Protection may by rule exempt categories of snow dumps from the need to obtain a license under this section when it finds that the exempted activity would not have a significant adverse effect on the quality or classifications of the waters of the State.

**3. Transfer of ownership.** In the event that any person possessing a license issued by the board shall transfer the ownership of the property, facility or structure which is the source of a licensed discharge, without transfer of the license being approved by the board, the license granted by the board shall continue to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer shall be jointly and severally liable for any violation thereof until such time as the board approves transfer or issuance of a waste discharge license to the new owner. The board may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

4, 5. Repealed. 1973, c. 450, § 10.

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

**7. Tidal waters and subtidal lands.** In connection with a license under sections 414 and 414-A, whenever issued, the board may grant to a licensee a permit to construct, maintain and operate any facilities necessary to comply with the terms of

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

## § 414. Applications for licenses

1. Repealed. 1977, c. 300, § 17.

2. **Terms of licenses.** Licenses shall be issued by the board for a term of not more than 5 years.

3. **Inspection and records.** Authorized representatives of the commissioner and the Attorney General shall have access at any reasonable time, to and through any premises where a discharge originates or is located, for the purposes of inspection, testing and sampling. The board may order a discharger to produce and shall have 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 thereto as it deems necessary.

4. Repealed. 1973, c. 712, § 6.

5. **Unlawful to violate license.** After the issuance of a license by the board it shall be 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.

6. **Conduct of hearings.** The board may establish reasonable fees for the reproduction of materials in its custody including parts of an application submitted to the board and parts of the records of a hearing held by the board under this section. All such fees collected by the board may be retained by it to reimburse expenses incurred in reproducing such materials. Any records, reports or information obtained under this subchapter shall be available to the public, except that upon a showing satisfactory to the board by any person that such records, reports or information, or particular part thereof, other than effluent data, to which the board has access under this subchapter would, if made public divulge methods or processes of such person which are entitled to protection as trade secrets, such records, reports or information shall be confidential and not available for public inspection or examination. Such 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 such terms as the board may prescribe in order to protect such confidential records, reports and information, provided that such disclosure is material and relevant to any issue under consideration by the board.

7. Repealed. 1977, c. 300, § 19.

## § 414-A. Conditions of licenses

**1. Generally.** The board shall issue a license for the discharge of any pollutants only if it finds that:

**A.** The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;

**B.** The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter;

**C.** The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless upon an affirmative showing by the applicant the board finds that such lowering is a result of necessary economic and social development; and

**D.** The discharge will be subject to effluent limitations which require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents which are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources which the board determines are best calculated to protect and improve the quality of the receiving water and which are consistent with the requirements of the Federal Water Pollution Control Act, as amended. In determining best practicable treatment for each such category or class, the board shall consider the then existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives.

**E.** A pesticide discharge is unlikely to exert a significant adverse impact on nontarget species. This standard shall only be applicable to applications to discharge pesticides.

**2. Schedules of compliance.** The board may establish schedules, within the terms and conditions of licenses, for compliance with best practicable treatment including such interim and final dates for attainment of specific standards as are necessary to carry out the purposes of this subchapter. The schedules shall be as short as possible and shall be based upon a consideration of the technological and economic impact of the steps necessary to attain these standards; provided that in any event these schedules shall require complete compliance with subsection 1 not later than October 1, 1976, except the application of best conventional pollutant control technology or best available technology economically achievable, which schedules shall be consistent with the times permitted for compliance by the Federal Water Pollution Control Act, as amended.

**3. Federal law.** At such time as the Administrator of the United States Environmental Protection Agency determines to cease issuing permits for discharges of pollutants to waters of this State pursuant to his authority under Section 402(c)(1) of the Federal Water Pollution Control Act, as amended,[1] the board shall refuse to issue a license for the discharge of pollutants which it finds would violate the provisions of any federal law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after such determination shall contain such provision, including effluent limitations, which the board deems necessary to carry out the purposes of this subchapter and any such federal laws or regulations.

Notwithstanding the foregoing, the board is authorized to issue licenses containing a variance from thermal effluent limitations, or from applicable compliance deadlines to accommodate an innovative technology. The variances shall be granted only in accordance with the Federal Water Pollution Control Act, sections 316 and 301(k), as amended, and applicable regulations.

## § 414-B. Publicly owned treatment works

**1. Definition.** "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

2. **Pretreatment standards.** The board may establish pretreatment standards for the introduction into publicly owned treatment works of pollutants which interfere with, pass through or otherwise are incompatible with those treatment works. In addition, the board may establish pretreatment standards for designated toxic pollutants which may be introduced into a publicly owned treatment works.

The board may require that any license for a discharge from a publicly owned treatment works include conditions to require the identification of pollutants, in terms of character and volume, from any significant source introducing pollutants subject to pretreatment standards, and to assure compliance with these pretreatment standards by each of these sources.

2-A. **Prohibited discharge through publicly owned treatment works.** The discharge to a publicly owned treatment works of any pollutant which interferes with, passes through or otherwise is incompatible with these works, or which is a designated toxic pollutant, is prohibited unless in compliance with pretreatment standards established for the applicable class or category of discharge.

3. **User charges.** The board may impose as a condition in any license for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by users of such treatment works with any system of user charges required by state or federal law or regulations promulgated thereunder.

## § 415. Repealed. 1977, c. 300, § 20

## § 416. Repealed. 1977, c. 375, § 1

## § 417. Certain deposits and discharges prohibited

No person, firm, corporation or other legal entity shall place, deposit or discharge, directly or indirectly into the inland waters or tidal waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow or leach into such waters, any of the following, except as otherwise provided by law:

**A.** Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse;

**B.** Any potatoes or any part or parts thereof;

**C.** Any scrap metal, junk, paper, garbage, septic tank sludge, rubbish, old automobiles or similar refuse.

This section shall not apply to solid waste disposal facilities in operation on July 1, 1977, owned by a municipality or quasi-municipal authority if the operation and maintenance of the facility has been or is approved by the Board of Environmental Protection pursuant to the requirements of chapter 13 and the regulations adopted thereunder.

## § 418. Log driving and storage

1. **Prohibitions.** No person, firm, corporation or other legal entity shall place logs or pulpwood into the inland waters of this State after October 1, 1976 for the purpose of driving the same to pulp mills, lumber mills or any other destination.

No person, firm, corporation or other legal entity shall place logs or pulpwood on the ice of any inland waters of this State after October 1, 1976.

No person, firm, corporation or other legal entity shall place logs or pulpwood into the inland waters of this State after October 1, 1976 for the purpose of storage or curing the same, or for other purposes incidental to the processing of forest products, without a permit from the board as described in subsection 2.

2. **Storage; permit.** Whoever proposes to use the inland waters of this State after October 1, 1976 for the storage or curing of logs or pulpwood, or for other purposes incidental to the processing of forest products, shall apply to the board for a permit for such use. Applications for such permits shall be in such

form and require such information as the board may determine. Within 45 days of receipt of an application, the board shall either grant the application or hold a public hearing thereon as provided.

If the board is able to find, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein, and that inability to conduct such use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 3 years, with such terms and conditions as, in its judgment, may be necessary to protect such quality, standards and rights.

In the event the board deems it necessary to solicit further evidence regarding the proposed use, it shall schedule a public hearing on the application.

At such hearing the board shall solicit and receive testimony concerning the nature and extent of the proposed use and its impact on existing water quality, water classification standards and the public rights of fishing and navigation and the economic implications upon the applicant of such use. If after hearing the board determines that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct such use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 3 years, with such terms and conditions, as in its judgment, may be necessary to protect such quality, standards and rights.

## § 419. Cleaning agents containing phosphate banned

**1. Definitions.**

**A.** "Dairy equipment", as used in this section, means equipment used by farmers or processors for the manufacture or processing of milk and dairy products.

**B.** "Food processing equipment", as used in this section, means equipment used for the processing and packaging of food for sale, except that equipment used at restaurants and similar places of business shall not be included within the meaning of "food processing equipment."

**C.** "High phosphorous detergent", as used in this section, means any detergent, presoak, soap, enzyme or other cleaning agent containing more than 8.7% phosphorous, by weight.

**D.** "Industrial equipment", as used in this section, means equipment used by industrial concerns which concerns are located on any brook, stream or river.

**E.** "Person", as used in this section, means any individual, firm, association, partnership, corporation, municipality, quasi-municipal organization, agency of the State or other legal entity.

**2. Prohibition.** No person shall sell or use any high phosphorous detergent after June 1, 1972.

**3. Exception.** Subsection 2 shall not apply to any high phosphorous detergent sold and used for the purpose of cleaning dairy equipment, food processing equipment and industrial equipment.

**4.** Repealed. 1977, c. 300, § 23.

## § 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 inland ground or surface waters or tidal waters of this State, or on the ice thereof, or on the banks thereof so that the same may flow or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters, any of the following substances:

1. **Mercury.** Mercury, and any compound containing mercury, whether organic or inorganic, in any concentration which increases the natural concentration of mercury in the receiving waters.

A. Any person, firm, corporation or other legal entity who, on January 1, 1971, was discharging any of the substances mentioned in this subsection in connection with an industrial process shall not be deemed in violation of this subsection if on or before December 31, 1971 it shall file with the board a statement indicating the amount of such substance so discharged on said date.

B. Notwithstanding paragraph A, whenever the board shall find that a concentration of 10 parts per billion of mercury or greater is present in any waters of this State, or that danger to public health exists due to mercury concentrations of less than 10 parts per billion in any waters of this State, it may issue an emergency order to all persons discharging to such waters prohibiting or curtailing the further discharge of mercury, and compounds containing mercury, thereto. Such findings and order shall be served in manner similar to that described in section 347, subsection 2, and the parties affected by such order shall have the same rights and duties with respect thereto as is described in section 347, subsection 2.

2. **Toxic or hazardous substances.** Any other toxic substance in any amount or concentration greater than that identified or regulated, including complete prohibition of such substance, by the board. In identifying and regulating such toxic substances, the board shall take into account the toxicity of the substance, its persistence and degradability, the usual or potential presence of any organism affected by such substance in any waters of the State, the importance of such organism and the nature and extent of the effect of such substance on such organisms, either alone or in combination with substances already in the receiving waters or the discharge. As used in this subsection, "toxic substance" shall mean those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

3. **Radiological, chemical or biological warfare agents.** Radiological, chemical or biological warfare agents or high level radioactive wastes.

## § 421. Solid waste disposal areas; location

No boundary of any public or private solid waste disposal area shall lie closer than 300 feet to any classified body of surface water.

If the board shall determine that soil conditions, groundwater conditions, topography or other conditions indicate that any boundary of any such area should be further than 300 feet from any classified body of surface water, it may, after notice to and a hearing with the affected party, order the relocation of such boundaries and the removal of any solid waste, previously depos-

ited within the original boundaries, to the confines of the new boundaries.

Any person, corporation, municipality or state agency establishing a solid waste disposal area after September 23, 1971 may apply to the board for a determination that the boundaries of the proposed area are suitably removed from any classified body of surface water.

Any solid waste disposal area whose boundary is closer than 300 feet to any classified body of surface water shall be discontinued in conformity with this section prior to December 1, 1973.

Notwithstanding this section, if the Board of Environmental Protection shall determine from an examination of soil conditions, groundwater characteristics, climatic conditions, topography, the nature and amount of the solid waste and other appropriate factors, that the deposit of solid waste within an area less than 300 feet from any classified body of surface water, will not result in an unlicensed direct or indirect discharge of pollutants to such body of surface water, it may, after notice and hearing, permit the deposit of solid waste within such area, upon such terms and conditions as it deems necessary. Permits issued pursuant to this section shall be for a term of not more than 2 years but may be renewed for successive 2-year terms after reexamination pursuant to this chapter.

## § 422. Repealed. 1977, c. 564, § 137, eff. July 23, 1977

## § 423. Discharge of waste from watercraft

No person, firm, corporation or other legal entity shall discharge, spill or permit to be discharged sewage, garbage or other pollutants from watercraft, as defined in Title 12, section 2061, subsection 17, and including houseboats, into inland waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters.

Any watercraft, as defined in Title 12, section 2061, subsection 17, including houseboats, operated upon the inland waters of this State and having a permanently installed sanitary waste disposal system shall have securely affixed to the interior discharge opening of such 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.

## § 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.

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.

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.

Such monitors shall not be construed to be employees of this State for any purpose.

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.

## § 451. Enforcement generally

After adoption of any classification by the Legislature for surface waters or tidal flats or sections thereof, it shall be 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 man-

ner as will, after reasonable opportunity for dilution, diffusion or mixture with the receiving waters or heat transfer to the atmosphere, lower the quality of the waters below the minimum requirements of such classifications, or where mixing zones have been established by the board, so lower the quality of those waters outside such zones, notwithstanding any exemptions or licenses which may have been granted or issued under section 413 to 414-B.

The board may establish a mixing zone with respect to any discharge at the time application for license for such discharge is made pursuant to section 414, and when so established shall be a condition of and form a part of the license issued. The board may, after hearing in accordance with section 345, establish by order a mixing zone with respect to any discharge for which a license has heretofore been issued pursuant to section 414, or for which an exemption has been granted by virtue of section 413, subsection 2. Prior to the commencement of any enforcement action to abate a classification violation, the board shall establish, in the manner above provided, a mixing zone with respect to the discharge sought to be thereby affected.

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 by it established under this section, the board may require from the applicant testimony concerning the nature and rate of the discharge; the nature and rate of existing discharges to the wat erway; 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 board's judgement will enable it to establish a reasonable mixing zone for such discharge. An order establishing a mixing zone may provide that the extent thereof shall vary 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.

Where no mixing zones have been established by the board, it shall be 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.

**1. Time schedule.** A municipality, sewer district, person, firm, corporation or other legal entity shall not be deemed in violation of any classification or reclassification adopted on or after January 1, 1967, at any time or times prior to October 1, 1976, with respect to those classifications if by such time or times he or it with respect to any project necessary to achieve compliance with the applicable classification shall have completed all steps required to then be completed by the schedules set forth in this subchapter.

**A.** Preliminary plans and engineers' estimates shall be completed and submitted to the board on or before October 1, 1969.

**B.** Arrangements for administration and financing shall be completed on or before October 1, 1971. This period, in the case of municipalities, shall encompass all financing including obtaining of state and federal grants.

**C.** Detailed engineering and final plan formulation shall be completed on or before October 1, 1972.

**D.** Review of final plans with the board shall be completed and construction commenced on or before October 1, 1973.

**E.** Construction shall be completed and in operation on or before October 1, 1976.

However, a reclassification adopted on or after January 1, 1967 shall not be deemed to exempt any municipality, sewer district, person, firm, corporation or other legal entity from complying with the water quality standards of the last previous classification, as such standards existed on December 31, 1966, and enforcement action may be maintained for noncompliance therewith; provided, however, that in the event that a time schedule for compliance with the standards of such last previous classification was in existence on December 31, 1966 and the municipality, sewer district, person, firm, corporation or other legal entity was on that date in compliance with such time schedule, then no such enforcement action may be maintained, nor shall any further compliance with such time schedule be required.

After notice to and a hearing with the affected parties, the board may issue to any municipality, sewer district, person, firm, corporation or other legal entity, special orders directing such operating results as are necessary to achieve any of the interim goals set out in the above timetable.

Notwithstanding the foregoing timetable, if the board shall determine that any municipality, sewer district, person, firm, corporation or other legal entity can reasonably complete any or all of the foregoing steps at an earlier date or dates than herein provided, the board, after notice and hearing, may order completion of any such steps according to an accelerated schedule.

In determining any such time, or times, to be allotted under the foregoing provision for an accelerated schedule, the board shall consider, but not necessarily be limited to the following factors: The availability of municipal, quasi-municipal, state, federal or other funds, of technical and engineering advice and services, of machinery, construction materials and manpower necessary to construct any proposed abatement facility, and the state of the art of pollution abatement technology.

**2.** Repealed. 1977, c. 300, § 26.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the board shall, as soon thereafter as practicable, make findings of fact based on the record and, if it finds that a violation exists, it shall issue an order aimed at ending the violation.

All orders of the board shall be enforced by the Attorney General. If any order of the board is not complied with within the time period specified, the board shall immediately notify the Attorney General of this fact. Within 21 days thereafter, the Attorney General shall forthwith commence an action in the Superior Court of any county where the violation of the board's order has occurred.

If the board finds that the discharge of any materials into any waters of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property, they shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge. Said injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in this section.

## § 451-A. Time schedule variances

**1. Power to grant variances.** The Board of Environmental Protection shall grant a variance from any statutory water pollution abatement time schedule to any municipality or quasi-municipal entity, hereinafter called the "municipality," upon application by it. The board shall 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; and

**B.** The municipality has demonstrated that it has completed preliminary plans acceptable to the Department of Environmental Protection for the treatment of municipal wastes and for construction of that portion of the municipal sewage system intended to be served by the planned municipal treatment plant when that plant first begins operations; and

**C.** Beginning on October 1, 1976, the municipality shall collect, from each discharger into its sewage system and each discharger not connected to the sewage system which has signed an approved agreement with the municipality pursuant to subsection 2, a fee sufficient to equal their proportionate share of the actual current cost of operating the sewage system for which preliminary plans have been completed and approved pursuant to paragraph B. Actual current costs shall include but not be limited to preliminary plans, final design plans, site acquisition, legal fees, interest fees, sewer system maintenance and rehabilitation and other administrative costs. A municipality may provide, when permitted under the federal construction grant program, that in lieu of such annual fees paid by dischargers, the municipality may apportion an appropriate amount from general revenues to cover that share of fees to be paid by dischargers.

The funds collected or apportioned pursuant to this paragraph and interest collected thereon shall be invested and expended pursuant to Title 30, chapter 241.[1]

Any funds paid by a discharger or discharger not connected to the sewage system pursuant to this paragraph may be credited to the account of the discharger if the municipality is subsequently reimbursed by the federal construction grant program. The credit arrangement shall be determined by agreement between the municipality and the discharger.

Variances shall be issued for a term certain not to exceed 3 years, and may be renewed, except that no variance shall run longer than the time specified for completion of the municipal waste treatment facility. Upon notice of the availability of federal funds, the municipality shall present to the Department of Environmental Protection for approval an implementation schedule for designing, constructing and placing the waste collection and treatment facilities in operation.

Variances may be conditioned upon reasonable and necessary terms relating to appropriate interim measures to be taken by the municipality to maintain or improve water quality.

**2. Exemptions.** Any person, other than a municipality, maintaining a discharge subject to the requirements of sections 413, 414 and 414–A shall be exempt from the requirements of section 414–A, subsection 1, paragraph D, Effluent Limitations and Best Practicable Treatment, if, by July 1, 1976 or on the commencement of a licensed discharge, whichever occurs later, such discharger presents to the Department of Environmental Protection and receives approval of a contract agreeing to connect to the existing or planned municipal sewage system immediately upon completion of construction and commencement of operation of such treatment plant. Such contract must insure that, in the case of a new discharge, such new discharge will not cause serious water quality problems, including but not limited to downgrading the receiving waters so as to make them unsuitable for currently existing uses. For the purpose of this section, a "new discharge" is a discharge which commences or a discharge which changes characteristics or increases licensed volume by more than 10% on or after the effective date of this Act.

**3. Failure to comply with agreement.** Failure to comply with any of the terms of an agreement approved pursuant to subsection 2 shall immediately render such agreement null and void and discharges included in such an agreement shall immediately cease or shall only discharge in accordance with the standards of best practicable treatment specified in section 414–A, subsection 1, paragraph D, and all other requirements of sections 414 and 414–A.

**4. Pretreatment systems.** Where a discharger otherwise exempted from constructing treatment facilities pursuant to this section will be required to pretreat effluents before discharge into the muncipal system pursuant to any requirement of state or federal law, such pretreatment system shall be installed not later than October 1, 1976.

**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,[2] and Title 30, chapters 235 [3] and 237.[4]

**6. Power to grant variances to owners of private dwellings.** The Board of Environmental Protection may grant a variance from any statutory water pollution abatement time schedule for a time certain terminating on or before June 1, 1977 to the owner of a structure which:

**A.** Is located on any Maine coastal island not connected to the mainland by a bridge, road or causeway;

**B.** Has been used as his dwelling place either year round or seasonally prior to March 30, 1976; and

**C.** Is maintaining a discharge subject to the requirements of sections 413, 414 and 414–A if the following conditions exist and requirements are met:

(1) compliance will cause an undue economic burden;

(2) the water quality of the receiving waters will not be seriously impaired;

(3) the discharge will not differ in kind or be greater in quantity from that which occurred prior to March 30, 1976, on a year round basis or seasonally;

(4) the applicant presents to the department and receives approval of a written contract for installation of an alternate system providing best practicable treatment; and

(5) the approved system in subparagraph (4) shall be completed and operating prior to June 1, 1977.

An application for a variance under this subsection must be submitted prior to September 1, 1976. No applicant for a variance under this subsection shall be in violation of any time schedule during the period following application and prior to the Board of Environmental Protection's final action on the application.

**7. Power to grant variances to owners of a single family dwelling.** The Board of Environmental Protection may grant a variance for a time certain from any statutory water pollution abatement time schedule upon receipt of an application from the owner of a single family dwelling which:

**A.** Has been used as his dwelling place year round prior to October 1, 1977;

**B.** Is maintaining a discharge subject to the requirements of sections 413, 414 and 414–A and if the following conditions exist and requirements are met:

(1) The discharge, in the opinion of the Board of Environmental Protection, is not creating a significant danger to the public health, safety and welfare;

(2) The discharge will not differ in kind or be greater in quantity from that which existed prior to October 1, 1977;

(3) The owner of the single family dwelling has a valid waste discharge license;

(4) The owner of the single family dwelling has obtained a certificate of eligibility from a local, county,

regional, state or federal agency stating that the applicant is eligible for an existing program of financial assistance where eligibility is based on income and assets; and

(5) The applicant agrees to seek funds from public agencies or private lending institutions to install an approved wastewater disposal system; and

C. Variances shall be issued for a term certain not to exceed 3 years and may be renewed, except that no variances shall run beyond July 1, 1985. Upon notice of the availability of funds, the licensee shall present to the Department of Environmental Protection for approval an implementation schedule for construction of the required treatment facilities.

Variances may be conditioned upon reasonable and necessary terms relating to appropriate interim measures to be taken by the licensee to obtain adequate funding for the required system.

## § 451-B. Variances

The Board of Environmental Protection may grant a variance from any statutory water pollution time schedule to any industrial licensee, upon application by any industrial licensee, if the board finds that:

1. **Seventy-five percent completion of treatment facility.** Actual construction of an approved industrial project deemed necessary in achieving statutory water quality classifications and regulatory requirement is at least 75% completed.

An approved project shall include but not be limited to a new manufacturing facility which will replace the source of the licensee's existing discharge;

2. **Contractual and financial commitments.** Contractual and financial commitments to complete the approved project have been made; and

3. **Cause for the failure.** The cause for the failure to have completed the approved project in time to meet the statutory time schedule is not directly attributable to the licensee and shall include but not be limited to acts of God, labor disputes, failure of 3rd parties to deliver ordered construction materials, equipment or services on time.

Variances shall be issued for a term certain, not to extend past July 1, 1977, and the board shall modify any existing license to make it consistent with this variance.

## § 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 board such 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 such manner and on such forms as the board may by regulation prescribe, within 30 days of receipt of such forms.

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 501 Fee Schedule-Bureau of Water Quality Control

SUMMARY: These Rules establish the fees to be assessed for waste discharge licenses and log storage permits and when such fees are due for payment. In addition certain classes of licensees are declared exempt from the payment of fees.

1. Licenses for Wastewater Dischargers - MRSA, Title 38, Section 414 and 543.

Waste discharge licenses not exempted by Section 9 of these regulations shall be assessed a fee according to the following schedule:

A. Contaminated Wastewater

A licensed discharge of wastewater containing pollutants other than heat shall be subject to an annual fee calculated according to the following formula:

$$\text{Annual Fee} = \frac{\text{average GPD}}{1{,}000{,}000 \text{ GPD}} \times \$500.00$$

B. Cooling Water

A licensed discharge of cooling water uncontaminated except for heat shall be subject to an annual fee calculated according to the following formula:

$$\text{Annual Fee} = \frac{\text{average GPD}}{10{,}000{,}000 \text{ GPD}} \times \$500.00$$

C. Treated Stormwater

A licensed discharge of treated stormwater shall be subject to an annual fee of $25.00.

D. Licenses encompassing more than one category of discharge

For those licenses including more than one category such as for cooling water plus sanitary wastewater plus industrial wastewater plus treated stormwater, etc., the total fee shall be the sum of the fees for the individual categories as outlined in these regulations except that no annual fee shall exceed $500.00.

E. Miscellaneous

Wastewater discharge licenses that do not fall into the categories described in Section 1(a), (b), (c) or (d) shall be assessed a fee according to one of the following three methods:

1. The Staff may, after consultation with the applicant, recommend to the Board and the Board, may adopt the staff recommendation, a category that best describes the licensed activity;

2. The Staff may recommend to the Board, and the Board may adopt the staff recommendation, that no fee be assessed;

3. The licensed discharge may be assessed an annual fee of $25.00.

F. Minimum Fee

Except as provided by Section 1e or 9 the minimum annual fee assessed a waste discharge license pursuant to these regulations shall be $25.00.

G. Maximum Fee

The maximum annual fee assessed a waste discharge license pursuant to these regulations shall be $500.00.

4. Log Storage Permits - MRSA, Title 38, Section 418

A. A log storage permit for one (1) acre or less shall be subject to an annual fee of $25.00.

B. A log storage permit for more than one (1) acre shall be subject to an annual fee according to the following formula:

Annual Fee = $25.00 + (acres of storage - 1) x $10.00.

C. The annual fee assessed a log storage permit shall not exceed $500.00.

5. Payment Due

A. Licenses issued on or after May 20, 1977

No license, permit, or approval order for which any fee is required pursuant to these regulations shall be effective until payment of that fee is made. All fees shall be paid in advance for the period of the license.

B. Licenses issued prior to May 20, 1977.

1. Licenses, permits, or approval orders issued prior to May 20, 1977 and requiring annual payment of fees shall continue to have fees assessed on an annual basis until expiration.

2. The annual fee shall be due and payable no later than the anniversary date of the license, permit or approval order as indicated above.

3. Failure to remit the proper annual fee prior to the due date will require a late payment fee of $25.00 plus the applicable fee. Failure to pay the proper annual fee plus late payment fee within 60 days of the due date will result in voiding of the license, permit or approval order.

6. Wastewater Treatment Plant Operator Certificates - MRSA, Title 32, Section 4175, 4176, 4177.

A. Applicants for Wastewater Treatment Plant Operator Certificates shall be subject to the following fee schedule.

| | |
|---|---|
| Initial Certification with examination | $10.00 |
| Initial Certification without examination | $10.00 |
| Re-examination | $ 5.00 |
| Reinstatement of Certificate | $ 5.00 |
| Annual Renewal Fee | $ 3.00 |

B. Certificates will be valid continously with payment of the annual renewal fee on or before January first each year, unless otherwise revoked as provided by Title 32, MRSA §4175.

9. Exemptions to Section 1.

The following entities are exempted from fees required by Section 1 of these regulations:

A. Municipalities.

B. Quasi-municipal corporations.

C. Private educational institutions formally recognized by the Department of Education and Cultural Services.

D. Non-profit health institutions licensed by the Department of Health and Welfare.

E. Public educational institutions.

F. Sanitary wastewater treatment plants serving one (1) or more single family homes and licensed to discharge less than 2500 gallons per day.

G. State agencies or Federal agencies.

H. Licensed non-industrial discharges for which there is a valid Time Schedule Waiver for municipal tie-in pursuant to MRSA Title 38 § 451-A.

For the purpose of these regulations an industrial discharge shall mean any discharge containing pollutants as a result of an industrial or manufacturing process.

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: The fees established by these Rules are intended to partially offset the costs for the administration of the licensing/permit program and the necessary inspection and monitoring services.

AUTHORITY: 38 MRSA, Section 361

EFFECTIVE DATE: October 3, 1974
Amended Date: May 20, 1977
February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 515 EXEMPTION FROM WASTE DISCHARGE LICENSING REQUIREMENTS FOR HOLDERS OF PESTICIDE PERMITS

SUMMARY: These Rules exempt restocking activities by the Department of Inland Fish and Wildlife and certain treatment of public water supplies from the necessity of obtaining a waste discharge license provided a valid pesticides permit has been issued by the Pesticides Control Board.

1. Exempt Activities

In accordance with Title 38 M.R.S.A. Section 413, subsection 2A, the Board of Environmental Protection finds that the following categories of pesticides activities will have no significant adverse effect on the quality of the waters of the State.

A. Reclamation of lakes and ponds for restocking purposes by the Department of Inland Fish and Wildlife.

B. Copper sulfate or copper sulfate compound application for treatment of public water supplies where those waters are closed to swimming and fishing.

After public notice and public hearing November 21, 1977, the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: These Rules are intended to avoid duplicate review of certain activities by the Board of Environmental Protection and the Board of Pesticides Control. The exempt activities have been determined to have no significant adverse effect on water quality.

AUTHORITY: 38 M.R.S.A. Section 413

EFFECTIVE DATE: February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 517 CERTIFICATION OF PERSONS SERVICING AND REPAIRING SANITARY WASTE TREATMENT FACILITIES

SUMMARY: These rules establish the procedures by which persons may demonstrate the ability and knowledge necessary to service small (less than 3000 gallons per day) mechanical sanitary waste treatment facilities and obtain a certificate attesting to that ability and knowledge.

1. 3000 Gallons Per Day or Less

Any individual wishing to engage in the business of servicing and repairing small "Home-Type" mechanical sanitary waste treatment facilities with capacities up to 3000 gallons per day must be certified by the Department of Environmental Protection.

2. More than 3000 Gallons Per Day

Individuals wishing to service wastewater treatment units of a capacity greater than 3000 gallons per day must hold a valid wastewater treatment plant operators certificate of the appropriate grade.

3. Certification Procedures

All applicants for certification shall satisfactorily demonstrate to the Department of Environmental Protection the applicants knowledge of package treatment plant operation. Such demonstrations shall include the applicant's education and experience as well as a written examination prepared by the Department.

Any applicant who fails to pass the written examination or who for any other reason is denied certification may reapply at any time. Examination will be administered at least twice annually.

Letters of certification will be issued to successful applicants. Certification shall not in any way warrant or guarantee any work performed by the persons certified.

Certification may be revoked, modified or suspended in accordance with Section 451 Paragraph 2 of Title 38 M.R.S.A.

4. Exemption

Individuals holding Class II or above municipal treatment plant operator's licenses are exempt from this regulation and may service plants of less than 3000 gallons per day as long as they continue to hold a valid municipal treatment plant operator's license.

5. Effective Date

This regulation shall be effective upon the date of filing with the Secretary of State.

BASIS STATEMENT: These rules are intended to provide small treatment plant owner with some assurance that persons claiming to be able to service and repair small treatment plants have demonstrated that ability through a testing program.

AUTHORITY: 38 MRSA, Section 361

EFFECTIVE DATE: August 3, 1976

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 531 REGULATIONS FOR WASTEWATER OPERATOR CERTIFICATION PROGRAM

SUMMARY: These Rules establish the criteria that a person must meet in order to be certified as an operator of a wastewater treatment plant. Treatment plants are classified 1-5 according to population equivalents and type of treatment. Certification for each operator grade 1-5 is based on education and experience. There are provisions for substituting education for experience as well as certain work experiences for actual treatment plant experience.

1. General Conditions

A. Persons who are operators of wastewater treatment plants which require certified operators under the provisions of Title 32 MRSA, Chapter 62, are subject to these regulations.

B. Graduates of the New England Regional Wastewater Institute at Southern Maine Vocational Technical Institute, South Portland, Maine; the Environmental Technology Course at Eastern Maine Vocational Technical Institute, Bangor, Maine, or other equivalent programs will be eligible, upon graduation, for Grade III or lower examination and certification. Such certification shall be provisional pending successful completion of one year of work experience in a Grade II or higher treatment facility under the direct supervision of a fully certified operator.

C. Violations of Title 32, MRSA Chapter 62, by operators who are registered professional engineers will be reported to the State of Maine Engineers Board of Registration.

D. The wastewater treatment plant operator's certificate issued by the Department of Environmental Protection will be displayed in a prominent location at the operator's place of work.

E. All wastewater treatment plant operators, except those qualifying under Title 32, MRSA, Section 4177, certified by the Department of Environmental Protection shall be qualified to operate a plant grade equal to or lower than the certificate grade. Operators qualified under Section 4177 are only permitted to operate the plant in which they were employed at the time the certificate was issued.

2. Certificate Procedure

A. All candidates for a wastewater treatment plant operator's certificate must complete an application as furnished by the Department of Environmental Protection. The application, with appropriate fee, should be forwarded to the Department office in Augusta, Maine.

B. Applicants having the necessary qualifications, as set forth in Section 4, for initial certification with examination or for upgrading present classification, will be notified of the scheduled time and place of examination. Applicants not possessing the necessary qualifications in the grade applied for will be allowed to reapply for such lower grade as their education and experience qualify them. Applicants may be examined up to three months prior to being fully qualified for the desired grade.

3. Work experience in a related field includes plant operation, pilot studies, design, planning, construction, related laboratory work, etc. with the type treatment process applied for.

4. See Section 4 B of explanations of evaluations of related education.

5. Grade I Operator

Applicants for this grade must submit satisfactory evidence of graduation from high school or at least two years experience operating a wastewater treatment plant.

6. Grade II Operator

(A) Applicants for this grade must submit satisfactory evidence of at least four years experience in a wastewater treatment plant. Education may be substituted for no more than three years of experience; or

(B) Submit satisfactory evidence of three years of related education and one year of related work experience.

7. Grade III Operator

(C) Applicants for this grade must submit satisfactory evidence of at least five years experience in a wastewater treatment plant. Education may be substituted for no more than three years of experience; or

(D) Submit satisfactory evidence of at least three years of related education and two years of related work experience.

8. Grade IV Operator

(A) Applicants for this grade must submit satisfactory evidence of at least six years experience in a wastewater treatment plant, three years of which must have been as operator of a Grade II or higher plant. Education may be substituted for no more than three years experience; or

(B) Submit satisfactory evidence of at least four years of related education and two years of related work experience.

9. Grade V Operator

(A) Applicants for this grade must submit satisfactory evidence of at least eight years experience in a wastewater treatment plant, four years of which must have been as operator of a Grade III or higher plant. Education may be submitted for no more than four years experience; or

(B) Submit satisfactory evidence of at least five years related education and three years of related work experience.

4. Operator Qualifications

A. Five grades of operators are hereby established to parallel the previously described classification of wastewater treatment plants. Grade I certified operators shall be considered to be qualified to supervise the Operation of Grade I plants: Grade II certified operators shall be considered as qualified to supervise the operation of Grade II plants, etc.

B. Each applicant shall satisfy the experience requirements for the grade of certification requested. Education may be substituted for experience as set forth below. Educational substitutions will be based on the following:

1. High school education is credited for two years of experience.
2. Post high school education in approved areas of engineering, science and/or related fields, 30 semester hours, or equivalent, equal 1 year.
3. Specialized training courses will be evaluated on the basis of training credits; six classroom hours of approved courses equal one credit, 45 credits equal one year. Examples: 36 hour course = 6 credits; Sacramento Course = 30 credits; ICS Operator Course = 45 credits.

4. All experience and/or education submitted in support of applications which is not specified in this section shall be evaluated on an individual basis.

C. Qualifying examinations are required of all applicants for certification. Persons holding valid certificates in other states may be certified to an equal grade level without examination, providing all other requirements are met.

D. Certificates will be issued attesting to the holder's ability to operate one of two general types of treatment systems:

B = systems utilizing biological means of treatment
P/C = systems utilizing physical and/or chemical means of treatment

Certificates authorize the holder to operate only that type system for which the certificate was issued.

General Requirements and Definitions:

1. Applicants for all certificates must pass an examination for that grade.

2. Work experience in a treatment plant is defined as that gained in actual performance of important operating functions within any wastewater treatment facility.

E. In addition to satisfying the minimum requirements for operating plants of the appropriate grade level, operators of advanced treatment plants must demonstrate by examination special knowledge of advanced wastewater treatment. Applicants passing such examinations will be awarded certificates so indicating.

5. Applicability of Certificates

All certificates issued prior to the effective date of these regulations shall authorize the holder to operate biological treatment systems of the Grade indicated on the certificate or lower.

Exemptions

Persons holding Provisional Certificates who, on the effective date of those regulations, are operating a wastewater treatment facility but are not under the supervision of a fully certified operator are exempted from that requirement as stated in Section 2.

Effective Date

These regulations shall be effective upon the date of filing with the Secretary of State and shall supercede all previous regulations adopted by the Board dealing expressly with the certification of wastewater treatment plant operators.

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: A wastewater treatment plant in order to function properly must be operated by a person with knowledge and experience. These Rules establish the qualifications for persons considered qualified to supervise the operation of wastewater treatment plants in order that the plant will function in a manner that will prevent nuisance conditions or unlawful discharge and protect the public health, safety and welfare.

AUTHORITY: 33 M.R.S.A. Section 4179
38 M.R.S.A. Section 361

EFFECTIVE DATE: March 28, 1975
Amended Date: May 20, 1977
February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 541 REGULATIONS DEFINING BEST PRACTICABLE TREATMENT FOR DISCHARGES FROM SINGLE FAMILY HOMES

SUMMARY: These Rules apply to all discharges from single family homes. Sub-surface disposal and a determination that it is impractical is a prerequisite to Board consideration of an application. Best practicable treatment is defined as a sand filter or if a sandfilter is not feasible a package treatment plant may be substituted. Minimum effluent standards are listed as well as provisions for exception to these standards if an applicant can show cause.

1. Applicability

This regulation shall apply to all licensed discharges from single family homes.

2. Sub-Surface Disposal

No application for a sanitary wastewater discharge from a single family residence or a group of single family residences shall be considered by the Board of Environmental Protection until the applicant has shown that sub-surface disposal is not possible.

3. Best Practicable Treatment

A. Best practicable treatment for sanitary discharges to the waters of the state from single family residences, or groups of such residences shall be defined as a sandfilter system designed and constructed in accordance with good engineering practice or a treatment system approved in accordance with Section 5 of this regulation.

B. Where an applicant demonstrates that a sandfilter system is not economically or technically feasible in the applicant's particular circumstances, the Department may permit the applicant to install a package treatment plant or other waste treatment system in lieu of a sandfilter where such system has the approval of the Department of Environmental Protection.

4. Effluent Quality - Minimum

All discharges licensed pursuant to this regulation shall meet at least the following levels of quality:

A. Discharges to fresh water other than lakes, ponds, and tributaries thereof shall have an effluent whose content shall not exceed a 30 day average concentration of 15 mg/l of B.O.D. 5 and suspended solids or a maximum concentration of 20 mg/l of B.O.D. 5 and suspended solids.

B. Discharges to tidewaters of the state shall be an effluent whose content shall not exceed a 30-day average concentration of 30 mg/l of B.O.D. 5 and suspended solids and maximum concentration of 60 mg/l of B.O.D. 5 and suspended solids.

(B.O.D.) means bio-chemical oxygen demand (5 day)

C. In addition, disinfection shall be required of all treated discharges unless exception is authorized by the Board.

5. Treatment System Approval

A. A treatment system other than a sandfilter may be approved as meeting the best practicable treatment standard where it satisfactory completes tests lasting a period of at least 6 months in actual use on single family residences which tests demonstrate that the quality of effluent produced by such system meets or exceeds the quality of effluent produced by properly designed and maintained sandfilters. The test must be performed on units approved by the Department of Environmental Protection and located in the State of Maine. Testing and sampling methods shall be as determined by the Department of Environmental Protection and shall include a reasonable mix of units subject to full-time use and units subject to intermittent use.

B. Approval pursuant to this section (5) may be revoked at any time that the Department of Environmental Protection determines that a representative sample of approved units is not meeting the performance standards upon which the approval was based.

6. National Sanitation Foundation Certification

The Board of Environmental Protection shall consider for licensing only those mechanical or "package" treatment units that have received certification from the National Sanitation Foundation or equivalent. Those units receiving a Class II Certification shall be considered for discharge into tidewaters only. Units to be considered for other than tidewater discharges must have received a Class I Certification.

Class I and Class II Certifications shall be as defined by the National Sanitation Foundation, Ann Harbor, Michigan.

7. Less Stringent Effluent Quality

The Commissioner may authorize a waste discharge effluent quality less stringent than the requirements of Section 4 whenever he finds that:

A. because of physical and natural conditions of the installation site a treatment system designed to achieve the effluent quality of Section 4 cannot be reasonably installed;

B. maintenance of such limits are not necessary to protect organisms in the receiving water from substantial adverse effects; and

C. the proposed discharge will assure the protection and propagation of a balanced and indigenous population of fish, shellfish and wildlife in and on the receiving body of water.

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: These Rules are intended to guide the owners of single family homes, who discharge to the waters of the state, in the selection of a wastewater treatment system that will abate existing pollution, prevent an unlawful discharge and protect the public health, safety or welfare.

AUTHORITY: 38 M.R.S.A. Section 414

EFFECTIVE DATE: October 30, 1975
Amended Date: February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 550 DISCONTINUANCE OF WASTEWATER TREATMENT LAGOONS

SUMMARY: These Rules define the term wastewater treatment lagoon and outline the procedures by which this type of lagoon maybe discontinued either temporarily or permanently.

1. Definitions

A. Wastewater Treatment Lagoons: Wastewater treatment lagoons means a lagoon, basin or pond consisting of a relatively shallow body of water contained in an earthern basin, lined or unlined, or controlled shape designed for the purpose of storing and/or treating wastewater.

B. Permanent Discontinuance: Permanent discontinuance means the cessation of depositing wastewater into lagoons for more than ninety (90) days.

C. Temporary Discontinuance: Temporary discontinuance means the cessation of depositing wastewater into lagoons for ninety (90) or less days.

2. Notice of Discontinuance

Any person who discontinues the use of a lagoon shall give notice to the Commissioner, in writing, no later than fifteen (15) days after wastewaters have ceased to enter the lagoon.

3. Reclamation Plan

The notices of discontinuance shall be accompanied by a reclamation plan and/or maintenance plan satisfactory to the Commissioner. The method of sludge disposal and the selection of a sludge disposal area shall be in accordance with applicable State laws and regulations.

4. Permanent Abandonment

Any person who intends to permanently discontinue the use of a lagoon shall follow the following minimum procedures:

A. The contents of the lagoon shall be diluted by uncontaminated water until the effluent parameters within the lagoon are equal to or less than the final discharge parameters.

B. The discharge at the time of dilution shall be consistent with the terms of the discharge license.

C. When the contents of the lagoons are equal to or less than the final discharge parameters the lagoon area shall be emptied at a rate consistent with the receiving waters classification requirements.

D. When the liquid in the lagoon has been completely discharged and/or evaporated the sludge in the lagoon shall be (1) removed, or (2) if appropriate used as a soil conditioner.

E. Within fifteen (15) days of removal of the sludge or preparing the soil/sludge mixture the lagoon area shall be graded and seeded with a perennial type plant growth that will prevent erosion and leaching of contaminants into surface and ground waters.

F. If any any time during the dewatering, sludge removal, soil-sludge mixture, and/or seeding, process water is added to the lagoon area by natural or artificial means the dewatering process shall be repeated in accordance with these regulations.

5. Temporary Discontinuance

Any person who intends to temporarily discontinue a lagoon shall follow the following minimum procedures:

A. The contents of the lagoon shall be maintained in an aerobic condition.

B. Solids of any type inconsistent with the terms of the discharge license shall not be allowed to be discharged in the final effluent.

C. The lagoon area may only be emptied in accordance with (1) the terms of the discharge license, or (2) any reasonable terms the Board of Environmental Protection may require of the dischargee.

6. Exemption

The Commissioner may upon written request exempt any seasonal lagoon area from regulation Number .4. The Commissioner in granting a seasonal exemption shall specify the maintenance procedures to be followed while the lagoon area is not receiving wastewaters.

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 21st Day of December, 1977.

BASIS STATEMENT: These Rules provide for the protection of water quality whenever it becomes necessary to discharge the contents of a lagoon to a body of water when in the process of discontinuing the use of a lagoon as a treatment process.

AUTHORITY: 38 M.R.S.A. Section 361

EFFECTIVE DATE: December 27, 1974
Amended Date: February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 555 STANDARDS FOR THE ADDITION OF SEPTAGE AND FLUID HAZARDOUS WASTE TO MUNICIPAL WASTEWATER TREATMENT FACILITIES

SUMMARY: The regulations require each waste water treatment facility owner wishing to receive septage or fluid hazardous waste to submit an application for approval by the Board of Environmental Protection. Approval will coincide with the term of the discharge license and will be given only to those facilities where the addition of septage would not cause violation of design parameters, discharge license limits, or have an adverse effect on sludge handling practices.

Some of the requirements for approval are controlled access, posted hours of operation, volume control, record keeping, testing for BOD, suspended solids, and possibly toxic substances.

1. Scope

These regulations apply to the disposal of septic tank, cesspool wastes or fluid hazardous wastes in wastewater treatment facilities, regulated by 38 M.R.S.A. Sections 1320-1322. They are promulgated under the authority of 38 M.R.S.A. section 343.

2. Purpose

These regulations are to assure that the disposal of septic tank waste in wastewater treatment plants is conducted in a safe, efficient manner which protects the physical facilities and assures proper operation and effluent quality.

3. Definition

A. "Septage" shall mean fluid or solid materials removed from a septic tank, holding tank or cesspool.

B. "Wastewater Treatment Facility" shall mean the facility or group of units provided for the treatment of wastewater. For the purposes of these regulations, collector sewers, interceptor sewers and pumping stations serving as wastewater treatment facility shall be considered part of that facility.

C. "Septage Receiving Facilities" shall mean the point(s) at which the transfer of septage from conveyance vehicles to wastewater treatment facilities takes place.

D. "Fluid hazardous waste" is defined in § 1321 to mean wastes containing sufficient liquid content to be free flowing and which contain or are composed of any element, substance or material designated by the Board of Environmental Protection, after opportunity for public hearing, as being a hazard to the public health, safety or welfare.

4. Prohibition

Disposal of septic tank, cesspool waste or fluid hazardous waste in wastewater treatment facilities is prohibited unless approved by the Board of Environmental Protection.

5. Application

The owner of any wastewater treatment facility wishing to receive septage or fluid hazardous waste for disposal at that facility must apply for approval from the Board of Environmental Protection on forms provided by the Department of Environmental Protection.

6. Minimum Information Required for Approval

A. Type and size of treatment facility;

B. Nature and volume of septage (or fluid hazardous wastes);

C. Methods for treatment and handling of septage;

D. Point(s) of addition to the treatment process;

E. Present operating condition and design of the treatment facility;

F. Discharge license conditions;

G. Septage receiving facilities design;

H. Septage measuring devices;

I. Anticipated impact on sludge disposal practices;

J. Hours of septage disposal operation (and any possible seasonal scheduling).

7. Term of Approval

Approval granted for disposal of septage in wastewater treatment facilities is subject to renewal and modification at the same time as the Waste Discharge License Certificate is considered for renewal.

8. Criteria for Approval

A. Septage may be received for disposal only by wastewater treatment facilities which are found to be in compliance, both before and after the addition of septage, with all terms and limitations of the Waste Discharge License Certificate issued by the Board of Environmental Protection.

B. Septage receiving facilities shall be designed to permit access only under the direct control and supervision of the person in responsible charge of the wastewater treatment facility or his designated representative.

C. Septage receiving facilities shall be available to the users during specified hours. Notice of the location, hours of operation, changes, and rules for use as the owner may see fit shall be posted at the septage receiving site.

D. Septage disposal at the wastewater treatment facility shall not have any adverse impact on the sludge disposal practices of the wastewater treatment facility.

9. Septage Characteristics

A. Volume - The average daily volume of septage received by a wastewater treatment facility shall not exceed 1% of the average daily design flow for that facility. In no case shall the quantity of concentration of septage received cause any design parameter of that wastewater treatment facility to be exceeded.

B. Toxic Materials - Septic wastes which are harmful to the treatment processes shall not be accepted. Wastes which contain heavy metals, toxic chemicals, extreme pH, flammable or corrosive materials in concentrations harmful to the treatment operation shall be refused.

10. Records

Each wastewater treatment facility which accepts septage shall maintain appropriate records of septage received and treated. These records shall include, as a minimum, the following by date.

A. Volume of wastes received;

B. The source of the wastes (name of municipality);

C. The hauler transporting the wastes;

D. The dates and volumes of septage added to the waste treatment stream; and

E. Test results as required by this regulation.

All records pertaining to septage disposal in a wastewater treatment facility shall be maintained by that facility for a minimum of three years.

11. Testing

Periodically each wastewater treatment facility shall conduct laboratory testing, using approved methods, to determine the strength and impact of septage received. For all testing, samples shall be selected to be representative of average or normal conditions:

A. Once per year for each 100,000 gallons or part thereof of septage received, samples of both raw septage and that which is fed into the treatment plant shall be analyzed for $BOD_5$ and total suspended solids; and

B. Upon finding of just cause, the Department of Environmental Protection may require additional testing to be conducted.

12. Effective Date

These regulations shall be effective upon filing with the Office of the Secretary of State.

After public notice and public hearing September 28, 1978 the above regulation is adopted this 25th day of October 1978.

BASIS STATEMENT: Regulation of the addition of septage to treatment facilities is necessary to insure protecting both the treatment process and the integrity of the discharge. When septage is added to a treatment facility with little control of dumping or inadequate handling capability, such a discharge has caused major upsets in the treatment process. The addition of septage stresses sludge handling capability causing high operation and maintenance cost.

AUTHORITY: 38 M.R.S.A. Section 343.

EFFECTIVE DATE:

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 560 REGULATIONS CONCERNING TREATMENT REQUIREMENTS FOR THE SARDINE PROCESSING INDUSTRY

SUMMARY: This rule describes pretreatment requirements for the wastewaters of sardine canneries connected to municipal waste treatment systems and treatment requirements for wastewaters of canneries not connected to municipal systems. It specifies the acceptable levels of treatment for each category of effluent from the cannery.

1. Definition

A. A sardine cannery is a facility engaged in processing and storing herring for subsequent cooking and canning either at the facility or for canning elsewhere. Depending upon the size of the fish, the final product may be conventional canned sardines or fish steaks, etc.

2. Treatment Requirement:

A. The cannery shall be connected into an available municipal sewer system.

B. Exception. A cannery which plans to connect to a municipal system may be eligible for a variance to 2. (A) under M.R.S.A. 38 Section 451-A.

3. Pretreatment of Process Waste Connected to a Municipal System:

A. Pretreatment of the steam box waste water shall be in compliance with the applicable sewer ordinance and consist of a minimum of gravity oil separation in an oil separator device for which plans have been approved by the Department of Environmental Protection.

B. Discharges subject to State Licensing and Federal Permit and minimum treatment requirements include:

1. Direct discharge of retort water without treatment.

2. Flume and fish pump water after adequate screening in a screening device with an efficiency equivalent of that obtained with a Number 30 Standard Sieve.

3. Any other discharge containing pollutants as defined in Title 38, Section 361-A not connected to a municipal treatment system, shall meet Best Practicable Treatment requirements as defined in Section 414-A (D) of Title 38 MRSA.

4. Canneries Not Connected to a Municipal System or Eligible for Exemption

2. (B) shall be subject to requirements in State discharge license and federal permit. Discharges subject to licensing and minimum treatment requirements include:

A. Direct discharge of retort water without treatment.

B. Waste water from, but not limited to, flumes, fish pump, conveyors, floor drains and can-wash shall be screened in a screening device with an efficiency equivalent to that obtained with a Number 30 Standard Sieve.

C. Sanitary waste water shall receive the equivalent of secondary treatment with disinfection.

D. All oil bearing waste of non-petroleum origin, such as, but not limited to, the steam box waste, shall receive treatment in an efficiently operated gravity oil separator of a design approved by this Department, and shall then be subjected to the screening process.

E. Any other discharges containing pollutants as defined in Title 38, Section 361-A shall provide the Best Practicable Treatment Requirements as defined in Section 414-A (D) of Title 38 MRSA.

5. Additional Treatment:

If local problems occur, or the present or the future classification of the receiving water is violated by the discharge after treatment required by these regulations, the Board of Environmental Protection may order the affected plant to provide additional treatment beyond that specified in this regulation.

6. Effective Date

These regulations shall be effective upon the date of filing with the Secretary of State and shall replace and supersede regulations effective August 6, 1976.

After public notice and public hearing November 21, 1977, the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: The sardine processing industry, although of major importance to Maine, is of minor importance when considered nationwide. For that reason, Federal guidelines outlining specific levels of waste treatment were not published and it was difficult to issue state and federal permits. This section is necessary as a basis for State licensing and treatment requirements until more specific Federal Guidelines exist.

AUTHORITY: 38 M.R.S.A. Section 361

EFFECTIVE DATE: August 6, 1976

AMENDED DATE: February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 570 STORMWATER AND COMBINED SEWER OVERFLOWS

SUMMARY: This rule allows discharges from the overflows of combined municipal sewers to meet "Best Practicable Treatment" requirements by developing an approved abatement plan.

1. Stormwater and Combined Sewer Overflow Discharges

For discharges from overflows from combined municipal storm and sanitary sewer systems, the requirement of "Best Practicable Treatment" specified in 38 MRSA, Section 414 A-1 D may be met by an agreement by the discharger, as a condition of its license, to develop a plan within a time limit specified by the Board. The plan shall: (1) identify and locate the above discharges, (2) determine the frequency, extent and the cause of said discharges, including points of inflow into combined systems. (3) determine the effect of these discharges on the receiving water quality classification, (4) identify actions which may be taken to treat or abate the discharges provided, however, that where the Board determines that applicable water quality standards may be violated by any discharge from a combined storm and sanitary system, the Board may order such treatment as it deems necessary to avoid violation of applicable water quality standards.

2. Effective Date

These rules shall be effective upon filing with the Office of the Secretary of State.

After public notice and public hearing November 21, 1977, the above regulation is hereby adopted this 21st Day of December, 1977.

BASIS STATEMENT: To allow municipalities with combined sewer overflows the time to develop and implement a plan to treat or abate those discharges, in a reasonable and orderly manner.

AUTHORITY: 38 M.R.S.A., Section 361

EFFECTIVE DATE: March 14, 1975

AMENDED DATE: February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 571 REGULATIONS FOR ADMINISTERING VARIANCES TO MUNICIPAL AND PRIVATE DISCHARGES PURSUANT TO 38 M.R.S.A., Section 451-A.

SUMMARY: These rules describe the procedures to be followed by the department and applicants when a person seeks a variance from statutory time schedules.

1. Purpose

These regulations are to govern administration by Department of Environmental Protection of the provisions of 38 MRSA, § 451-A, relating to granting of variances from statutory waste treatment requirements of municipalities and private dischargers.

2. Definitions

A. A "comprehensive engineering study" shall mean a study by the municipality which, using proper engineering skills, identifies: those areas served or to be served by sewers, the routes which the sewers are proposed to follow, and facilities (pump stations, etc.) needed for a viable sewer system, all commercial, industrial and private dischargers which will contribute to the sewer system, the estimated volume to be transported through the sewer system and treated by the treatment plant, the projected size, location and type of waste treatment, the projected costs of constructing, operating and maintaining the system, including projected user charges to be impoased, alternatives available for achieving the waste treatment goals, and engineering or economic problems anticipated in implementing the sewerage collection and waste treatment system for the municipality.

B. "Discharger" shall mean an owner of residential (single family homes, camps, apartment buildings, etc.) commercial (laundramats, filling stations, motels and hotels, retail and wholesale stores, office buildings, etc.) or industrial facilities or any other waste water generating activity which results in a point source discharge which was not connected to and discharging through a municipal sewer as of October 1, 1975.

C. "Initial phase of a municipal sewerage system" shall mean those sewers constructed before or concurrently with the waste water treatment facility which will be contributing wastes to the waste water treatment facility on the date it first begins operation.

D. "Municipality" shall mean a municipal or quasi-municipal corporation.

E. "New Discharge" shall mean a discharge which commences or a discharge which changes characteristics or increases licensed volume by more than 10% on or after October 1, 1975.

F. "Preliminary Plan" shall mean either (1) a comprehensive engineering study of the existing and proposed sewerage system and the waste treatment facility, or (2) a plan submitted by municipal officials delineating the streets and areas in the municipality to be served by the waste treatment facility when such plant first commences operation and projected costs of such a system if a more comprehensive study does not exist in a municipality.

3. Variances for Municipalities

A. Upon receipt of an application for a variance from any statutory water pollution abatement time schedule from any municipality or quasi-municipal entity the Board of Environmental Protection shall grant a variance to such municipality only upon a finding that:

1. Federal funds for the construction of municipal waste water treatment facilities are not available.

2. The municipality has an acceptable plan for cost recovery which assures that the municipality will collect from each discharger into its sewerage system which has signed an approved agreement with the municipality pursuant to Section 4 of these regulations, a fee sufficient to equal their proportionate share of the actual current cost of operating the sewerage system for which preliminary plans have been completed and approved pursuant to paragraph 3. Actual current costs shall include but not be limited to preliminary plans, final design plans, site acquisition, legal fees, interest fees, sewer system maintenance and rehabilitation and other administrative costs, provided, however, that in lieu of such a fee system, the municipality may agree to apportion an annual amount from the general revenues, acceptable to the Department, to cover that share of fees to be paid by dischargers.

3. The municipality has demonstrated it has completed preliminary plans acceptable to the Department for the treatment of municipal waste and for construction of the initial phase of the municipal sewer system. Preliminary plans shall only be approved where the Department determines that:

a. There are no engineering or economic problems with the plan which would make impelementation of the plan, as proposed, difficult or excessively costly.

b. The project can be constructed, operated and maintained in a manner not at variance with good engineering or economic practice in the field of constructing, operating and maintaining sewerage systems and waste treatment facilities which will be supported by user charges.

c. Where something less than a comprehensive engineering study is submitted, that such a comprehensive study will be completed within one year of the date of initiation of the comprehensive study and

d. The initial phase of the municipal sewer system and the waste treatment system proposal has been approved by:

i. vote of town meeting for a selectman form of government, or

ii. vote of the council for a council form of government, or

iii. vote of the appropriate governing body of a quasi-municipal corporation.

B. Variances shall be issued for a term certain not to exceed three years, however, no variance for a municipality without an approved comprehensive engineering study shall exceed a term of one year, and no more than one variance will be granted to a municipality which has not initiated a comprehensive engineering study.

C. Variances may be conditioned upon such interim control measures as the Department deems necessary to maintain or improve water quality.

D. Within 30 days of the grant award from the Environmental Protection Agency for construction of waste water treatment facilities the municipality shall present to the Department of Environmental Protection an implementation schedule for completing final design and specifications of the waste water treatment facility and constructing and placing the initial phase of the municipal sewer system and the waste water treatment facilities in operation. Such schedule shall be reviewed and approved, or modified by the Department of Environmental Protection and after such approval shall become binding upon the municipality, and no variance granted to the municipality pursuant to these regulations shall be valid beyond the date for commencement of operation of the municipal waste water treatment facility specified in such implementation plan.

4. Waivers for Individual Dischargers

A. Agreements between individual dischargers and the municipality to be considered for acceptance by the Department of Environmental Protection and thus waiver of treatment requirements must contain at least the following assurances:

1. That the municipality is bound to provide waste treatment for the discharger in the initial phase of the municipal sewer system and that the municipality will indeed provide such treatment as expeditiously as possible after federal and state funds are made available for construction of interceptor sewers and wastewater treatment facilities.

2. That the discharger is connected to the municipal sewer system or is bound to connect to and discharge into the municipal sewer system within 90 days of its availability and that, once the discharger is so discharging to the municipal sewer system, there will be no other unlicensed discharges from its premises.

3. That the discharger is bound to pay to the municipality its proportionate share of the fee for current cost of operation of the sewerage system which has been determined by the municipality pursuant to § 3.A.2 of these regulations, except that this requirement shall not be necessary where the municipality has had approved, pursuant to section 3 of these regulations, a system to apportion an annual amount from general revenues to cover the share of fees paid by dischargers.

4. That the discharger agrees not to increase the volume or change the nature of the discharge significantly without approval from the Department of Environmental Protection.

5. That if the discharger would be required, pursuant to other provisions of law, to pretreat effluents before discharge into the municipal sewage system, such pretreatment system will be installed and in operation on the first day of discharge into the municipal system and at all times thereafter.

B. Waivers pursuant to this section of the regulations shall not exceed the term of the variance granted to the municipality of the discharger pursuant to § 3 of these regulations, provided, however, contracts providing such waivers may be renewed subsequent to the renewal of any variance for the municipality. No waiver thereunder shall run longer than the time specified for completion of the initial phase of the municipal sewer system and the waste water treatment facility.

C. Failure to comply with any of the terms of an agreement approved pursuant to this section shall immediately render such agreement null and void and dischargers 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 of Title 38.

D. No agreements between individual dischargers and a municipality will be approved pursuant to this section (4) unless the municipality has an outstanding and presently valid variance approved by the Department pursuant to section 3 of these regulations. This shall not, however, prevent the Department from receiving and considering agreements prior to the approval of the municipal variance.

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: These rules are intended to provide the necessary additional time for a community to obtain federal and state funds when it is determined that federal funds are not available in time to complete a project according to the statutory time schedules.

AUTHORITY: 38 M.R.S.A., Section 361

EFFECTIVE DATE: September 30, 1975
Amended Date: February 8, 1978

Chapter 580 REGULATIONS RELATING TO SAMPLING PROCEDURES AND ANALYTICAL PROCEDURES

SUMMARY: This rule establishes standards whereby all sampling and analysis will be performed according to accepted technical procedures for chemical and biological analysis.

1. Sampling Procedures

The latest edition of the following publications will be used as standards for sample collection, preservation, and analysis.

A. Standard Methods for the Examination of Water and Wastewaters, American Public Health Association, New York, N.Y.

B. A.S.T.M. Standards, Part 23, Water; Atmospheric Analysis; American Society of Testing and Materials; Philadelphia, Penn.

C. Methods for Chemical Analysis of Water and Wastes, Environmental Protection Agency Water Quality Office, Analytical Quality Control Laboratory 1014 Broadway, Cincinnati, Ohio.

2. to 5. Reserved

6. Bioassay Procedures

Bioassay procedures will be performed according to Department of Environmental Protection standard methods.

7. to 10. Reserved

BASIS STATEMENT: In order to maintain an established, standard sampling and analysis program for chemical and biological samples and to provide quality control and continuity among data from which a variety of decisions will be made.

AUTHORITY: 38 M.R.S.A., Section 361

EFFECTIVE DATE: November 29, 1973

AMENDED DATE: March 14, 1977

Chapter 581 REGULATIONS RELATING TO WATER QUALITY EVALUATIONS

SUMMARY: These rules provide for the maintenance of stream and lake classifications without violations by computing capacity of the waters to break down waste and allows fish, wildlife, and organisms in the receiving waters to migrate both up and downstream in an undisturbed section of river adjacent to a waste discharge outfall. In addition, a scale of 0 to 100 is established in order to measure the trophic state or degree of enrichment of lakes due to nutrient input.

1. Assimilative Capacity--Rivers and Streams

For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of such river or stream shall be computed using the minimum seven day low flow which occurs once in ten years. Waste discharges shall be appropriately reduced when flows fall below the seven day ten year low flow if the Board determines that such reduction is necessary to maintain such applicable classifications.

2. Minimum Flow--Regulated Rivers and Streams

For regulated rivers and streams, the Department may establish a minimum flow necessary to maintain water quality standards. This flow will be based upon achieving the assigned classification, criteria and protection of the uses of the stream. The Department will cooperate with appropriate Federal, State and private interests in the development and maintenance of stream flow requirements.

3. Assimilative Capacity--Great Ponds

The hydraulic residence time will be used to compute the assimilative capacity of great ponds. Hydraulic residence time will be computed by dividing lake volume by the product of watershed area and the precipitation runoff coefficient.

4. Reserved

5. Zone of Passage

All discharges of pollutants shall, at a minimum, provide for a zone of passage for free-swimming and drifting organisms. Such zone of passage shall not be less than 3/4 of the cross-sectional area at any point in the receiving body of water. Such zone of passage may be reduced whenever the applicant for a discharge can demonstrate that (a) because of physical phenomena in the receiving body of water such minimum zone cannot be maintained and (b) such minimum zone of passage is not necessary to protect organisms in the receiving

body of water from substantial adverse effects.

6. Great Ponds Trophic State Index (TSI)

For the purposes of determining trophic state of great ponds the following trophic state index will be used.

Zero on this scale indicates poor water quality and 100 indicates excellent water quality. The TSI is defined as 40 + 33 ($\log_{10}$ minimum Secchi disk transparency in meters). Average chlorophyll a and spring total phosphorus may also be related to TSI.

7. Stream Species Diversity Index

The generic diversity of the bottom fauna of waters classified B-1 and B-2 shall not be less than 2.2 as measured by the Shannon-Weiner diversity index.

BASIS STATEMENT: These regulations provide the framework for more clearly and comprehensively defined water quality evaluation for both rivers and ponds and allows for optimum management of waters of the State.

AUTHORITY: 38 M.R.S.A., Section 361

EFFECTIVE DATE: November 29, 1973

AMENDED DATE: March 14, 1977

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 582 REGULATIONS RELATING TO TEMPERATURE

SUMMARY: These rules provide safeguards for fresh and salt water fauna in lakes and rivers of the state, by establishing instream limits on temperature resulting from thermal discharges.

1. Freshwater Thermal Discharges

No discharge of pollutants shall cause the ambient temperature of any freshwater body, as measured outside a mixing zone, to be raised more than 5°F or more than 3°F in the epilimnion of any lake or pond. In no event shall any discharge cause the temperature of any freshwater body to exceed 84°F at any point outside a mixing zone established by the Board, nor shall such discharge cause the temperature of any waters which presently are designed as trout or salmon waters to exceed 68°F at any point outside a mixing zone established by the Board.

2. to 4. Reserved

5. Tidal Water Thermal Discharges

No discharge of pollutants shall cause the monthly mean of the daily maximum ambient temperatures in any tidal body of water, as measured outside the mixing zone, to be raised more than 4°F, nor more than 1.5°F from June 1 to September 1. In no event shall any discharge cause the temperature of any tidal waters to exceed 85°F at any point outside a mixing zone established by the Board.

6. to 8. Reserved

BASIS STATEMENT: Organisms living within the aquatic environment are susceptible to changes of temperature in their environment. Limits established protect well being of species living in water bodies in proximity to thermal discharges.

AUTHORITY: 38 M.R.S.A., Section 361

EFFECTIVE DATE: November 29, 1973

Chapter 583 REGULATIONS RELATING TO NUTRIENT CONCENTRATIONS

SUMMARY: This rule requires a high degree of removal of phosphorus for new discharges which flow into lakes or ponds and requires existing dischargers to a lake or pond to remove phosphorus to highest levels feasible by current technology. In addition, limits on phosphorus to tributaries which enter into Great Ponds are established.

1. Phosphorus

There shall be no additional discharge of phosphorus to any lake or pond or tributary thereto which discharge does not employ the best available technology for phosphorus removal.

2. Existing Discharges

Existing discharges of phosphorus to any lake, pond or tributary thereto shall, on or before October 1, 1976, be treated to remove phosphorus to the maximum extent technically feasible.

3. Phosphorus Concentrations in Tributaries to Great Ponds

Not withstanding Sections 583.1 and 583.2, the ambient concentration for total phosphorus in all tributaries to Great Ponds shall not exceed 50 micrograms per liter (50 ug/l).

BASIS STATEMENT: This rule is intended to prevent lakes and ponds from developing algae conditions that would interfere with the recreational and best use of the lake waters.

AUTHORITY: 38 M.R.S.A., Section 361

EFFECTIVE DATE: November 29, 1973

AMENDED DATE: March 14, 1977

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 584 REGULATIONS RELATING TO WATER QUALITY CRITERIA

SUMMARY: This rule limits the concentration of a heavy metal (chromium) to Class B-1 and B-2 waters which is toxic to aquatic life.

1. Water Quality Criteria

The criteria listed below will apply only to Section 363, standards of classification of fresh waters, class B-1 and B-2. The numbers represent maximum acceptable concentration limits in the receiving waters. All numbers are expressed in micrograms per liter (ug/l).

2. Metals

| Metal | Concentration |
|---|---|
| A. Chromium | 50 ug/l |

BASIS STATEMENT: In order to control the amount of toxic waste being discharged into waters of the State, an instream limit was established to protect aquatic wildlife.

AUTHORITY: 38 M.R.S.A., Section 361

EFFECTIVE DATE: March 14, 1977

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 590 VARIANCES FROM VARIOUS REGULATIONS

SUMMARY: These rules allow variances from regulations pertaining to sampling and analytical techniques, temperature, water quality evaluation criteria, nutrient concentrations, and water quality criteria if an applicant can demonstrate to the Board that the requirements of the regulations are not necessary to protect and enhance water quality.

1. Variances

The Board may, in any license or Order issued by it, impose on any discharge limitations more stringent than those required by Regulations chapters 580, 581, 582, 583, and 584 whenever the physical or chemical properties or biological phenomena in the receiving body of water so require in order to maintain the statutory classification. The Board may authorize a variance from any of the limits established hereby whenever the applicant demonstrates that (a) because of physical or natural conditions in the receiving body of water such limits cannot be attained and (b) maintenance of such limits are not necessary to protect organisms in the receiving water from substantial adverse effects and (c) the proposed discharge will assure the protection and propagation of a balanced and indigenous population of fish, shellfish and wildlife in and on the receiving body of water.

BASIS STATEMENT: The requirements of regulations Chapters 580, 581, 582, 583, and 584 may not be necessary in every instance. This regulation allows an applicant to demonstrate to the Board that different criteria will meet the objectives of the water quality program.

AUTHORITY: 38 MRSA, Section 361

EFFECTIVE DATE: November 29, 1973

Amended Date: March 14, 1977

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 591 EXEMPTIONS FROM VARIOUS REGULATIONS

SUMMARY: This rule provides that certain rules will not supercede conditions in orders or licenses issued by the Board.

1. Exemptions From Various Regulations

No provision of Regulations 580, 581, 582, 583, 584 and 590 shall be deemed to change, alter, affect or supersede the terms or conditions of any Order or license heretofore issued by the Board of Environmental Protection.

BASIS STATEMENT: In order to allow conditions of orders or licenses issued by the Board to remain in effect.

AUTHORITY: 38 M.R.S.A., Section 361

EFFECTIVE DATE: November 29, 1973

AMENDED DATE: March 14, 1977

# ALTERATION OF COASTAL WETLANDS ACT

MAINE REVISED STATUTES ANNOTATED
Title 38 §§ 471-478

## § 471. Prohibitions

No person shall dredge or cause to be dredged, drain or cause to be drained, fill or cause to be filled or erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure in, on or over any coastal wetland; or bulldoze, remove, add or displace sand, or build any permanent structure in, on or over any coastal sand dune without first obtaining a permit therefor from the Board of Environmental Protection or a municipality acting under the provisions of sections 473 and 474; nor shall any action be taken in violation of the conditions of such permit, once obtained.

## § 472. Definition

As used in the alteration of coastal wetlands law, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Coastal sand dunes.** "Coastal sand dunes" are sand deposits within a marine beach system above high tide including, but not limited to, beach berms, frontal dune ridges, back dune areas and other sand areas deposited by wave or wind action. Coastal sand dunes may extend into the coastal wetlands.

2. **Coastal wetlands.** "Coastal wetlands" are all tidal and subtidal lands including all areas below any identifiable debris line left by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity. Coastal wetlands may include portions of coastal sand dunes.

## § 473. Permit granting authority

All permits shall be issued by the Board of Environmental Protection, except that a municipality may apply, on forms provided by the board, to the Board of Environmental Protection for authority to issue such permits. The board shall grant such authority if it finds that the municipality has:

1. **Planning board.** Established a planning board;

2. **Adopted zoning ordinance.** Adopted a zoning ordinance approved by the board and the Land Use Regulation Commission, pursuant to Title 12, chapter 424;

3. **Notice.** Made provision by ordinance or regulation for prompt notice to the board and the public upon receipt of application and written notification to the applicant and the board of the issuance of or denial of a permit stating the reasons therefor; and

4. **Application form.** The application form shall be the same as that provided by the Board of Environmental Protection.

In the event that the board finds that a municipality has failed to satisfy one or more of the above listed criteria, it shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If at any time the board determines that a municipality may be failing to exercise its permit granting authority in accordance with its approved procedures or the purposes of this Article as embodied in the standards set forth in section 474, it shall notify the municipality of the specific alleged deficiencies

and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality to solicit public or official comment thereon. Following such hearing, if it finds such deficiencies, it may revoke the municipalities permit granting authority. The municipality may reapply for authority at any time.

## § 474. Permits; standards

1. **Wetlands Permit.** If the applicant for the wetlands permit demonstrates to the satisfaction of the board or municipality as appropriate, that the proposed activity will not unreasonably interfere with existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm wildlife or freshwater, estuarine or marine fisheries; nor lower the quality of any waters, the board or municipality shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the foregoing standards.

Within 30 days after receipt of a completed application for a permit, the board or municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order for which hearing adequate public notice shall be given. Within 30 days after the adjournment of such hearing, the board or municipality shall either issue the permit or deny the permit setting forth the reasons therefor. In the event that a permit applied for is denied either by the municipality or the board, the applicant may request a hearing before either of the above with reasonable public notice given.

The board shall issue no permit without notifying the municipality in which the proposed alteration is to occur and considering any comments filed within a reasonable period by said municipality.

No permit issued by a municipality shall become effective until 30 days subsequent to its issuance, but if approved by the board in less than 30 days then the effective date shall be the date of approval. A copy of the application for the permit and the permit issued by the municipality shall be sent to the board immediately upon its issuance by registered mail. The board shall review such permit and either approve, deny or modify it as it deems necessary. Failure of the board to act within 30 days of the receipt of the permit by the municipality shall constitute its approval and the permit shall be effective as issued. When winter conditions prevent the board or municipality from evaluating a permit application, the board or municipality, upon notifying the applicant of such fact, may defer action on the application for a reasonable period. The applicant shall not during the period of deferral fill or cause to be filled, dredge or cause to be dredged, drain or cause to be drained or otherwise alter such coastal wetland.

2. **Sand dunes permit.** If the applicant for a sand dunes permit demonstrates to the satisfaction of the board or municipality, as appropriate, that the proposed activity will not unreasonably interfere with existing recreational or wildlife uses; unreasonably interfere with the natural supply or movement of sand within or to the sand dune system; unreasonably increase the erosion hazard to the sand dune system; or cause an unreasonable flood hazard to structures built in, on or over any coastal sand dune or neighboring property, the board or municipality shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the foregoing standards.

3. **Single permit.** In the event that a project affects both wetland areas and sand dune areas, the board or municipality, as appropriate, shall grant a single permit upon such terms as are necessary to comply with the foregoing standards.

## § 475. Penalties

A violation is defined as any filling, dredging, draining, depositing, altering, erecting or removal of materials which takes place in coastal wetlands contrary to the provisions of a valid permit or without a permit having been issued, and without regard to whether these physical acts were witnessed as they were being carried out or whether the action was willfully undertaken to avoid the intent of this subchapter or without knowledge of this subchapter undertaken. Any such filling, dredging, drain-

ing, depositing, altering or removal of materials shall be prima facie evidence that it was done or caused to be done by the owner of such coastal wetlands.

## § 476. Enforcement

Inland fish and game wardens, coastal wardens and all other law enforcement officers enumerated in Title 12, section 2003 shall enforce this subchapter.

## § 477. Repealed. 1977, c. 300, § 29

## § 478. Exemptions

The Board of Environmental Protection may by rule or regulation exempt from this subchapter certain activities including, but not limited to, repairs and maintenance of existing structures or waive such procedural requirements as it deems not inconsistent with the purposes of this subchapter. Nothing in this subchapter shall prohibit the minor repair of existing permanent structures which would require less than a total of one cubic yard of material to be filled, deposited, dredged, moved or removed in any coastal wetland or normal maintenance or repair of presently existing ways, roads or railroad beds nor maintenance and repair of installations and facilities of any utility as defined in Title 23, section 255, abutting or crossing said coastal wetlands, provided no watercourse is substantially altered.

# Chapter 340 DEFINITIONS OF TERMS USED IN THE ALTERATION OF COASTAL WETLANDS LAW AND REGULATIONS

SUMMARY: This chapter defines and clarifies terms used in the Alteration of Coastal Wetlands Law (38 M.R.S.A. §471 et seq.) and in the regulations interpreting the Alteration of Coastal Wetlands Law.

## 1. Definitions

The following terms, as used in the Alteration of Coastal Wetlands Law (38 M.R.S.A. §471 et seq.) and in these regulations (Chapter 340-347) shall have the following meaning, unless the context otherwise indicates:

A. Board. "Board" means the Board of Environmental Protection.

B. Coastal Bank. "Coastal bank" means the seaward face or side of any elevated land form, other than a dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other wetland area.

C. Coastal Beach. "Coastal beach" means the gently sloping shore of a body of tidal water consisting of unconsolidated sediment subject to wave, tidal, and coastal storm action.

D. Coastal Wetlands Law. "Coastal Wetlands Law" means the Alteration of Coastal Wetlands Law, 38 M.R.S.A. §471 et seq.

E. Department. "Department" means the Department of Environmental Protection.

F. Drain. "Drain" means to rid or attempt to rid land of surface water by deepening, straightening, or embanking the natural water courses which run through it and by supplementing natural water courses, when necessary, with artificial ditches and canals.

G. Dredge. "Dredge" means to move or remove, by digging or scooping, sand, silt, mud, gravel, rock, or any other substance.

H. Fill. "Fill" means to put into or upon, supply to, or allow to enter a coastal wetland any earth, rock, gravel, sand, clay, peat, trash, garbage, sewage, or any other material of either a solid or liquid nature.

I. Permanent Structure. "Permanent structure", as used in 38 M.R.S.A. §471 and §478, shall not include:

1. Floating structures located in coastal wetlands less than 7 months a year, such as rafts, houseboats, or other floating structures attached to the land solely by lines or removable runways.

2. Temporary structures intended for seasonal use and in place less than 7 months per year, such as tents, removable blinds, or ice houses.

*NOTE: "Permanent structure" shall include permanent fixtures or alterations, such as piers or cement slabs, intended to support, attach to, or provide access to floating or temporary structures.*

J. Productivity. "Productivity" means the rate of biomass production over a specified period of time. Biomass includes the amount of living plant and animal matter present and is usually expressed as the number or weight per unit area or volume of habitat.

K. Staff. "Staff" means the Staff of the Department of Environmental Protection.

L. Vegetation ... tolerant of salt water ... . "Vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat", as used in 38 M.R.S.A. §472, means the following types of vegetation:

| Scientific Name | Common Name |
|---|---|
| Low Salt Marsh | |
| Ruppia maritima | Ditch grass |
| Spartina alterniflora | Salt marsh cord grass |
| Zostera marina | Eelgrass |
| High Salt Marsh and Transition Area Between High Salt Marsh and Freshwater | |
| Antriplex patula v. hastata | Orach |
| Carex mackenziei | Sedge |
| C. paleacea | Salt marsh sedge |
| C. salina | Sedge |
| Distichlis spicata | Spikegrass |
| Eleocharis halophila | Spikerush |
| Glaux maritima | Sea milkwort |
| Juncus gerardii | Black grass |
| Ligusticum scothicum | Scotch lovage |
| Limonium carolinianum | Sea lavender |
| L. nashii | Sea lavender |
| Plantago juncoides | Seaside plaintain |
| Potentilla anserina | Silverweed |
| Puccinellia maritima | Alkali grass |
| P. paupercula | Goose grass |
| Salicornia bigelovii | Glasswort |
| S. europaea | Glasswort |
| Scripus maritimus | Salt marsh bullrush |
| S. paludosus v. atlanticus | Bayonet grass |
| Solidago sempervirens | Seaside goldenrod |
| Spartina patens | Salt meadow hay |
| Sueda maritima | Sea blite |
| Triglochin maritima | Arrow grass |

*NOTE: All scientific names are taken from Grey's Manual of Botany, 8th Edition.*

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are adopted to explain and clarify the meaning of words and terms used in the Alteration of Coastal Wetlands Law and in these regulations interpreting that law.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 341 EXEMPTIONS AND WAIVERS UNDER SECTION 478 OF THE COASTAL WETLANDS LAW

SUMMARY: These regulations describe activities exempt from, and procedural requirements waived under, the Coastal Wetlands Law in accordance with 38 M.R.S.A. §478.

1. Activities Exempt from the Permit Requirement

In addition to those activities specified under 38 M.R.S.A. §478, the following activities are exempt from the requirements of the Coastal Wetlands Law.

A. The construction and operation of fish weirs, provided proper practices with regard to navigational safety are followed. Fish weirs must be designed and constructed in a manner which allows water to flow through the weir and circulate normally.

B. The placement and use of boat moorings below the mean low tide line provided that proper practices with regard to navigational safety are followed. Such boat moorings shall include any type of bottom anchoring device to which is attached a line, cable or chain, with a float on the surface, used only for mooring boats of less than sixty-five feet.

C. The dumping of snow and attendant material from normal snow clean-up operations directly into a tidal area in a manner which does not cause physical alteration to the wetlands area. This exemption shall terminate on June 30, 1984.

1. Normal snow clean-ups include the removal of snow from roads, parking areas or other travelled ways, but does not include the removal of snow known to be contaminated with solid waste, commercial or industrial wastes, or hazardous wastes.

D. The repair and/or replacement of structures in coastal wetlands areas provided that:

1. The structures were in existence and in active use within the one-year period preceding their repair or replacement;

2. The repair or replacement does not result in an encroachment into the wetland area greater than that of the previously existing structure;

3. The repair or replacement does not result in a structure significantly different from that of the previously existing structure;

4. All repairs will be completed within one year of the date of the occurrence of the damage; and

5. All repair will be completed within 60 days of their commencement.

*NOTE: 38 M.R.S.A. §478 states in part: "Nothing in this subchapter shall prohibit the minor repair of existing permanent structures which would require less than a total of one cubic yard of material to be filled, deposited, dredged, moved or removed in any coastal wetland or normal maintenance or repair of presently existing ways, roads or railroad beds nor maintenance and repair of installations of facilities of any utility as defined in Title 23, section 255, abutting or crossing said coastal wetlands, provided no watercourse is substantially altered."*

2. Activities for Which Procedural Requirements May be Waived

A. Sewage Treatment Procedural Requirements:

1. The Board waives the procedural requirements, as authorized by 38 M.R.S.A. §478, for the following activities:

a. The deposit of treated sanitary sewage.

b. The construction of a sewage outfall line from a single family residence where the property owner holds a valid sanitary wastewater discharge license, issued by the Board pursuant to 38 M.R.S.A. §§413 and 414A, meets the standards of best practical treatment pursuant to 38 M.R.S.A. §414A, and has made adequate provision for the restoration of wetland areas altered during the construction of the outfall line.

2. The following procedural requirements shall replace those specified in 38 M.R.S.A. §474 and in applicable regulations:

a. A person desiring to engage in wetlands activities described in Paragraph 1 shall, prior to engaging in the activity:

i. Write a letter to the Commissioner of the Department fully describing the proposed activity; or

ii. Submit a description of the proposed activity as part of a waste discharge license application pursuant to 38 M.R.S.A. §413 et seq.

b. If a person receives a written response from the Department stating that the proposed activity falls within the activities described in Paragraph 1 above and the plans for undertaking the activity are acceptable to the Department, the proposed activity may be undertaken, subject to the Standard Conditions which accompany the granting of a permit.

c. If a person receives a response from the Department indicating that the proposed activity does not fall within the activities described in Paragraph 1 above or the plans for undertaking the activity are not acceptable to the Department, the normal application procedure specified by statute should be followed.

d. Any variation from the plans, proposals and supporting documents presented under Paragraph 2a is subject to review of and approval by the Board prior to implementation.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to compile in one place and in an organized manner activities exempt from and procedures waived by the Board under the Alteration of Coastal Wetlands Law.

AUTHORITY: 38 M.R.S.A. §478 and 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 342 GENERAL POLICIES AND PROCEDURES UNDER THE COASTAL WETLANDS LAW

SUMMARY: These regulations describe the general policies and procedures under the Coastal Wetlands Law (38 M.R.S.A. §471 et seq.) specifically with respect to rebuttable presumption against seawalls; review of projects partially located within Coastal Wetlands; scope of review; nature of terms and conditions; completeness of application; requirement of additional information; performance bonds; advisory rulings; access to the site; permits not contingent upon other approvals; title, right or interest; standard conditions of permits; and severability.

1. Rebuttable Presumption Against Seawalls

The Board operates under the rebuttable presumption that all seawalls and similar structures built on or adjacent to a sand beach inherently cause unreasonable soil erosion, unreasonably interfere with the natural flow of waters, and unreasonably interfere with existing recreational and navigational uses. An applicant for a permit to build a new seawall or similar structure on or adjacent to a sand beach must overcome this presumption by persuasive evidence that the proposal is unique in some way that allows fulfillment of the criteria set forth in 38 M.R.S.A. § 474.

*NOTE: The presumption against seawalls is based on the Board's review of numerous applications for ocean seawalls. That review consisted of examination of plans, extensive hearings, and receipt of substantial information and expert opinions on the effect of seawalls on sand beaches and adjacent natural resources or man-made structures. As a result of this review, the Board concludes that seawalls or similar structures placed on or adjacent to sand beaches:*

- *Cause a physical obstruction in the inter-tidal zone, which obstructs public rights in that zone;*
- *Cause the loss of sand and changes to the slope of the beach in front of the seawall;*
- *When deteriorating, create a likelihood of rubble or debris being scattered across the shore;*
- *Significantly modify normal patterns of water movement; and*
- *Cause erosion or accretion of sand.*

2. Review of Projects Partially Located Within Coastal Wetlands

When an activity falling within the scope of the Coastal Wetlands Law is part of a larger project, the Board shall review the entire project and grant a Coastal Wetlands permit only when it finds that all the standards

of the Coastal Wetlands Law have been met. Non-compliance with the statute can result from improperly conducted activities taking place adjacent to a coastal wetland as well as those taking place within the coastal wetland.

3. Scope of Review

In reviewing applications for permits under the Coastal Wetlands Law, the Board shall consider the location and nature of the proposed activity in relation to the primary, secondary and cumulative impacts on the areas of concern articulated in the standards for granting permits in 38 M.R.S.A. §474 as interpreted by these regulations.

4. Nature of Terms and Conditions

As specified in §474 of the Coastal Wetlands Law, the Board may place terms and conditions on the granting of a permit for a proposed activity. However, terms and conditions shall address themselves to specifying particular means of satisfying minor or easily corrected problems, or both, relating to compliance with the Coastal Wetlands Law and shall not substitute for or reduce the burden of proof of the applicant to provide substantial evidence that each of the standards of the law has been met.

5. Completeness of Application

If, in the opinion of the Staff, an application for a permit under the Coastal Wetlands Law is incomplete, the application may be returned to the applicant with an indication of the information which needs to be supplied; and, no further processing shall occur until the application is determined to be complete. The statutory time period within which the Board must act on an application under 38 M.R.S.A. §474 shall not begin until the application is determined to be complete by the Staff.

6. Requirement of Additional Information

In reviewing applications for permits for activities under the Coastal Wetlands Law, the Board or Staff may require additional information from the applicant on any aspect of the proposed activity relating to compliance with the standards of 38 M.R.S.A. §474.

7. Advisory Rulings

All requests for advisory rulings on the applicability of the Coastal Wetlands Law to particular situations or on other matters shall be based on existent facts and not hypothetical situations. Such requests shall be made in writing and addressed to the Division of Review and Planning, Bureau of Land Quality Control, Department of Environmental Protection, Augusta, Maine 04333. Issuance of advisory rulings is discretionary with the Department on a case-by-case basis.

8. Access to the Site

The filing of an application for a permit constitutes the granting of permission by the applicant to allow authorized application reviewers access

to the site of the proposed activity in order to evaluate whether or not the proposed activity will meet the standards, as stated in 38 M.R.S.A. §474.

9. Permits Not Contingent Upon Other Approvals

The granting of a permit under the Coastal Wetlands Law is not contingent upon the applicant having obtained, prior to filing, other appropriate federal, state, or municipal approvals, licenses, permits,etc.

*NOTE: Standard conditions of approval require such permits prior to commencing construction.*

10. Title, Right or Interest

The Department will consider an application for a permit only when an applicant has demonstrated sufficient title, right or interest in all of the property on which the proposed activity will be undertaken. An applicant shall demonstrate in writing sufficient title, right or interest as follows:

A. When the applicant claims ownership of the property, copies of the deed to the property shall be supplied.

B. When the applicant has an option to buy the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title.

C. When the applicant has a lease on the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the development.

D. When the applicant has eminent domain power over the property, evidence shall be supplied of the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Board.

*NOTE: The construction of permanent structures and dredging and filling of submerged lands require the issuance of a lease or easement from the Bureau of Public Lands, Department of Conservation. Applications for coastal wetlands permits are forwarded to the Bureau by the Department of Environmental Protection. The Bureau normally issues a lease or easement on the basis of the wetlands permit application and a copy of the lease or easement is forwarded to the applicant upon the granting of a coastal wetlands permit.*

11. Performance Bonds

The Board may require an applicant to post a performance bond to ensure that the approved activity will be undertaken and completed in a manner consistent with approved plans and in compliance with the standards of the Coastal Wetlands Law.

12. Standard Conditions of Permits

The following standard conditions shall apply to all permits granted under the Coastal Wetlands Law, unless otherwise specifically stated in the permit:

A. Approval Of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals and supporting documents is subject to review and approval prior to implementation.

B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

C. Compliance With All Permit Terms and Conditions. The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all terms and conditions of this permit. All preconstruction terms and conditions must be met before construction begins.

D. Initiation Of Activity Within Two Years. If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the activity was not begun within two years from the granting of the initial permit and the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Re-applications for permits may include information submitted in the initial application by reference.

E. Reexamination After Five Years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.

F. No Construction Equipment Below High Water. No construction equipment being used in the undertaking of an approved activity is allowed below the mean high water line.

G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.

H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

13. Severability

Should any provision of these regulations be declared invalid or ineffective by court decision, the decision shall not invalidate any other provision of these regulations.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to compile in one place in an organized manner existing policies and procedures used by the Board in implementing the Coastal Wetlands Law and new policies and procedures developed during the process of writing these regulations.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 343 INTERFERENCE WITH RECREATIONAL AND NAVIGATIONAL USES STANDARD OF THE COASTAL WETLANDS LAW

SUMMARY: These regulations describe the Board's scope of review in determining an applicant's compliance with the recreational and navigational uses standard of the Coastal Wetlands Law (38 M.R.S.A. §474) and the terms and conditions which the Board may impose on the granting of a permit to ensure compliance with that standard.

1. Interference With Recreational and Navigational Uses

A. Scope of Review. In determining whether there is substantial evidence that a proposed activity will not unreasonably interfere with existing recreational and navigational uses, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. The proposed activity will not unreasonably interfere with established public rights of access to and use of coastal wetlands.

2. The proposed activity will not unreasonably interfere with access to and use of public recreational facilities, both in operation and planned.

3. The proposed activity will not be located in a way which unreasonably interferes with a navigable channel nor eliminate a large water area from small craft navigation.

4. The proposed activity will not unreasonably cause nor contribute to sedimentation problems in adjacent or nearby navigational channels or anchorages.

5. The height, width, and placement of structure will be restricted to the fullest extent practicable.

6. Pile-supported construction rather than crib-type or solid fill construction will be utilized to the fullest extent practicable.

B. Terms and Conditions. The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not unreasonably interfere with existing recreational and navigational uses, such as requiring that:

1. The location of submarine cables be clearly marked.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the recreational and navigational use standard of the Coastal Wetlands

Law (38 M.R.S.A. §474) and to set out the duties, powers, and limitations of the Board and of permit applicants under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 344 SOIL EROSION STANDARD OF THE COASTAL WETLANDS LAW

SUMMARY: These regulations describe the Board's scope of review in determining an applicant's compliance with the soil erosion standard of the Coastal Wetlands Law (38 M.R. S.A. §474) and the terms and conditions which the Board may impose on the granting of a permit to insure compliance with that standard.

I. Soil Erosion

A. Scope of Review. In determining whether there is substantial evidence that a proposed activity will not cause unreasonable soil erosion, either during the undertaking of the activity or after its completion, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Temporary and permanent erosion control measures will be utilized on the project site both during and after construction. A detailing of erosion control measures will include, when appropriate, such information as:

a. The size, location, source, placement, and shape of any fill, rip rap, granite blocks, or other construction material to be used within the proposed project.

b. Plans, including a time schedule, for the fertilization, liming, seeding, and mulching of all disturbed areas.

2. The proposed activity will not cause unreasonable changes in current patterns or water velocity which result in changes in erosion patterns.

3. The proposed activity will not unreasonably affect the volume, distribution of sediment size, relief and elevation of coastal beaches.

4. With respect to coastal banks, the proposed activity will not unreasonably affect:

a. The stability of the bank;

b. The supply of sediment from the bank to coastal beaches or other land subject to tidal action; or

c. The storm damage or flood control function of the bank.

5. Any permanent structure constructed generally protruding from the shoreline will:

a. Not significantly interfere with natural shore processes;

b. Not cause unreasonable erosion of adjacent or downdrift areas of coastal beaches, banks, land under the ocean, or other coastal wetlands;

c. Be no greater in size than length, width, and height necessary to accomplish its intended function; and

d. Include provision for the transfer of sediment to downdrift areas, if necessary to prevent those areas from being deprived of sediment.

6. Plans for channel dredging will be designed to avoid unreasonable siltation at the point where the dredged channel joins with the natural channel.

B. Terms and Conditions. The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not cause unreasonable soil erosion, such as requiring:

1. Provision for surface water diversion during construction.

2. Preservation of natural beach areas, including but not limited to:

a. Restricting the use of machinery on the beach; or

b. Limiting or restricting the placement or removal of foreign materials on the beach.

3. Protective planting on coastal banks to reduce erosion.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the soil erosion standard of the Coastal Wetlands Law (38 M.R.S.A. §474) and to set out the duties, powers, and limitations of the Board and of permit applicants under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 345 INTERFERENCE WITH NATURAL FLOW OF WATERS STANDARD OF THE COASTAL WETLANDS LAW

SUMMARY: These regulations describe the Board's scope of review in determining an applicant's compliance with the natural water flow standard of the Coastal Wetlands Law (38 M.R.S.A. §474) and the terms and conditions which the Board may impose on the granting of a permit to ensure compliance with that standard.

1. Interference With the Natural Flow of Any Waters

A. Scope of Review. In determining whether there is substantial evidence that a proposed activity will not unreasonably interfere with the natural flow of any waters, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. There will be no unreasonable interference with nor unreasonable alteration of existing water circulation patterns such as tidal flow, current and wave characteristics, including storm wave overwash or flooding which is essential to the long-term maintenance of active beach systems.

2. The flow of fresh water to any coastal wetland area will not be unreasonably affected.

3. Water stagnancy will be neither caused nor contributed to, and the ability of adjacent water bodies to flush themselves will not be unreasonably reduced.

a. Culverts of sufficient size, placed at the proper elevation, will be installed, where necessary, and maintained.

4. The flood control function of coastal wetlands will not be unreasonably affected.

5. Pile-supported construction rather than crib-type or solid fill construction will be utilized to the fullest extent practicable.

B. Terms and Conditions. The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not unreasonably interfere with the natural flow of any waters, such as requiring that:

1. Rip-rap, stones or granite blocks be installed to facilitate water movement.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the natural flow of waters standard of the Coastal Wetlands Law (38 M.R.S.A. §474) and to set out the duties, powers, and limitations of the Board and of permit applicants under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 346 HARM TO WILDLIFE AND FISHERIES STANDARD OF THE COASTAL WETLANDS LAW

SUMMARY: These regulations describe the Board's scope of review in determining an applicant's compliance with the wildlife and fisheries standard of the Coastal Wetlands Law (38 M.R.S.A. §474) and the terms and conditions which the Board may impose on the granting of a permit to ensure compliance with that standard.

1. Harm To Wildlife Or Freshwater, Estaurine or Marine Fisheries

A. Scope of Review. In determining whether there is substantial evidence that a proposed activity will not unreasonably harm wildlife or freshwater, estaurine or marine fisheries, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Salt marshes and other critical habitat areas, such as habitat of rare and endangered wildlife and fish species, will not be destroyed, filled, or otherwise unreasonably affected.

2. The existing productivity of any coastal wetland will not be unreasonably affected.

3. Native wildlife species populations will not be unreasonably affected.

4. Erosion from the proposed activity will not result in the formation of deposits unreasonably harmful to any fisheries habitat.

5. Evidence that shellfish beds will not be unreasonably affected. In determining unreasonable effects upon shellfish beds, the Board may consider any or all of the following:

a. The quality of the water flowing over shellfish beds, including dissolved oxygen, nutrients, temperature, and turbidity;

b. Water circulation and depth patterns around and over shellfish beds;

c. Natural relief of areas containing shellfish; and/or

d. Size and distribution of sediment in areas containing shellfish.

6. The timing of construction activities takes into consideration the movements and lifestages of fish, shellfish, and wildlife.

B. Terms and Conditions. The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not unreasonably harm wildlife or freshwater, estaurine, or marine fisheries, such as requiring that:

1. Construction activities be timed to avoid periods of seasonal fish runs.

2. Construction activities be timed to avoid bird nesting seasons.

3. Shellfish beds be protected by routinely maintaining a culvert to insure that debris is removed, thereby preventing any unnatural impoundment of water above the culvert.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the harm to wildlife and fisheries standard of the Coastal Wetlands Law (38 M.R.S.A. §474) and to set out the duties, powers, and limitations of the Board and of permit applicants under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 347 LOWERING OF WATER QUALITY STANDARD OF THE COASTAL WETLANDS LAW

SUMMARY: These regulations describe the Board's scope of review in determining an applicant's compliance with the water quality standard of the Coastal Wetlands Law (38 M.R.S.A. §474) and the terms and conditions which the Board may impose on the granting of a permit to ensure compliance with that standard.

1. Lowering the Quality of Any Waters

A. Scope of Review. In determining whether there is substantial evidence that a proposed activity will not lower the quality of any waters, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Sedimentation from the proposed activity will not unreasonably lower water quality.

2. The existing levels of dissolved oxygen, temperature, salinity, biochemical oxygen demand, and nutrients will not be unreasonably affected.

3. The classification of any waters will not be lowered.

4. All appropriate licenses and permits related to water quality, including a waste discharge license, have been or will be obtained.

B. Terms and Conditions. The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not lower the quality of waters, such as requiring that:

1. A bottom sediment analysis be submitted to insure that dredged material is not contaminated.

2. The composition of fill be limited to specified materials.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the lowering of water quality standard of the Coastal Wetlands Law (38 M.R.S.A. §474) and to set out the duties, powers, and limitations of the Board and to permit applicants under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

# MANDATORY ZONING AND SUBDIVISION CONTROL

MAINE REVISED STATUTES ANNOTATED
Title 12 §§ 4811-4814

## § 4811. 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 defined as land within 250 feet of the normal high water mark of any pond, river or salt water body be subjected to zoning and subdivision controls. The purposes of such controls shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

## § 4811-A. Definitions

For purposes of this chapter, pond shall include any inland body of water which has a surface area in excess of 10 acres, except where such body of water is man-made and in addition is completely surrounded by land held by a single owner, and except those privately owned ponds which are held primarily as waterfowl and fish breeding areas or for hunting and fishing. A river is defined as any free flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth. The State Planning Office shall prepare and publish a list of such rivers for the use of the municipalities no later than November 1, 1973.

## § 4812. Municipal control

Cities and towns pursuant to presently existing enabling legislation are authorized to plan, zone and control the subdivision of land. With respect to the shoreland areas defined in section 4811, cities and towns, hereafter called municipalities, shall adopt zoning and subdivision control ordinances according to the following schedule.

**1. Prior to July 1, 1973.** Prior to July 1, 1973 the municipal officers of each city or town shall have appointed an appropriate municipal body with responsibility for preparing such ordinances as are necessary for compliance with this chapter and shall certify such appointment to the State Planning Office.

**2. Prior to July 1, 1974.** Prior to July 1, 1974 each municipality shall have:

**A.** Prepared a comprehensive plan adequate to comply with the requirements of Title 30, section 4961 and this chapter and notified the State Planning Office;

**B.** Adopted shoreland protection, subdivision and zoning ordinances adequate to comply with the requirements of this chapter for shoreland protection and filed a copy of said ordinances with the State Planning Office.

In order to aid municipalities in meeting the requirements of this chapter the Department of Inland Fisheries and Game shall, prior to January 1, 1973, identify all of those areas in municipalities which it finds to be areas of moderate to high waterfowl breeding areas. Any or all areas within a municipality which are subject to nonmunicipal zoning controls may be exempted from the operation of this section upon a finding by the Bureau of Environmental Protection and the Maine Land Use Regulation Commission that the purposes of this chapter have been accomplished by such nonmunicipal zoning.

## § 4812-A. Requirements

In addition to controls required by this chapter, municipalities may adopt zoning and subdivision controls applicable to other bodies of water as required to protect the public health, safety and welfare and further the purposes of this chapter.

Zoning ordinances adopted pursuant to this chapter shall be pursuant to and consistent with a comprehensive plan.

Zoning ordinances adopted pursuant to this chapter 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, section 4962 to the contrary, it being the intention of the Legislature to recognize that it is reasonable for municipalities to treat specially with shoreland areas and to choose to immediately zone around water bodies rather than to wait until such time as it enacts zoning ordinances for all of the land within its boundaries. However, the provisions of ordinances, which zone shoreland areas only, must relate solely to measures necessary to protect and enhance water quality, preserve and enhance the aesthetics of water bodies and views therefrom, protect shoreland areas from erosion, protect and preserve that vegetation and wildlife which is more indigenous to shoreland areas than areas not associated with water bodies, avoid the problems associated with floodplain development and use and to encourage and insure the integrity of points of access to water bodies.

Any other law notwithstanding, when a zoning ordinance adopted in conformance with this section requires a written report of soil suitability for subsurface waste disposal or commercial or industrial development, such report shall be prepared and signed by the person who has made the evaluation of soil properties. Persons qualified to prepare such reports shall be persons certified by the Department of Health and Welfare, including: Maine State Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience specifically in the recognition and evaluation of soil properties and can provide proof of such training and experience in a manner specified by the department. The Department of Health and Welfare may promulgate rules and regulations for the purpose of establishing training and experience standards required by this paragraph.

### § 4812-B. Federal flood insurance

In addition to controls required by this chapter, municipalities may extend or adopt zoning and subdivision controls beyond the limits established by this chapter in order to protect the public health, safety and welfare and to avoid problems associated with flood plain development.

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan.

Zoning ordinances adopted or extended pursuant to this section need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30, section 4962 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.

## § 4813. Municipal failure to accomplish purposes

If any municipality fails to adopt ordinances as required by section 4812 for shoreland areas as defined in section 4811 or if the Board of Environmental Protection and the Maine Land Use Regulation Commission determine that particular municipal ordinances because of their laxity and permissiveness do not adequately prevent and control water pollution, protect wildlife habitat, conserve shore cover or otherwise fail to accomplish the purposes outlined in section 4811, the Department of Environ-

mental Protection and the Maine Land Use Regulation Commission shall, following consultation with the State Planning Office, with respect to these shoreland areas, adopt suitable ordinances for these municipalities, which ordinances the respective municipalities shall then administer and enforce.

The Department of Environmental Protection and the Maine Land Use Regulation Commission, acting pursuant to the administrative direction of the State Planning Office, shall by December 15, 1973 adopt minimum guidelines for the protection of shoreland areas reflecting considerations of preventing and controlling water pollution, protecting spawning grounds, fish, aquatic life, bird and other wildlife habitat, location and size of structures and signs and conserving shore cover. The incorporation of such guidelines into a municipal regulatory ordinance shall be deemed sufficient to meet the requirements of this section.

## § 4814. Cooperation; enforcement

The Board of Environmental Protection and the Maine Land Use Regulation Commission, municipalities and all state agencies shall mutually cooperate to accomplish the objectives of this chapter. To that end, the board and the commission shall consult with the governing bodies of municipalities and to whatever extent necessary with other state agencies to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor. The State Planning Office shall be responsible for coordinating the efforts and responsibilities of the Board of Environmental Protection and the Maine Land Use Regulation Commission acting pursuant to this chapter.

If a municipality fails to administer and enforce zoning ordinances adopted by it or the State, pursuant to the requirements of this chapter, the Attorney General shall seek an order of the Superior Court of the county in which the municipality lies, requiring the municipal officials to enforce such zoning ordinance. The district attorney may enforce the provisions of a local shoreland zoning ordinance upon the request of an authorized municipal official. The Attorney General shall be made a party to all civil and criminal actions in which the pleadings challenge the legality of any ordinance or portion thereof adopted pursuant to the guidelines promulgated under section 4813.

# Minimum Shoreland Zoning Ordinance

Shoreland Zoning Ordinance for the Town of _____

## Section 1. Purposes

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

## Section 2. Applicability

The Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high water mark of any pond, river or salt water body as defined.

## Section 3. Effective Date

The effective date of this Ordinance is _____. A certified copy of this Ordinance shall be filed with the County Register of Deeds, according to the requirements of State law.

## Section 4. Validity and Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## Section 5. Amendments (Revised, March 28, 1979)

This ordinance may be amended by majority vote of the legislative body. The State Planning Office shall be notified by the municipal clerk of amendments to this ordinance within 30 days after the effective date of such amendments.

## Section 6. Districts and the Zoning Map

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map:

1. Resource Protection District
2. General Development District
3. Limited Residential-Recreational District

The Official Shoreland Zoning Map, and all future amendments thereto, is hereby made part of and incorporated into this Ordinance.

Section 7. Interpretation of District Boundaries

Unless otherwise set forth in the Official Shoreland Zoning Map, District boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to exact location of District boundary lines, the Board of Appeals shall be the final authority as to location.

Section 8. Non-Conforming Uses (Paragraph B Revised March 28, 1979)

A. Any lawful use of building, structures, premises, land or parts thereof existing at the effective date of this Ordinance or amendments thereto and not in conformance with the provisions of this Ordinance shall be considered to be a non-conforming use.

B. Any non-conforming use may continue and may be maintained, repaired and improved. No such non-conforming use may be expanded, changed to another non-conforming use, replaced, or renewed after it has been discontinued for a period of 12 calendar months or more, without a permit from the Planning Board in accordance with the provisions of Section 12-B subsection 6, paragraphs a-i of this Ordinance. No structure which is less than the required setback from the normal high water mark shall be expanded toward the water.

C. Any non-conforming lot of record existing before the effective date of this Ordinance and not adjoined by other land of the same ownership may be used in accordance with State law and section 10 of this Ordinance.

Section 9. Criteria for Establishing Districts (Item A-3 Revised March 28, 1979)

A. Resource Protection District

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biotic systems, or scenic and natural values. This district shall include:

1. Inland or coastal wetlands as defined in Section 13 , and specifically areas rated as moderate to high-value waterfowl areas by the Department of Inland Fisheries and Wildlife, as of January 1, 1973.

2. Flood plains as defined by the 100 year flood or the flood of record or, in the absence of these, by soil types identifiable as recent flood plain soils.

3. Areas having unstable soil subject to slumping, mass movement, or severe erosion, when these areas are two acres or more in size.

This District may also include:

4. Other significant wildlife habitat;

5. Natural sites of significant scenic or esthetic value.

6. Areas designated by Federal, State or municipal governments as natural areas of significance to be protected from development; and

7. Other significant areas which should be included in this district to fulfill the purposes of this Ordinance.

B. General Development District

The general development district includes the following types of areas:

1. Areas of two acres or more devoted to intensive residential, recreational, commercial or industrial activities or combinations of such activities, including, but not limited to:

   a. Transportation rights of way;
   b. Communication and utility rights of way;
   c. Areas used for the extraction or processing of mineral resources;
   d. Areas devoted to: manufacturing, fabricating, wholesaling, warehousing or other commercial activities;
   e. Areas devoted to retail trade and service activities;
   f. Areas devoted to intensive recreational development and activities;
   g. Areas devoted to residential dwelling units at a density of 3 or more per two acres.
   h. Areas devoted to mixed or combined patterns of a through g above.

2. Areas otherwise discernable as having patterns of intensive residential, recreational, commercial, or industrial uses.

C. Limited Residential-Recreational District

The Limited Residential-Recreational District includes areas other than those included in the Resource Protection District, and which are used less intensively than those included in the General Development District.

Section 10. Uses (Revised, March 28, 1979)

Land Uses permitted in each District, in conformance with the land use standards of this Ordinance, are shown below:

KEY: Yes - Allowed (no permit required)
No - Prohibited
PB Permit - Requires permit issued by the Planning Board
CEO Permit - Requires permit from Code Enforcement Officer
LPI Permit - Requires permit from Local Plumbing Inspector
* - Subject to specific Land Use Standards, Section 11

| Land Uses | Resource Protection | DISTRICT Limited Residential-Recreational | General Development |
|---|---|---|---|
| 1. Non-intensive recreational uses not requiring structures, such as hunting, fishing and hiking | yes | yes | yes |
| 2. Motorized vehicular traffic on roads and trails, and snowmobiling | yes | yes | yes |
| 3. Forest management activities except for timber harvesting | yes | yes | yes |
| 4. Timber harvesting * | CEO permit | yes | yes |
| 5. Fire prevention activities | yes | yes | yes |
| 6. Wildlife management practices | yes | yes | yes |
| 7. Soil & water conservation practices | yes | yes | yes |
| 8. Mineral exploration * | yes | yes | yes |
| 9. Surveying and Resource analysis | yes | yes | yes |
| 10. Emergency operations as defined | yes | yes | yes |
| 11. Harvesting of wild crops | yes | yes | yes |
| 12. Agriculture * | PB permit | yes | yes |
| 13. Principal structures * | | | |
| Residential dwelling units | no | PB permit | PB permit |
| Commercial structures | no | no | PB permit |
| Industrial structures | no | no | PB permit |
| Governmental structures | no | PB permit | PB permit |
| Institutional structures | no | no | PB permit |
| 14. Structures accessory to permitted uses * | CEO permit | CEO permit | yes |
| 15. Road construction * | PB permit | yes | yes |
| 16. Small non-residential facilities for educational, scientific or nature interpretation purposes | PB permit | yes | yes |
| 17. Public and private parks and recreation areas involving minimal structural development | PB permit | yes | yes |
| 18. Campgrounds * | no | PB permit | PB permit |
| 19. Piers, docks, wharves, breakwaters, causeways, marinas, bridges over 20 ft. in length, and uses projecting into water bodies. | | | |
| Temporary | CEO permit | CEO permit | CEO permit |
| Permanent | PB permit | PB permit | PB permit |
| 20. Clearing for approved construction * | CEO permit | yes | yes |
| 21. Essential services accessory to permitted uses | yes | yes | yes |
| 22. Private sewage disposal systems | no | LPI permit | LPI permit |
| 23. Public utilities, including sewage collection & treatment facilities | PB permit | PB permit | PB permit |
| 24. Signs * | yes | yes | yes |
| 25. Filling or other earth-moving activity of less than 10 cubic yds. | CEO permit | yes | yes |
| 26. Filling or other earth-moving activity of more than 10 cubic yds | PB permit | CEO permit | CEO permit |
| 27. Uses similar to permitted uses | CEO permit | CEO permit | CEO permit |
| 28. Uses similar to uses requiring a CEO permit | CEO permit | CEO permit | CEO permit |
| 29. Uses similar to uses requiring a PB permit | PB permit | PB permit | PB permit |

## Section 11. Land Use Standards

All land use activities shall conform to the following applicable land use standards:

### A. Agriculture

1. All spreading or disposal of manure shall be accomplished in conformance with the "Maine Guidelines for Manure and Manure Sludge Disposal on Land" published by the University of Maine and the Maine Soil and Water Conservation Commission, in July 1972 or subsequent revisions thereof.

2. There shall be no tilling of soil within 50 feet of the normal high water mark of any lake or pond whose shorelands are covered by this Ordinance.

3. Where soil is tilled in a Resource Protection District, or where soil in excess of 20, 000 sq. ft. lying either wholly or partially within the area covered by this Ordinance is tilled in a General Development District or a Limited Residential-Recreational District, such tillage shall be carried out in conformance with the provisions of a Conservation Plan which meets the standards of the State Soil and Water Conservation Commission, and is approved by the appropriate Soil and Water Conservation District. The number of the plan shall be filed with the Planning Board. Non-conformance with the provisions of such Conservation Plan shall be considered to be a violation of this Ordinance.

### B. Beach Construction

Beach construction on any great pond or coastal wetland shall require a permit from the Department of Environmental Protection. Beach construction on any river, stream, or brook capable of floating watercraft shall require approval from the Commissioner of the Department of Inland Fisheries and Wildlife, as required by law.

### C. Campgrounds

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

1. Camping areas shall contain a minimum of 5,000 square feet of suitable land, not including roads and driveways, for each site.

2. The area intended for placement of the recreational vehicle, tent, or shelter and utility and service buildings, shall be set back a minimum of 75 feet from the normal high water mark of any pond, river, or salt water body as defined.

### D. Clearing

Clearing of trees and conversion to other vegetation is permitted for approved construction and landscaping. Where such clearing extends to the shoreline, a cleared opening or openings not greater than 30 feet in width for every 100 feet of shoreline (measured along the normal high water mark) may be created in the

strip extending 50 feet inland from the normal high water mark and paralleling the shoreline. Where natural vegetation is removed, it shall be replaced with other vegetation that is equally effective in retarding erosion and preserving natural beauty.

E. Erosion and Sedimentation Control (Revised March 28, 1979)

Filling, grading, lagooning, dredging, earth-moving activities, and other land use activities shall be conducted in such manner to prevent to the maximum extent possible, erosion and sedimentation of surface waters. On slopes greater than 25%, there shall be no grading or filling within 100 feet of the normal high water mark except to protect the shoreline and prevent erosion.

F. Mineral Exploration

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitations.

G. Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges over 20 feet in length, and Uses Projecting into Water Bodies.

In addition to federal or state permits which may be required for such structures and uses, they shall conform to the following:

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

2. The location shall not interfere with developed beach areas.

3. The facility shall be located so as to minimize adverse effects on fisheries.

4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.

H. Residential Lot Standards (Revised, March 28, 1979)

1. Lots shall meet or exceed the following minimum requirements:

| Without Sanitary Sewers | With Sanitary Sewers |
|---|---|
| 20,000 square feet | 10,000 square feet |

2. If more than one residential dwelling unit is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit.

3. A lot abutting a lake, pond, river, stream or tidal water shall have a minimum shore frontage of 100 feet, measured in a straight line between the points of intersection of the side lot lines with the shoreline at normal high water elevation.

4. Structures shall not cover more than 20% of any lot.

I. Road Construction (Revised March 28, 1979)

1. Roads shall be located, constructed, and maintained in such a manner that minimal erosion hazard results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

2. Additionally, all roads constructed shall conform with the following standards:

   a. Road crossings of watercourses shall be kept to the minimum number necessary;
   b. Bottoms of culverts shall be installed at streambed elevation;
   c. All cut or fill banks and areas of exposed mineral soil shall be re-vegetated or otherwise stabilized as soon as possible; and
   d. Bridges or culverts of adequate size and design shall be provided for all road crossings of watercourses which are to be used when surface waters are unfrozen. The requirement for a bridge or culvert may be waived by obtaining a permit from the Planning Board.

J. Sanitary Standards (Revised March 28, 1979)

All subsurface sewage disposal facilities shall be installed in conformance with the Maine State Plumbing Code and the following:

1. All subsurface sewage disposal systems shall be located in areas of suitable soil of at least 1,000 square feet in size.

2. The minimum setback for subsurface sewage disposal facilities shall be no less than 100 horizontal feet from the normal high water mark of a water-body. This requirement shall not be reduced by variance.

K. Signs

The following provisions shall govern the use of signs in the Resource Protection and Limited Residential- Recreational Districts:

1. Signs and billboards relating to goods and services sold on the premises shall be permitted, provided such signs shall not exceed six (6) square feet in area, and shall not exceed two (2) signs per premises. Billboards and signs relating to goods and services not rendered on the premises shall be prohibited.

2. Name signs shall be permitted, provided such signs shall not exceed two (2) signs per premises.

3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

4. Signs relating to trespassing and hunting shall be premitted without restriction as to number provided that no such sign shall exceed two (2) square feet in area.

5. No sign shall extend higher than twenty (20) feet above the ground.

6. Signs may be illuminated only by shielded, non-flashing lights.

L. Soils

1. All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report, prepared by a State-certified soil scientist or geologist based on an on-site investigation. Suitability considerations shall be based primarily on criteria employed in the National Cooperative Soil Survey as modified by on-site factors such as depth to water table and depth to refusal.

M. Structures (Revised March 28, 1979)

1. All structures which are permitted in the Resource Protection and Limited Residential-Recreational District shall be set back at least 75 feet from the normal high water mark of any pond, river or salt water body as defined. This provision shall not apply to structures which require direct access to the water as an operational necessity, such as piers, docks, and retaining walls.

2. The first floor elevation or openings of all buildings and structures shall be elevated at least two feet above the elevation of the 100 year flood, the flood of record or, in the absence of these, the flood as defined by soil types identifiable as recent flood plain soils.

N. Timber Harvesting

1. No substantial accumulation of slash shall be left within fifty (50) feet of the normal high water mark of any pond, river, or salt water body as defined. At distances greater than fifty (50) feet from the normal high water mark of such waters and extending to the limits of the area covered by this Ordinance, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.

2. Skid trails, log yards, and other sites where the operation of logging machinery results in the exposure of substantial areas of mineral soil shall be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high water mark of any pond, river, or salt water body as defined. The width of this strip shall vary according to the average slope of the land as follows:

| Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (percent) | Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet along Surface of the Ground) |
|---|---|
| 0 | 25 |
| 10 | 45 |
| 20 | 65 |
| 30 | 85 |
| 40 | 105 |
| 50 | 125 |
| 60 | 145 |
| 70 | 165 |

3. Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

4. Harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained.

5. Harvesting activities shall not create single openings greater than seven thousand five hundred (7,500) square feet in the forest canopy.

6. In any stand, harvesting shall remove not more than forty (40) percent of the volume of trees in any ten (10) year period. For the purpose of these standards, a stand means a contiguous group of trees, sufficiently uniform in species, arrangement of age classes, and conditions, to be identifiable as a homogeneous and distinguishable unit.

7. Timber harvesting operations not in conformance with 2, 4, 5, and 6 above may be allowed by the Planning Board upon approval of a permit granted in accordance with the provisions of Section 12-B subsection 6, paragraphs a-i upon a clear showing by the applicant that such an exception is necessary for proper timber management.

O. Water Quality Protection

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.

## Section 12. Administration

A. Creation of Administering Bodies and Agents.

1. Code Enforcement Officer

A Code Enforcement Officer shall be appointed by the Municipal Officers.

2. Board of Appeals

There is hereby created the Board of Appeals for the Town of_____ pursuant to the provisions of State law.

B. Permits

1. Permits Required

After the effective date of this Ordinance no person shall engage in any use of land requiring a permit in the district in which it would occur, or expand or change an existing non-conforming use, or renew a discontinued nonconforming use without first obtaining a permit.

2. Permit Application

Applications for permits shall be submitted in writing. The Code Enforcement Officer or Planning Board may require the submission of whatever information is necessary to determine conformance with the provisions of this Ordinance.

3. Plumbing Permit Required Prior to Building Permit

No building permit shall be issued for any structure or use involving the construction, installation or alteration of plumbing facilities unless a permit for such facilities has been secured by the applicant or his authorized agent, according to the requirements of this Ordinance.

4. Procedure for administering permits (Revised March 28, 1979)

Within 30 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 10, shall notify the applicant in writing either that the application is a complete application, or if the application is incomplete, the specific additional material needed to make a complete application. All permits shall either be approved or denied in writing within 30 days of receiving a completed application, including all information requested. Permits shall not be denied if the proposed use is found to be in conformance with the provisions of this Ordinance. Permits may be made subject to reasonable conditions to insure conformity with the purposes and provisions of this Ordinance. If a permit is denied, the reasons for the denial shall be stated in writing. An appeal to the board of appeals from an approval or denial of a permit shall be made within 30 days of the approval or denial.

5. Permits Issued by Code Enforcement Officer

The Code Enforcement Officer shall approve or deny those applications on which he is empowered to act as shown in Section 10. Approval shall be granted only if the proposed use is in conformance with the provisions of this Ordinance.

6. Permits Issued by Planning Board (Revised March 28, 1979)

The Planning Board shall approve or deny those applications on which it is empowered to act as stated in this Ordinance. The Planning Board shall, after the submission of a complete application including all information requested, grant a permit if it makes a positive finding based on the information presented to it that, except as specifically exempted in this Ordinance, the proposed use:

a. Will not result in unsafe or unhealthful conditions;
b. Will not result in erosion or sedimentation;
c. Will not result in water pollution;
d. Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
e. Will conserve shoreland vegetation;
f. Will conserve visual points of access to waters as viewed from public facilities;
g. Will conserve actual points of public access to waters;
h. Will conserve natural beauty;
i. Will avoid problems associated with flood plain development and use; and
j. Is in conformance with the provisions of Section 11, Land Use Standards.

C. Appeals to Board of Appeals. (Revised March 28, 1979)

1. Variance Appeals

A copy of all variances granted by the Board of Appeals shall be submitted to the State Planning Office. The Board of Appeals may, upon written application of the affected landowner, grant a variance from the strict application of the Ordinance under the following conditions:

a. The strict application of the terms of this Ordinance would result in undue hardship to the applicant. The term "undue hardship" shall mean:

1. that the land in question cannot yield a reasonable return unless a variance is granted;

2. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. that the granting of a variance will not alter the essential character of the locality; and

4. that the hardship is not the result of action taken by the applicant or a prior owner.

b. The Board of Appeals, based on clear and convincing evidence presented to it, makes a finding that the proposed use would meet the provisions of Section 12-B, subsection 6, paragraphs a-i.

A variance is authorized only for dimensional requirements. A variance shall not be granted to permit a use or structure otherwise prohibited.

2. Administrative Appeals

The Board of Appeals may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board or Code Enforcement Officer in the administration of this Ordinance. Such hearings shall be held in accordance with State laws. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board or Code Enforcement Officer only upon a finding that the decision is clearly contrary to specific provisions of this Ordinance.

3. Appeal to Superior Court

An appeal may be taken within thirty days after any decision is rendered by the Board of Appeals, by any party to Superior Court in accordance with State law.

D. Enforcement

1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

2. Code Enforcement Officer

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.

3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby authorized and directed to

institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.

4. Fines

Any person who continues to violate any provision of this Ordinance after receiving notice of such violation shall be guilty of a misdemeanor subject to a fine of up to $100.00 for each violation. Each day such a violation is continued is a separate offense.

Section 13. Definitions

Terms not defined herein shall have the customary dictionary meaning. As used in this Ordinance, the following definitions shall apply:

Water Related Terms

A. Pond

Any inland body of water which has a surface area in excess of 10 acres, except where such body of water is man-made and in addition is completely surrounded by land held by a single owner, and except those privately owned ponds which are held primarily as waterfowl and fish breeding areas or for hunting and fishing.

B. River

Any free flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

C. Normal High Water Mark of Coastal Waters

That line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap.

D. Normal High Water Mark of Inland Waters

That line on the shores and banks of non-tidal waters which is apparent because of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups - water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes, and marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups - upland grasses, aster, lady slipper, wintergreen, partridge berry, sasparilla, pines, cedars, oaks, ashes, alders, elms, and maples). In places where the shore or bank is of such character that the high water mark cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks) the normal high water mark shall be estimated from places where it can be determined by the above method.

Forest Management Terms

E. Forest Management Activities

Timber cruising and other forest resources evaluation activities, management planning activities, insect and disease control, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands, and other similar associated activities, but not the construction or creation of roads.

F. Timber Harvesting

The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

Road Terms

G. Road

A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

Wetland Terms

H. Coastal Wetland

Any swamp, marsh, bog, beach, flat or other land above extreme low water which is subject to tidal action.

I. Inland Wetland

Areas enclosed by the normal high water mark of inland waters and areas otherwise identified on the basis of soils, vegetation, or other criteria as inland wetlands including but not limited to swamps, marshes or bogs.

Structure Terms

J. Structure

Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.

K. Principal Structure

The structure in which the primary use of the lot is conducted.

L. Accessory Structure

A structure of a nature customarily incidental or subordinate to that of the principal structure or the primary use to which the premises are devoted.

M. Residential Dwelling Unit

A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or tempory living quarters for only one family. The term shall include mobile homes.

N. Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges Over 20 feet in Length, and Uses Projecting Into Water Bodies.

Temporary: Structures which remain in the water for less than seven months in any period of twelve consecutive months.

Permanent: Structures which remain in the water for seven months or more in any period of twelve consecutive months.

O. Aggrieved Party

A person whose land is directly or indirectly affected by the grant or denial of a permit or variance under this Ordinance, a person whose land abuts land for which a permit or variance has been granted, or a group of five or more citizens of the municipality who represent an interest adverse to the grant or denial of such permit or variance.

P. Emergency Operations

Emergency operations shall include operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Q. Recent Flood Plain Soils

Recent flood plain soils include the following soils as described and identified by the National Cooperative Soil Survey:

Alluvial land
Hadley silt loam
Limerick silt loam
Ondawa fine sandy loam
Podunk fine sandy loam
Rumney fine sandy loam
Saco silt loam
Suncook loamy sand
Winooski silt loam

R. Privy

A pit in the ground into which human excrement is placed.

S. Essential Services

Gas, electrical, communication facilities, steam, fuel or water supply, transmission, or distribution systems.

State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, Dec. 15, 1973

## Changes *

Section 5. - Change to read:

"This ordinance may be amended by majority vote of the legislative body. The State Planning Office shall be notified by the municipal clerk of amendments to this ordinance within 30 days after the effective date of such amendments."

Explanation: As currently written, Section 5 does not require notification of whether proposed changes are enacted or not. The orgininal intent of prior notification by certified mail was to give the State an opportunity to warn a municipality that an intended change would result in a State-imposed shoreland zoning ordinance. To date, however, there has been no opportunity to use the prior notification requirement for this purpose.

Section 8-B. - Change to read:

"Any non-conforming use may continue and may be maintained, repaired and improved. No such non-conforming use may be expanded, changed to another non-conforming use, replaced, or renewed after it has been discontinued for a period of 12 calendar months or more, without a permit from the Planning Board in accordance with the provisions of Section 12-B subsection 6, paragraphs a-i of this Ordinance. No structure which is less than the required setback from the normal high water mark shall be expanded toward the water.

Explanation: This change would clarify the fact that a non-conforming use may be replaced if a permit is obtained from the Planning Board. It also would clarify the fact that when the setback requirement is not met, the Planning Board may not permit a further reduction of the existing setback.

Section 9-A-3 - Change to read:

"Areas having unstable soil subject to slumping, mass movement, or severe erosion, when these areas are two acres or more in size."

Explanation: This change would eliminate the requirement that steep slopes in excess of 25% be placed in the Resource Protection District. Steep slopes are not necessarily fragile environmental areas, particularly along rocky areas of the coast. Moreover, some lots in areas of predominantly steep slopes have been shown to contain plateaus of sufficient dimension to allow the installation of a subsurface sewage disposal system in conformance with Plumbing Code requirements.

* These changes are recommended for those municipalities with a municipally enacted shoreland zoning ordinance or its equivalent. The changes have already been incorporated into State-imposed shoreland zoning ordinances.

Section 10. - Add to Key

"LPI Permit - Requires permit from Local Plumbing Inspector".

Explanation: See following explanation.

Section 10. - Change item 22 to read:

| | | | |
|---|---|---|---|
| "Private Sewage Disposal Systems | No | LPI Permit | LPI Permit" |

Explanation. This change would allow the plumbing inspector, rather than the code enforcement officer, to issue permits for subsurface sewage disposal systems. In some communities, the LPI and the CEO are two different people, and this has resulted in citizens having to obtain a permit from two different local officials for the same system. This change is also consistent with the proposed change to Section 11-J, which makes reference to the Plumbing Code.

Section 10. - Add to item 13:

| | | | |
|---|---|---|---|
| "Governmental structures | No | PB Permit | PB Permit |
| Institutional structures | No | No | PB Permit" |

Explanation: The Guidelines are currently silent about whether these types of structures are permitted or not. This change would eliminate the silence.

Section 11-E. - Delete the second sentence, and add the following:

On slopes greater than 25%, there shall be no grading or filling within 100 feet of the normal high water mark except to protect the shoreline and prevent erosion.

Explanation: This change would eliminate reference to the Environmental Quality Handbook, which has proven to be unworkable and not relevant to most shoreland zoning projects. It would also prohibit grading and filling near water bodies on those slopes most likely to result in erosion and sedimentation.

Section 11-H. - Change paragraph 2 to read:

"If more than one residential dwelling unit is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit."

Explanation: This change would increase the frontage requirement when two or more dwellings are constructed on a single parcel. Under the current wording, only the lot size has to be increased.

Section 11-I. - Delete the second sentence of paragraph 1.

Explanation: This change would delete reference to the pamphlet "Permanent Logging Roads for Better Woodlot Management," as this pamphlet does not contain enforceable, numerical standards for constructing roads.

Section 11-J. - Delete paragraphs 1, 2, and 3, and replace with:

"All subsurface sewage disposal facilities shall be installed in conformance with the Maine State Plumbing Code and the following:

1. All subsurface sewage disposal systems shall be located in areas of suitable soil of at least 1,000 square feet in size.

2. The minimum setback for subsurface sewage disposal facilities shall be no less than 100 horizontal feet from the normal high water mark of a waterbody. This requirement shall not be reduced by variance.

Explanation: The current wording of the Guideline is inconsistent with the Plumbing Code which has been strengthened considerably since the Guidelines were originally adopted. However, retention of the above two provisions will help insure that new systems will not result in water pollution.

Section 11-M. - Change to read as follows:

"All structures which are permitted in the Resource Protection and Limited Residential-Recreational District shall be set back at least 75 feet from the normal high water mark of any pond, river or salt water body as defined. This provision shall not apply to structures which require direct access to the water as an operational necessity, such as piers, docks, and retaining walls."

Explanation: This change would require that principal and accessory structures in the Resource Protection and Limited Residential-Recreational District be set back 75 feet from the normal high water mark. This change also makes clear the original intent of the Guidelines to allow only those structures which are permitted in the Resource Protection District to be 75 feet back. Under the current wording, some individuals had mistakenly interpreted the reference to "principal structure" to mean that residential dwelling units were permitted in the Resource Protection District.

Section 12-B-4 - Change to read:

"4. Procedure for administering permits

Within 30 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 10, shall notify the applicant in writing either that the application is a complete application, or if the application is incomplete, the specific additional material needed to make a complete application. All permits shall either be approved or denied in writing within 30 days of receiving a completed application, including all information requested. Permits shall not be denied if the proposed use is found to be in conformance with the provisions of this Ordinance. Permits may be made subject to reasonable conditions to insure conformity with the purposes and provisions of this Ordinance. If a permit is denied, the reasons for the denial shall be stated in writing. An appeal to the board of appeals from an approval or denial of a permit shall be made within 30 days of the approval or denial."

Explanation: This change is proposed in order to spell out more clearly the procedures to be followed in processing permit applications.

Section 12-B-6 - Change "may" to "shall" in the second sentence.

Explanation: This change would require that the Planning Board issue a permit if it finds that the applicant meets all of the requirements of the ordinance.

Section 12-B-7 - Delete

Explanation: This paragraph, which allowed the Planning Board to attach conditions to permits, is no longer needed, since this would be covered by the change in paragraph 4 above.

Section 12-C. - Change the heading to read "Appeals to Board of Appeals."

Explanation: This change would make it clear that variance appeals and administrative appeals both fall under the category of appeals to the Board of Appeals.

Section 12-C-1 - Change to read:

" . Variance Appeals

A copy of all variances granted by the Board of Appeals shall be submitted to the State Planning Office. The Board of Appeals may, upon written application of the affected landowner, grant a variance from the strict application of the Ordinance under the following conditions:

a. The strict application of the terms of this Ordinance would result in undue hardship to the applicant. The term "undue hardship" shall mean:

1. that the land in question cannot yield a reasonable return unless a variance is granted;

2. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. that the granting of a variance will not alter the essential character of the locality; and

4. that the hardship is not the result of action taken by the applicant or a prior owner.

b. The Board of Appeals, based on clear and convincing evidence presented to it, makes a finding that the proposed use would meet the provisions of Section 12-B, subsection 6, paragraphs a-i.

A variance is authorized only for dimensional requirements. A variance shall not be granted to permit a use or structure otherwise prohibited."

Explanation: This change would bring the criteria for granting variances into line with current statutory wording. In addition, the change would allow the Board of Appeals to grant variances for dimensional requirements other than those for lot area, lot coverage by structures, and setbacks. The current wording may be too restrictive because it would prohibit the Board from granting a variance from dimensional requirements such as those for lot frontage, even though a genuine hardship may exist.

Section 12-C-2 - Amend the heading to read "Administrative Appeals."

Explanation: This change would clarify the fact that paragraph 2 applies only to administrative appeals, and not variance appeals.

# LAND USE REGULATION LAW

MAINE REVISED STATUTES ANNOTATED
Title 12 §§ 681-689

## § 681. Purpose and scope

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

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

## § 682. Definitions

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

1. **Unorganized and deorganized areas.** Unorganized and deorganized areas shall include all areas located within the jurisdiction of the State of Maine, except areas located within organized cities and towns, and Indian reservations.

2. **Subdivision.** A subdivision is a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, or by sale of the land by metes and bounds or by leasing.

No sale or leasing of any lot or parcel shall be considered a subdivision, if such lot or parcel is not less than 40 acres in size, except where the intent of such conveyance is to avoid the objectives of this statute.

3. **Building.** Building shall mean any structure having a roof, partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or objects regardless of the materials of which it is constructed.

4. **Structure.** Structure shall mean anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, walls, fences, billboards, signs, piers and floats. It shall not include a wharf, fish weir or trap that may be licensed under Title 38, chapter 9.

5. **Accessory use or accessory structure.** Accessory use or accessory structure shall include a use or structure subordinate to a permitted or conditional use or structure and customarily incidental to the permitted or conditional use of the structure.

6. **Person.** Person shall mean an individual, firm, association, organization, partnership, trust, company, corporation, state agency or other legal entity.

**7. Development.** Development shall mean any land use activity or activities directed toward using, reusing or rehabilitating air space, land, water or other natural resources, excluding, however, such specific uses or classes and categories of uses as the commission may by regulation determine do not need regulating to achieve the purpose, intent and provisions of this chapter.

**8. Land use district.** Land use district shall mean the area located within the boundaries of air, land or water delineated vertically or horizontally by the commission for distinct categories of use.

**9. Nonconforming structure.** Nonconforming structure shall mean a structure, lawfully existing at the time of adoption of district regulations or subsequent amendment made thereto, that does not conform to the district regulations.

**10. Nonconforming use.** Nonconforming use shall mean a use of air, land, water or natural resources or a parcel of land, lawfully existing at the time of adoption of district regulation or subsequent amendments made thereto, that does not conform to the district regulations.

## § 683. Creation of Maine Land Use Regulation Commission

To carry out the purposes stated in section 681 there is created, within the Department of Conservation, the Maine Land Use Regulation Commission, hereinafter in this chapter called the "commission." The commission is charged with implementing this chapter in all of the unorganized and deorganized areas of the state. The commission shall consist of 7 public members, none of whom shall be state employees, who shall be appointed by the Governor, subject to review by the Joint Standing Committee on Natural Resources and to confirmation by the Legislature, for staggered 4-year terms. Among the public members, there shall be 4 who shall be knowledgeable in at least one of the following areas: Commerce and industry; fisheries and wildlife; forestry; and conservation. Of the potential appointees to the commission, the Governor shall give consideration to persons residing in or near the unorganized areas of the State.

Of the initial appointees, 2 shall be appointed for one-year terms, 2 shall be appointed for 2-year terms and 2 shall be appointed for 3-year terms. Thereafter appointees shall be appointed to serve 4-year terms. One of the members shall be elected annually by the members as chairman.

## § 684. Commission officers, meetings and rules; hearings

The commission shall elect annually, from its own membership, a secretary and such other officers it deems necessary. Meetings shall be held at the call of the chairman or at the call of more than ½ of the membership. Such public meetings shall be held at least once a month. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter II,[1] may adopt whatever rules it deems necessary for the conduct of its business. The secretary shall keep minutes of all proceedings of the commission, which minutes shall be a public record available and on file in the office of the commission. Members of the commission, except state employees, shall receive $40 per day for their services at meetings or hearings and all members shall receive necessary traveling expenses for attending any meetings of the commission or for any travel in connection with the official business of the commission and under specific authority of the commission, which traveling expenses shall be paid out of the General Fund. A quorum of the commission for the transaction of business shall be 4 members. No action shall be taken by the commission unless upon approval by a vote of 4 members.

Whenever the commission is required or empowered to conduct a hearing pursuant to any provision of law, such hearing may be held and conducted by the commission or by any member of the commission or by any qualified employee or representative of the commission as the commission chairman may determine. If the hearing is conducted by a single commissioner or qualified employee or representative, such commissioner, employee or representative shall report his findings of fact and conclusions to the commission together with a transcript of the hearing and all exhibits. Such findings of fact and conclusions shall become a part of the record. The commission shall not be bound by such findings or conclusions when acting upon such record, but shall take such action, issue such orders and make such decisions as if it had held and conducted the hearing itself.

## § 685. Commission budget, financing and executive director

The Commissioner of Conservation shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make such requirements in respect to the administration of such funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The commission shall give public notice of all contributions, in the state paper, stating the source, the amount and the purpose of such contributions. The commission may contract with municipal, State and Federal Governments or their agencies to assist in the carrying out of any of its assigned tasks. The Commissioner of Conservation, with the consent of a majority of the commission, shall appoint a director who shall be the principal administrative, operational and executive employee of the commission. The director shall attend all meetings of the commission and be permitted to participate fully but shall not be a voting member of the commission. The director with the approval of the Commissioner of Conservation may hire whatever competent professional personnel and other staff he deems necessary and he may obtain office space, goods and services as required.

## § 685-A. Land use districts and standards

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

**A.** Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State.

**B.** Management districts: Areas which are appropriate for commercial forest product or agricultural uses and for which plans for additional development are not presently formulated nor additional development anticipated.

**C.** [Blank]

**D.** Development districts: Areas discernible as having patterns of intensive residential, recreational, commercial or industrial use, or commercial removal of minerals or other natural resources, and areas appropriate for designation as development districts when measured against the purpose, intent and provisions of this chapter.

In addition to delineating the major district classifications listed, the commission may delineate such subclassifications as may be

deemed necessary and desirable to carry out the intent of this chapter.

2. **Interpretation of district boundaries.** Where uncertainty exists as to the boundaries of districts as shown on the official land use maps the following shall apply:

**A.** Boundaries indicated as approximately following center lines of public or private roads shall be construed to follow such center lines.

**B.** Boundaries indicated as following railroad lines shall be construed to be midway between the 2 outermost rails.

**C.** Boundaries indicated as approximately following property lines, township or county lines shall be construed as following such lines.

**D.** Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in event of natural change in the shorelines, shall be construed as moving with the normal high water mark; boundaries indicated as following the center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such natural center lines.

**E.** Boundaries indicated as approximately following ridge lines or specific contour lines shall be construed to follow such lines.

**F.** Boundaries indicated as parallel to or as extensions of features indicated in paragraphs A to E shall be so construed.

**G.** Where physical or cultural features existing on the ground are at variance with those shown on the official land use maps or in other circumstances not covered by paragraphs A to F, the commission shall interpret the district boundaries.

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

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

**A.** Encourage the most desirable and appropriate use of air, land and water resources consistent with the comprehensive land use plan;

**B.** Protect public health by reduction of noise, air pollution, water pollution and other environmental intrusions;

**C.** Protect and preserve significant natural, scenic and historic features where appropriate, beneficial and consistent with the comprehensive land use plan;

**D.** Advise and assist the Department of Transportation and other concerned agencies in transportation planning and operation;

**D-1.** Provide for safe and appropriate loading, parking and circulation of land, air and water traffic;

**E.** Encourage minimal adverse impact of one use upon the use of surrounding areas by setting standards of performance describing desirable and acceptable levels of operation in connection with any use and its relation to surrounding areas, including provisions for the eventual amelioration of existing adverse impact;

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

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

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

Any portion of a land use district which subsequently becomes an organized municipality or part of an organized municipality or any plantation which adopts planning, zoning and subdivision control as provided in Title 30, section 5621, shall continue to be regulated by the Land Use Regulation Commission pursuant to this chapter until such time as the municipality or plantation of which the regulated district is then a part, shall adopt land use plans and regulations not less protective of the existing natural, recreational or historic resources than those adopted by the commission. For a time period of 4 years after initial commission approval of these plans and regulations, any revisions or amendments to the adopted plan and regulation that are less protective than those in the adopted plan shall be submitted to the Land Use Regulation Commission for approval.

Any municipality organized after September 23, 1971, or any plantation which adopts planning, zoning and subdivision control as provided in Title 30, section 5621, may submit to the commission and receive the approval of the commission of the following:

A. A comprehensive land use plan for such plantation or proposed city or town;

B. Standards for determining land use district boundaries and uses permitted within such districts in such plantation or proposed city or town;

C. A land use district boundary map for such plantation or proposed city or town;

D. Such other proposed regulations or standards as the commission deems to be necessary to achieve the purpose, intent and provisions of this chapter; and

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

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

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

Land use standards adopted pursuant to this chapter for management districts shall in no way limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes, including tree farms.

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

**6. Interim district boundaries and land use standards.** Prior to the adoption of permanent district boundaries and land use standards as provided in subsections 1 and 3, the commission shall by January 1, 1975 adopt and enforce interim land use standards for temporary districts whose boundaries shall be determined and delineated on interim land use maps.

Interim districts and land use standards shall be delineated and related, insofar as practicable and reasonable, to reflect existing uses and conditions.

Interim districts and land use standards shall be adopted after public hearings as provided in subsection 7.

Interim districts and land use standards shall be effective no more than 48 months from the date first adopted. The adoption of permanent districts or land use standards shall supersede interim districts or standards.

In addition to the criteria stated in paragraph A of subsection 1, no boundaries for any protection district or subdistrict relating to deer wintering habitat may be adopted unless the following requirements are met:

A. The Department of Inland Fisheries and Game has met with the landowner for the purpose of reaching agreement as to the areas to be designated. The terms of any such agreement shall be reported to the commission by the department. If the parties were unable to agree, the substance of and reasons for such disagreement shall be reported to the commission by the department and the landowner;

B. In absence of agreement, in addition to the other requirements of this subchapter, a wildlife biologist of the Department of Inland Fisheries and Game shall substantiate the proposed protection district or subdistrict for wintering habitat, by the results of on-the-ground observation during a period of winter conditions when such areas are used for cover by the deer.

If the foregoing provisions work an undue hardship on the Department of Inland Fisheries and Game so that they are unable to substantiate these areas as deer wintering habitats, said areas shall continue to be designated as interim P-4 districts or subdistricts until the required on-the-ground observations are conducted.

**7. Hearings and procedures.** Within 45 days after the proposed land use district boundaries or standards are prepared or received by the commission, the commission shall hold a public hearing at a time and place convenient to persons affected by the proposal.

At least 45 days prior to holding a public hearing on proposed land use district boundaries, the commission shall give notice of the hearing to the owners of directly affected lands by mail, according to their names and addresses as shown on the records of the Bureau of Taxation and plantation tax assessors.

That notice shall state a citation of the statutory authority under which the maps or standards are proposed to be adopted, the purpose, time and place of the hearing, the time and place where copies of the proposed maps or standards may be inspected or obtained prior to the hearing, and the manner and time within which comments may be submitted to the commission for consideration.

At least 30 days prior to all hearings held under this subsection, notices shall be sent to appropriate state and federal agencies. Public notice shall be given by 3 publications in the state paper and such other daily papers published in the State as is determined will bring the proposals to the attention of interested parties; the date of the first publication to be at least 30, and the last publication to be at least 3, days prior to the hearing.

At hearings, interested owners, lessees, officials, agencies and individuals may appear and be heard. They shall further be allowed at least 15 days following the public hearing to file written statements with the commission. Except as provided in this chapter, any hearings required or authorized under this subsection or subsection 8 shall be conducted in accordance with the requirements for rule-making set forth in Title 5, chapter 375, subchapter II; provided that the requirements of Title 5, section 8052, subsection 5, section 8056, subsections 1, 3 and 4 and section 8057, subsection 2, shall not apply to these procedures.

The commission, acting in accordance with Title 5, chapter 375, subchapter II, shall adopt, and may amend and repeal, rules for the conduct of public hearings held under this section, including adjournments and continuations thereof. A complete verbatim recording shall be made of all hearings held pursuant to this section.

The land use district boundaries or standards shall be adopted within 45 days from final adjournment of the hearing.

Land use maps and standards so adopted shall become effective 15 days after their adoption by the commission, provided the applicable requirements of the Maine Administrative Procedure Act,[2] as modified by this chapter, are met, and provided the maps and standards are available in the appropriate registry of deeds for each county. Notice of this adoption of land use maps, standards or amendments thereto shall be given by publication once in those newspapers in which notice to the public is provided for under this subsection. Notice of this adoption shall also be filed with the Secretary of State indicating, in addition, that current copies of land use maps and standards are on file in the commission's offices and the methods by which copies may be obtained.

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

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

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

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

A. The change would be consistent with the standards for district boundaries in effect at the time; the comprehensive land use plan; and the purpose, intent and provisions of this chapter; and

B. The change in districting will satisfy demonstrated need in the community or area and will have no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

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

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

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

9. **Periodic review of district boundaries and land use standards.** At the end of each 5 years following initial adoption of permanent land use standards and districts, the commission shall make a comprehensive review of the classification and delineation

of districts of the land use standards. The assistance of appropriate state agencies shall be secured in making this review and public hearings shall be held in accordance with the requirements set forth in subsection 7.

**10. Special exceptions and variances.** The commission may approve the issuance of a special exception permit in strict compliance with this chapter and the regulations and standards adopted pursuant thereto. The commission may grant a variance where the commission finds that strict compliance with the regulations and standards adopted by this commission would cause unusual hardship or extraordinary difficulties because of exceptional or unique conditions of topography, access, location, shape, size or other physical features of the site, that the proposed development is in keeping with the general spirit and intent of this chapter and the public interest is otherwise protected.

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

## § 685-B. Development review and approval

**1. Review and approval required.**

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

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

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

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

Approval by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards, rules and regulations adopted by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the development meets the requirements of the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G, the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, chapter 3, subchapter 1, Article 1-A [1] or the Stream Alteration Law, sections 2206 to 2212 and the rules and regulations adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply. Disapproval by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the proposed development does not meet the requirements of the Site Location Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G, the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, section 422, or the Stream Alteration Law, sections 2206 to 2212 and the rules and regulations adopted with respect to any such statutes, as any of such statutes, rules or regulations may apply.

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

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

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

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

B. The fee prescribed by the commission rules, such fee to be the greater of $10 or 1/10 of 1% of the total construction costs;

3. **Hearings and procedures.** Any person aggrieved by a decision of the commission or its staff concerning any matter upon which no hearing was held may petition the commission for a hearing, within 30 days of such decision. The commission shall respond to the request within 30 days of receipt thereof by notifying the petitioner in writing of the date, time and place set for the requested hearing or of the denial of the request.

The commission may determine on its own motion to hold a hearing on an application, in which event it shall hold the hearing within 45 days of receiving the application. At least 15 days prior to the hearing, notices of the date, time and place thereof shall be sent to the applicant and to appropriate state and federal agencies. Any hearing held under this subsection shall not be considered an adjudicatory proceeding, subject to Title 5, chapter 375, subchapter IV.[2] Public notice shall be given 3 publications in the state paper and such daily papers published in the State as is determined will bring the proposals to the attention of all interested parties; the date of the first publication to be at least 10, and the last publication to be at least 3, days prior to the hearing.

The commission, acting in accordance with Title 5, chapter 375, subchapter II, shall adopt, and may amend and repeal, rules of conduct of hearings and shall make a complete verbatim recording of all hearings held pursuant to this section.

Within 45 days after the commission adjourns any hearing held under this subsection, it shall make findings of fact and issue an order granting or denying approval to the applicant to construct, develop or operate the structure, subdivision or development as proposed or granting such approval upon such reasonable terms and conditions as the commission may deem appropriate.

In the event that the commission determines to act upon an application for approval without hearing, within 30 days of receipt of the application, the commission shall approve, with such terms and conditions as deemed necessary, or disapprove the application.

In the event of a decision for disapproval, the commission shall notify the applicant and specify the grounds of disapproval and inform him of any right he may have to request a hearing.

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

The commission shall approve no application, unless:

A. Adequate technical and financial provision has been made for complying with the requirements of the state's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G, the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, chapter 3, subchapter 1, Article 1-A, and the Stream Alteration Law, sections 2206 to 2212, for solid waste disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies; and

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

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

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

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

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

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected.

**5. Limitation, expiration, transfer and revocation of approval.** Commission authorization pursuant to this section shall permit only the arrangement and construction set forth in the approval as issued. Change in use, arrangement or construction shall be considered a violation of this chapter and punishable as provided in this chapter.

A violation of any condition attached to a commission approval or permit, or any change in use, arrangement or construction from that approved, shall be deemed a violation of this chapter and, in addition to any other penalties or remedies prescribed herein or otherwise provided by law, shall constitute grounds for the revocation or suspension of this approval. The commission may, acting in accordance with Title 5, section 10003, amend, modify or refuse to renew any commission approval or permit where the commission determines that the criteria for approval set forth in subsection 4, paragraphs A to F, have not been, are not being, or will not be satisfied.

**6. Recording of approved proposals.** A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.

In the event the commission approves an application for subdivision approval, a copy of an approved plat or plan and a copy of the conditions required by the commission to be set forth in any instrument conveying an interest within the subdivision attested to by an authorized commission signature shall be filed with the appropriate registry of deeds in the county in which the land lies.

A register of deeds shall not record a copy of conditions or any plat or plan purporting to subdivide land located within the unorganized and deorganized lands of the State, unless the commission's approval is evidenced thereon.

The grantee of any conveyance of unrecorded subdivided land or subdivided land recorded in violation of this section may recover the purchase price, at interest, together with damages and costs in addition to any other remedy provided by law.

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

petuation of nonconforming uses. Specifically the commission may regulate and prohibit:

**A.** Changes in nonconforming uses to another nonconforming use;

**B.** Extension or enlargement of nonconforming uses or nonconforming structures;

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

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

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

Any use for which a special exception has been granted by the commission, as provided for in section 685-A, subsection 10, shall not be deemed a nonconforming use, but shall be deemed a conforming use in such district.

8. **Certificates of compliance.** It shall be unlawful to use or occupy or permit the use or occupancy of any land, structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structural form, requiring subsequent review and approval pursuant to this subchapter, until a certificate of compliance has been issued therefor by the commission stating that the requirements and conditions of approval have been met.

A certificate of compliance may contain such terms and conditions as will protect the health, safety and general welfare of the occupants, users and the public.

The commission may establish standards within which authority shall be delegated to its staff, to issue or deny certificates of compliance. Any person aggrieved by a decision of the staff shall have the right to a review of such decision by the commission members within 30 days of such decision.

## § 685-C. Miscellaneous provisions

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

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

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

The commission may hold public hearings to collect information to be used in establishing the land use guidance plan. The public hearings will be conducted according to commission rules adopted in accordance with procedures for the establishment of rules

and regulations pursuant to Title 5, Chapter 375, Subchapter II

The commission may, on its own motion or petition of any state agency or regional planning commission, hold such other hearings as it may deem necessary from time to time for the purpose of obtaining information helpful in the determination of its policies, the carrying out of its duties, or the formulation of its land use standards or rules and regulations.

The commission shall adopt no plan or portion of a plan, unless:

**A.** The tentative plan has been submitted to each regional planning commission and other appropriate agencies, which shall forward their comments and recommendations, if any, to the commission within 30 days, and

**B.** The tentative plan has been submitted to the State Planning Office, pursuant to Title 5, section 3305, subsection 1, paragraph G, which shall forward its comments and recommendations, if any, to the commission within 30 days, and

**C.** The commission has considered all such comments.

Upon adoption of the official land use plan by the commission, it shall submit the plan to the Governor for approval. The Governor shall approve or disapprove the plan, plans or any portion of a plan within 30 days of receipt. If the Governor fails to act, the plan shall be deemed approved. This subsection shall also apply to any alteration in the comprehensive plan.

**2. Land use guidance and planning manual.** The commission shall prepare, maintain and distribute from time to time a land use guidance and planning manual setting forth:

**A.** A copy of this chapter, together with all amendments thereof and other applicable legislation;

**B.** Examples of land use planning policies, standards, maps and documents prepared in conformance with the purposes of this chapter;

**C.** An explanation and illustrative examples of the land use standards and procedures authorized in this chapter;

**D.** Other explanatory material and data which will aid landowners in the preparation of their plans in conformance with the procedures, rules and standards authorized in this chapter.

The commission shall, from time to time, confer with interested parties with a view toward insuring the maintenance of such manual in the form most useful to those making use of it.

Sections of this manual may be cited in any plan or standard in the same manner as citations of this chapter, and may be incorporated by reference in any plan, standard, rule or regulation.

**3. Schedule of fees.** The commission shall establish and amend a schedule of reasonable fees for the administration of this chapter. The fees shall be adopted and amended, in accordance with procedures for the establishment of rules and regulations pursuant to Title 5, Chapter 375, subchapter II.

No approval, certificate, special exception or variance shall be issued, unless or until such fees established by the commission have been paid in full, nor shall any action be taken on proceedings before the commission, unless or until preliminary fees have been paid in full.

**4.** Repealed.

**5. Additional powers and duties.** In order to implement this chapter, the commission may, in addition to its powers and duties previously authorized in this chapter:

A. Adopt rules to interpret and carry out this chapter in accordance with Title 5, chapter 375, subchapter II, unless otherwise provided by this chapter;

B. Have the power to compel attendance of witnesses, and require production of evidence;

C. Designate or establish such regional offices as it deems necessary;

D. Designate or request other appropriate agencies to receive application, provide assistance, investigations and make recommendations;

E. By rule allow joint hearings to be conducted with other appropriate agencies;

F. Execute contracts and other agreements to carry out its purposes.

**6. Adjustments of assessing practices.** Upon adoption of district boundaries and land use standards, a certified copy of each official land use guidance map, delineating district boundaries, and associated land use standards shall be filed with the State Tax Assessor.

**7. Time periods.** In computing the period of time to perform any act under these rules, the first day on which an act may be performed shall not be included but the last day of the period shall be included, unless it is a Saturday, Sunday or holiday in which event the period shall be extended until the next business day.

A holiday is any day appointed as such by the President or Congress of the United States, or the Governor or Legislature of the State of Maine.

**8. Enforcement, inspection and penalties for violations.** Standards, rules, regulations and orders issued by the commission pursuant to this chapter shall have the force and effect of law. No development may be undertaken, except in conformance with this chapter, the standards, rules, regulations and orders enacted or issued pursuant to this chapter, and any real estate or personal property existing in violation of such shall be a nuisance. For the purposes of inspection and to assure compliance with standards, orders and permits issued or adopted by the commission, authorized commission staff or consultant personnel may conduct such investigations, examinations, tests and site evaluations deemed necessary to verify information presented to it, and may obtain access to any lands and structures regulated pursuant to this chapter.

A violation of any provision of this chapter or the rules promulgated hereunder is punishable by a fine of up to but not more than $500 for each day of the violation.

In addition to the other penalties provided, the commission may, in the name of the State of Maine, institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any violation hereof or orders or of the standards, rules or regulations promulgated hereunder. This action may include, but is not limited to, proceedings to revoke or suspend any commission permit or approval, taken either before the commission itself in accordance with Title 5, section 10004, before the Administrative Court in accordance with Title 4, sections 1152 to 1157, or, notwithstanding the provisions of Title 4, section 1151, subsection 2, or Title 5, section 10051, before the Superior Court as part of an enforcement action brought by the commission.

A person who willfully or knowingly falsifies any statement contained in the certification required, shall be punished by a fine of up to but not more than $500.

**§ 689. Appeal**

Persons aggrieved by final actions of the commission, including without limitation any final decision of the commission with respect to any application for approval or the adoption by the commission of any district boundary or amendment thereto, may appeal therefrom in accordance with Title 5, Chapter 375, subchapter VII.[1] This right of appeal, with respect to any commission action to which this right may apply, shall be in lieu of the rights provided under Title 5, section 8058, subsection 1.

# LAND SUBDIVISIONS LAW

MAINE REVISED STATUTES ANNOTATED
Title 30 § 4956

## § 4956. Land subdivisions

**1. Defined.** A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of such gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purposes of this section.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of said first 2 lots, by whomever accomplished, unless otherwise exempted herein, shall be considered to create a 3rd lot, unless both such dividings are accomplished by a subdivider who shall have retained one of such lots for his own use as a single family residence for a period of at least 5 years prior to such 2nd dividing. Lots of 40 or more acres shall not be counted as lots.

For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

**2. Municipal review and regulation.**

**A.** All requests for subdivision approval shall be reviewed by the municipal planning board, agency or office, or if none, by the municipal officers, hereinafter called the municipal reviewing authority.

**B.** The municipal reviewing authority may, after a public hearing, adopt additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body. The municipal reviewing authority shall give at least 7 days' notice of such hearing.

**C.** On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.

**C–1.** Upon receiving an application, the municipal reviewing authority shall issue to the applicant a dated receipt. Within 30 days from receipt of an application, the municipal reviewing authority shall notify the applicant in writing either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the municipal reviewing authority has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.

**D.** In the event that the municipal reviewing authority determines to hold a public hearing on an application for subdivision approval, it shall hold such hearing within 30 days of receipt by it of a completed application, and shall cause notice of the date, time and place of such hearing to be given to the person making the application and to be published in a newspaper of general circulation in the municipality in

which the subdivision is proposed to be located, at least 2 times, the date of the first publication to be at least 7 days prior to the hearing.

The municipal reviewing authority shall, within 30 days of a public hearing or within 60 days of receiving a completed application, if no hearing is held, or within such other time limit as may be otherwise mutually agreed to, issue an order denying or granting approval of the proposed subdivision or granting approval upon such terms and conditions as it may deem advisable to satisfy the criteria listed in subsection 3 and to satisfy any other regulations adopted by the reviewing authority, and to protect and preserve the public's health, safety and general welfare. In all instances, the burden of proof shall be upon the persons proposing the subdivisions. In issuing its decision, the reviewing authority shall make findings of fact establishing that the proposed subdivision does or does not meet the foregoing criteria.

**3. Guidelines.** When promulgating any subdivision regulations and when reviewing any subdivision for approval, the planning board, agency or office, or the municipal officers, shall consider the following criteria and before granting approval shall determine that the proposed subdivision:

**A.** Will not result in undue water or air pollution. In making this determination it shall at least consider: The elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;

**B.** Has sufficient water available for the reasonably foreseeable needs of the subdivision;

**C.** Will not cause an unreasonable burden on an existing water supply, if one is to be utilized;

**D.** Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

**E.** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;

**F.** Will provide for adequate sewage waste disposal;

**G.** Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage, if municipal services are to be utilized;

**H.** Repealed. 1973, c. 465, § 3.

**I.** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;

**J.** Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any; and

**K.** The subdivider has adequate financial and technical capacity to meet the above stated standards.

**L.** Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.

M. Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

3–A. **Access to direct sunlight.** The planning board, agency or office or the municipal officers may, for purposes of protecting and assuring access to direct sunlight for solar energy systems, prohibit, restrict or control development through subdivision regulations. The regulations may call for subdivision development plans containing restrictive covenants, height restrictions, side yard and setback requirements or other permissible forms of land use controls.

4. **Enforcement.** No person, firm, corporation or other legal entity may sell, lease, develop, build upon or convey for consideration, offer or agree to sell, lease, develop, build upon or convey for consideration any land in a subdivision which has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and recorded in the proper registry of deeds, nor shall such person, firm, corporation or other legal entity sell or convey any land in such approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term "permanent marker" includes but is not limited to the following: A granite monument, a concrete monument, an iron pin or a drill hole in ledge. No subdivision plat or plan shall be recorded by any register of deeds which has not been approved as required. Approval for the purpose of recording shall appear in writing on the plat or plan. No public utility, water district, sanitary district or any utility company of any kind shall install services to any lot in a subdivision for which a plan has not been approved.

Any person, firm, corporation or other legal entity who sells, leases, develops, builds upon, or conveys for consideration, offers or agrees to sell, lease, develop, build upon or convey for consideration any land in a subdivision which has not been approved as required by this section shall be punished by a fine of not more than $1,000 for each such occurrence. The Attorney General, the municipality, the planning board of any municipality or the appropriate municipal officers may institute proceedings to enjoin the violations of this section and if a violation is found by the court, the municipality, municipal planning board or the appropriate municipal officers may be allowed attorney fees.

5. **Exemptions.** This section shall not apply to proposed subdivisions approved by the planning board or the municipal officials prior to September 23, 1971 in accordance with laws then in effect nor shall it apply to subdivisions as defined by this section in actual existence on September 23, 1971 that did not require approval under prior law or to a subdivision as defined by this section, a plan of which had been legally recorded in the proper registry of deeds prior to September 23, 1971. The division of a tract or parcel as defined by this section into 3 or more lots and upon all of which lots permanent dwelling structures legally existed prior to September 23, 1971 is not a subdivision.

The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this section, shall not become subject to this section by the subsequent dividing of said tract or parcel of land or any portion thereof, however, the municipal reviewing authority shall consider the existence of such previously created lot or lots in reviewing a proposed subdivision created by such subsequent dividing.

# SITE LOCATION OF DEVELOPMENT

MAINE REVISED STATUTES ANNOTATED
Title 38 §§ 481-490

## § 481. Findings and purpose

The Legislature finds that the economic and social well-being of the citizens of the State of Maine depend 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 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 environment.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Board of Environmental Protection, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings and protect the health, safety and general welfare of the people.

## § 482. Definitions

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

**1. Board.** "Board" means the Board of Environmental Protection.

**2. Development which may substantially affect the environment.** "Development which may substantially affect the environment," in this Article called "development," means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, which occupies a land or water area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or under water where the area affected is in excess of 60,000 square feet, or which is a mining activity, or which is a structure; but excluding state highways, state aid highways, and, borrow pits for sand, fill or gravel, of less than 5 acres or when regulated by the Department of Transportation.

No person shall construct or cause to be constructed or operate or cause to be operated, or in the case of a subdivision sell, offer for sale, or cause to be sold, any development requiring approval under section 483 without first having obtained approval for such construction, operation or sale from the Board of Environmental Protection.

**2-A. Exploration.** "Exploration" means an activity solely intended to determine the existence, quality and quantity of product provided less than 1,000 cubic yards of product is extracted or removed within 12 successive months.

**2-B. Mining activity.** "Mining activity" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of more than 1,000 cubic yards of product or overburden from the earth within 12 successive calendar months; any activity or process that for the extraction or removal of the product or overburden; and the preparation, washing, cleaning or other treatment of that product so as to make it suitable for commercial, industrial or construction use, but shall not include excavation or grading preliminary to a construction project.

**3. Natural environment of a locality.** "Natural environment of a locality" includes the character, quality and uses of land, air and waters in the area likely to be affected by such development, and the degree to which such land, air and waters are free from non-naturally occurring contamination.

**3-A. Overburden.** "Overburden" means earth and other materials naturally lying over the product to be mined.

**4. Person.** "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, educational or charitable organization or institution or other legal entity.

**4-A. Product.** "Product" means clay, peat, stone minerals, ores, topsoils or other solid matter.

**4-B. Reclamation.** "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the board, including, but not limited to, the creation of lakes or ponds, where practicable, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits, shafts and underground workings with solid materials.

**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 such lots make up an aggregate land area of more than 20 acres except for the following:

**A.** All the lots are at least 10 acres in size;

**B.** All the lots are at least 5 acres, and the municipality has adopted additional regulations governing subdivisions pursuant to Title 30, section 4956, and the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access; or

**C.** All the lots are at least 5 acres, but do not make up a total of more than 100 acres and the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access.

**6. Structure.** A "structure" shall mean:

**A.** A building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or attached to something on or in the ground which occupies a ground area in excess of 60,000 square feet, or

**B.** Parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated which causes a total project, including any buildings to occupy a ground area in excess of 3 acres.

## § 483. Notification required; board action; administrative appeals

Any person intending to construct or operate a development shall, before commencing construction or operation, notify the board in writing of his intent and of the nature and location of such development, together with such information as the board may by regulation require. The board shall within 30 days of receipt of such notification, either approve the proposed development, upon such terms and conditions as are appropriate and reasonable, or disapprove the proposed development setting forth the reasons therefor or schedule a hearing thereon in the manner hereinafter provided.

Any person as to whose development the board has issued an order without a hearing may request, in writing, within 30 days after notice, a hearing before the board. Such request shall set forth, in detail, the findings and conclusions of the board to which such person objects, the bases of such objections and the nature of the relief requested. Upon receipt of such request, the board shall schedule and hold a hearing limited to the matters set forth in such request. Such hearing shall be scheduled in accordance with section 484.

## § 484. Hearings; orders; construction suspended

In the event that the board determines to hold a hearing on a notification submitted to it pursuant to section 483, it shall hold such hearing within 30 days of such determination, and shall cause notice of the date, time and place thereof to be given.

At such hearing the board shall solicit and receive testimony to determine whether such development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare. The board may at such hearing also receive testimony on the economic effect of such development.

The board shall approve a development proposal whenever it finds that:

1. **Financial capacity.** The developer has the financial capacity and technical ability to meet state air and water pollution control standards, and has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies;

2. **Traffic movement.** The developer has made adequate provision for traffic movement of all types out of or into the development area;

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, or natural resources in the municipality or in neighboring municipalities.

4. **Soil types.** The proposed development will be built on soil types which are suitable to the nature of the undertaking.

In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 100 kilovolts or more proposed to be erected within this State by an electrical company or companies, the proposed development, in addition to meeting the requirements of subsections 1 to 4, shall also have been approved by the Public Utilities Commission under Title 35, section 13–A.

In the event that an electric company or companies file a notification pursuant to section 483 before they are issued a certificate of public convenience and necessity by the Public Utilities Commission, they shall file a bond or, in lieu of that bond, satisfactory evidence of financial capacity to make that reimbursement with the department, payable to the department, in a sum satisfactory to the Commissioner of Environmental Protection and in an amount determined by him not to exceed $50,000, which bond or evidence of financial capacity shall be conditioned so as 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.

At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the board that each of the criteria for approval listed in the preceding paragraphs have been met, and that the public's health, safety and general welfare will be adequately protected.

A complete verbatim transcript shall be made of all hearings held pursuant to this section.

Within 30 days after the board adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing such development to construct or operate the same as proposed, or granting such permission upon such terms and conditions as the board may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

In the case of a transmission line carrying 100 kilovolts or more or a gas pipeline, a permit under this chapter may be obtained prior to any acquisition of lands or easements therefor to be acquired by purchase and such permit shall be obtained prior to any acquisition of land by eminent domain.

Any person making application for site location of development approval pursuant to section 481, et seq., for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to section 483, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or a transmission line by registered mail, postage prepaid at the land owner's last known address as contained in the applicable tax assessor's records and shall file with the town clerk of each municipality through which the pipeline or a transmission line is proposed to be located, a map demonstrating the intended approximate location of the pipeline or a transmission line within the municipality. The applicant shall not be required to provide notice of his intent to construct a gas pipeline or a transmission line other than as set forth in this paragraph. The board shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of subsections 1 to 4 have been met, the board, in the case of such transmission line or pipelines, shall consider whether any proposed alternatives to the proposed location and character of such transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The board may approve or disapprove all or portions of such 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 thereby caused.

Any person who has notified the board, pursuant to section 483, of his intent to construct or operate a development shall immediately defer or suspend construction or operation with respect to such development until the board has issued its order.

Any person securing approval of the board, pursuant to this Article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until he has complied with such standards.

## § 485. Failure to notify board; hearing; injunction; orders

The board may at any time with respect to any person who has commenced construction or operation of any development without having first notified the board pursuant to section 483, schedule and conduct a public hearing with respect to such development.

## §§ 486, 487. Repealed. 1977, c. 300, §§ 33, 34

## § 488. Applicability

This Article shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying 100 kilovolts or more, nor shall it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.

Developments which consist only of a municipal or private road or way are exempt from the requirements of this Article as follows.

1. Unorganized areas. Within those areas of the State which are subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, such roads and ways are exempt provided they are located, constructed and maintained in accordance with the following provisions:

A. In protection and development districts, the standards adopted by the Maine Land Use Regulation Commission for such districts; and

B. In management districts, the guidelines of the Maine Land Use Regulation Handbook, section 6, "Erosion Control on Logging Jobs," or as revised. The Maine Land Use Regulation Commission may adopt such definitions as are necessary to implement the provisions of this paragraph.

2. Organized areas. Within all areas of the State not subject to the jurisdiction of the Maine Land Use Regulation Commission, such roads and ways are exempt provided they are located, constructed and maintained in accordance with standards adopted by the board in accordance with this section. The board shall consider road construction standards adopted by the Maine Land Use Regulation Commission in promulgating these standards.

3. Standards, guidelines, definitions and revisions. Standards, guidelines, definitions and any revisions adopted pursuant to this section shall be in effect until 90 days after adjournment of the next regular session of the Legislature following enactment of this subsection, unless approved by legislative resolve.

## § 489. Municipal review of subdivisions

**1. Municipal application for review power.** A municipality may apply to the Board of Environmental Protection, on forms provided by the board, for authority to substitute permits issued pursuant to Title 30, section 4956 for permits required by section 483 for subdivisions more than 20 acres but less than 100 acres. The board shall grant such authority if it finds that the municipality has:

**A.** Established a planning board;

**B.** Developed a suitable application;

**C.** Made provisions by ordinance or regulation for prompt notice to the board upon receipt of the application, written notification to the applicant and the board of the issuance of or denial of a permit, stating the reason therefor, public notice and satisfactory hearing procedures.

In the event that the board finds that a municipality has failed to satisfy one or more of the above listed criteria, it shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If at any time the board determines that a municipality has failed to exercise its permit granting authority in accordance with its approved procedures or the purposes of this Article as embodied in the standards set forth in section 484 and Title 30, section 4956, it shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality, to solicit public or official comment thereon. Following such hearing, if it finds that such deficiencies will persist, it shall revoke the municipality's permit granting authority.

In the event that a municipality has the authority granted by this Act revoked by the board, it may reapply to the board for such authority at any time.

**2. Time limit for municipal action on permit.** Within 30 days after receipt of a completed application for a permit for a subdivision, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order, for which hearing adequate public notice shall be given. Within 30 days after the adjournment of such hearings, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor.

**3. Effective date of permit; board review.** No permit issued by a municipality shall become effective until 30 days subsequent to its issuance. A copy of the application for the permit, the permit issued by the municipality and its findings on review of the application shall be sent to the board immediately upon its issuance by certified mail. The board shall review such permit and either approve, deny or modify it as it deems necessary. Failure of the board to act within 30 days of the issuance of the permit by the municipality shall constitute its approval and the permit shall be effective as issued.

**4. Hearing upon denial.** In the event that a permit applied for is denied either by a municipality or the Board of Environmental Protection, the applicant may request a hearing before either of the above with reasonable public notice given.

5. **Exception.** If a proposed subdivision is located in more than one municipality, the authority provided in subsection 1 shall not apply.

§ 490. **Reclamation**

1. **Requirement.** All mining activities shall include provisions for safety and reclamation of the land area affected or otherwise comply with an approval issued pursuant to this chapter.

2. **Bonds.** The board may require a bond payable to the State with sureties satisfactory to the board or such other security as the board may determine will adequately secure compliance with this chapter, conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations of the board. In determining the amount of the bond or the security, the board 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 to be required. All proceeds of forfeited bonds or other security shall be expended by the board for the reclamation of the area for which the bond was posted, and any remainder shall be returned to the operator.

3. **Time schedules.** It shall be the duty of a person engaged in a mining activity to commence the reclamation of the area of land affected by the mining activity as soon as possible after the beginning of the mining activity of that area in accordance with plans previously approved by the board. If it appears that planting to provide vegetative cover of an affected area may not be successful, the board may authorize the deferring of the planting until the soil has become suitable for those purposes and a yearly report shall be filed with the board indicating the soil conditions until a successful planting or seeding has been completed.

4. **Gifts and funds for reclamation.** The board may acquire, in the name of the State, land by gift or purchase which has been affected by a mining activity for the purpose of carrying out reclamation work. Upon completion of reclamation, the land may be sold at public auction, conveyed to the municipality or remain property of the State. The board may accept funds from private or other sources, which shall be used for reclamation purposes, whether in conjunction with appropriated funds of the State or otherwise.

5. **Cooperation with others.** The board shall cooperate with the federal, state and local governments, with natural resource and conservation organizations, and with any public or private entities having interests in any subject within the purview of this chapter.

The board is designated the public agency of the State for the purpose of cooperating with appropriate departments and agencies of the Federal Government concerning reclamation of lands in connection with development and mining of minerals in the State, and for the purpose of cooperating and consulting with federal agencies in carrying out this chapter. For these purposes, the board may accept federal funds which may be made available pursuant to federal law, and may accept such technical and financial assistance from the Federal Government as the board deems advisable and proper for purposes of this chapter.

The board is further designated the public agency of the State for the purposes of meeting requirements of the Federal Government with respect to the administration of these federal funds, not inconsistent with this chapter.

6. **Fees.** All fees collected by and other funds received by the board pursuant to this chapter shall be placed in a reclamation fund to carry out the purposes of this chapter. This fund shall not lapse.

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 330 BUREAU OF LAND QUALITY-FEE SCHEDULE

SUMMARY: These rules establish the fees for new, amended and revised site location and septic tank and cesspool materials disposal site permits. In addition governmental agencies and certain entities licensed by the Department of Education and Cultural Services and Human Services are exempt from the payment of fees.

All previous regulations pertaining to Bureau of Land Quality Fees are superseded by these rules.

1. Site Location of Development-MRSA, Title 38, Section 484

A. Site location of Development projects excluding subdivisions, shall be subject to fee according to the following formula:

Fee= estimated cost of project in dollars x .0001

B. Amendments and/or revisions to applications shall be subject to an additional fee based on the formula in Section A.

C. The minimum fee to be assessed under this section is $30.00 for the original approval.

D. Subdivision projects shall be subject to a fee according to the following formula:

Fee= number of lots x $2.00 + $6.00 for registry of deed costs.

E. Amendments and/or revisions to applications shall be subject to a fee based on the formula in section B., plus $6.00 for registry of deed costs.

F. The minimum fee to be assessed under this section is $30.00 for the original approval.

G. The fee for transfer of an order shall be $6.00.

Fees assessed under this regulation shall be paid prior to commencement of any development work or an offer to sell or lease any lot.

2.0 Septic Tank and Cesspool Waste Material Disposal Areas-MRSA, Title 38, Section 1320-1322.

Septic tank and cesspool waste material disposal areas approved by the Board of Environmental Protection shall be subject to an annual fee of $25.00.

7.0 Maximum Fee

No fee assessed under these regualtions shall exceed $500.00 per year.

8.0 Payment Due

All fees shall be paid prior to the issuance of the license or permit.

9. Exemptions

A. Municipalities;
B. Quasimunicipal corporations;
C. Private educational institutions formally recognized by the Department of Education and Cultural Services;
D. Non-profit health institutions licensed by the Department of Human Services;
E. Public educational institutions; and
F. State agencies.

After public notice and public hearing November 21 1977 the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: The projects subject to fees in addition to initial processing require periodic inspection to determine if the developer is carrying out the project in accordance with the conditions of the permit. The collected fees partially off-set the inspection and document recording costs.

AUTHORITY: 38 M.R.S.A. Section 361

EFFECTIVE DATE: May 24, 1976
Amended Date: February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 371 DEFINITIONS OF TERMS USED IN THE SITE LOCATION OF DEVELOPMENT LAW AND REGULATIONS

SUMMARY: This chapter defines and clarifies the terms used in the Site Location of Development Law (38 M.R.S.A. §481 et seq.) and in the regulations interpreting the Site Location of Development Law.

1. Definitions

The following terms, as used in the Site Location of Development Law (38 M.R.S.A. §481 et seq.) and in these regulations (Chapter 371 - 376) shall have the following meanings, unless the context otherwise indicates:

A. Board. "Board" means the Board of Environmental Protection.

B. Borrow pit. "Borrow pit", as used in 38 M.R.S.A. §482(2), means an excavation for sand, fill or gravel.

1. Borrow pits in existence before January 1, 1970, which are expanded or intended to be expanded by five acres or more after that date, do not qualify for exemption under 38 M.R.S.A. §482(2), unless regulated by the Maine Department of Transportation.

C. Common scheme of development. "Common scheme of development" means a plan or process of development which:

1. Takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity; and

2. Exhibits characteristics of a unified approach, method, or effect such as:

a. unified ownership, management, or supervision;
b. sharing of common equipment or labor; or
c. common financing.

D. Department. "Department" means the Department of Environmental Protection.

E. Developer. "Developer" means a person as defined in 38 M.R.S.A. §482(4):

1. Constructing, causing to be constructed, or intending to construct a development;

2. Operating, causing to be operated, or intending to operate a development; or

3. In the case of a subdivision, selling or leasing, causing to be

sold or leased, offering for sale or lease, or intending to sell or lease lots in a development.

F. Division. "Division", as used in 38 M.R.S.A. §482(5), means some overt act beyond drawing or marking lots on a plot or plan in furtherance of an intent to offer for sale or lease lots falling within the specifications of 38 M.R.S.A. §482(5).

*NOTE: The required overt act may include, but is not limited to, beginning construction, advertising lots for sale, selling lots, or recording a plot plan with the Registry of Deeds. Exploratory soil test pits for the purpose of detailed soils mapping or for assessing adequacy for on-site sewage disposal would not be considered an overt act under this subsection.*

G. Excavating. "Excavating", as used in 38 M.R.S.A. §482(2), means the moving, removing or uncovering of natural resources, such as topsoil, clay, peat, rock or other materials, but does not include:

1. Borrow pit operations for sand, fill or gravel of less than five acres, or when regulated by the Maine Department of Transportation;

2. Normal agricultural practices, excluding the stripping of topsoil; or

3. Digging pits or holes by manual labor for activities such as the harvesting of clams or worms.

H. In existence. "In existence", as used in 38 M.R.S.A. §488, means utilizing a parcel of land so that the parcel is known in the neighborhood as being used for a given purpose. Mere contemplated or intended use, standing alone, is not sufficient to establish the "existence" of a development.

1. If plans for a development in existence are changed substantially by a developer after January 1, 1970, the development no longer qualifies for the exemption in 38 M.R.S.A. §488, and the entire development must be approved by the Board before further construction or operation is undertaken.

I. Lot. "Lot", as used in 38 M.R.S.A. §482(5), means a portion of a parcel of land measured and marked out by metes and bounds or by some other approved surveying technique.

J. Natural buffer strip. "Natural buffer strip" means an area or belt of land which:

1. Is covered with trees or other vegetation;

2. Runs along the border between a development site and an adjacent piece of land, body of water, or other specified area; and

3. Serves to protect the piece of land or body of water from adverse effects of the development or preserves some existing quality or use in the area of the development.

K. Offered for sale or lease to the general public. "Offered for sale or lease to the general public", as used in 38 M.R.S.A. §482(5), means com-

municated as available for sale or lease, and does not include consideration of who initiated the offer.

1. Any transfer of title, right or interest, except those described in Paragraph 2, shall be considered a sale or lease.

2. Unless intended to circumvent the Site Location Law, the following transactions shall not be considered offers for sale or lease:

a. Bona fide private transactions such as the offering of lots for sale or lease to an abutting owner or to a spouse, child, parent, grandparent, or sibling of the developer;

b. Bona fide personal, non-profit transactions such as the transfer of lots by gift or devise.

L. Parcel of land. "Parcel of land" means the block or piece of land a developer owns or has sufficient title, right or interest in regardless of size, regardless of whether the block of land is divided into lots, and regardless of whether individual lots within the block are contiguous, as long as the lots treated together are all part of a common scheme of development.

1. In calculating the aggregate land area of a parcel of land, the following shall be considered:

a. The acreage of the parcel of land proposed for development;

b. The acreage of all lots within the parcel already offered for sale or lease by the developer within the preceeding five years; and

c. The acreage within the parcel which the developer intends to develop within the next five years.

2. In determining the area of a parcel of land, property in the intertidal zone shall be included as part of the property of the adjoining shoreland owner, unless specifically excluded by deed.

a. An owner of property located on tidewater owns all land down to the ordinary low water mark or 1650 feet (100 rods) below the high water mark, whichever is less, unless specifically excluded by deed.

b. The side lines on flats adjoining property located on the tidewater shall be determined as follows:

i. draw a base line between the points where the property lines touch the high water mark.

ii. project lines out from those points at a 90 degree angle from the base line and extend the lines to the ordinary low water mark or for 1650 feet (100 rods), whichever is less.

iii. where lines of adjacent owners intersect, as in coves, or do not touch, as on points, split the difference between adjacent owners.

3. In determining the area of a parcel of land, the following considerations shall be taken into account:

a. Riparian owners of property on non-tidal streams own the bed of the stream to the thread of the stream, or to the mid-point of the stream, if no thread is determinable;

b. Owners of property located adjacent to a great pond own all the land down to the natural low water mark;

c. Ownership of roads, ways, or highways, or portions of roads, ways, or highways, by adjacent landowners, should be determined in accordance with 33 M.R.S.A. §465.

*NOTE: 33 M.R.S.A. §465 is the section of the Maine statutes dealing with the ownership of roads, ways, and highways or their parts by persons owning land abutting the roads, ways, and highways.*

M. Person

1. Each "person", as defined in 38 M.R.S.A. §482(4), shall be regarded as a separate and distinct entity, except that a combination of persons shall be treated as a single person for the purposes of the Site Location Law if:

a. Together they pursue a common scheme of development which is subject to the Site Location Law even though individual persons in the combination own separate parcels which may not be subject to the Site Location Law if the parcels were developed separately; or

b. One person engages in a transaction with another person with the intent to evade the intent and purpose of the Site Location Law.

N. Possession of applicable state or local licenses. "Possession of applicable state or local licenses", as used in 38 M.R.S.A. §488, means actual possession by the developer of licenses or written evidence of approval which would have permitted construction or operation of the development to begin lawfully. Mere preliminary conditional approval of a license application, a mere right to approval of a license application, or any other interest short of actual possession of a license or other written evidence of approval are insufficient to satisfy the possession requirement.

O. Road. "Road", as used in 38 M.R.S.A. §482(6)(B), means a way or course which is:

1. Constructed or formed by substantial recontouring of land;

2. Designed to permit passage by most wheeled vehicles;

3. Not intended to be abandoned and revegetated within a short period of time; and

4. Designed to be permanent or intended to be used for a significant period of time.

*NOTE: For example, a passage bulldozed through a stand of trees to permit the movement of a skidder or tracked vehicle, that does not result in substantial recontouring of the land, and that is intended to be abandoned and naturally revegetated within a year or less, is not a road within the meaning of §482(6)(B).*

P. Site Location Law. "Site Location Law" means the Site Location of Development Law, 38 M.R.S.A. §481 et seq.

Q. Staff. "Staff" means the staff of the Department of Environmental Protection.

R. Transmission line. "Transmission line", as used in 38 M.R.S.A. §§484 and 488, means electrical transmission line and does not include a natural gas pipeline, an oil pipeline, a highway, or any other means of conveyance.

S. Under construction. "Under construction", as used in 38 M.R.S.A. §488, means the developer's having expended a substantial amount of money or effort towards the completion of a development. The test of the substantiality involves an assessment of the amount of money or effort expended in relation to the amount required to complete the development.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are adopted to explain and clarify the meaning of words and terms used in the Site Location of Development Law and in these regulations interpreting that law.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 372 POLICIES AND PROCEDURES UNDER THE SITE LOCATION LAW

SUMMARY: These regulations describe the general policies and procedures under the Site Location Law, including scope of review; nature of terms and conditions; Board jurisdiction; completeness of application; requirement of additional information; advisory rulings; access to the site; approval not contingent upon other approvals; title, right or interest; phased development; association responsible for common facilities; standard conditions of approval; and, severability.

1. Scope of Review

In reviewing applications for approval of proposed developments under the Site Location Law, the Board shall consider the size, location, and nature of the proposed development in relation to:

A. The potential primary, secondary and cumulative impacts of the development on the character, quality, and uses of land, air, and water on the development site and on the area likely to be affected by the proposed development; and

B. The potential effects on the protection and preservation of the public's health, safety, and general welfare.

*NOTE: The Board considers the primary, secondary, and cumulative impacts of a proposed development in relation to the areas of concern articulated in the criteria for approval of 38 M.R.S.A. §484 as interpreted by these regulations. "Cumulative impacts" refer to those impacts that are realized when the incremental effects of individual developments add up to the point where certain threshholds of tolerance are exceeded.*

2. Nature of Terms and Conditions

As specified in §483 of the Site Location Law, the Board may place terms and conditions on the approval of a proposed development. However, terms and conditions shall address themselves to specifying particular means of satisfying minor or easily corrected problems, or both, relating to compliance with the Site Location Law and shall not substitute for or reduce the burden of proof of the developer to affirmatively demonstrate to the Board that each of the standards of the Site Location Law has been met.

*NOTE: In the case of In re Belgrade Shores, Inc., 371 A.2d 413, 416 (1977), the Supreme Judicial Court of Maine stated:*

*"In addition to the express authority to impose conditions conveyed by §483, §481 mandates a 'flexible and practical' approach to site regulation. A series of disapprovals pending the applicant's correction of deficiencies in its proposal would achieve the same effect as conditional approval. We therefore view the choice between those two methods as a question of semantics and, as such, fully within the*

*Board's discretion under §483. Further, we believe this conclusion consistent with the pragmatism espoused in §481."*

*"That the Board found non-compliance with two of the four criteria listed in §484 does not, as appellants claim, require disapproval. Such a result would be neither practical nor flexible where the non-compliance is minor, easily corrected, or both."*

3. Board Jurisdiction

The Board acquires jurisdiction under the Site Location Law when a person makes the first overt act in furtherance of an intent to construct or operate a development as defined in 38 M.R.S.A. §482(2).

4. Completeness of Application

If in the opinion of the Staff an application for approval of a development under the Site Location Law is incomplete, the application may be returned to the applicant with an indication of the information which needs to be supplied; and, no further processing shall occur until the application is determined to be complete. The statutory time period within which the Board must act on an application under 38 M.R.S.A. §483 shall not begin until the application is determined to be complete by the Staff.

5. Requirement of Additional Information

In reviewing applications determined to be complete, the Board or Staff may require additional information from the applicant on any aspect of the proposed development relating to compliance with the standards of 38 M.R.S.A. §484.

6. Advisory Rulings

All requests for advisory rulings on the applicability of the Site Location Law to particular situations or on other matters shall be based on existent facts and not on hypothetical situations. Such requests shall be made in writing and addressed to the Division of Review and Planning, Bureau of Land Quality Control, Department of Environmental Protection, Augusta, ME 04333. Issuance of advisory rulings is discretionary with the Department on a case-by-case basis.

7. Access to the Site

The filing of an application for approval of a development constitutes the granting of permission by the applicant to allow authorized application reviewers access to the site of the proposed development in order to evaluate whether or not the proposed development will meet the standards as stated in 38 M.R.S.A. §484.

8. Approval Not Contingent Upon Other Approvals

Approval of applications under the Site Location Law is not contingent upon the applicant having obtained, prior to filing, other appropriate federal, state or municipal approvals, licenses, permits, etc.

*NOTE: Standard Conditions of Approval require such permits prior to commencing construction.*

9. Title, Right or Interest

The Department will consider an application only when an applicant has demonstrated sufficient title, right, or interest in all of the property which is proposed for development or use. An applicant shall demonstrate in writing sufficient title, right, or interest, as follows:

A. When the applicant claims ownership of the property, copies of the deeds to the property shall be supplied.

B. When the applicant has an option to buy the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title.

C. When the applicant has a lease on the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the development.

D. When the applicant has eminent domain power over the property, evidence shall be supplied of the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Board.

10. Phased Development

The Board requires that an application for approval include present plans for all phases of a development to be undertaken on a parcel. In the absence of evidence sufficient to approve all phases of the proposed development, the Board may approve one or more phases of the development based on the evidence then available. Approval of phases, however, shall be based on compliance of the entire proposed development with the standards of the Site Location Law.

*NOTE: A proper analysis of the potential primary, secondary and cumulative impacts of a proposed development can be made only when all phases of a proposed development are considered. Also, the plans for site modification and pollution mitigation need to be based on the entire extent of a proposed development in order to insure their effectiveness in accomplishing the desired objectives.*

11. Association Responsible for Common Facilities or Properties

Applications for developments with common facilities or properties, whose operation or maintenance will require the cooperation of more than one person, other than the developer, to satisfy the standards of 38 M.R.S.A. §484 over the life of the development, shall include a detailed description of the nature of the person or association which will be responsible for operating or maintaining the common facilities or properties of the development.

*NOTE: Examples of types of developments which may require a person or association to be responsible for operating or maintaining common facilities or properties are residential subdivisions with private interior roads, common sewage treatment or water supply facilities, or community-owned open space; condominiums; shopping centers; and multi-family residential developments with commonly maintained facilities.*

12. Standard Conditions of Approval

Unless otherwise specifically stated in the approval, all Board (or Staff) approvals shall be subject to the following standard conditions:

A. Approval of Variations from Plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.

B. Compliance with All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

C. Compliance with All Terms and Conditions of Approval. The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.

D. Advertising. Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.

E. Transfer of Development. Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.

F. Initiation of Development Within Two Years. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval,

if granted. Reapplications for approval may include information submitted in the initial application by reference.

G. Reexamination After Five Years. If the approved development is not completed within five years from the date of the granting of approval, the Board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred during the five-year period.

H. Approval Included in Contract Bids. A copy of this approval must be included in or attached to all contract bid specifications for the development.

I. Approval Shown to Contractors. Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

13. Severability

Should any provision of these regulations be declared invalid or ineffective by court decision, the decision shall not invalidate any other provision of these regulations.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to compile in an organized manner existing policies and procedures used by the Board in implementing the Site Location Law and new policies and procedures developed during the process of writing these regulations.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

Chapter 373 FINANCIAL CAPACITY STANDARD OF THE SITE LOCATION LAW

SUMMARY: These regulations describe the scope of review of the Board in determining a developer's compliance with the "financial capacity" standard of the Site Location Law (38 M.R.S.A. §484(1)); the information which shall be submitted, when appropriate, within an application for approval; and, the terms and conditions which the Board may impose on the approval of an application to ensure compliance with the standard.

1. Financial Capacity to Meet Pollution Control Standards

A. Scope of Review. In determining whether the developer has the financial capacity to meet state air and water pollution control standards, the Board shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development, and not just the pollution control aspects.

*NOTE: The Supreme Judicial Court of Maine stated in the case of In re Maine Clean Fuels, Inc., 310 A.2d 736, 755 (1973) that "it is clear that the ability to finance the cost of meeting pollution standards is inexorably a part of the ability to obtain total financing." Furthermore, the Board's experience with developers has shown that air and water pollution control equipment is usually installed after all other aspects of the development are completed. If the developer's funds run low or run out toward the end of the development, the pollution control aspects of the development may be slighted. Therefore, in determining financial capacity, the Board requires proof of adequate funding for the completion of a development, including the pollution control aspects.*

B. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has the financial capacity to undertake the proposed development, including information such as the following, when appropriate:

1. Accurate and complete cost estimates of the development.

2. The time schedule for construction and for satisfying pollution abatement measures.

3. A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds and the uses for which the funds may be utilized.

4. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "intent to fund" from the appropriate funding institution indicating the amount of funds and their specified uses.

5. The most recent corporate annual report indicating availability of sufficient funds to finance the development together with explanatory material interpreting the report, when requested.

6. Copies of bank statements or other evidence indicating availability of funds, when the developer will personally finance the development.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the financial capacity to meet state air and water pollution control standards, such as:

1. Requiring the posting of a performance bond to ensure that the air and water pollution control plans are completed as approved.

2. Technical Ability to Meet Air and Water Pollution Control Standards

A. Preamble. The Board is concerned that the developer have not only the financial capacity but also the technical ability and skilled manpower to meet pollution control standards, particularly when a large scale development includes sophisticated pollution abatement measures.

B. Scope of Review. In determining whether the developer has the technical ability to meet state air and water pollution control standards, the Board shall consider all relevant evidence to that effect, such as:

1. Evidence that project personnel are capable of properly installing, operating and maintaining pollution control devices.

2. Evidence that, even if the applicant's technical personnel have never before constructed or operated a development like the one proposed, competent engineering and field operational personnel will be available and can adapt their training and experience to accomplish the required tasks.

3. Evidence regarding the developer's prior conduct as a measure of willingness to meet all terms and conditions of approval established by the Board.

C. Submissions. Applications for approval of a proposed development shall include evidence that affirmatively demonstrates that the developer has the technical ability to undertake the proposed development, including information such as the following, when appropriate:

1. A statement of the developer's prior experience or appropriate training, or both, relating to the nature of the proposed development.

2. A description of the types of personnel who will be employed to design, install, and operate pollution control measures.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the technical ability to meet state air and water pollution control standards, such as:

1. Requiring the developer to employ a capable engineer or other professional knowledgable and experienced in the disciplines necessary to ensure that state air and water pollution control standards are met.

2. Requiring a training program for the appropriate personnel to acquaint them with the operation and maintenance of pollution control equipment.

3. When the development is of substantial size and of a complex nature, requiring provision for an independent consultant to conduct on-site inspection, at the developer's expense, to ensure proper execution of plans as approved, including any conditions imposed by the Board.

3. Adequate Provision for Solid Waste Disposal

A. Scope of Review. In determining whether the developer has made adequate provision for solid waste disposal, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. All solid waste will be disposed of in a manner which ensures that:

a. No adverse effects on the natural environment will result;

b. Public health, safety, and welfare will not be adversely affected; and

c. The wastes will not combine with other wastes, water, or other natural or man-made substances to create additional harmful effects to the natural environment or the public health, safety, and welfare.

B. Submissions. Applications for approval of a proposed development shall include evidence that affirmatively demonstrates that the developer has made adequate provision for solid waste disposal, including information such as the following, when appropriate:

1. The types and estimated quantities of solid waste to be generated by the development and the proposed method of disposal.

2. A letter from the operator of a solid waste disposal facility or a municipality stating that adequate capacity exists for solid waste generated by the development and that the development may utilize the solid waste disposal facility.

*NOTE: The Board may deny approval if the solid waste disposal facility proposed to be used is not in compliance with applicable state laws and regulations.*

3. When the proposed development is or includes the establishment of a solid waste disposal facility, the developer shall supply evidence of compliance with the Solid Waste Management Act (38 M.R.S.A. §1301 et seq.).

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for solid waste disposal, such as requiring:

1. A groundwater quality monitoring program.

2. On-site construction supervision or engineering inspection by a certified engineer or geologist.

3. Operational inspections and reports by an independent consultant.

4. Adequate Provision for the Control of Odors

A. Preamble. The Board recognizes that offensive odors may be generated by solid waste disposal facilities and certain types of commercial and industrial developments and that these odors can have an undesirable effect on surrounding uses and people living in the area.

B. Scope of Review. In determining whether the developer has made adequate provision for the control of odors, the Board shall consider all relevant evidence to that effect.

C. Submissions. Applications for approval of any development likely to be the source of offensive odors shall include evidence that affirmatively demonstrates that the developer has made adequate provision for the control of odors, including information such as the following, when appropriate:

1. The identification of any sources of odors from the development.

2. An estimation of the area which would be affected by the odor, based on general experience in dealing with the material or process used in the development, or similar materials or processes.

3. Proposed systems for enclosure of odor-producing materials and processes, and proposed uses of technology to control, reduce or eliminate odors.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the control of odors.

5. Adequate Provision for Securing and Maintaining Sufficient and Healthful Water Supplies

A. Scope of Review. In determining whether the developer has made adequate provision for securing and maintaining a sufficient and healthful water supply, the Board shall consider all relevant evidence to that effect.

B. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has made adequate provision for securing and maintaining a sufficient and healthful water supply, including information such as the following, when appropriate:

1. A letter from the appropriate utility or water district that a sufficient and healthful water supply exists and may be utilized by the development.

2. If water is to be supplied on-site, a letter from a geologist or well driller knowledgable about the area where the development is located that a sufficient and healthful water supply is likely to be available.

a. If there is reasonable doubt that a sufficient and healthful water supply can be provided by means of on-site wells, the following may be required:

i. Water from wells located in close proximity to the development site be tested for potability; and/or

ii. A test well be dug or drilled on the development site and a report prepared indicating the volume and potability of water obtained from the well.

3. If water supply and sewage disposal are to be handled on-site, and if lots are less than 2 acres in size, identification of the location of wells and on-site sewage disposal systems for each lot. The separation distance between wells and on-site sewage disposal areas shall be at least the minimum distance established in the State of Maine Plumbing Code.

4. If water is to be provided by a common source:

a. Evidence that there will be sufficient water to serve the development;

b. Evidence that the common water supply system will be constructed in conformance with the Maine Drinking Water Regulations, authorized by 22 M.R.S.A. §601; and

c. Evidence that adequate provision has been made for the establishment of a mechanism to ensure proper operation and maintenance of the water supply system.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure the adequate provision of a sufficient and healthful water supply, such as requiring that:

1. One or more central wells be installed with adequate water for the development.

2. An applicant arrange for adequate water service with a local utility or water district, or provide an adequate off-site common well, in cases where the Board determines that on-site water supplies may not be adequate.

3. The location of wells and on-site sewage disposal areas be established by deed conditions.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the financial capacity standard of the Site Location Law (38 M.R.S.A. §484(1)) and to set out the duties, powers, responsibilities, and limitations of the Board and of applicants for approval of proposed developments under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

Chapter 374 TRAFFIC MOVEMENT STANDARD OF THE SITE LOCATION LAW

SUMMARY: These regulations describe the scope of review of the Board in determining a developer's compliance with the "traffic movement" standard of the Site Location Law (38 M.R.S.A. §484(2)); the information which shall be submitted, when appropriate, within an application for approval; recommended guidelines for street and parking lot design; and the terms and and conditions which the Board may impose on the approval of an application to ensure compliance with the standard.

1. Adequate Provision for Traffic Movement of All Types

A. Preamble. The Board recognizes the potential effects which many developments can have on existing traffic patterns, the need to assure safe and convenient access to and from the developments, and the importance of interior traffic patterns to the safety and convenience of the public.

B. Scope of Review. In determining whether the developer has made adequate provision for traffic movement of all types into, out of, and within the proposed development, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. On-site traffic patterns will maximize safety and ensure adequate parking, smooth traffic flow, adequate turning and maneuvering space, adequate room for the discharge and loading of materials and passengers, and adequate space for snow removal operations.

2. Existing off-site traffic patterns will have the ability to handle safely and conveniently the increased traffic generated by the development as far away from the development as the effects of the development can be traced with reasonable accuracy.

*NOTE: Reviews will be conducted using standard traffic engineering practices.*

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has made adequate provision for traffic movement of all types, including information such as the following, when appropriate:

1. The location and width of proposed streets, walkways, easements, and other public or private rights-of-way.

2. The location and ground area of parking lots.

3. The nature of the interior roads and the parking system, including:

a. Type of road surface;

b. Number of lanes;

c. Capacity of parking areas;

d. Width of right-of-way;

e. Estimated completion schedule;

f. Cross-section of proposed roads; and

g. Entrance location and design.

4. Expected volume of traffic of all types to be generated by the development.

5. If interior residential, commercial or industrial roads are not to be dedicated to a municipality, evidence that adequate provision has been made for ensuring the proper maintenance of the roads.

*NOTE: The following design GUIDELINES for roads and parking lots are intended to provide assistance to the developer. These guidelines should be considered together with municipal standards and conditions particular to the situation of the proposed development.*

1. *Definitions*

*a. Arterial Roads - "Arterial Roads" means major traffic ways for travel between and through towns.*

*b. Collector Roads - "Collector Roads" means feeders to arterial roads, collecting traffic from minor roads for circulation and access.*

*c. Local Roads - "Local Roads" means roads used primarily for access to abutting residential properties.*

*d. Industrial/Commercial Roads - "Industrial/Commercial Roads" means roads primarily for access to abutting industrial and commercial properties.*

2. *Design Guidelines for Roads*

| | ARTERIAL | COLLECTOR | LOCAL | INDUSTRIAL/ COMMERICAL |
|---|---|---|---|---|
| Right of Way Width | 80' | 60' | 50' | 80' |
| Travel Way | 44' | 32' | 20' | 44' |
| Shoulder Width | 9' | 9' | 8' | 9' |
| Minimum Grade | 0.5% | 0.5% | 0.5% | 0.5% |
| Maximum Grade | 5.0% | 10% | 10% | 5% |
| Min. Center Line Radius on Curves | 800' | 200' | 150' | 800' |
| Min. Tangent between Curves of Reverse Alignment | 300' | 200' | 100' | 300' |
| Roadway Crown | ¼"/ft. | ¼"/ft. | ¼"/ft. | ¼"/ft. |

| | ARTERIAL | COLLECTOR | LOCAL | INDUSTRIAL/ COMMERICAL |
|---|---|---|---|---|
| Min. Angle of Intersection | 60 | 60 | 60 | 60 |
| Min. Distance Between Street Intersections: | | | | |
| Same Side | 1000' | 400' | 300' | 400' |
| Opposite Side | 300' | 250' | 150' | 300' |
| Maximum Grade within 75' of Intersection | 2% | 3% | 3% | 2% |
| Curb Radii: 90 intersections | 30' | 20' | 15' | 30' |
| 60 - 90 intersections | 30' | 30' | 30' | 30' |
| 90 -120 intersections | 50' | 40' | 30' | 50' |
| Minimum Property Line Radii at Intersections | 20' | 10' | 10' | 20' |
| Dead End Streets: Max. Length | -- | -- | 600' | 1000' |
| Radii at Turn-Around: | | | | |
| Property Line (Min.) | -- | -- | 65' | 70' |
| Pavement (Min.) | -- | -- | 50' | 44' |
| Sidewalk Width | 5' | 5' | 5' | 5'-I, 6'-C |
| Aggregate Sub-Base | 18" | 12" | 12" | 18" |
| Crushed Aggregate Base | 6" | 6" | 6" | 6" |
| Hot Bituminous Pavement | 3" | 2.5" | 2" | 3" |
| Site Distance at Intersection | Roughly 10 feet for every one mile/hour of posted speed limit | | | |

3. Design Guidelines for Parking Lots

a. Vehicular Entrance and Exit

1. Entrances and exits should be clearly identified by the use of signs, curb cuts, and landscaping.

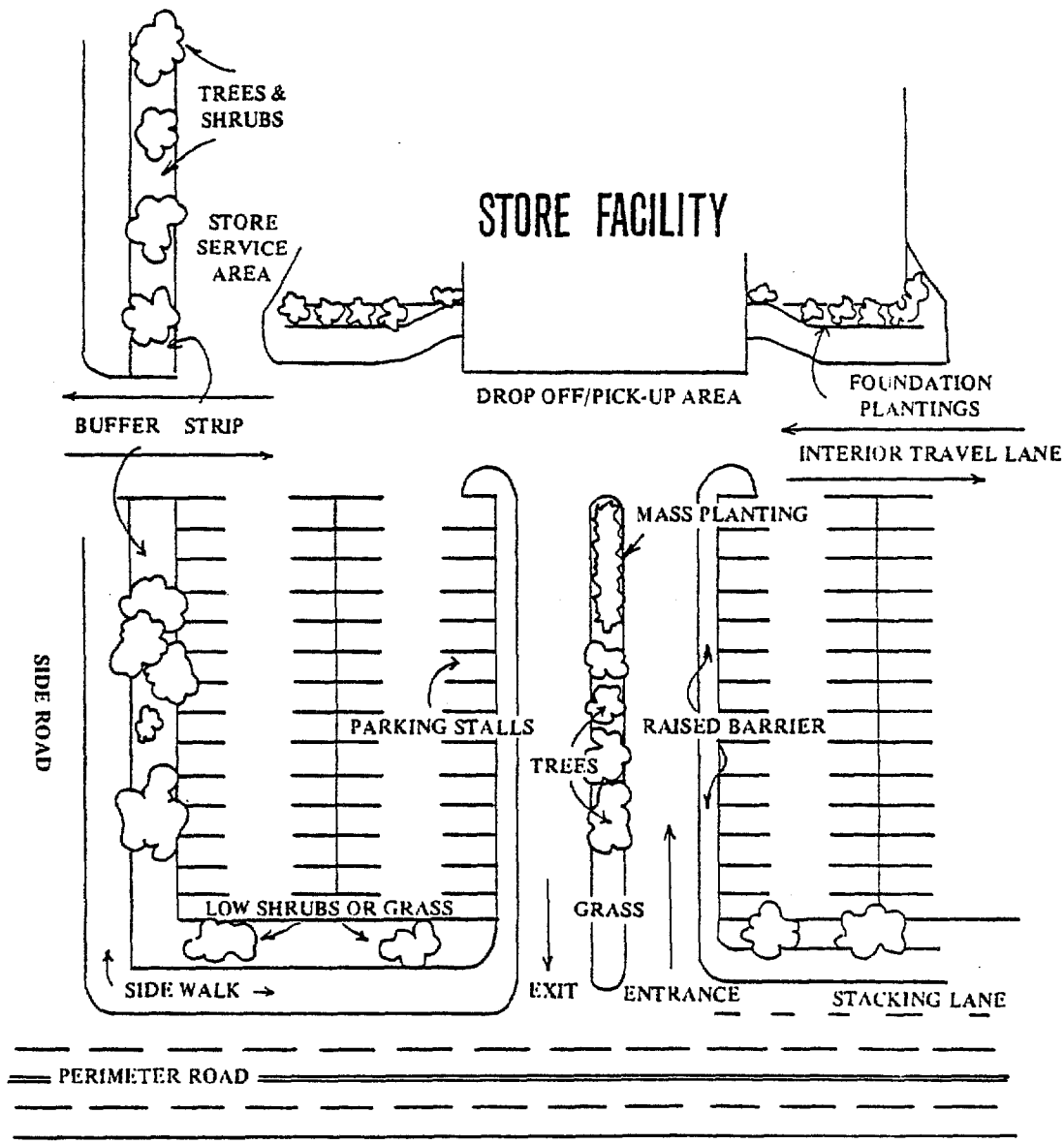
2. To minimize congestion and to facilitate entrance and exit and the movement of through-traffic on perimeter roads, stacking lanes should be used where recommended by the Maine Department of Transportation.

3. Entrance/exit design should be reviewed by and be in conformance with the standards of the Maine Department of Transportation traffic personnel for size, location, sight-distance, grade separation, and possible future changes in highway alignment on any affected public roads.

b. Interior Vehicular Circulation.

1. A widened road or turn-out lane, a minimum of 13 feet in width, should be provided adjacent to the front of stores, or other facilities, to aid in discharge or pick-up without interrupting traffic flow. Appropriate landscaping, pavement paintings, signs, or curbs should be used to delineate the turn-out lane.

# DESIGN TERMINOLOGY




*NOTE - The above are examples of terminology used in these Guidelines.*

2. Major interior travel lanes should be designed to allow continuous and uninterrupted traffic movement.

3. Painted arrows and/or elevated signs should be used as necessary to define desired circulation patterns.

4. Customer/employee and service traffic should be separated to the greatest extend possible.

5. One-way travel lanes may be used as a traffic control device in conjunction with roadway dividers.

6. Enclosures, such as guardrails, curbs, fences, walls, and landscaping, should be used to identify circulation patterns of parking areas and to restrict driving movements diagonally across parking aisles, but not to reduce visibility of oncoming pedestrians and vehicles.

c. Parking

1. Access to parking stalls should not be from major interior travel lanes.

2. Parking aisles should be oriented perpendicular to stores or businesses for easy pedestrian access and visibility.

3. The following dimensions are minimums for stall layouts:

| PARKING ANGLE | STALL WIDTH | SKEW WIDTH | STALL DEPTH | AISLE WIDTH |
|---|---|---|---|---|
| 90° | 9'-0" | | 18'-5" | 26'-0" |
| 60° | 8'-6" | 10'-5" | 19'-0" | 16' – 0" ONE WAY |
| 45° | 8'-6" | 12'-9" | 17'-5" | 12' – 0" ONE WAY |
| 30° | 8'-6" | 17'-0" | 17'-0" | 12'-0" |

*4. Painted stripes should be used to delineate parking stalls. Stripes should be a minimum of 4" in width. Where double lines are used, they should be separated a minimum of 1'0" on center.*

*5. In aisles utilizing diagonal parking, arrows should be painted on the pavement to indicate proper traffic flow.*

*6. Bumpers and/or wheel stops should be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.*

*d. Road Surface*

*1. Roads and parking areas should have a hard, dust-free surface.*

*2. Surface drainage patterns should be defined to provide positive flow to ditches, catch basins or other drainage structures. Additional catch basins should be considered to reduce pavement icing from melt-off and snow storage.*

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for traffic movement, such as:

1. Requiring limitations on the size, time of operation, manner of operation and number of vehicles operating out of or into the development area.

2. Requiring the appointment of a traffic control officer.

3. Requiring that adequate provision be made for on-site traffic movement during the inclement weather.

4. Requiring restrictions in a residential subdivision, such as:

a. The number and type of dwellings per lot.

b. Requiring that lots bordering on interior roads enter and exit onto interior roads rather than major access roads.

c. Requiring the installation of sidewalks and bicycle paths to provide adequate access for school children, the elderly, the handicapped, or others requiring special considerations.

5. Restricting the location of driveways.

6. Requiring the clearing of brush or other obstructions near entrance-ways to insure visibility for adequate site distances.

7. Requiring the installation of traffic warning, speed limit, and directional signs.

8. Requiring the construction of frontage roads or turning lanes.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the traffic movement standard of the Site Location Law (38 M.R.S.A. §484(2)) and to set out the duties, powers, responsibilities, and limitations of the Board and of applicants for approval of proposed developments under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 375 NO ADVERSE ENVIRONMENTAL EFFECT STANDARD OF THE SITE LOCATION LAW

SUMMARY: These regulations describe the scope of review of the Board in determining a developer's compliance with the "no adverse effect on the natural environment" standard of the Site Location Law (38 M.R.S.A. §484(3)); the information which shall be submitted, when appropriate, within an application for approval; and, the terms and conditions which the Board may impose on the approval of an application to ensure compliance with the standard.

*NOTE: In determining whether 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, or natural resources in the municipality or in neighboring municipalities, the Board has identified several specific areas of concern which are dealt with in detail below.*

1. No Unreasonable Adverse Effect On Air Quality

A. Preamble. The Board recognizes that point source emissions from certain types of commercial and industrial developments and solid waste disposal facilities and non-point source emissions deriving from industrial, commercial, and governmental developments can have an unreasonable adverse effect on air quality.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on ambient air quality, through point or non-point sources of chemical pollutants or particulate matter, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. The best practicable treatment of point sources of air pollution will be utilized and that point source emissions meet state ambient air quality standards and state emission standards.

2. The amount of air pollution produced from either point or non-point sources of air emissions will be consistent with the Board's "Policy on Air Quality Use," adopted March 28, 1979.

C. Submissions. Applications for approval of proposed industrial, commercial and governmental developments and solid waste disposal facilities shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on air quality, including information such as the following, when appropriate:

1. Evidence that an Air Emission License has been or will be obtained.

2. Evidence that increased traffic generated by the development will not significantly affect the ambient air quality. Modeling of the effect of non-point sources of air pollution on ambient air quality may be requested.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on air quality, such as requiring that:

1. Emissions from point sources of pollution be monitored.

2. The size of the parking lots be limited in order to limit the amount of non-point source pollutants generated by the development.

2. No Unreasonable Alteration of Climate

A. Preamble. The Board recognizes the potential of large-scale, heavy industrial facilities, such as power generating plants, to affect the climate in the vicinity of their location by causing changes in climatic characteristics such as rainfall, fog, and relative humidity patterns.

B. Scope of Review. In determining whether the proposed development will cause an unreasonable alteration of climate, the Board shall consider all relevant evidence to that effect.

C. Submissions. Applications for approval of large-scale, heavy industrial developments, such as power generating plants, shall include evidence that affirmatively demonstrates that there will be no unreasonable alteration of climate, including information such as the following, when appropriate:

1. Evidence that the proposed development will not unreasonably alter the existing cloud cover, fog, or rainfall characteristics of the area.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will not cause an unreasonable alteration of climate.

3. No Unreasonable Alteration of Natural Drainage Ways

A. Scope of Review. In determining whether the proposed development will cause an unreasonable alteration of natural drainage ways, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Where a development site is traversed by a natural water course, drainage way, channel, or stream, a drainage right-of-way will be provided that substantially conforms with the lines of such natural water courses. Such rights-of-way shall be at least thirty feet in width.

2. Any grading or other construction activity on the site will cause no unreasonable alteration of natural drainage ways such that drainage, other than that which occurred prior to development, will adversely affect adjacent parcels of land and that drainage ways flowing from adjacent parcels of land to the development site will be impeded.

B. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable alteration of natural drainage ways, including information such as the following, when appropriate:

1. A plan showing all existing water courses, drainage ways, channels, or streams to be affected by the development, and the nature, width and location of proposed easements, rights-of-way, culverts, catch basins or other means of channeling surface water within the development and over adjacent parcels of land.

2. Deed covenants which establish the easements or rights-of-way and provide for their continued maintenance.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that there will be no unreasonable alteration of natural drainage ways.

4. <u>No Unreasonable Effect On Runoff/Infiltration Relationships</u>

A. Preamble. The Board recognizes that some developments cause unreasonable increases in stormwater runoff by decreasing the infiltrative capacity of the soils on a development site. The Board also recognizes that increases in stormwater runoff cause increased danger of flooding, the pollution of surface water bodies, and the depletion of groundwater resources.

B. Scope of Review. In determining whether the proposed development will have an unreasonable effect on runoff/infiltration relationships, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. A stormwater management system will infiltrate, detain, or retain water falling on the site during a storm of an intensity equal to a twenty-five year, twenty-four hour storm such that the rate of flow of stormwater from the development does not exceed the rate of outflow of stormwater from the site prior to the undertaking of the development.

a. Developments which convey stormwater directly into the ocean (excluding estuarine tidewaters) exclusively in manmade piped or open drainage systems are exempt from the requirements of this subsection.

2. The physical, biological, and chemical properties of the receiving waters will not be unreasonably degraded by the stormwater runoff from the development site.

3. The peak discharge of the receiving waters will not be increased as the result of the stormwater runoff from the development site for storms up to a level of intensity of a twenty-five year, twenty-four hour storm.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable effect on runoff/infiltration relationships, including information such as the following, when appropriate:

1. Evidence that the proposed stormwater management system has been designed by a professional engineer or other person duly qualified to undertake the design. The designer of the system will evaluate the effectiveness of various stormwater methods and develop and make available for review the hydraulic computations based on accepted engineering practices to demonstrate that the standards established under subsection B, above, will be met.

2. Evidence that the stormwater management system will take into consideration the upstream runoff which must pass over or through the development site. The system will be designed to pass upstream flows generated by a twenty-five year frequency through the proposed development without overloading the system or flooding areas not specifically planned for such flooding.

3. Evidence that the design of piped or open channel systems will be based on a ten year flow frequency without overloading or flooding beyond channel limits. In addition, the areas expected to be flooded by runoff of a twenty-five year frequency will be designated, and no structures will be planned within such area.

4. Evidence that, where permanent embankment-type storage or retention basins are planned, the basins will be designed in accordance with good engineering practice, such as outlined in the Soil Conservation Service Engineering Field Manual or other appropriate references.

5. Evidence that rights-of-way or easements will be designated for all components of the stormwater management system lying outside of established street lines.

6. Evidence that the developer will maintain all components of the stormwater management system until it is formally accepted by the municipality or a quasi-municipal district, or is placed under the jurisdiction of a legally created association that will be responsible for the maintenance of the system. The charter of such an association must be acceptable to the Board.

7. Evidence that the stormwater management system will be fully coordinated with project site plans, including consideration of street patterns, pedestrian ways, open space, building siting, parking areas, recreational facilities, and other utilities, especially sanitary wastewater disposal facilities.

8. When the construction of a development is to occur in phases, the planning of the stormwater management system should encompass the entire site which may ultimately be developed, and not limited to an initial or limited phases of the development.

*NOTE: The following references may be of assistance to a developer in making the necessary computations and in designing the stormwater management system:*

*"Urban Hydrology for Small Watersheds", Technical Release No. 55, USDA, Soil Conservation Service, University of Maine, Orono, Maine.*

*"Water Resources Protection Measures in Land Development - A Handbook", Tourbier and Westmacott, University of Delaware Water Resources Center, Newark, Delaware.*

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that there will be no unreasonable effect on runoff/infiltration relationships.

5. Erosion and Sedimentation Control

A. Preamble. The Board recognizes the importance of controlling erosion and sedimentation to protect water quality and wildlife and fisheries habitat. Additionally, the Board considers topsoil to be a natural resource which should be properly managed. Control of erosion and sedimentation is a concern both during and after construction activities.

B. Scope of Review. In determining whether the developer has made adequate provision for controlling erosion and sedimentation, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. All earth changes will be designed, constructed, and completed in such a manner so that the exposed area of any disturbed land will be limited to the shortest period of time possible.

2. Sediment caused by accelerated soil erosion will be removed from runoff water before it leaves the development site.

3. Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the development site will be designed to limit the water flow to a non-erosive velocity.

4. Permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area will be completed within fifteen calendar days after final grading has been completed. When it is not possible or practical to permanently stabilize disturbed land, temporary erosion control measures will be implemented within thirty calendar days of the exposure of soil.

5. When vegetative cover will be established as a temporary or permanent erosion control measure:

a. Plant species to be used and the seeding rates will take into account soil, slope, climate, and duration and use of the vegetative cover.

b. Mulch will be provided at rates appropriate to ensure a minimum of soil and seed loss until an acceptable "catch" of seed is obtained.

c. Reseeding will be done within a reasonable period of time if there is not an acceptable "catch".

6. All development plans will incorporate building designs and street layouts that fit and utilize existing topography and desirable natural surroundings to the fullest extent possible.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that adequate provision will be made to control erosion and sedimentation, including information such as the following, when appropriate:

1. A comprehensive erosion and sedimentation control plan, designed in accordance with the "Maine Environmental Quality Handbook", the U.S.D.A., Soil Conservation Service's Engineering Field Manual, or another appropriate reference, which includes the following information:

a. A description and location of the limits of all proposed construction activities which result in the disturbance of the land.

b. A description and location of all existing and proposed on-site drainage.

c. The timing and sequence of all proposed land disturbances.

d. A description and location of all proposed temporary and permanent erosion and sedimentation control measures, including the timing and sequence of their completion.

e. A proposed program for the maintenance of all erosion and sedimentation control facilities which will remain after the project is completed, including a designation of the responsible party.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer will make adequate provision to control erosion and sedimentation, such as requiring that:

1. Erosion control devices be in place before the commencing of other construction activities.

2. Construction activity be limited to certain times of the year, particularly when soil type, slope, and the extent of area to be stripped pose serious potential for erosion and sedimentation.

6. No Unreasonable Adverse Effect On Surface Water Quality

A. Preamble. The Board recognizes that developments have the potential to cause the pollution of surface waters through both point and non-point sources of pollution.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on surface water quality, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. The development or reasonably forseeable consequences of the development will not discharge any water pollutants which affect the state classification of a surface water body (38 M.R.S.A. § 363 et seq.)

2. The best practicable treatment of point sources of water pollutants will be utilized.

3. The total phosphorous concentrations in all tributaries to great ponds will not exceed the standard established in Department Regulation 583.1 as the result of the proposed development.

4. Any effect on surface water temperature will be in compliance with all appropriate standards established in Department Regulations 582.1 - 582.8.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on surface water quality, including information such as the following, when appropriate:

1. Where sewage disposal is to be handled off-site by a municipal or quasi-municipal sewage treatment facility, a letter from the authorized agent of the facility stating that there is adequate capacity to ensure satisfactory treatment.

2. Evidence that a waste discharge license, as required by 38 M.R.S.A. § 413 et seq., has been or will be obtained.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on surface water quality.

7. No Unreasonable Adverse Effect On Ground Water Quality

A. Preamble. The Board recognizes the importance of protecting ground water resources in order to promote the future health, safety, and welfare of the citizens of Maine through the maintenance of an adequate supply of safe drinking water.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on ground water quality, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. The development will not result in the existing groung water quality becoming inferior to the physical, biological, chemical, and radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 M.R.S.A. §601. If the existing ground water quality is inferior to the State Drinking Water Regulations, the developer will not degrade the water quality any further.

C. Rebuttable Presumption Against Disposal Of Wastes In Certain Areas. The Board operates under the rebuttable presumption that the storage and/or disposal of solid wastes, hazardous wastes, and leachable or liquid wastes, including petroleum products and septage, pose serious threats to public health, safety, and welfare through the potential pollution of the ground water when such storage and/or disposal occurs on or above sand and gravel aquifers or the recharge areas of sand and gravel aquifers.

*NOTE: Maps of sand and gravel aquifers and their recharge areas are available for portions of the state from the Bureau of Geology, Department of Conservation, Augusta.*

1. An applicant seeking approval for a development which involves one or more of the activities specified above, must overcome this presumption by persuasive evidence that the development is unique in some way that allows for compliance with the intent of this subsection.

D. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on ground water quality, including information such as the following, when appropriate:

1. A comprehensive list, including physical and chemical characteristics and projected quantities of wastes to be disposed of or stored within the proposed development which may potentially contaminate the ground water.

2. Methods for preventing ground water pollution as the result of the disposal and/or storage of wastes.

3. An evaluation of the geological, hydrologic, and soils conditions of the development site.

4. Data establishing background ground water quality.

5. Proposed plan of action, and alternatives, to be followed in the event the proposed development results in ground water contamination.

E. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on ground water quality, such as requiring that:

1. A ground water monitoring program be established and reports be filed with the Department at designated intervals.

2. Specified wastes not be disposed of or stored within the proposed development.

8. <u>No Unreasonable Adverse Effect on Ground Water Quantity</u>

A. Preamble. The Board recognizes the importance of maintaining an adequate supply of ground water for drinking purposes. The Board also recognizes that the depletion of ground water resources can result in the intrusion of salt water into potable ground water supplies and can affect the hydrologic characteristics of surface water bodies (peak flows, low flows and water levels) resulting in adverse effects on their assimilative capacity and recreational use, as well as on certain wildlife habitats.

Additionally, new wells can cause a lowering of the ground water supply to the point where existing wells run dry, particularly during the late summer and early fall.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on ground water quantity, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. The quantity of water to be taken from ground water sources will not substantially lower the ground water table, cause salt water intrusion, cause undesirable changes in ground water flow patterns, or cause unacceptable ground subsidence.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on ground water quantity, including information such as the following, where appropriate:

1. Estimates of the quantity of ground water to be used by the proposed development.

2. In areas where salt water intrusion, the lowering of the ground water level, or land subsidence have been or can reasonably be expected to be a problem, a report by a duly qualified person addressing the potential effects of ground water use by the proposed development.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that there will be no unreasonable adverse effect on ground water quantity, such as requiring that:

1. A development obtain its water from a surface water source, public community supply, or utility.

2. Wells in the surrounding area be monitored to determine the effect of the development on ground water levels.

3. People in the surrounding area, whose wells are adversely affected by the development, be provided with new wells or another source of potable water for their use and consumption.

9. Buffer Strips

A. Preamble. The Board recognizes the importance of natural buffer strips in protecting water quality and wildlife habitat. The Board also recognizes that buffer strips can serve as visual screens which can serve to lessen the visual impact of incompatible or undesirable land uses. The width and nature of buffer strips, if required, shall be determined by the Board on a case-by-case basis.

B. Scope of Review. In determining whether the developer has made adequate provision for buffer strips, when appropriate, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Water bodies within or adjacent to the development will be adequately protected from sedimentation and surface runoff by buffer strips.

*NOTE: The following GUIDELINES address the width of buffer strips which should be established between water bodies and operations to extract natural resources or borrow pit operations.*

*- No portion of any ground area disturbed by the extraction of natural resources or sand, fill or gravel on land sloping toward the water should be closer to the normal high water mark of a flowing, standing, or tidal body of water than is indicated by the following table:*

| *Average slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)* | *Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet Along Surface of the Ground)* |
|---|---|
| *0* | *50* |
| *10* | *90* |
| *20* | *130* |
| *30* | *170* |
| *40* | *210* |
| *50* | *250* |
| *60* | *290* |
| *70* | *330* |

2. Buffer strips will provide adequate space for movement of wildlife between important habitats.

3. Buffer strips will shield adjacent uses from unsightly developments and lighting.

a. Developments involving the excavation of natural resources and borrow pit operations will retain a minimum buffer strip of 150 feet from all property lines. If written permission of the abutter is obtained, a buffer strip of no less than 25 feet may be allowed. The working edge of an extractive activity will be no closer than 150 feet to any public road or way.

*NOTE: The following GUIDELINES should be considered in establishing visual buffer strips.*

*1. Plant materials used in the screen planting will be at least four feet high when planted and be of such evergreen species as will produce ultimately a dense visual screen at least eight feet high. Alternatively, a six-foot high wooden fence, without openings wider than 1", may be substituted.*

*2. The screen will be maintained permanently, and any plant material which does not live will be replaced within one year.*

3. *Screen planting will be so placed that at maturity it will be no closer than three feet from any street or property line.*

4. *The screen will be broken only at points of vehicular or pedestrian access.*

5. *Fencing and screening will be so located within the developer's property line to allow access for maintenance on both sides without intruding upon abutting properties.*

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that adequate provision of buffer strips, when appropriate, will be made, including information such as the following:

1. The location and width of all natural buffer strips to be retained.

2. The nature, location, width, and height of all vegetative buffer strips or architectural screens to be established.

3. Legal provisions for the maintenance of all buffer strips and architectural screens.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the establishment of buffer strips, such as requiring:

1. The maintenance of existing vegetation as a natural buffer strip, which shall remain as a permanent feature of the landscape.

2. The incorporation of buffer strip maintenance into deed covenants in projects where deed transfers of property to the general public are contemplated.

3. Written permission of the Department of Environmental Protection for activities which may adversely affect a body of water or wildlife habitat protected by a natural buffer strip, such as: removal of live trees, stump and root systems, and the displacement of rocks, topsoil and similar activities which would cause or allow increased soil erosion.

4. The establishment of particular species of vegetation.

5. The use of particular materials, colors, and styles in the construction of architectural screens.

10. <u>Control of Noise</u>

A. Preamble. The Board recognizes that certain types of industrial and commercial developments, mining operations and roads may cause excessive levels of noise which result in physiological, psychological or economic damage.

B. Scope of Review. In determining whether a developer has made adequate provision for the control of noise generated by the proposed development the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Effective noise muffling devices or other technical solutions will be used to reduce the impact of the proposed development on background noise levels.

C. Submissions. If the development will be the source of significant noise, applications for approval of proposed developments shall include evidence that affirmatively demonstrates that adequate provision for the control of noise will be made, including information such as the following, when appropriate:

1. Identification of the sources and nature of any noises from the development which will be at levels substantially above background noise levels, the levels of noise expected, and methods to be utilized to reduce the impact of noise on surrounding uses.

2. Where background noise levels may be increased by more than ten decibels (dbA) at any time for a duration exceeing one minute, a detailed assessment will be submitted including the level and duration of noise expected, the anticipated effect of the noise on surrounding uses, the extent of the area affected, and possible measures to reduce or eliminate the excessive noise.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the control of noise from the development, such as:

1. Limiting the hours of operation of the development to minimize the impact on surrounding uses.

## 11. Preservation of Historic Sites

A. Preamble. The Board recognizes the value to society of preserving sites of historic significance.

B. Definition. As used in this section, "historic site" means any site, structure, district or archaeological site which has been officially included on the National Register of Historic Places and/or on the Maine Historic Resource Inventory, or which is established by qualified testimony as being of historic significance.

C. Scope of Review. In determining whether a proposed development will have an adverse effect on the preservation of historic sites either on or near the development site, the Board shall consider all relevant evidence to that effect.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a proposed development will not adversely affect preservation of any historic site.

12. Preservation of Unusual Natural Areas

A. Preamble. The Board recognizes the importance of preserving unusual natural areas for educational and scientific purposes.

B. Definition. As used in this section, "unusual natural area" means any land or water area, usually only a few acres in size, which is undeveloped and which contains natural features of unusual geological, botanical, zoological, ecological, hydrological, other scientific, educational, scenic, or recreational significance. By way of illustration, and not limitation, such are, as may include: rare or exemplary plant communities; individual plant species of unusual interest because of size, species or other reasons; unusual or exemplary bogs; unusually important wildlife habitats, particularly those of rare or endangered species; unusual land forms; fossils and other deposits of importance to geologists; outstanding scenic areas; and others of similar character.

C. Scope of Review. In determining whether a proposed development will have an adverse effect on the preservation of unusual natural areas either on or near the development site, the Board shall consider all relevant evidence to that effect.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a proposed development will not adversely affect the preservation of natural areas.

13. Access to Direct Sunlight

A. Preamble. The Board recognizes that some existing structures utilize active or passive solar energy systems for purposes such as heating air or water, and that, in these instances, it may be an unreasonable effect on existing uses to deny access to direct sunlight.

B. Scope of Review. In determining whether a proposed development will have an adverse effect on access to direct sunlight, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Structures within the proposed development will not block access to direct sunlight to structures utilizing solar energy through active or passive systems.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a proposed development will not block access to direct sunlight.

14. No Unreasonable Effect on Scenic Character

A. Preamble. The Board considers scenic character to be one of Maine's most important assets. The Board also feels that visual surroundings strongly influence people's behavior.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on the scenic character of the surrounding area, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. The design of the proposed development takes into account the scenic character of the surrounding area.

2. A development which is not in keeping with the surrounding scenic character will be located, designed and landscaped to minimize its visual impact to the fullest extent possible.

3. Structures will be designed and landscaped to minimize their visual impact on the surrounding area.

*NOTE: The following are GUIDELINES for the landscaping of parking lots, which are structures pursuant to 38 M.R.S.A. §482(6)(B).*

*a. Lighting will be shielded from adjacent highways and residential areas.*

*b. Curbed planting strips will be utilized in parking areas of 2 acres of more. Planting strips will be a minimum of ten (10) feet wide and spaced between every second double bay parking aisle or 200 feet, whichever is less.*

*c. When the parking lots are adjacent to a residential use, landscaping and/or architectural screens will be utilized to provide an effective perimeter separation area between property lines and the edge of the pavement and/or structures. There will be a minimum setback of fifteen (15) feet from the property line. The Board may require a similar provision when the parking lot is adjacent to other land uses.*

*d. Planting and maintenance program specifications will be developed to provide the earliest establishment of landscape materials and their maintenance.*

*e. Planting specifications:*

*i. Shrubs will be planted with a 24" minimum size for those specified by spread.*

*ii. Shrubs will be planted with a 36" minimum size for those specified by height.*

*iii. Shade trees will be highcrowned species with ascending or lateral branching habit indigenous to the area, tolerant to existing soils and urbanized conditions, two-inch minimum caliper measured six inches up from the base, and planted a maximum of 30' on center.*

*iv. Flowering and evergreen trees will be a minimum of 7' tall and planted a maximum of 20' on center.*

v. *Selections for ground cover will reflect the project's function, expected foot traffic, exposure, and maintenance program.*

f. *Provisions will be made to supply water to planted islands and other vegetated areas.*

4. The plans for the proposed development provide for the preservation of existing elements of the development site which contribute to the maintenance of scenic character.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on the scenic character of the surrounding area, including information such as the following, when appropriate:

1. Sketches of the proposed development indicating how the development fits into the scenic character of the area.

2. Landscaping plans for minimizing the visual impact of the parking lots, mining operations and other types of developments.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on scenic character, such as requiring that:

1. Illumination of the development be limited.

2. Vegetative or architectural screens be established.

15. Protection of Wildlife and Fisheries

A. Preamble. The Board recognizes the need to protect wildlife and fisheries by maintaining suitable and sufficient habitat and the susceptability of certain species to disruption and interference of lifecycles by construction activities.

B. Scope of Review. In determining whether the developer has made adequate provision for the protection of wildlife and fisheries, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. A buffer strip of sufficient area will be established to provide wildlife with travel lanes between areas of available habitat.

2. Proposed alterations and activities will not adversely affect wildlife and fisheries lifecycles.

3. There will be no unreasonable disturbance to:

a. Important deer wintering areas.
b. Habitat of any species declared threatened or endangered by the Commissioner, Maine Department of Inland Fisheries and

Wildlife or the Director of the U.S. Fish and Wildlife Service.

c. Nesting sites for bird colonies.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has made adequate provision for the protection of wildlife and fisheries, including information such as the following, when appropriate:

1. The location of natural buffer strips and adequate provision for their maintenance.

2. Plans to mitigate adverse effects on wildlife and fisheries through design considerations, pollution-abatement practices, and the timing of construction activities.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a developer has made adequate provision for the protection of wildlife and fisheries.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the No Adverse Environmental Effect Standard of the Site Location Law (38 M.R.S.A. §484(3)) and to set out the duties, powers, responsibilities, and limitations of the Board and of applicants for approval of proposed developments under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

Chapter 376 SOIL TYPES STANDARD OF THE SITE LOCATION LAW

SUMMARY: These regulations describe the scope of review of the Board in determining a developer's compliance with the "soil types" standard of the Site Location Law (38 M.R.S.A. §484(4)); the information which shall be submitted, when appropriate, within an application for approval; and, the terms and conditions which the Board may impose on the approval of an application to ensure compliance with the standard.

1. Soil Types Suitable For the Development

A. Scope of Review. In determining whether the proposed development will be located on soils suitable for the nature of the development, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. All major limitations to the proposed development presented by soil characteristics will be overcome by proper engineering techniques.

2. The developer will comply with the "Maine Guidelines For Septic Tank Sludge Disposal On Land", the "Maine Guidelines For Manure and Manure Sludge Disposal On Land", and all other appropriate regulations and guidelines.

3. When a single family, residential development is proposed to be served by individual, on-lot subsurface sewage disposal systems and individual, on-lot wells, the lots will be at least the minimum area established in Table A according to the soil characteristics of each lot as determined by a licensed site evaluator.

a. Lots smaller than the minimum area specified in Table A may be allowed if a developer can present evidence that, because of unique characteristics of the site, or because of an innovative and acceptable method of on-lot sewage disposal, the minimum lot size requirement should not apply.

*NOTE: The Board recognizes the advantages of cluster development and encourages the use of this approach to development design. The establishment of minimum lot sizes in subsection 3 is not intended to discourage the use of a cluster approach to development.*

B. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the development will be built on suitable soils, including information such as the following, when appropriate:

1. A map indicating soil types or general characteristics of the soils. Soil boundaries are to be observed throughout their length and air photos may be used to aid boundary delineations. The maximum size of any included dissimilar soils will be one-half acre. The soils are to be mapped at the same scale as the map showing the lay-

Table A

| | Soil Profiles | Soil Conditions: A Bedrock encountered at depths of 0 to 100 cm (38") | B Free of drainage mottling to depth of 100 cm (38") or greater | C Generally bright colors in the top 60 cm. (24" of the soil with drainage mottling a depths 38-100 cm. (15"-39") |
|---|---|---|---|---|
| | | sq. ft. | sq. ft. | sq. ft. |
| PROFILE 1 | SILTY GLACIAL TILL SOILS - Silt loam soils to a depth of 100 cm (39") or more, or until bedrock. These soils tend to become more compact with depth. Stones may be present throughout the profile. May or may not have an impervious layer. Generally finer textured (silty) tills | 40,000 | 25,000 | 33,000 |
| PROFILE 2 | LOAMY GLACIAL TILL SOILS - Loam to sandy loam soils to a depth of 100 cm (39") or more, or until bedrock. Stones may be present throughout the profile. Glacial till | 30,000 | 21,000 | 29,000 |
| PROFILE 3 | LOAMY GLACIAL TILL SOILS WITH PAN - Loam to sandy loam soils to a depth of 100 cm (39") or more, or until bedrock. These soils become firm to very firm at depths of 30-75 cm. (12" - 30") Stones may be present through the profile. This till is a firm basal or lodgement till | 30,000 | 29,000 | 29,000 |
| PROFILE 4 | SANDY GLACIAL TILL SOILS - Sandy loam to loamy sand soils to a depth of 100 cm (39") or more, or until bedrock. Stones may be present throughout the profile. This till is a coarse textured ablation till | 26,000 | 20,000 | 25,000 |
| PROFILE 5 | LOAMY OUTWASH SOILS - Loam to sandy loam soils underlain by stratified sands and gravels at depths less than 100 cm. (39") Stones or cobbles may be present in the lower portion of the profile. Proglacial and ice-contact stratified drift - medium to fine sands. | 80,000 | 40,000 | 80,000 |
| PROFILE 6 | SANDY OUTWASH SOILS - Loamy sands and gravelly sandy soils underlain by stratified sands and gravels at depths less than 100 cm. (39") Stones or cobbles may be present throughout the profile. Proglacial and ice-contact stratified drift - coarse sand and gravels. | 80,000 | 40,000 | 80,000 |
| PROFILE 7 | SANDY MIXED ORIGIN SOILS - Sandy loam to loamy sand soils underlain by very firm silts to silty clays at depths less than 100 cm. (39") Stones are usually absent in the profile. Stratified drift over marine and lacustrine sediments. | 30,000 | 29,000 | 29,000 |
| PROFILE 8 | SANDY MIXED ORIGIN SOILS - Silt loam to fine sandy soils underlain by dense or firm stratified silts and lenses of very fine sands at depths less than 100 cm. (39") Stones are usually absent in the profile. Stratified deposits, primarily marine or lacustrine. | 34,000 | 33,000 | 33,000 |
| PROFILE 9 | SILTY MARINE SOILS - Silt loam soils underlain by very firm silt loams to clays at depths less than 100 cm. (39") Stones are usually absent in the profile. Marine or lacustrine deposits. | 39,000 | 38,000 | 38,000 |

out of the proposed development. The soils map should include such features as: lot lines; location of structures, roads, and other improvements; the location of natural buffer strips, easements, and dedicated open space; natural features; and, the location of test pits and/or borings.

a. A soils map of less detail may be acceptable if it is determined by the Staff that the level of detail required in subsection C(1), above, is not necessary to ensure a proper evaluation of the development proposal to ensure compliance with this standard.

2. When on-site sewage disposal is to be utilized, an organized compilation of all test pit and/or boring investigations, including but not limited to the following information: soil series or soil profile and condition; depth of pit or boring; depth to seasonal high water; depth to bedrock and/or other impervious strata; and, soil texture as related to soil profile.

3. A report identifying all major limitations to the proposed development presented by soil characteristics of the site and the techniques which will be used to overcome the limitations. The report will be prepared by a duly qualified person.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the development will be built on soil types which are suitable for the nature of the undertaking, such as requiring:

1. The combination of lots when the lots, as proposed, are not suitable for the nature of the development proposed.

2. The use of specific on-site, sewage disposal techniques in order to overcome soils limitations.

3. The establishment of a common sewage disposal system when on-lot disposal is determined to be undesirable.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

BASIS STATEMENT: These regulations are intended to explain and clarify the meaning of the Soil Types Standard of the Site Location Law (38 M.R.S.A. §484(4)) and to set out the duties, power, responsibilities, and limitations of the Board and of applicants for approval of proposed developments under that standard.

AUTHORITY: 38 M.R.S.A. §343

EFFECTIVE DATE: November 1, 1979

# PROTECTION AND IMPROVEMENT OF AIR LAW

MAINE REVISED STATUTES ANNOTATED
Title 39 § 581-610

## § 581. Declaration of findings and intent

The Legislature finds and declares that air pollution exists with varying degrees of severity within this State; that such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is aesthetically unappealing.

The Legislature by this chapter intends to exercise the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.

Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damage or other relief on account of injury to persons or property due to violation of air quality standards or emission standards and to maintain any action or other appropriate procedure therefor; nor to so affect the powers of the State to initiate, prosecute and maintain actions to abate public nuisances.

## § 582. Definitions

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

1. **Air contaminant.** "Air contaminant" includes, but is not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.

2. **Air contamination source.** "Air contamination source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores; heating and power plants and stations; buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings; garages and vending and service locations and stations, railroad locomotives, ships, boats and other water-borne craft; portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles; and any machinery, equipment, stack, conduit, flue, duct, vent, chimney or other apparatus leading out of any of the foregoing.

3. **Air pollution.** "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantitites and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property throughout the State or throughout such areas of the State as shall be affected thereby; excluding, however, all air conditions subject to the requirements of employer-employee contracts, and state or local labor laws and industrial codes insofar as these excluded air conditions are confined to and exist soley within the property boundaries of the person giving rise to that air condition.

4. Air pollution control apparatus. "Air pollution control apparatus" means and includes any means, method, process or equipment which removes, reduces or renders less noxious the emission of air contaminants into ambient air.

5. Ambient air. "Ambient air" means all air outside of buildings, stacks or exterior ducts.

5-A. Best practical treatment. "Best practical treatment" means that method which controls or reduces emissions of air contaminants to the lowest possible level considering:

A. The then existing state of technology;

B. The effectiveness of available alternatives for reducing emissions from the source being considered;

C. The economic feasibility for the type of establishment involved.

6. Board. "Board" means the Board of Environmental Protection.

6-A. Repealed. 1977, c. 78, § 207, eff. April 14,1977.

6-B. Bulk gasoline terminal. "Bulk gasoline terminal" means a gasoline storage facility which has an average daily throughput of more than 76,000 liters of gasoline.

7. Emission. "Emission" means a release of air contaminants into ambient air.

7-A. Emission source. "Emission source" means any and all sources of emissions of air contaminants, whether privately or publicly owned or operated.

7-A-1. External floating roof. "External floating roof" means a storage vessel cover in an open-top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

7-B. Fuel-burning equipment. "Fuel-burning equipment" means any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. "Fuel-burning equipment" as defined herein does not include solid waste fuel-burning equipment as defined in subsection 11-B.

7-C. Repealed. 1980, c. 718 § 2.

7-C-1. Fugitive emissions. "Fugitive emissions" means particulate matter emitted by an air pollution source other than from a stack or flue.

7-D. General process source. "General process source" means any emission source, except fuel-burning equipment, incinerators, mobile sources, open burning sources and sources of fugitive dust.

7-E. Incinerator. "Incinerator" means any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire any material or substance, and shall be classified as follows:

A. Class I. Portable, packaged, completely assembled,

direct fed incinerators 5 to 15 cubic feet primary chamber volume or a burning rate of 25 to 100 pounds per hour of type 1 or type 2 waste or a burning rate of 25 to 75 pounds per hour of type 3 waste;

B. Class I-A. Portable, packaged or job assembled, direct feed incinerators with 5 to 14 cubic feet primary chamber volume or a burning rate of 25 to 100 pounds per hour of type 1 or 2 waste or a burning rate of 25 to 75 pounds per hour of type 3 waste;

C. Class II. Flue-fed, single chamber incinerators with more than 2 square feet burning area, for type 2 waste. This type of incinerator is served by one vertical flue functioning both as a chute for charging waste and to carry the products of combustion to atmosphere;

D. Class II-A. Chute -fed multiple chamber incinerators, with more than 2 square feet burning area, suitable for type 1 or type 2 waste. This type of incinerator is served by a vertical chute for charging wastes from 2 or more floors above the incinerator and a separate flue for carrying the products of combustion to the atmosphere;

E. Class III. Direct-fed incinerators with a burning rate of 100 pounds per hour and over, suitable for type 3 waste;

F. Class IV. Direct-fed incinerators with a burning rate of 75 pounds per hour or over, suitable for type 3 waste;

G. Class V. Municipal incinerators suitable for type 0, type 1, type 2 or type 3 wastes, or a combination of all 4 wastes, with a rated capacity expressed in tons per 24 hours;

H. Class VI. Crematory and pathological incinerators, suitable for type 4 waste;

I. Class VII. Incinerators designed for specific by-product wastes, type 5 or type 6.

7-E-1. Internal floating roof. "Internal floating roof" means a cover or roof in a fixed-roof tank which rests upon or is floated upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

7-F. Repealed. 1980, c. 718 § 4.

8. Municipality. "Municipality" includes, for purposes of enacting an air pollution control ordinance, only cities and organized towns.

8-A. Opacity. "Opacity" means the degree of light obscuring capability of nonblack visible air contaminant expressed as a percentage. Complete opacity shall be expressed expressed 100%.

8-B. Open burning. "Open burning" means the burning

of any type of combustible material in the open ambient air without being completely enclosed and where the products of combustion are emitted directly into the ambient air without passing through a stack, chimney or duct or other device or structure.

9. Person. "Person" means any individual, partnership, corporation, whether private, public or quasi-municipal, municipality, state governmental agency or other legal entity.

9-A. Process weight rate. "Process weight rate" means the average total weight of all materials, not including any gaseous or liquid fuels or combustion air, introduced into any manufacturing, industrial or combustion process that may result in the emission of particulate matter to the ambient air, computed on an hourly basis, and shall be expressed in terms of weight per unit of time.

9-B. Petroleum liquid. "Petroleum liquid" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

10. Region. "Region" means air quality regions established pursuant to section 583.

11. Ringelmann Chart. "Ringelmann Chart" shall mean the chart published and described in the U.S. Bureau of Mines Information Circular 8333, on which are illustrated graduated shades of gray for use in estimating the light obscuring density or opacity of any black emissions or any other such device which may be approved by the board.

11-A. True vapor pressure. "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962.

11-A. Solid waste fuel. "Solid waste fuel," when burned as fuel in solid waste fuel-burning equipment, means any material, other than primary fossil fuel, including, without limitation, garbage, refuse, sludge from a waste treatment plant or air pollution control facility, sawdust, shavings, chips, bark, slabs or inert fill material.

(Note: This conflict in numbering should be resolved during the next legislative session.)

11-B. Solid waste fuel-burning equipment. "Solid waste fuel-burning equipment" means any furnace, boiler, apparatus, stack and all appurtenances thereto, capable of burning solid waste fuel for the primary purpose of producing thermal energy.

**12. Waste.** "Waste" means refuse, garbage, rubbish, trash or unwanted or discarded materials of any kind and source which shall be classified as follows:

**A.** Type 0. Trash, a mixture of highly combustible waste such as paper, cardboard cartons, woodboxes and combustible floor sweepings from commercial and industrial activities. The mixtures contain up to 10% by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags and plastic or rubber scraps. This type of waste contains about 10% moisture and 5% incombustible solids and has a heating value of approximately 8500 B.T.U. per pound as fired.

**B.** Type 1. Rubbish, a mixture of combustible waste such as paper, cardboard cartons, wood scrap, foliage and combustible floor sweepings from domestic, commercial and industrial activities. The mixture contains up to 20% by weight of restaurant or cafeteria waste, but contains little or no treated papers, plastic or rubber wastes. This type of waste contains about 25% moisture and 10% incombustible solids and has a heating value of approximately 6500 B.T.U. per pound as fired.

**C.** Type 2. Refuse, consisting of an approximately even mixture of rubbish and garbage by weight. This type of waste is common to apartment and residential occupancy, consisting of up to 50% moisture, 7% incombustible solids and a heating value of approximately 4300 B.T.U. per pound as fired.

**D.** Type 3. Garbage, consisting of animal and vegetable wastes from restaurants, cafeterias, hotels, hospitals, markets and like installations. This type of waste contains up to 70% moisture and up to 5% incombustible solids and has a heating value of approximately 2500 B.T.U. per pound as fired.

**E.** Type 4. Human and animal remains, consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds and similar sources, consisting of up to 85% moisture, 5% incombustible solids and having a heating value of approximately 1000 B.T.U. per pound as fired.

**F.** Type 5. By-product waste, gaseous, liquid or semi-liquid, such as tar, paints, solvents, sludge, fumes, etc., from industrial operations. B.T.U. values must be determined by the individual materials to be destroyed.

**G.** Type 6. Solid by-product waste, such as rubber, plastics, wood waste, etc., from industrial operations. B.T.U. values must be determined by individual materials to be destroyed.

Additional words, terms and phrases, whether used in this chapter or not, may be defined for purposes of this chapter by the board by regulation, but in no case may a definition established by this section be altered by board regulation.

## § 583. Establishment of air quality regions

The board may establish reasonable air quality regions within the State for the purposes of conducting air quality studies, and establishing reasonable ambient air quality standards and emission standards therein.

The following air quality regions, established by the board are adopted:

1. **Metropolitan Portland Air Quality Region.** The Metropolitan Portland Air Quality Region shall consist of the Counties of York, Cumberland, Sagadahoc and the municipalities of Brownfield, Denmark, Fryeburg, Hiram and Porter in the County of Oxford.

1-A. **Portland Peninsula Air Quality Region.** The Portland Peninsula Air Quality Region shall consist of that section of the City of Portland bordered on the west by Interstate 95, on the south and east by the Fore River and on the north by Casco Bay and the inlet to Back Bay.

2. **Central Maine Air Quality Region.** The Central Maine Air Quality Region shall consist of the Counties of Androscoggin, Kennebec, Knox, Lincoln and Waldo; of the municipalities of New Portland, Embden, Solon, Athens, Harmony, Cambridge, Ripley and all other municipalities in Somerset County to the south of these; of the municipalities and unorganized territory of Township No. 6, Phillips, Salem Township, Freeman Township and all other municipalities and unorganized territory in Franklin County to the south of these; and of the municipalities and unorganized territory of Stow, Batchelder, Grant, Gilead, Riley T. A. No. 1, Grafton T. A. No. 2, Andover North Surplus, Byron and all other municipalities in Oxford County to the south and east of these with the exception of those municipalities within the Metropolitan Portland Air Quality Region.

3. **Downeast Air Quality Region.** The Downeast Air Quality Region shall consist of the Counties of Hancock and Washington; of the municipality of Stacyville, the unorganized territory of T. 3, R. 7, W.E.L.S., T. 3, R. 8, W.E.L.S. and all other municipalities and unorganized territory in Penobscot County to the south of these; and of the municipalities and unorganized territory of Blanchard Plantation, Monson, Willimantic, Bowerbank, Barnard Plantation, T. 6, R. 8, W.E.L.S. (Williamsburg Township), Brownville, Lake View Plantation and all other municipalities and unorganized territory in Piscataquis County to the south of these.

4. **Aroostook Air Quality Region.** The Aroostook Air Quality Region shall consist of all municipalities and unorganized territory in Aroostook County not included within the Northwest Air Quality Region.

5. **Northwest Maine Air Quality Region.** The Northwest Maine Air Quality Region shall consist of the municipality of Upton, the unorganized territory of C Surplus Township, C Township and all other municipalities and unorganized territory in Oxford County to the north of these; the municipalities and unorganized territory of D Township, E Township, Madrid, T. 4, R. 1, B.K.P., W.K.R., Kingfield and all other municipalities and unorganized territory in Franklin County to the north of these; of the municipalities and unorganized territory of Lexington Plantation, Concord Township, Bingham, Brighton Plantation and all other municipalities and unorganized territory in Somerset County to the north of these; of the municipalities and unorganized territory of Shirley, Elliottsville Plantation, T. 7, R. 9, W.E.L.S., T. 6, R. 9, W.E.L.S. (Katahdin Iron Works), T. 5, R. 9, W.E.L.S., T. 4, R. 9, W.E.L.S. and all municipalities and unorganized territory in Piscataquis County to the north of these; of

the municipality of Patten, the unorganized territory of T. 4, R. 7, W.E.L.S., T. 4, R. 8, W.E.L.S., and all other municipalities and unorganized territory in Penobscot County to the north of these; and the municipality of St. Francis, the unorganized territory of T. 16, R. 9, W.E.L.S., T. 15, R. 9, W.E.L.S., T. 14, R. 9, W.E.L.S., T. 13, R. 9, W.E.L.S., T. 12, R. 9, W.E.L.S., T. 11, R. 9, W.E.L.S., and all other municipalities and unorganized territory in Aroostook County to the west of these.

## § 583-A. Repealed. 1977, c. 300, § 39

### § 583-B. Classification of air quality control regions

The air quality regions set forth in section 583 or portions thereof are classified as follows:

1. **Class I.** Class I:

A. Those federal lands which have been established as mandatory Class I areas by the Federal Clean Air Act:[1] Acadia National Park located in the Downeast Air Quality Region: Moosehorn National Wildlife Refuge located in the Downeast Air Quality Region; and the Roosevelt Campobello International Park located in New Brunswick, Canada;

2. **Class II.** The areas in the State not designated Class I or Class III or nonattainment areas shall be Class II areas;

3. **Class III.**

4. **Nonattainment areas.** The department shall have the authority to designate certain regions or portions thereof as nonattainment area after public hearing and determination that any ambient air quality standard is being exceeded;

5. **Redesignation of class.**

A. Repealed. 1980, c.732, § 28

B. Other areas may be redesignated as follows:

(1) The board may recommend to the Legislature the redesignation of any air quality region in whole or in part, to Class I, II or III. Prior to this recommendation, a public hearing shall be conducted in each area proposed to be redesignated. Prior to the public hearing, a report shall be made available with a description and an analysis of health, environmental, economic, social and energy impacts with the proposed redesignation. Should the area proposed for redesignation include or be deemed to affect federally owned lands, the board shall consult with the appropriate federal land manager prior to the redesignation. All proposed redesignations shall be submitted to the Legislature for enactment.

## § 584. Establishment of ambient air quality standards

The board shall establish and may amend reasonable standards, in this chapter called "ambient air quality standards," within a reasonable air quality region regulating and limiting the amount and types of air contaminants which may exist in the ambient air of such region. Such standards shall be designed to preserve or enhance the quality of ambient air within such region and to prevent air pollution.

Prior to the establishment or amendment of ambient air quality standards, the board shall conduct a public hearing in some municipality within the region, and shall give public notice of its intent to establish standards for the region.

At such hearing the board shall solicit and consider testimony concerning the existing quality of the ambient air within the region; the recreational, industrial and residential uses of land within the region; the effects of existing air contaminants and air pollution upon such uses; the availability and effectiveness of air pollution control apparatus designed to control and reduce such existing air contaminants and air pollution; the expense of purchasing and installing the same, and such other evidence as

in the board's judgment will enable it to determine and establish the standards of air quality necessary to prevent air pollution within the region.

After hearing the board shall by order establish or may amend reasonable ambient air quality standards for the region, regulating and limiting the amount and type of air contaminants which may exist in the ambient air of such region, which standards shall be designed to achieve the purposes set forth in the first paragraph of this section. The order shall state the date upon which such standards, or any of them, become effective, and such regions and standards shall thereafter be in effect until 90 days after the date of adjournment of the next regular or special session of the Legislature unless such next regular or special session shall adopt by legislative enactment such air quality regions and standards.

In establishing such effective date, the board shall consider the degree of air pollution existing within the region, the length of time necessary to inform persons affected by the establishment of such standards of their existence, the time needed by the board to implement effective controls, and the time needed by persons affected to design and install air pollution control apparatus to comply with such standards.

## § 584-A. —enactment

The ambient air quality standards set forth in this section, which are expressed in terms of 25° centigrade and 760 millimeters of mercury pressure, shall apply in all air quality regions:

**1. Particulate matter.**

**A.** Particulate matter concentration for any 24-hour period at any location shall not exceed 150 micrograms per cubic meter.

**B.** The annual geometric mean of the 24-hour particulate matter concentrations at any location shall not exceed 60 micrograms per cubic meter.

**2. Sulfur dioxide.**

**A.** Sulfur dioxide concentration for any 3-hour period at any location shall not exceed 1150 micrograms per cubic meter.

**B.** Sulfur dioxide concentration for any 24-hour period at any location shall not exceed 230 micrograms per cubic meter.

**C.** The annual arithmetic mean of the 24-hour average sulfur dioxide concentrations at any location shall not exceed 57 micrograms per cubic meter.

**3. Carbon monoxide.**

**A.** Carbon monoxide concentration for any 8-hour period at any location shall not exceed 10 milligrams per cubic meter, except once per year.

**B.** Carbon monoxide concentration for any 1-hour period at any location shall not exceed 40 milligrams per cubic meter, except once per year.

**4. Photochemical oxidant.** Photochemical oxidant concentration for any 1-hour period at any location shall not exceed 160 micrograms per cubic meter, except once per year.

5. **Hydrocarbon.** Hydrocarbon concentration for any 3-hour period at any location shall not exceed 160 micrograms per cubic meter, except once per year.

6. **Nitrogen dioxide.** The annual arithmetic mean of the 24-hour average nitrogen dioxide concentration at any location shall not exceed 100 micrograms per cubic meter.

### § 584-B. Establishment of ambient increments—Class I regions

In addition to the ambient air quality standards set forth in section 584-A any Class I region or part thereof within the State, including those federal lands designated by the Federal Clean Air Act Amendments of 1977,[1] shall be subject to a maximum allowable increase in concentration of sulfur dioxide and particulate matter over the baseline concentration of that pollutant, which increase shall not be exceeded more than once annually for any period other than an annual period. The maximum allowable increase shall consist of:

1. **Particulate matter.** In regards to particulate matter:
   A. An increase in the annual geometric mean at any location not to exceed 5 micrograms per cubic meter; and
   B. An increase in concentration for any 24-hour period at any location not to exceed 10 micrograms per cubic meter; and
2. **Sulfur dioxide.** In regards to sulfur dioxide:
   A. An increase in the annual arithmetic mean at any location not to exceed 2 micrograms per cubic meter;
   B. An increase in concentration for any 24-hour period at any location not to exceed 5 micrograms per cubic meter; and
   C. An increase in concentration for any 3-hour period at any location not to exceed 25 micrograms per cubic meter.

1979, c. 381, § 7.

### § 584-C. Establishment of ambient increments—Class II regions

In addition to the ambient air quality standards set forth in section 584-A, any Class II region or part thereof within the State shall be subject to a maximum allowable increase in concentration of particulate matter and sulfur dioxide over the baseline concentration of that pollutant, which increase shall not be exceeded more than once annually for any period other than an annual period. The maximum allowable increase shall consist of:

1. **Particulate matter.** In regards to particulate matter:
   A. An increase in the annual geometric mean at any location not to exceed 19 micrograms per cubic meter; and
   B. An increase in concentration for any 24-hour period at any location not to exceed 37 micrograms per cubic meter; and
2. **Sulfur dioxide.** In regards to sulfur dioxide:
   A. An increase in the annual arithmetic mean at any location not to exceed 20 micrograms per cubic meter;
   B. An increase in concentration for any 24-hour period at any location not to exceed 91 micrograms per cubic meter; and
   C. An increase in concentration for any 3-hour period at any location not to exceed 512 micrograms per cubic meter.

### § 584-D. Establishment of ambient increments—Class III regions

In addition to the ambient air quality standards set forth in section 584-A, any Class III region or part thereof within the State shall be subject to a maximum allowable increase in concentration of particulate matter and sulfur dioxide over the baseline concentration of that pollutant, which increase shall not be exceeded more than once annually for any period other than the annual period. The maximum allowable increase shall consist of:

1. **Particular matter.** In regards to particulate matter:
   A. An increase in the annual geometric mean at any location not to exceed 37 micrograms per cubic meter; and
   B. An increase in concentration for any 24-hour period at any location not to exceed 75 micrograms per cubic meter; and
2. **Sulfur dioxide.** In regards to sulfur dioxide:
   A. An increase in the annual arithmetic mean at any location not to exceed 40 micrograms per cubic meter;
   B. An increase in concentration for any 24-hour period at any location not to exceed 182 micrograms per cubic meter; and
   C. An increase in concentration for any 3-hour period at any location not to exceed 700 micrograms per cubic meter.

### § 584-E. Exclusions from applicable increments—Class I, II and III regions

1. **Exclusions from applicable increments.** The following concentrations shall be excluded in determining compliance with applicable increments:
   A. Concentrations of such pollutant attributable to the increase in emis-

sions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 [1] over the emissions from such sources before the effective date of such order;

B. Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities; and

C. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration.

## § 585. Establishment of emission standards

The board may establish and may amend standards, herein called "emission standards", limiting and regulating in a just and equitable manner the amount and type of air contaminants which may be emitted to the ambient air within a region. Such emission standards shall be designed to prevent air pollution and to achieve and maintain the ambient air quality standards within the region in which applicable.

Prior to the establishment or amendment of emisssion standards, the board shall conduct a public hearing in some municipality within the region. At such hearing the board shall solicit and consider testimony concerning the ambient air quality standards of the region; the existing emissions of air contaminants within the region, their nature, amount and sources; the effect of such emissions upon the ambient air quality standards of the region; the availability, effectiveness and cost of air pollution control apparatus designed to prevent and control air pollution caused by such emissions, and such other evidence as in the board's judgment will enable it to determine and establish emission standards for the region which will achieve and maintain the ambient air quality standards therein.

After hearing the board shall by order establish or may amend emission standards limiting and regulating the amount and type of air contaminants which may be emitted to the ambient air of a region so as to achieve the goals set forth in the first paragraph of this section. The order shall state the date upon which such standards, or any of them, become effective.

In establishing such date, the board shall consider the same factors required by it to be considered in establishing the effective date of ambient air quality standards.

Any emission standard or amendment thereto established by the board shall thereafter be in effect until 90 days after the date of adjournment of the next regular or special session of the Legislature unless such next regular or special session shall adopt by legislative enactment such emission standard or amendment thereto.

## § 585-A. Establishment of standards

The board may, after the establishment of ambient air quality standards and emission standards, establish and amend reasonable standards and regulations to implement ambient and emission standards established by the board. Such standards and regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and the prevention of air pollution.

Prior to the establishment or amendment of such standards and regulations the board shall conduct a public hearing thereon. At such hearing the board shall solicit and receive testimo-

ny concerning applicable ambient air quality and emission standards; the availability, effectiveness and cost of any air pollution control apparatus designed to prevent or control air pollution or violations of ambient air quality or emission standards which would be required by any proposed standards or regulations; and such other evidence as in the board's judgment will enable it to determine and establish standards and regulations adequate to maintain applicable ambient air quality and emission standards.

After hearing the board shall by order establish or amend reasonable standards and regulations which shall be designed to achieve the purposes set forth in the first paragraph of this section. The order shall state the date upon which such standards and regulations or any of them, become effective, and such standards shall thereafter be in effect until 90 days after the date of adjournment of the next regular or special session of the Legislature unless such next regular or special session shall adopt by legislative enactment such standards.

## § 586. Subpoena power

The board may issue subpoenas to compel the production of books, records and other data related to the matters in issue at any board hearing.

If any person served with such subpoena claims, at or before the hearing that the production by him of books, records or other data under his control is sought, that such production may disclose secret processes, formulae or methods used by him or under his direction, such information from such books, records or other data shall be disclosed at a nonpublic portion of the hearing and the record thereof shall be confidential.

If any person refuses to obey a subpoena issued by the board under this section, the board may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of the subpoena. Such justice may issue such order and may punish failure to obey the same as a contempt thereof.

## § 587. Variances

Any person who owns or is in control of any source for which an air emission license was granted and construction was commenced prior to January 6, 1975, or a source other than a new or modified major stationary source for which an air emission license is granted after January 6, 1975, may apply to the board for a variance from ambient air quality standards or emission standards promulgated under this chapter. The application shall be accompanied by such information and data as the board may reasonably require. The board may grant such variance if it finds that:

1. **No danger to human health or safety.** The emissions occurring or proposed to occur do not endanger human health or safety;
2. **Compliance to produce hardship.** Compliance with the rules or regulations from which variance is sought would produce serious hardships; and
3. **Violation.** Such variance will not cause or contribute to a violation of the applicable ambient air increment.

No variance shall be granted except after a public hearing in the municipality where the applicant maintains the building or business in connection with which the variance is sought.

If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be good only until the necessary means for prevention, abate-

ment or control become known and available and subject to the taking of such reasonable substitute or alternate measures as the board may prescribe.

If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as the board finds is requisite for the taking of the necessary measures.

If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections 1 and 2, it shall be only for such time as the board considers reasonable.

Any variance may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the board on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor.

Any person adversely affected by a variance or renewal granted by the board may obtain judicial review thereof by a proceeding in the Superior Court. Judicial review of the denial of a variance or denial of renewal thereof may be had only on the ground that the denial was arbitrary or capricious.

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 347, subsection 2, to any person or his property.

Any owner or operator of a new or modified major emitting source who applies for an air emission license after January 6, 1975, shall not be eligible for a variance from ambient air quality standards, including applicable ambient air increments, except that the source may apply for a variance to increments applicable to mandatory federal Class I areas under the terms and conditions set forth in section 165(d) of the Federal Clean Air Act, 42 United States Code Annotated, section 7475(d).

## § 588. Repealed. 1977, c. 300, § 43

## § 589. Registration; penalties

The board may require the registration with it of such persons or air contamination sources of the type it may by regulation prescribe engaged in activities which emit air contaminants, and may also require persons operating stationary air contamination sources to install, maintain and use such reasonable emission monitoring devices as the board by regulation may prescribe.

The board may also require such persons to make periodic reports to it containing information relating to location, size of outlet, height of outlet, rate and period of emission and composition of air contaminants, location and type of air pollution control apparatus, and such other information as the board may by regulation prescribe.

Failure to register, to install, maintain and use emission monitoring devices or to file reports shall render the failing party liable to the penalties prescribed in sections 348 and 349 for violation of board orders.

## § 590. Licensing

After ambient air quality standards and emission standards have been established within a region, the board may by regulation provide that no person shall operate or maintain therein any air contamination source or emit any air contaminants therein without an emission license from the board.

Application for such licenses shall be made in such form and contain such information relating to the proposed air contamination source and emission of air contaminants as the board may by regulation prescribe. All hearings under this section shall be held in some municipality within the region where the proposed emission is to be located. At such hearing, the board shall solicit and receive testimony concerning the nature of the proposed emissions; their effect on existing ambient air quality standards within the region; the availability and effectiveness of air pollution control apparatus designed to maintain the emission for which license is sought at the levels required by law; and the expense of purchasing and installing such apparatus. If after hearing the board shall find that the proposed emission will be receiving the best practicable treatment, will not violate applicable emission standards, or can be controlled so as not to violate the same, and that such proposed emission, either alone or in conjunction with existing emissions, will not violate or can be controlled so as not to violate applicable ambient air quality standards, it shall grant the license, imposing such appropriate and reasonable conditions thereon as may, in the board's judgment, be necessary to secure compliance with such standards.

The board shall have the power to deny an air emission license for a new or modified major emitting source if it determines that emissions from the source will cause an adverse impact on air quality-related value, including visibility for federally mandated Class I areas notwithstanding the fact that the source will not cause or contribute to air pollution concentrations which exceed the ambient increments for a Class I area.

## § 591. Prohibitions

No person shall discharge air contaminants into ambient air within a region in such manner as to violate ambient air quality standards established by the board pursuant to section 584 or emission standards so established pursuant to section 585.

Where the board, pursuant to section 590, has by regulation provided that no person shall operate or maintain within a region any air contamination source or emit any air contaminants without an emission license from the board, such operation or maintenance without license is prohibited.

## §§ 592 to 596. Repealed. 1977, c. 300, §§ 45 to 48

## § 597. Municipal air pollution control

Nothing in this chapter shall be construed as a preemption of the field of air pollution study and control on the part of the State. Municipalities may study air pollution and adopt and enforce air pollution control and abatement ordinances, to the extent that these ordinances are not less stringent than this chapter or than any standard, order or other action promulgated pursuant to this chapter. Local ordinance provisions which touch on matters not dealt with by this chapter or which are more stringent than this chapter shall bind persons residing in the municipality.

## § 598. Visible emissions

1. Scope. This section shall be effective in all ambient air quality control regions in the State.

2. Prohibition. No person may emit or cause to be emitted any visible air contaminants:

A. From any fuel burning equipment:

(1) Whose rated input capacity is equal to or less

than 250,000,000 B.T.U. per hour that exceeds an opacity of 30% for more than 15 minutes in any continuous 3-hour period; or

(2) Whose rated input capacity is greater than 250,000,000 B.T.U. per hour that exceeds an opacity of 40% for more than 15 minutes in any continuous 3-hour period;

B. From any solid waste fuel burning equipment that exceeds an opacity of 40% for more than 20 minutes in any 2-hour period;

C. From any general process including fugitive emission source that exceeds an opacity of 20% for more than 5 minutes in any one hour, except:

(1) Existing wood-fired brick kilns whose opacity may not exceed 40% for more than 20 minutes in any one-hour period; or

(2) Existing recovery boilers whose opacity may not exceed 30% for more than 5 minutes in any 3-hour period; or

D. From any air contaminant source comprised of 2 or more of any combination of fuel burning, solid waste fuel burning or general process emitted through one stack that exceeds an opacity of 40% for more than 20 minutes in any continuous 2-hour period or 80% for more than 10 minutes in any one hour.

3. Exemptions. This section does not apply to:

A. Emissions of condensed, uncombined water vapor;

B. Incinerators;

C. Permitted open burning;

D. Air contaminants emitted for the purpose of training, research or recreation; and

E. For boilers whose rated input capacity is greater than 200,000,000 B.T.U. per hour, violations of the applicable provision of subsection 2 during the first 4 hours following the initiation of cold startup or planned shutdown, provided that operating records are available to demonstrate that the facility was being operated to minimize emissions. Any person claiming an exemption under this paragraph shall have the burden of proving that any excess emissions were not caused entirely, or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition.

4. Malfunctions. The department is authorized to exempt emissions occurring during periods of unavoidable malfunction or unplanned shutdown from civil penalty under section 349, subsection 2, if the malfunction was not caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition. In such a case, the

burden of proof shall be on the person seeking the exemption.

## § 599. Open burning

**1. Prohibitions.**

**A.** Open burning of tires or rubber products or by-products is prohibited after July 1, 1972.

**B.** Except as provided in subsection 2, open burning of waste of any kind at sites other than a municipal solid waste disposal site is prohibited after July 1, 1975.

**C.** Open burning of solid waste material at a municipal solid waste disposal site serving less than 1,000 persons shall only be prohibited where the Board of Environmental Protection, after investigation and hearing, shows that the continuance of open burning at a specific municipal site is in violation of air quality standards.

**D.** Open burning of solid waste materials at a municipal solid waste disposal site serving 1,000 or more persons is prohibited after September 1, 1975, unless the owners and lessee of the municipal solid waste disposal site apply for a variance under this section from the Board of Environmental Protection.

While an application for a variance is being processed by the Department of Environmental Protection, open burning at the municipal site in question may continue until the board makes its final decision on the application.

**E.** Whenever the Board of Environmental Protection shows that open burning at a municipal solid waste disposal site violates air quality standards or whenever the board denies a variance under this section it shall, after consultation with the violator or applicant for a variance, establish a reasonable compliance schedule aimed at bringing about the cessation of open burning at the municipal waste disposal site under consideration. This compliance schedule shall include, but not be limited to, the following:

(1) Arrangements for administration and financing;

(2) Plans and specifications;

(3) Studies and investigations;

(4) Site acquisition;

(5) Purchase of necessary equipment; and

(6) Operational date of the proposed solid waste disposal site.

A compliance schedule established under this section shall be conditioned upon reasonable terms and conditions aimed at achieving air quality standards and shall be for a time of not less than 2 years.

**2. Exemptions.** Open burning may be permitted for the following purposes:

**A.** With a permit obtained under subsection 3:

(1) Open burning for the control or prevention of any disease, virus or similar hazard to public health;

(2) Open burning for agricultural purposes, such as land clearing, blueberry control or burning for similar prescribed cultural purposes;

(3) Open burning for the disposal of any material generated by the demolition of any building or the clearing of any land for the erec-

tion, modification, maintenance or construction of any highway, railroad, power or communication line or pipeline or commercial or industrial or recreational building or development; and

(4) Open burning for training and research; or

B. Without any permit under this chapter, provided the burning will comply with all applicable requirements of Title 12, chapter 215:

(1) Open burning for recreational purposes.

3. **Open burning permits.** Open burning permits may be granted by the forest ranger or town forest fire warden having jurisdiction over the location where the fire is to be set. Should complicated circumstances warrant, the ranger or warden may refer the person requesting such a permit to the commissioner for approval of paragraph A, B and C. Such permits will be issued if it is determined:

**A.** There is no local, private or municipal waste collection for such materials nor any reasonably located municipal or private solid waste disposal facility to which such material may be transported or the quantity of material is such that it cannot be reasonably transported;

**B.** There is no other reasonable method for disposal of such materials that will not create or aggravate a hazard to public health or safety or public or private property nor violate any provision of state or local law or regulation;

**C.** The existing wind speed and atmospheric stagnating conditions will not create any nuisance conditions;

**D.** Such burning will not take place within 25 feet of a public way;

**E.** Such burning will take place under such conditions as will prevent the uncontrolled spread of the fire;

**F.** The burning will comply with all applicable regulations of the State of Maine Bureau of Forestry and any applicable local fire regulations.

4. Repealed. 1979, c. 127, §214.

5. **Variances.** Any municipality maintaining or leasing an open-burning solid waste disposal site may apply to the board for a variance to the open-burning requirements of this section. The application shall be accompanied by such information and data as the board may require. The staff of the Department of Environmental Protection shall provide air quality technical assistance to municipal applicants for a variance under this section.

Whenever a municipality shows that compliance with the open burning requirements of this section would produce undue hardship, the board shall grant a variance, except that no variance shall be granted when the board shows that the emissions from the open burning endanger human health and safety.

No variance shall be granted under this section unless the municipality causes to be published a public notice of the intent to grant a variance in a newspaper circulated in the area at least 10 days prior to the meeting at which the board is scheduled to act on the variance. The board shall notify the municipality of its intent to grant a variance 20 days before the meeting scheduled to act on the variance.

The Board of Environmental Protection may conduct a public hearing on any variance application under this section if it determines that there is substantial objection to the granting of the variance. The Board of Environmental Protection, if it determines that it will deny the variance applied for, shall at the request of the municipality conduct a public hearing for the municipality which made application, before the denial becomes effective, to give the town the opportunity to show that the emissions from open burning do not endanger human health or safety and compliance with the open burning requirements of this subsection would produce serious hardship and that a variance should be granted.

The board, after granting a variance to a municipality under this section, if it determines that the municipal solid waste disposal facility does not violate air quality standards, shall take all necessary steps to remove that facility from the United States Environmental Protection Agency approved State of Maine Air Quality Implementation Plan.

## § 600. Fuel-burning equipment particulate emission standard

1. **Scope.** This section shall be applicable to all fuel-burning and solid waste fuel-burning equipment that is fired at a rate of 3 million B.T.U. per hour or greater, regardless of fuel type, and shall be effective in all ambient air quality control regions in the State of Maine as follows:

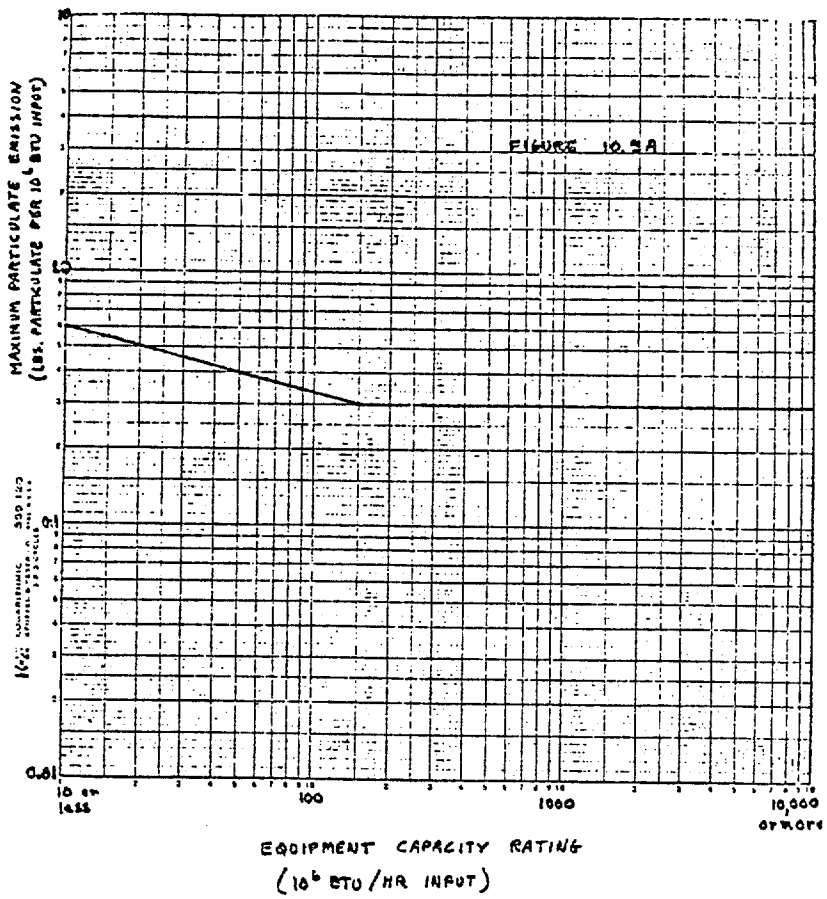
**A.** Immediately for all fuel-burning equipment, the construction or operation of which begins after January 31, 1972;

**B.** June 1, 1975 for all existing sources.

2. **Emission standard.** Any person operating fuel-burning or solid waste fuel-burning equipment within the scope of this section shall limit the particulate emissions from such fuel-burning equipment in accordance with Figure A during any continuous 2-hour period. If monitoring data or modeling information is available to demonstrate, on a case by case evaluation, that ambient air quality standards or applicable increments will not be violated by an emission rate from any solid waste fuel-burning equipment in excess of the rate set forth in Figure A, this higher emission rate shall apply to this equipment. For purposes of obtaining necessary state and federal approval of the higher emission limitation for solid waste fuel-burning equipment, it shall be the responsibility of the person operating the solid waste fuel-burning equipment to acquire and present appropriate monitoring data or modeling information to the department.

3. **Test methods and procedures.** Test methods 1 and 5 as promulgated by the Administrator of the United States Environmental Protection Agency in Regulation 60.85 published in the Federal Register, volume 36, number 247, December 23, 1971, or such other methods as are deemed equivalent by the board shall be those used to determine compliance with this section.

FIGURE A




## § 601. Incinerator particulate emission standard

**1. Scope.** This section shall be applicable to all incinerators and shall be effective in all regions in the State of Maine as follows:

**A.** Immediately for all incinerators, the construction or operation of which begins after January 31, 1972; and

**B.** June 1, 1975 for all existing incinerators, except existing wood waste teepee incinerators.

**2. Emission standard.** Except as provided in subsections 4 and 5, no person shall emit or cause to be emitted any particulate air contaminants from:

**A.** Any incinerator, darker than a number 1 on the Ringelmann Chart, excluding the emission of water vapor;

**B.** Any class III, IV, V, VI and VII incinerator having a designed charging rate of 50 tons per day or less, that exceed 0.2 grain per standard cubic foot of dry flue gas during any continuous 2-hour period, corrected to 12% carbon dioxide without the contribution of carbon dioxide from the auxiliary fuel;

**C.** Any class incinerator having a designed charging rate greater than 50 tons per day, that exceed 0.08 grain per standard cubic foot of dry flue gas during any continuous 2-hour period, corrected to 12% carbon dioxide without the contribution of carbon dioxide from the auxiliary fuel.

**3. Test methods and procedures.** Test methods 1, 3 and 5 as promulgated by the Administrator of the United States Environmental Protection Agency in Regulation 60.85 published in the Federal Register, volume 36, number 247, December 23, 1971 or such other methods as are deemed equivalent by the board shall be those used to determine compliance with this section.

**4. Ambient monitoring system.** Notwithstanding anything contained in subsection 2, paragraphs A, B and C, as long as ambient monitoring data is available to demonstrate, on a case by case evaluation, that ambient air quality standards will not be violated by emissions from any specific wood waste teepee incinerator, wood waste teepee incinerators may emit particulate air contaminants not to exceed either 0.3 grain per standard cubic foot of dry flue gas during any continuous 2-hour period, corrected to 12% carbon dioxide without the contribution of carbon dioxide from the auxiliary fuel or a number 2 on the Ringelmann Chart, excluding the emission of water vapor, for a period or periods aggregating more than 3 minutes in any hour, excluding the emission of water vapors.

**5. Start-up and burn-down.** There shall be daily periods not to exceed one hour each for the start-up and burn-down of wood waste teepee incinerators during which the standards contained in subsection 4 shall not apply.

## § 602. General process source particulate emissions

**1. Scope.** This emission standard shall be effective in all regions in the State of Maine as follows:

**A.** Immediately for any process source the construction or operation of which begins after January 31, 1972;

**B.** June 1, 1975 for any existing general process source.

**2. Kraft pulping processes.** Any person operating any kraft pulping process shall limit the emission of particulate air contaminants from such emission source as follows:

Four pounds of particulate emissions per air dried ton of kraft pulp from the recovery boiler; one pound of particulate air contaminants per air dried ton of kraft pulp from the lime kiln; 0.5 pound of particular air contaminants per air dried ton of kraft pulp from the smelt tank during any continuous 2-hour period.

**3. Other processes.** Any person operating any general process sources, except kraft pulping processes, shall limit the emission of particulate air contaminants from such source according to the following table:

TABLE I

| Process Weight Rate (lbs./hr.) | Emission Rate (lbs./hr.) |
|---|---|
| 50 | 0.36 |
| 100 | 0.55 |
| 500 | 1.53 |
| 1,000 | 2.25 |
| 5,000 | 6.34 |
| 10,000 | 9.73 |
| 20,000 | 14.99 |
| 60,000 | 29.60 |
| 80,000 | 31.19 |
| 120,000 | 33.28 |
| 160,000 | 34.85 |
| 200,000 | 36.11 |
| 400,000 | 40.35 |
| 1,000,000 | 46.72 |

Interpolation of Table I for process weight rates up to 60,000 lbs./hr. shall be computed by use of the following equation:

$$E=3.59P^{0.62} \qquad P \leq 30 \text{ tons/hr.}$$

and interpolation and extrapolation of Table I for rates in excess of 60,000 lbs./hr. shall be computed by use of the equation:

$$E=17.31P^{0.16} \qquad P \geq 30 \text{ tons/hr.}$$

Where E=emissions in pounds per hour and P=process weight rate in tons per hour.

All emissions from all general process sources operated by the same person in the same general location shall be combined in computing the process weight rate.

**4. Test methods and procedures.** Test methods 1 and 5 as promulgated by the Administrator of the United States Environmental Protection Agency in Regulation 60.85 published in the Federal Register, volume 36, number 247, December 23, 1971 or such other methods as are deemed equivalent by the board shall be used to determine compliance with this regulation.

## § 603. Low sulfur fuel

**1. Prohibitions.**

**A.** In the Central Maine, Downeast, Aroostook County and Northwest Maine Air Quality Regions, no person shall sell, distribute, buy or use any fuel with a sulfur content greater than 2.5% by weight anytime after November 1, 1973. In the Metropolitan Portland Air Quality Region outside the Portland Peninsula Air Quality Region, no person shall sell, distribute, buy or use any fuel with a sulfur content greater than 2.5% by weight anytime after June 1, 1975.

**B.** In the Portland Peninsula Air Quality Region, no person shall use any fuel with a sulfur content greater than 1.5% by weight anytime after November 1, 1975.

**C.** In the Portland Peninsula Air Quality Region, no person shall use any fuel with a sulfur content greater than 1.0% by weight anytime after November 1, 1985.

**2. Records.** Any person importing residual oil or coal into the State of Maine shall submit to the Department of Environmental Protection a record of the sulfur content of each shipment of such fuel. Any person blending oil for use within the

Portland Peninsula Air Quality Region shall submit to the Department of Environmental Protection on a monthly basis a report indicating the total volume and average sulfur content actually supplied.

**3. Exemptions.**

**A.** A source that installs one or more sulfur collecting devices that reduce sulfur dioxide emissions to the equivalent level allowed in that air quality region shall be exempt from this regulation.

**B.** If, during periods of energy crisis or equipment outage, an oil supplier is unable to supply conforming fuel, that supplier may apply for a temporary variance to the Commissioner of Environmental Protection. The commissioner may without hearing issue that variance for a period not to exceed 60 days if the application in his judgment meets the criteria of the applicable statutory variance requirements. Such temporary variance cannot be renewed.

## § 604. Sulfur dioxide emission standard for sulfite pulping processes

**1. Scope.** The emission standard shall apply to all emissions of sulfur dioxide from sulfite pulping processes except sulphur dioxide produced from the burning of coal or petroleum fuels. This emission standard shall become effective in all regions as follows:

**A.** Immediately for any sulfite pulping process, the construction or operation of which begins after January 31, 1972;

**B.** June 1, 1975 for all existing sources.

**2. Emission standard.** No person shall emit or cause to be emitted any sulfur dioxide emissions from any emission source within the scope of this emission standard in excess of 40 pounds per air dried ton of sulfite pulp produced.

**3. Test methods and procedures.** Test methods 1 and 6 as promulgated by the Administrator of the United States Environmental Protection Agency in Regulations 60.85 as published in the Federal Register, volume 36, number 247, December 23, 1971, or such other methods as are deemed equivalent by the board shall be used to determine compliance with this regulation.

## § 605. Malfunctions

Any person owning or operating any emission source that suffers a malfunction or breakdown in any component part which malfunction or breakdown causes a violation of sections 598 to 604 shall notify the board in writing within 48 hours.

## § 606. Nonpoint sources or indirect sources; review of public ways

**1. Prohibition.** No person, firm, corporation, municipality, state agency or other entity shall commence construction of any highway project of 4 or more lanes in the State unless the Board of Environmental Protection has first determined that the project will not violate the State of Maine Ambient Air Quality

Standards. The person or agency proposing to construct a highway resulting in 4 or more lanes shall submit to the Department of Environmental Protection an air quality impact analysis. This analysis shall be conducted in accordance with such mathematic modeling techniques as are mutually acceptable to the department, The Federal Environmental Protection Agency and the Federal Highway Administration.

**2. Exemptions.** The foregoing shall not apply, however, to highway projects that will have no significant effect on air quality, such as lights, signs, landscaping and resurfacing.

**3. Scope.** The requirements of this section shall apply in all the air quality regions of the State.

## § 607. Municipal alternative

**1. Cone burners.** The Department of Environmental Protection shall have the authority to assist municipalities and set the emission standards for the use of cone burner incineration for the disposal of municipal solid waste.

**2. Notification.** Any municipality, group of municipalities, quasi-municipal corporations or district shall notify the Department of Environmental Protection of its intent to construct and operate a cone burner and may request technical assistance be provided by the department.

**§ 608. Repealed. 1979, c. 381, § 15**

**§ 609. Petroleum liquid storage vapor control**

**1. Scope.**

**A.** This section shall be applicable in the Metropolitan Portland, Portland Peninsula and Central Maine Air Quality Control Regions of the State.

**B.** This section shall apply to all fixed-roof storage vessels with capacities greater than 150,000 liters containing volatile petroleum liquids whose true vapor pressure is greater than 10.5 kilo pascals, 1.52 pounds per square inch absolute.

**2. Prohibition.** No owner or operator of a fixed-roof storage vessel shall permit the use of those vessels unless:

**A.** The vessels have been retrofitted with an internal floating roof equipped with a closure seal or seals, to close the space between the roof edge and tank wall; or with equally effective alternative control, approved by the commissioner;

**B.** The vessel is maintained so that there are no visible holes, tears or other openings in the seal or any seal fabric or materials;

**C.** All openings, except stub drains, are equipped with covers, lids or seals so that:

(1) The cover, lid or seal is in the closed position at all times, except when in actual use;

(2) Automatic bleeder vents are closed at all times, except when the roof is floated off or landed on the roof leg supports; and

(3) Rim vents, if provided, are set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting;

**D.** Routine inspections are conducted through roof hatches once every 6 months; and

**E.** A complete inspection of cover and seal is conducted whenever the tank is emptied for nonoperational reasons or at least once per year.

**3. Emission testing.** The determination of compliance under this section shall be made by visual inspection of the floating cover through the roof hatches by department staff or other qualified representative of the department. The source shall be found in compliance if:

**A.** The seal is intact and uniformly in place around the circumference of the cover between the cover and tank well;

**B.** The cover is uniformly floating on or above the liquid and there are no visible defects in the surface of the cover or liquid accumulated on the cover; and

**C.** All records are being properly maintained.

**4. Compliance schedule.** The owner or operator of a fixed-roof petroleum storage vessel covered under this section proposing to install a floating roof or other acceptable volatile organic compound emission control equipment shall adhere to the following schedule and shall report to the department within 15 days of the prescribed deadline the status of compliance.

A. Final plans for the floating roof and other necessary modifications or other acceptable volatile organic compound emission control equipment shall be submitted before November 1, 1979.

B. Contracts for installation of the floating roof, other modifications or other acceptable volatile organic compound emission control equipment or purchase orders for component parts shall be issued before March 1, 1980.

C. Initiation of on-site construction or installation of acceptable volatile organic compound emission control equipment shall begin before July 1, 1980.

D. Final compliance shall be achieved before July 1, 1981.

5. **Records.** The owner or operator of a fixed-roof storage vessel covered under this section shall maintain the following records and make them available to the department:

A. Reports of the results of inspections conducted under subsection 2, paragraphs D and E; and

B. A record of monthly throughput quantities and types of volatile petroleum liquids for each storage vessel.

## § 610. Petroleum liquids transfer vapor recovery

1. **Scope.**

A. This section shall be applicable in the Metropolitan Portland, Portland Peninsula and Central Maine Air Quality Control Regions of the State.

B. This section shall apply to all bulk gasoline terminals in existence prior to December 31, 1978, and having an average daily throughput of more than 76,000 liters.

2. **Prohibition.** No owner or operator of any bulk gasoline terminal may load gasoline into any tank trucks or trailers unless:

A. The bulk gasoline terminal is equipped to vent all displaced vapors and gases only to a vapor control system, properly installed, in good working order, in operation and consisting of one of the following:

(1) An absorber or condensation system which processes and recovers vapors and gases from the equipment being controlled;

(2) A vapor collection system which directs all vapors to a fuel gas system; or

(3) Any other control system approved by the commissioner;

B. A means is provided to prevent liquid drainage from the loading device when it is not in use, or to accomplish complete drainage before the loading device is disconnected;

C. All loading and vapor lines are equipped with fittings which make vaportight connections and which close automatically when disconnected;

D. The pressure in the vapor collection system is not allowed to exceed the tank truck or trailer pressure relief settings; and

E. Tank truck or trailer hatches are closed and there are no leaks at hatch covers or pressure relief valves, and tank trucks and trailers are at least 90% vapor tight.

3. **Emission standard.** No owner or operator of any bulk gasoline terminal shall allow the mass emissions of volatile organic compounds from the terminal to exceed 80 milligrams per liter of gasoline transferred.

4. **Compliance schedule.** The owner or operator of a bulk gasoline terminal covered under this section proposing to install a vapor recovery system or other acceptable volatile organic compound emission control equipment shall adhere to the following schedule, and shall report to the department within 15 days of the prescribed deadline the status of compliance.

A. Final plans for the acceptable volatile organic compound emission control equipment shall be submitted before November 1, 1979.

B. Contracts for installation of the acceptable volatile organic compound emission control equipment or purchase orders for component parts shall be issued before March 1, 1980.

C. Initiation of on-site construction or installation of acceptable volatile organic compound emission control equipment shall begin before July 1, 1980.

D. Final compliance shall be achieved before July 1, 1981.

5. **Emission testing.** Until a federally approved test method is available the determination of compliance shall be by methods approved by the commissioner.

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 100 DEFINITIONS REGULATION

SUMMARY: This regulation provides definitions for those terms used in the air pollution control regulations and emission standards.

1. Air contaminants include, but are not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.

2. Air pollution control apparatus means and includes any appliance, equipment, machinery, installation or structures which remove, control, reduce, elimate, dispose of or render less noxious the emission of air contaminants into the ambient air.

3. Ambient air means all air outside of buildings, stacks or exterior ducts.

4. Baseline concentration: The term "baseline concentration" reflects the time from which additional sources of air pollution will be counted against the available increment. It shall mean the actual ambient air quality in an area as of August 7, 1977 except that:

A. Contributions for any major emitting source subject to review for the Prevention of Significant Deterioration between January 6, 1975 and August 7, 1977 and operating on August 7, 1977 shall be subtracted from actual air quality on that date to establish baseline concentration (and shall be counted against the increment);

B. Contributions for any major emitting source not subject to review for the Prevention of Significant Deterioration and receiving approval to construct before January 6, 1975, but not in operation by August 7, 1977 shall be added to actual August 7, 1977 ambient air quality to establish the baseline concentration (and not counted against the increment).

Contributions for all air contaminants sources beginning operation after August 7, 1977 shall be counted against the increment except as provided in (b) above.

5. Best practical treatment means that method which controls or reduces emissions of air contaminants to the lowest possible level considering:

A. The then existing state of technology:

B. The effectiveness of available alternatives for reducing emissions from the source being considered:

C. The economic feasibility for the type of establishment involved.

6. Board means the Board of Environmental Protection.

7. Bulk Gasoline Terminal - Bulk Terminal means a gasoline storage facility which receives gasoline from refineries primarily by pipeline, ship, or barge, and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has a daily throughput of more than 76,000 liters (20,000 gallons) of gasoline.

8. Commissioner means the Commissioner of the Department of Environmental Protection.

9. Emission means a release of air contaminants into ambient air.

10. Emission source means any and all sources of emissions of air contaminants, whether privately or publicly owned or operated.

11. External Floating Roof - External floating roof means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

12. Fuel burning equipment means any furnace, boiler, appartus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer.

13. Fugitive Dust means particulate matter composed of soil which is uncontaminated by pollutants resulting from industrial activity.

14. Fugitive Emissions means particulate matter emitted by an air pollution source other than from a stack or flue.

15. General Process source means any emission source except fuel burning equipment, incinerators, mobile sources, open burning sources and sources of fugitive dust.

16. Incinerators means any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire any material or substance.

17. Classification of Wastes

A. Type 0 - Trash, a mixture of highly combustible waste such as a paper, cardboard cartons, woodboxes and combustible floor sweepings, from commercial and industrial activities. The mixtures contain up to 10% by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags and plastic or rubber scraps. This type of waste contains about 10% moisture and 5% incombustible solids and has a heating value of approximately 8500 B.T.U. per pound as fired.

B. Type 1 - Rubbish, mixture of combustible waste such as paper, cardboard cartons, wood scrap, foliage and combustible floor sweepings, from domestic, commercial and industrial activites. The mixture contains up to 20% by weight of restaurant or cafeteria waste, but contains little or no treated papers, plastic or rubber wastes. This type of waste contains about 25% moisture and 10% incombustible solids and has a heating value of approximately 6500 B.T.U. per pound as fired.

C. Type 2 - Refuse, consisting of an approximately even mixture of rubbish and carbage by weight. This type of waste is common to apartment and residential occupancy, consisting of up to 50% moisture, 7% incombustible solids, and a heating value of approximately 4300 B.T.U. per pound as fired.

D. Type 3 - Garbage, consisting of animal and vegetable wastes from restaurants, cafeterias, hotels, hospitals, markets and like installations. This type of waste contains up to 70% moisture, and up to 5% incombustible solids and has a heating value of approximately 2500 B.T.U. per pound as fired.

E. Type 4 - Human and animal remains, consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds, and similar sources, consisting of up to 85% moisture, 5% incombustible solids and having a heating value of approximately 1000 B.T.U. per pound as fired.

F. Type 5 - By-product waste, gaseous, liquid or semi-liquid such as tar, paints, solvents, sludge, fumes, etc., from industrial operations. B.T.U. values must be determined by the individual materials to be destroyed.

G. Type 6 - Solid by-product waste, such as rubber, plastics wood waste, etc., from industrial operations. B.T.U. values must be determined by the individual materials to be destroyed.

18. Classification of Incinerators

A. Class I - Portable, packaged, completely assembled, direct fed incinerators 5 to 15 cubic feet primary chamber volume; or a burning rate of 25 to 100 pounds per hour of type 1 or type 2 waste; or a burning rate of 25 to 75 pounds per hour of type 3 waste.

B. Class IA - Portable, packaged or job assembled, direct feed incinerators with 5 to 14 cubic feet primary chamber volume; or a burning rate of 25 to 100 pounds per hour of type 1 or type 2 waste; or a burning rate of 25 to 75 pounds per hour of type 3 waste.

C. Class II - Flue-fed, single chamber incinerators with more than 2 square feet burning area, for type 2 waste. This type of incinerator is served by one vertical flue functioning both as a shute for charging waste and to carry the products of combustion to atmosphere.

This type of incinerator has been installed in apartment houses or multiple dwellings.

D. Class IIA - Shute-fed multiple chamber incinerators, for apartment buildings with more than 2 square feet burning area, suitable for type 1 or type 2 waste. (Not recommended for industrial installation) This type of incinerator is served by a vertical shute for charging wastes from two or more floors above the incinerator and a separate flue for carrying the products of combustion to the atmosphere.

E. Class III - Direct fed incinerators with a burning rate of 100 pounds per hour and over, suitable for type 3 waste.

F. Class Iv - Direct fed incinerators with a burning rate of 75 pounds per hour or over, suitable for type 3 waste.

G. Class V - Municipal incinerators suitable for type 0, type 1, type 2 or type 3 wastes, or a combination of all four wastes, and are rated in tons per 24 hours.

H. Class VI - Crematory and pathological incinerators, suitable for type 4 waste.

I. Class VII - Incinerators designed for specific by-products wastes, type 5 or type 6.

19. Internal Floating Roof - Internal floating roof means a cover or roof in a fixed roof tank which rests upon or is floated upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

20. Major emitting source - The term "major emitting source" means any of the following emission sources of air contaminants which emit, or have the potential to emit, one hundred tons per year or more of any air contaminants:

A. Fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input;

B. Primary zinc smelters;

C. Coal cleaning plants (thermal dryers);

D. Iron and steel mill plants;

E. Kraft pulp mills;

F. Portland cement plants;

G. Primary aluminum ore reduction plants;

H. Primary copper smelters;

I. Municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day;

J. Hydrofluoric, sulfuric, and nitric acid plants;

K. Petroleum refineries:

L. Lime plants:

M. Phosphate rock processing plants;

N. Coke oven batteries;

O. Sulfur recovery plants;

P. Carbon black plants;

Q. Sintering plants;

R. Secondary metal production facilities;

S. Chemical process plants;

T. Fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input;

U. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels;

V. Taconite Ore processing facilities;

W. Glass fiber processing plants;

X. Charcoal production facilities;

Y. Primary Lead Smelters;

Z. Fuel Conversion Plants;

Such term shall also include any source with the potential to emit two hundred and fifty tons per year or more of any air contaminants.

Such term shall not include nonprofit health or educational institutions.

Such term shall also include any modification in such source such that the potential emissions of any regulated pollutant is increased according to the above definition.

For the purposes of regulating of new sources which seek to locate in or whose emissions may reasonably be expected to affect designated Nonattainment Areas, the term "major emitting source" shall include any source which emits or has the potential to emit one hundred tons per year or more of any air contaminants.

21. Modification means any physical change to or change in the method of operation of, an affected facility which increases the amount of any air contaminant (to which a standard applies) emitted by such facility or which results in the emission of any air contaminant (to which a standard applies) not previously emitted, except that:

A. Routine maintenance, repair, and replacement shall not be considered physical changes and

B. The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such facility, the affected facility is designed to accomodate such alternative use.

22. Opacity means the degree of light obscuring capacility of non black emissions of visible air contaminants expressed as a percentage. (For example complete opacity shall be expressed as 100 percent)

23. Open burning means the burning of any type of combustible material in the open ambient air without being eompletely enclosed, and where the products of combustion are emitted directly into the ambient air without passing through a stack, chimney or duct.

24. Person means any individual, partnership, corporation, whether private, public or quasi-municipal, municipality, state governmental agency or other legal entity.

25. Petroleum Liquids - Petroleum liquids means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

26. Potential emissions - The term "potential emissions" means those emissions expected to occur without air pollution control equipment.

Annual potential emissions shall be based on the maximum annual rated capacity of the source, unless the source is subject to enforceable permit conditions which limit the operating rate and/or hours of operation. Other enforceable permit conditions on the type or amount of materials combusted or processed will also be used in determining the potential emission rate of a source.

27. Process weight rate means the average total weight of all materials, not including any gaseous or liquid fuels or combustion air, introducted into any manufacturing, industrial or combustion process that may result in the emission of particulate matter to the ambient air, computed on an hourly basis, and shall be expressed in terms of weight per unit of time.

28. Region means those air quality regions established by the Department of Environmental Protection pursuant to 38 M.R.S.A., Section 583.

29. Ringelmann Chart shall mean the chart published and described in the U. S. Bureau of Mines Information Circular 8333, on which are illustrated graduated shades of gray for use in estimating the light obscuring density or deice for the measurement of the light obscuring density of black air contaminant emissions which may be approved by the Department of Environmental Protection.

30. True Vapor Pressure - True vapor pressure means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517 "Evaporation Loss from Floating Roof Tanks," 1962.

31. Significant Impact - Significant impact shall mean the contribution for all air contaminants which is equal to or greater than, or may reasonably be expected to be equal to or greater than the levels shown below for the respective averaging times:

| | | Averaging Time | | | |
|---|---|---|---|---|---|
| Pollutant | Annual | 24-Hr | 8-Hr | 3-Hr | 1-Hr |
| $SO_2$ | 1 ug/m$^3$ | 5 ug/m$^3$ | | 25 ug/m$^3$ | |
| TSP | 1 ug/m$^3$ | 5 ug/m$^3$ | | | |
| $NO_2$ | 1 ug/m$^3$ | | 0.5mg/m$^3$ | | |
| CO | | | | | |

These regulations shall be effective upon filing with the Office of the Secretary of State and shall supersede all previous regulations on this subject.

After public hearings on August 21, 22, 23, 24, and 27, 1979 the above regulation is amended this 26Th day of September 1979.

BASIS STATEMENT: The basis of this regulation are those concepts and ideas used in air pollution control regulations and that need special definition to aid in the understanding of those regulations.

AUTHORITY: 38 M.R.S.A., Section 585-A

EFFECTIVE DATE: January 31, 1972
Amended May 7, 1979
Amended DEC 24 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 101 VISIBLE EMISSIONS REGULATION

SUMMARY: This regulation establishes opacity limitations for emissions from several catagories of air contaminant sources.

1. Scope

This section shall be effective in all ambient air quality control regions in the State of Maine.

2. Prohibition

No person shall emit or cause to be emitted any visible air contaminants:

A. From any "Fuel Burning Equipment":

1. whose rated input capacity is less than 250 million BTU/hr that exceeds an opacity of 30 per cent for more than 15 minutes in any continuous 3-hour period.

2. whose rated input capacity is greater than 250 million BTU/hr that exceeds an opacity of 40 per cent for more than 15 minutes in any continuous 3-hour period.

B. From any "Solid Waste Fuel Burning Equipment" that exceeds an opacity of 40 per cent for more than 20 minutes in any two hour period.

C. From any "General Process" including "fugitive emission" source that exceeds an opacity of 20 per cent for more than five minutes in any one hour except:

1. existing wood fired brick kilns whose opacity shall not exceed 40 per cent for more than 20 minutes in any 1 hour period.

2. existing recovery boilers whose opacity shall not exceed 30 per cent for more than 5 minutes in any 3 hour period.

D. From any "air contaminant source" comprised of two or more of any combination of fuel burning, solid waste fuel burning or general process emitted through one stack that exceeds an opacity of 40 per cent for more than 20 minutes in any continuous two hour period or 80 per cent for more than 10 minutes in any one hour.

3. Exemptions

This section shall not apply to:

A. Emissions of condensed, uncombined water vapor

B. Incinerators

C. Permitted open burning

D. Air contaminants emitted for the purpose of training, research, or recreation.

After public hearings on August 21, 22, 23, 24, and 27, 1979 the above regulation is amended this 26Th day of September 1979.

BASIS STATEMENT: This regulation permits the direct evaluation of opacity of air emission at the point of discharge to the ambient air. Opaque plumes indicate high particulate emissions or improperly operated or maintained fuel-burning, process or air pollution tion control equipment and often create nuisance conditions or otherwise deleteriously effects local aesthetic values.

AUTHORITY : 38 M.R.S.A. 585

EFFECTIVE DATE: January 31, 1972
Amended DEC 26 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 102 OPEN BURNING REGULATION

SUMMARY: This rule provides for the prohibition of the open-burning of rubber products or by-products at any time. In addition, the open-burning of waste of any type except at municipal sites serving less than 1,000 persons is prohibited. Open burning at sites serving less than 1,000 persons may be prohibited if the burning is in violation of air quality standards. Municipal officials maintaining a solid waste site serving 1,000 or more persons may apply to the Board for a variance to the open-burning provisions. Conditions for which an open burning permit may be obtained are also outlined in these rules.

1. Scope

This regulation shall be effective in all ambient air quality control regions in the State of Maine.

2. Prohibitions

A. Open burning of tires or rubber products or by-products shall be prohibited after July 1, 1972.

B. Except as provided in subsection 2, open burning of waste of any kind at sites other than a municipal solid waste disposal site is prohibited after July 1, 1975.

C. Open burning of solid waste material at a municipal solid waste disposal site serving less than 1,000 persons shall only be prohibited where the Board of Environmental Protection, after investigation and hearing, shows that the continuance of open burning at a specific municipal site is in violation of air quality standards.

D. Open burning of solid waste materials at a municipal solid waste disposal site serving 1,000 or more persons is prohibited after September 1, 1975, unless the owners and lessee of the municipal solid waste disposal site apply for a variance under this section from the Board of Environmental Protection.

While an application for a variance is being processed by the Department of Environmental Protection, open burning at the municipal site in question may continue until the Board makes its final decision on the application.

E. Whenever the Board of Environmental Protection shows that open burning at a municipal solid waste disposal site violates air quality standards or whenever the Board denies a variance under this section it shall, after consultation with the violator or applicant for a variance, establish a reasonable compliance schedule aimed at bringing about the cessation of open burning at the municipal waste disposal site under consideration. This compliance schedule shall include, but not be limited to, the following:

1. Arrangements for administration and financing;
2. Plans and specifications;
3. Studies and investigations;
4. Site acquisition;
5. Purchase of necessary equipment; and
6. Operational date of the proposed solid waste disposal site.

A compliance schedule established under this section shall be conditioned upon reasonable terms and conditions aimed at achieving air quality standards and shall be for a time of not less than 2 years.

3. Exemptions

Open burning may be permitted for the following purposes provided a permit is obtained pursuant to paragraph 10.2.4:

A. Open burning for the control or prevention of any disease, virus or similar hazard to public health;
B. Open burning for agricultural purposes such as land clearing, blueberry control, or burning for similar prescribed cultural purposes.
C. Open burning for the disposal of any material generated by the demolition of any building or the clearing of any land for the erection, modification or construction of any highway, railroad, power or communication line or pipeline, or commercial or industrial or recreational building or development.
D. Open burning for training, research and recreational purposes except that fires for recreational purposes on a person's own property are not required to obtain a permit.

4. Open Burning Permits

Open burning permits may be granted by the Forest Ranger of Town Forest Fire Warden having jurisdiction over the location where the fire is to be set. Should complicated circumstances warrant, the Ranger or Warden may refer the person requesting a permit to the Commissioner for approval of paragraphs A., B., C., below. Such permits will be issued if it is determined:

A. There is no local, private or municipal rubbish collection for such materials nor any reasonably located municipal or private dump to which such material may be transported or the quantity of material is such that it cannot be reasonably transported;
B. There is no other suitable method for disposal of such materials that will not create or aggravate a hazard to public health or safety or public or private property nor violate any provision of state or local law or regulation;
C. The existing wind speed and atmospheric stagnating conditions will not create any nuisance conditions;
D. Such burning will not take place within 25 feet of a public way;
E. Such burning will take place under such conditions as will prevent the uncontrolled spread of the fire;
F. The burning will comply with all applicable regulations of the State of Maine Bureau of Forestry (Department of Conservation) and any applicable local fire regulations.

5. Reports

The progress reports listed in this subsection shall be submitted to the Board on or before the date indicated by any persons using open burning as a method of waste disposal.

A. November 1, 1973: Status report on forms supplied by the Department;
B. April 15, 1974: A status report on forms supplied by the Department indicating that the necessary studies and investigations and preparation of final plans is progressing to insure compliance with paragraph C. Such a report should include, but is not limited to, location and method of waste disposal for which final plans are being prepared and name of inhouse or contracted person responsible for the preparation of such plans;
C. October 1, 1974: Final plans for proposed waste disposal facilities including detailed engineering plans and necessary site acquisition, said final plans to be subject to Board review and approval under applicable laws and regulations;
D. April 15, 1975: Copies of executed contracts or agreements necessary to implement the approved final plans including acquisition of land and acquisition, installation and construction of structures and equipment;
E. July 1, 1975: Certification of Compliance
1973, c. 438 § 8.

6. Variances

Any municipality maintaining or leasing an open-burning solid waste disposal site may apply to the board for a variance to the open-burning requirements of this section. The application shall be accompanied by such information and data as the Board may require. The staff of the Department of Environmental Protection shall provide air quality technical assistance to municipal applicants for a variance under this section.

Whenever a municipality shows that compliance with the open burning requirements of this section would produce undue hardship, the Board shall grant a variance, except that no variance shall be granted when the Board shows that the emissions from the open burning endanger human health and safety.

No variance shall be granted under this section unless the municipality causes to be published a public notice of the intent to grant a variance in a newspaper circulated in the area at least 10 days prior to the meeting at which the Board is scheduled to act on the variance. The Board shall notify the municipality of its intent to grant

a variance 20 days before the meeting scheduled to act on the variance.

The Board of Environmental Protection may conduct a public hearing on any variance application under this section if it determines that there is substantial objection to the granting of the variance. The Board of Environmental Protection, if it determines that it will deny the variance applied for, shall at the request of the municipality conduct a public hearing for the municipality which made application, before the denial becomes effective, to give the town the opportunity to show that the emissions from open burning do not endanger human health or safety and compliance with the open burning requirements of this subsection would produce serious hardship and that a variance should be granted. Public notice of hearings described in this paragraph shall be published in the state paper and a newspaper circulated in the municipality at least 10 days prior to the date of the public hearing.

The board, after granting a variance to a municipality under this section, if it determines that the municipal solid waste disposal facility does not violate air quality standards, shall take all necessary steps to remove that facility from the United States Environmental Protection Agency approved State of Maine Air Quality Implementation Plan.

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: The Board of Environmental Protection has found that the open-burning of rubber products and by-products as well as open-burning dumps contributes to the degradation of air quality. A reduction of particulate pollutants by limiting open burning will lead to an improvement in air quality and provide protection to the public's health, safety and welfare.

AUTHORITY: 38 M.R.S.A., Section 585-A

EFFECTIVE DATE: February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 103 FUEL BURNING EQUIPMENT PARTICULATE EMISSION STANDARD

SUMMARY: This regulation establishes a limitation on the amount of particulate matter allowed to be emitted from fuel burning equipment. The amount of particulate matter permitted is dependent upon the rated capacity of the equipment.

1. Scope

This regulation shall be applicable to all fuel-burning equipment that is fired at a rate of 3 million BTU/hr or greater regardless of fuel type, and shall be effective in all ambient air quality control regions in the State of Maine as follows:

A. Immediately for all new fuel-burning equipment, the construction or operation of which begins after the effective date of this emission standard unless such equipment is otherwise required to meet a stricter standard of performance;

B. June 1, 1975 for all existing sources.

2. Emission Standard

Any person operating fuel-burning equipment within the scope of this regulation shall limit the particulate emissions from such fuel-burning equipment in accordance with Figure 103A for a two hour sampling period.

3. Equipment Malfunction or Breakdown

Any person owning or operating fuel-burning equipment within the scope of this emission standard that malfunctions or suffers a breakdown in any component part which malfunction or breakdown causes this emission standard to be violated shall notify the Environmental Improvement Commission within 48 hours in writing.

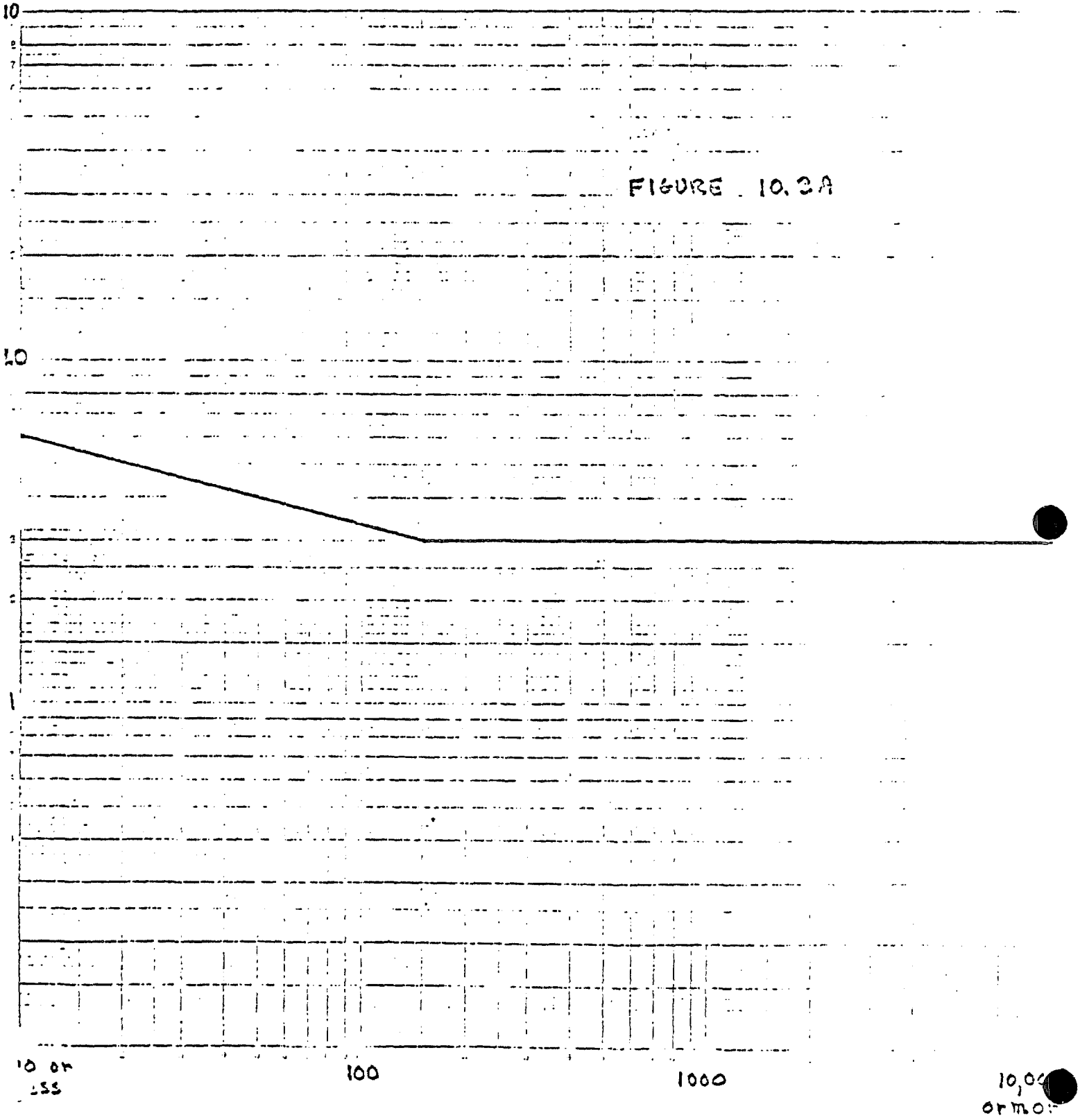
4. Test Methods and Procedures

Test Methods 1 and 5 as promulgated by the Administrator, Environmental Protection Agency Rules and Regulation 60.85, "Federal Register", Volume 36, Number 247, Thursday, December 23, 1971, or such other methods as are deemed equivalent by the Environmental Improvement Commission shall be those used to determine compliance with this regulation.

BASIS STATEMENT: The basis of the regulation is to limit the amount of particulate matter to be emitted from fuel burning equipment thereby protecting the ambient air quality standard.

AUTHORITY: 38 M.R.S.A., Section 585, 585-A

EFFECTIVE DATE: January 31, 1972


10
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10 or less
100
1000
10,000 or more
EQUIPMENT CAPACITY RATING
(10^6 BTU/HR INPUT)

FIGURE 10.2A

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 104 INCINERATOR PARTICULATE EMISSION STANDARD

SUMMARY: This regulation establishes a limitation on the amount of particulate matter allowed to be emitted from each of several catagories and sizes of incinerators and a limitation on the opacity of emissions from all incinerators.

1. Scope

This regulation shall be applicable to all incinerators and shall be effective in all regions in the State of Maine as follows:

A. Immediately for all new incinerators, the consturction or operation of which begins after the effective date of this emission standard unless such incinerators are required to meet a stricter standard of performance;

B. June 1, 1975 for all existing incinerators.

2. Emission Standard

No person shall emit or cause to be emitted any particulate air contaminants from:

A. Any incinerator darker than a number 1 on the Ringelmann Chart, excluding the emission of water vapor;

B. Any Class III, IV, V, VI, and VII incinerator having a designed charging rate of 50 tons per day or less, that exceed 0.2 grains per standard cubic foot of dry flue gas for a two hour sampling period corrected to 12 per cent carbor dioxide without the contribution of carbon dioxide from the auxiliary fuel.

C. Any class incinerator having a designed charging rate greater than 50 tons per day, that exceed 0.08 grains per standard cubic foot of dry flue gas for a 2-hour sampling period, corrected to 12 per cent carborn dioxide without the contribution of carbon dioxide from the auxiliary fuel.

3. Incinerator Malfunction or Breakdown

Any person owning or operating incinerators under the scope of this emission standard, except Class I, IA, II, and IIA incinerators that malfunction or suffer a breakdown in any component part which malfunction or breakdown causes this emission standard to be violated shall notify the Environmental Improvement Commission within 48 hours

in writing.

4. Test Methods and Procedures

Test Methods 1, 3, and 5 as promulgated by the Administrator, Environmental Protection Agency Rules and Regulations 60. 85, "Federal Register", Volume 36, Number 247, Thursday, December 23, 1971 or such other methods as are deemed equivalent by the Environmental Improvement Commission shall be those used to determine compliance with this regulation.

BASIS STATEMENT: The basis of the regulation is to limit particulate emissions to protect the ambient air quality standard.

AUTHORITY: 38 M.R.S.A., Section 585, 585-A

EFFECTIVE DATE: January 31, 1972

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 105 GENERAL PROCESS SOURCE PARTICULATE EMISSION STANDARD

SUMMARY: This regulation establishes a limitation on the amount of particulate emissions allowed from any general process source determined on the basis of the size and rate at which the process operates. Also included are specific emission limitations on Kraft pulping processes based on the tons of pulp produced.

1. Scope

A general process source shall be any emission source except fuel-burning equipment, incinerators, mobile sources, open burning sources, and sources of fugitive dust. This emission standard shall be effective in all regions in the State of Maine as follows:

A. Immediately for all new process sources the construction of which begins after the Commission adopts this emission standard unless such sources are required to meet a stricter standard of performance;

B. June 1, 1975 for all existing sources.

2. Emission Standard

Any person operating any general process source within the scope of this regulation, except kraft pulping processes, shall limit the emission of particulate air contaminants from such emission source in accordance with Section 4, for a 2-hour sampling period.

Any person operating any kraft pulping process shall limit the emission of particulate air contaminants from such emission source as follows: 4 pounds of particulate emissions per air dried ton of kraft pulp from the recovery boiler, 1 pound of particulate air contaminants per air dried ton of kraft pulp from the lime kiln, 0.5 pound of particulate air contaminants per air dried ton of kraft pulp from the smelt tank for a 2-hour sampling period.

All similar units, processes operated by the same person at the same general location shall be combined in computing the process weight rate for use in Table 105A.

4. Table 105A

| Process Weight Rate (lb./hr.) | Emission Rate (lbs/hr.) |
|---|---|
| 50 | 0.36 |
| 100 | 0.55 |
| 500 | 1.53 |
| 1,000 | 2.25 |
| 5,000 | 6.34 |
| 10,000 | 9.73 |
| 20,000 | 14.99 |
| 60,000 | 29.60 |
| 80,000 | 31.19 |
| 120,000 | 33.28 |
| 160,000 | 34.85 |
| 200,000 | 36.11 |
| 400,000 | 40.35 |
| 1,000,000 | 46.72 |

Interpolation of Table I for process weight rates up to 60,000 lbs./hr. shall be computed by use of the following equation:

$$E = 3.59P^{0.62} \qquad P- 30 \text{ tons/hr.}$$

and interpolation and extrapolation of Table I for rates in excess of 60,000 lbs./hr. shall be computed by use of the equation:

$$E = 17.31P^{0.16} \qquad P- 30 \text{ tons/hr.}$$

Where E = Emissions in pounds per hour and P = process weight rate in tons per hour.

5. Malfunction or breakdown

Any person owning or operating a source under the scope of this emission standard that malfunctions or suffers a breakdown in any component part that causes this emission standard to be violated shall notify the Commission within 48 hours in writing.

6. Test Methods and Procedures

Test methods 1 and 5 as promulgated by the Administrator, Environmental Protection Agency Rules and Regulations 60.85, "Federal Register", volume 36, number 247, Thursday, December 23, 1971 or such other methods as are deemed equivalent by the Environmental Improvement Commission shall be used to determine compliance with this regulation.

BASIS STATEMENT: The basis of the regulation is to limit particulate emissions from this catagory of sources so as to protect the ambient air quality standard.

AUTHORITY: 38 M.R.S.A., Section 585, 585-A

EFFECTIVE DATE: January 31, 1972

Chapter 106 LOW SULFUR FUEL REGULATION

SUMMARY: This regulation establishes maximum sulfur contents of fossil fuels used in all areas of the state.

1. Scope

This regulation shall apply to those air quality controls regions in the State of Maine as indicated in Section 106.2.

2. Prohibitions

A. In the Central Maine, Downeast, Aroostook County, and Northwest Maine Air Quality Control Regions, no person shall sell, distribute, buy or use any fuel with a sulfur content greater than 2.5% by weight anytime after November 1, 1973. In the Metropolitan Portland Air Quality Control Region outside the Portland Peninsula Air Quality Control Region, no person shall sell, distribute, buy or use any fuel with a sulfur content greater than 2.5% by weight any time after June 1, 1975.

B. In the Portland Peninsula Air Quality Control Region, no person shall use any fuel with a sulfur content greater than 1.5% by weight any time after November 1, 1975.

C. In the Portland Penisula Air Quality Control Region, no person shall use any fuel with a sulfur content greater than 1.0% by weight any time after November 1, 1985.

3. Records

Any person importing residual oil or coal into the State of Maine shall submit to the Department of Environmental Protection a record of the sulfur content of each shipment of such fuel. Any person blending oil for use within the Portland Peninsula Air Quality Control Region shall submit to the Department of Environmental Protection on a monthly basis a report indicating the total volume and average sulfur content actually supplied.

4. Exemptions

A. A source that installs one or more sulfur collecting devices that reduce sulfur dioxide emissions to the equivalent level allowed in that air quality region shall be exempt from this regulation.

B. If during periods of energy crisis or equipment outage an oil supplier is unable to supply conforming fuel, that supplier may apply for a temporary variance to the Commissioner of the Department of Environmental Protection. The Commissioner may, without hearing, issue that variance for a period not to exceed 60 days if the application in his judgement meets the criteria of the applicable statutory variance requirements. Such temporary variance cannot be renewed.

5. Effective Date

This regulation shall be effective upon the date of filing with the Secretary of State.

After public notice and public hearing December 19, 1977 the above regulation is hereby adopted this 11th day of January, 1978.

BASIS STATEMENT: Sulfur in fossil fuels is converted to sulfur dioxide during the combustion process. Regulating the sulfur content of fossils represents an emission standard for sulfur dioxide from fuel burning sources to protect the ambient air quality standard for sulfur dioxide.

AUTHORITY: 38 M.R.S.A. Section 585

EFFECTIVE DATE: February 8, 1978

# Chapter 107 SULFUR DIOXIDE EMISSION STANDARDS FOR SULFITE PULP MILLS

SUMMARY: This regulation establishes a limitation on the amount of Sulfur Dioxide allowed to be emitted from process sources for sulfite pulp mills based on the sulfite pulp production of the mill.

## 1. Scope

This emission standard shall apply to all emissions from sulfite type pulp mills except that sulfur dioxide produced from the burning of coal or petroleum fuels are not to be included in this emission standard. This emission standard shall become effective in all regions as follows:

A. Immediately for any new sulfite type pulp mill, the construction or operation of which begins after the effective date of this emission standard;

B. June 1, 1975 for all existing sources.

## 2. Emission Standard

No person shall emit or cause to be emitted any sulfur dioxide emissions from any emission source within the scope of this emission standard in excess of 40 pounds per air dried ton of sulfite pulp produced.

## 3. Malfunction or Breakdown

Any person owning or operating pulp mills under the scope of this emission standard that malfunction or suffer a breakdown in any component part, which malfunction or breakdown causes this emission standard to be violated shall notify the Commission within 48 hours in writing.

## 4. Test Methods and Procedures

Test methods 1 and 6 as promulgated by the Administrator, Environmental Protection Agency Rules and Regulations 60.85, "Federal Register", volume 36, number 247, Thursday, December 23, 1971, or such other methods as are deemed equivalent by the Environmental Improvement Commission shall be used to determine compliance with this regulation.

BASIS STATEMENT: The basis of the regulation is to limit sulfur dioxide emissions to protect the ambient air quality standard for sulfur dioxide.

AUTHORITY: 38 M.R.S.A., Section 585, 585A

EFFECTIVE DATE: January 31, 1972

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 108 EMISSION LICENSE REGULATION

SUMMARY: This regulation implements Section 590 of Title 38 Maine Revised Statutes. It specifies who must obtain an air emission license, what information an applicant must submit and what standards and criteria he must comply with.

1. Scope

This regulation shall be effective in all ambient air quality control regions in the State of Maine.

2. Emission License

Any person operating an existing emission source which is not exempted under Section 10 shall file an application for an Emission License with the Department.

Any person planning to operate a new emission source not exempted under Section 10 or modify either an exempt existing source or licensed source such that following construction or modification the source would require an emission license under this regulation, shall submit an application for an Emission License at least 180 days prior to starting construction.

3. Information and Impact Analysis Required

In addition to the application data required of any source for an air emission license, a new or modified major emitting source shall provide sufficient information so as to demonstrate that proposed increases in emissions, in conjunction with existing emissions from other sources, will not cause or contribute to a violation of applicable state ambient air quality standards and ambient air increments, except insofar as allowed under Section 5.

A. All estimates of ambient concentrations required under this section shall be based on the applicable air quality models, data bases and other requirements specified in the Guidelines on Air Quality Models promulgated by the U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711.

1. Where an air quality impact model specified in the Guidelines on Air Quality Models is inappropriate, the model may be modified or another model substituted.

2. A substitution or modification of a model shall be subject to public comment procedures.

3. Written approval of the Commissioner of DEP must be obtained for any modification or substitution.

4. Methods like those outlined in the Workbook for the Comparison of Air Quality Models (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April 1977) will be used to determine the comparability of air quality models.

5. Monitoring done by the owner or operator, if requested by the Department pursuant to subsection (C)(1), shall conform to the requirements of Appendix B to Part 58, Title 40, Code of Federal Regulations. Modification to these procedures are permitted only after written approval by the Commissioner.

B. The following application data is required of any proposed new or modified major emitting source:

1. A description of the nature, location, design capacity and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout.

2. A schedule for construction of the source or modification.

3. A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates and any other information necessary to determine that Best Available Control Technology or Lowest Achievable Emission Rate as applicable would be applied.

C. The following additional data will be required of those new or modified emission sources whose emissions may have significant impact on ambient air quality standards and applicable increments, or will impact a Class I area or will impact an area in which an applicable increment is known to be violated:

1. An analysis of continuous air quality monitoring data for any pollutant emitted by the source or modification for which a State ambient air quality standard exists, except non-methane hydrocarbons. Such data shall relate to, and shall have been gathered over, the year preceding receipt of the complete application, unless the owner or operator demonstrates to the Department's satisfaction that such data gathered over a portion or portions of that year or another representative year would be adequate to determine that the source or modification would not cause or contribute to a violation of a national ambient air

quality standard.

2. An analysis of the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact.

3. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

4. An analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

D. The owner or operator of a proposed source or modification shall, after construction of the source or modification, conduct such ambient air quality monitoring as the Department determines may be necessary to establish the effect which emissions from the source or modification of a pollutant for which an ambient air quality standard exists (other than non-methane hydrocarbons) may have or is having, on air quality in any area which such emissions would affect.

E. Sections 1, 2, 3, and 4 of subpart C shall not apply to a major emitting source or modification except for those sources whose emissions will or can reasonably be expected to impact a Class I area-

1. With respect to emissions from it which the owner or operator shows to be fugitive dust, or

2. Whose allowable emissions of such pollutant would be less than 50 tons per year, 1,000 pounds per day, or 100 pounds per hour, whichever is most restrictive.

4. <u>Criteria for Granting the License</u>

Issuance of licenses shall be governed by 38 M.R.S.A. 590. Within 180 days of receipt of a properly completed application for emission license, the Department must either grant or deny the license. The burden shall be upon the person requesting the emission license to affirmatively demonstrate to the Department that each of the following criteria have been met:

A. the emission is receiving the best practical treatment as defined in Section 6.

B. the emission will not violate applicable emission standards or can be controlled so as to not violate the applicable emission standards as defined in DEP regulations.

C. The emission either alone or in conjunction with existing emissions will not violate applicable ambient air quality standards and increments as defined in 38 M.R.S.A. 584-A and DEP regulations.

D. The equipment to be used is both reliable in conforming to design specifications and expected operating characteristics, and dependable in performance, except that allowances will be made for innovative technology.

5. License for Sources in or Affecting Nonattainment Areas

A. In addition to the criteria listed in Section 4, no license for a new or modified major emitting source located in or significantly impacting a nonattainment area shall be granted unless:

1. The source demonstrates to the Department that it has obtained offsets consistant with the requirements of DEP Regulation, Chapter 113; and

2. All major emitting sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in the state are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards.

B. It shall be the responsibility of the proposed new or modified major emitting source subject to subsection A to insure the required offset. All such emission reductions or offsets must be legally enforceable prior to obtaining an air emission license and in effect by startup and throughout operation of the proposed source.

C. Licenses for existing sources located in or significantly impacting a nonattainment area shall not be reissued unless the Board determines that:

1. There is in effect a State Implementation Plan program to achieve the applicable ambient air quality standard for the nonattainment area;

2. Reasonable Further Progress toward achievement of the standard is being made in accordance with the State Implementation Plan schedule; and

3. The source seeking renewal of its license is in compliance with any obligations it may have to achieve the applicable standard in the nonattainment area.

6. Definition of Best Practical Treatment

A. Existing Sources. For all sources which obtained an original air emission license for a new, modified, or existing facility prior to January 6, 1975, "Best Practical Treatment" shall mean:

1. That method which controls or reduces emissions of air contaminants to the lowest possible level considering:

a. the then existing state of technology, and
b. the effectiveness of available alternatives for reducing emissions from the source being considered, and
c. the economic feasibility for the type of establishment involved.

2. Reasonably Available Control Technology for those sources located within or whose emissions significantly impact a designated nonattainment area. Reasonably Available Control Technology means that method of treatment that is reasonably available as a retrofit to existing processes or equipment involved and shall be determined by the Department considering the then existing state of technology, federal guidelines for determining the degree of emission reductions achievable and the type and unique character of affected facilities.

3. In no case shall "Best Practical Treatment" mean less than:

a. that method of air pollution control which assures the attainment and maintenance of all applicable emission standards promulgated by the Department and in force at the time of the issuance of the original or renewed air emission license; or

b. where applicable, that method of air pollution control which assures the attainment and maintenance of New Source Performance Standards, as promulgated by the U. S. Environmental Protection Agency at 40 CFR Part 60 under authority of Section 111 of the Clean Air Act; or

c. where applicable, that method of air pollution control which assures the attainment and maintenance of the National Emission Standards for Hazardous Air Pollutants as promulgated by the U.-S. Environmental Protection Agency at 40 CFR Part 61, under authority of Section 112 of the Clean Air Act.

B. New Sources in Attainment Areas

1. For any new or modified major emitting source which submits a license application after January 1, 1979 "Best Practical Treatment" shall mean "Best Available Control Technology" (BACT). "Best Available Control Technology" means an emission limitation based on the maximum degree of reduction of each pollutant emitted from or which results from the new or modified source, which the Board, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source through application of production processes and available methods, systems, techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "Best Available Control Technology" result in emissions of any pollutant which exceed those allowed by any applicable standard established pursuant to section 111 (New Source Performance Standards) or section 112 (National Emission Standards for Hazardous Pollutants) of the U. S. Clean Air Act, as amended, or any applicable emission standard established by the Department.

The Board will consider the imposition of a design, equipment or operating standard or work practice if the imposition of emission limitations proves not to be possible.

2. The Board views the BACT requirement as the major means by which the use of the available ambient air increment is regulated. BACT as defined in Section 6 (B)(1) will generally minimize the use of the increment so as to maximize local future growth options.

3. The BACT determination will be on a case-by-case basis. The degree of analysis required of the applicant will vary with the level of air quality impact expected to be contributed by the source. In every case, however, the applicant is responsible for the submission of the following information to the degree necessary (as determined by the Department) to make the BACT determination:

a. Proposal of a Control System Representing BACT. BACT should consider control of each emission point at a facility, including fugitive as well as stack emissions. Technology selection should consider application of flue gas treatment, fuel treatment and processes and techniques which are inherently low polluting and are economically feasible to this source. In cases where technological or economic limitations on the application of measurement techniques would make the imposition of an emission

standard infeasible, a design, operating, or equipment standard or work practice can be established.

b. Presentation of all Alternative Systems Considered that Could Achieve a Higher Degree of Emission Control. Only technically viable alternatives which have greater control capabilities than the system proposed as BACT and which have been used for the same or similar applications should be considered. However, the Board recognizes that the BACT decision may require a trade-off of control among pollutants and sources. If no better control alternative is technically and economically feasible for an emission point, then such finding should be stated and supported. In some cases, a better control technology may be available for a general type of operation; however, unique processing equipment or procedures may create a valid technical reason which would preclude its use. Such situations should be fully supported.

c. For Alternative Systems Not Selected. A source must explain why the more stringent level of control is inappropriate for BACT in terms of energy, economic and environmental impacts. The rationale should be presented in the form of a incremental analysis of the impacts of each rejected alternative relative to the proposed BACT system.

4. The impact analysis which compares the preferred BACT decision with alternatives not chosen will vary in number of variables and the depth in which they are presented depending on the size, location, and air quality impact of the proposed source. While the following list of factors to be considered in the environmental, energy and economic impacts analysis is not all-inclusive, a typical BACT determination for a complex source may involve the following.

a. Energy Impacts: Direct Energy Impacts; Impact on Scarce Fuels; Energy Production Impacts (electric utilities).

b. Environmental Impact (direct and secondary): Air Pollution; Water Pollution; Solid Waste Disposal; Irreversible and Irretrievable Commitment of Resources; Other, as appropriate.

5. The Department urges the use of already available documents and studies, however, the impact analysis must be supported by documentation.

6. The Department will not automatically assign relative weights to these impact factors. The peculiar nature of the source, its proposed location and the views of the public and local officials may vary the approach taken by the Board.

C. New Sources in Nonattainment Areas. For any new or modified major emitting source which submits a license application to locate in or whose emissions may reasonably be expected to impact any designated Nonattainment Area, "Best Practical Treatment" shall mean "Lowest Achievable Emission Rate" for those pollutants emitted by the facility which are the cause of the nonattainment designation for that area.

"Lowest Achievable Emission Rate" means for any source that rate of emissions which reflect:

1. The most stringent emission limitation which is contained in any implementation plan of any state (required under the Clean Air Act, as amended, 42 U.S.C. 1857, et. seq.) for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

2. The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event shall "Lowest Achievable Emission Rate" result in the emission of any pollutant in excess of those standards and limitations promulgated pursuant to Sections 111 or 112 of the Clean Air Act, as amended, or any emission standard established by the Department.

D. Stack Height. The degree of emission limitation required for control of any air contaminant under this section shall not be affected in any manner by:

1. So much of the stack height of the source as exceeds good engineering practice; or

2. Any other dispersion technique.

7. Conditions on the License.

The Department may impose any appropriate and reasonable conditions to insure compliance with emission and ambient air quality standards, regulations and orders. However, every license shall be subject to the following standard conditions:

A. Employees and authorized representatives of the Department of Environmental Protection shall be allowed access to the premises of the licensee during normal business or operating hours, and at such other times as the Commissioner of the Department of Environmental Protection deems necessary, to perform such tests and inspections and examine all records relating to emissions.

B. A new emission license shall be required prior to the commencement of a modification.

C. All applicable ambient air quality standards, emission standards, regulations, orders and local ordinances shall be complied with.

D. The licensee shall maintain sufficient records to accurately complete the application for an emission license.

E. The licensee shall maintain records of all required air pollution control equipment malfunctions, failures, and downtime as well as records of any change or malfunction of the air contaminant sources that would create above normal contaminant emissions.

F. Approval to construct shall become invalid if construction is not commenced within 24 months after receipt of such approval or if construction is discontinued for a period of 24 months or more. The Department may extend such time period upon a satisfactory showing that an extension is justified.

In addition to the standard conditions imposed on any license, the Board may impose any other appropriate and reasonable conditions necessary to insure compliance with emission standards and regulations.

8. Determination of Adverse Impact on Nearby Regions

The Department shall have the authority to make a preliminary determination upon submission of the application for the new or modified major emitting source whether such source is likely to have an adverse impact on the air quality standards of a nearby region or portion thereof. If such determination is in the affirmative, the proposed new or modified source shall be requested, in writing, to demonstrate that its emissions will not cause or contribute to a violation of the applicable standards of any nearby region or portion thereof. Any interested person may petition the Department for a

determination under this Section with respect to any license application within the time period allowed for public comment.

9. Terms of the Emission License

All emission licenses except those classified in Regulations, Chapter 100 as lesser sources shall be issued for a two year period and renewed biennially from the date that they were initially granted. Lesser source licenses may be granted and renewed for five year periods. Obtaining an air emission license does not relieve the source from complying with all applicable emission standards and ambient air quality standards. Sources classified as "lesser sources" shall be so licensed as current licenses expire except that any such sources licensed after January 1, 1978 shall be automatically placed in this category.

10. Exemptions

The following sources are exempted from obtaining an Emission License as required in Section 108.2:

A. Fuel burning equipment whose total heat input is less than 10 million BTU per hour;

B. Incinerators of Class I and IA;

C. Moving sources;

D. Bulk gasoline terminals with a daily throughput of less than 20,000 gallons;

E. Bulk Petroleum Storage Facilities having gasoline or crude oil stored in tanks smaller than 39,000 gallons.

11. Prohibition

No person shall emit or cause to be emitted any air contaminant from any emission source without a license from the Department after January 1, 1973.

12. Confidential and Proprietary Information

All process, product and other information designated proprietary by the applicant, but not the emissions information, submitted in an application for an emission license shall be considered confidential and not for public disclosure.

These regulations shall be effective upon filing with the Office of the Secretary of State and shall supersede all previous regulations on this subject.

After public hearings on February 26, 27, 28, March 1, 2, and 3 and August 21, 22, 23, 24 and 27, 1979, the above regulation is amended this 12th day of December, 1979.

BASIS STATEMENT: The basis of the regulation is to enable the Board to determine that existing sources of air pollution are complying with state and federal regulations and that new sources do not cause air quality standard violations. It also enables Maine to comply with certain federal permitting programs.

AUTHORITY: 38 MRSA, Section 590, 585-A

EFFECTIVE DATE: January 28, 1972
Amended October 8, 1975
Amended November 30, 1977
Amended May 7, 1979
Amended December 24, 1979
Amended January 16, 1980

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 109 EMERGENCY EPISODE REGULATIONS

SUMMARY: This regulation provides the criteria for four air pollution levels, (1) forecast, (2) alert, (3) warning, (4) emergency and then specifies special emission reductions that must be implemented at each of the levels, including at some stages process cut-backs or curtailments.

1. Scope

This regulation shall apply in any region in which the ambient air quality reaches those levels defined in Section 10.9.2.

2. Criteria

A. Forecast: The forecast level will be declared upon receipt of an air stagnation advisory.

B. Alert: The Alert level is that concentration of pollutants at which first stage control actions is to begin. An Alert will be declared when any one of the following levels is reached at any monitoring site: $SO_2$--800 ug/m$^3$ (0.3 p.p.m.), 24-hour average. Particulate--3.0 COHs or 375 ug/m$^3$, 24-hour average. $SO_2$ and particulate combined--product of $SO_2$ p.p.m., 24-hour average and COHs equal to 0.2 or product of $SO_2$ - ug/m$^3$, 24 hour average, and particulate ug/m$^3$, 24-hour average equal to 65 X 10$^3$. CO--17 mg/m (15 p.p.m.), 8-hour average. Oxidant ($O_3$)--200 ug/m3 (0.1 p.p.m.)--1-hour average. $NO_2$--1130 ug/m$^3$ (0.6 p.p.m.), 1-hour average, 282 ug/m$^3$ (0.15 p.p.m.), 24-hour average, and meteorological conditions are such the pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase unless control actions are taken.

C. Warning: The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary. A warning will be declared when any one of site: $SO_2$-1, 600 ug/m$^3$ (0.6 p.p.m.), 24-hour average. Particulate - 5.0 COHs or 625 ug/m$^3$, 24-hour average. $SO_2$ and particulate combined - product of $SO_2$ p.p.m., 24-hour average and COHs equal to 0.8 or product of $SO_2$ ug/m$^3$, 24-hour average and particulate ug/m$^3$, 24-hour

average equal to 261 X $10^3$.
CO-34 mg/$m^3$ (30 p.p.m.), 8-hour average. Oxidant ($O_3$) - 800 ug/$m^3$ (0.4 p.p.m.), 1-hour average. $NO_2$ - 2,269 ug/$m^3$ (1.2 p.p.m.) - 1-hour average; 565 ug/$m^3$ (0.3 p.p.m.), 24-hour average, and meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase unless control actions are taken.

D. Emergency: The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary. An emergency will be declared when any one of the following levels is reached at any monitoring site: $SO_2$-200 ug/$m^3$ (0.8 p.p.m.), 24-hour average. Particulate-7.0 COHs or 875 ug/$m^3$, 24-hour average. $SO_2$ and particulate combined - product of $SO_2$ p.p.m. 24-hour average and COHs equal to 1.2 or product of $SO_2$ ug/$m^3$, 24-hour average and particulate ug/$m^3$, 24-hour average equal to 393 X $10^3$. CO - 46 mg/$m^3$ (40 p.p.m.), 8-hour average Oxidant ($O_3$) - 1,200 ug/$m^3$ (0.6 p.p.m.), 1-hour average. $NO_2$-3,000 ug/$m^3$ (1.6 p.p.m.), 1-hour average; 750 ug/$m^3$. (0.4 p.p.m.), 24-hour average, and meteorological conditions are such that this condition can be expected to remain at the above levels for twelve (12) or more hours.

3. <u>Emission Reduction During Episodes</u>

A. Forecast Stage

There is no specific emission reduction required during the forecast stage, however, the Commission will monitor the atmospheric concentrations of the various pollutants and the prevailing meteorology on a 24-hour basis.

1. The following emission reduction plan shall be instituted in any region that the alert level has been reached.

a. There shall be no open burning by any persons of tree waste, vegetation, refuse or debris in any form.

b. The use of incinerators for the disposal of any form of solid waste shall be limited to the hours between 12 noon and 4 p.m.

c. Persons operating fuel-burning equipment shall make maximum use of mid-day (12 noon - 4 p.m.) atmospheric turbulence for boiler lancing and soot blowing.

d. Persons operating motor vehicles should eliminate all unnecessary operations.

2. Any person responsible for the operation of a source of air pollutants listed below shall take all required control actions for this Alert Level.

| Source of Air Pollution | | Control Action |
|---|---|---|
| a. Coal or oil-fired electric power generating facilities. | i. | Substantial reduction by utilization of fuels having low ash and sulfur content. |
| | ii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing and soot blowing. |
| | iii. | Substantial reduction by diverting electric power generation to facilities outside of Alert Area. |
| b. Coal and oil-fired process steam generating facilities. | i. | Substantial reduction by utilization of fuels having low ash and sulfur content. |
| | ii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing and soot blowing. |
| | iii. | Substantial reduction of steam load demands consistent with continuing plant operations. |
| c. Manufacturing industries of the following classifications: | i. | Substantial reduction of air pollutants from manufacturing |

| | | |
|---|---|---|
| Primary Metals Industries<br>Petroleum Refining Operation<br>Chemical Industries<br>Mineral Processing Indust.<br>Paper & Allied Products<br>Grain Industry | | operations by curtailing postponing or deferring production and all operations. |
| | ii. | Maximum reduction by deferring trade waste disposal operations which emit solid particles, gas vapors or malodorous substances. |
| | iii. | Maximum reduction of heat load demands for processing. |
| | iiii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing or soot blowing. |

B. Warning Stage

1. The following emission reduction plan shall be instituted in any region that the warning level has been reached.

a. There shall be no open burning by any persons of tree waste, vegetation, refuse, or debris in any for.

b. The use of incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited.

c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12 noon and 4 p.m.

d. Persons operating motor vehicles must reduce operations by the use of car pools and increased use of public transportation and elimination of unnecessary operation.

2. Any person responsible for the operation of a source of air pollutants listed below shall take all required control actions for this Warning Level.

| Source of Air Pollution | | Control Action |
|---|---|---|
| a. Coal or oil-fired electric power generating facilities. | i. | Maximum reduction by utilization of fuels having lowest ash and sulfur content. |
| | ii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing and soot blowing. |
| | iii. | Maximum reduction by diverting electric power generation to facilities outside of Warning Area. |
| b. Oil and oil-fired process steam generating facilities. | i. | Maximum reduction by utilization of fuels having the lowest available ash and sulfur content. |
| | ii. | Maximun utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing and soot blowing. |
| | iii. | Making ready for use a plan of action to be taken if an emergency develops. |
| c. Manufacturing industries which require considerable lead time for shut-down including the following classifications.<br><br>Petroleum Refining<br>Primary Metals Industries<br>Glass Industries<br>Paper & Allied Products<br>Chemical Industries | i. | Maximum reduction of air contaminants from manufacturing operations by, if necessary, assuming reasonable economic hardships by postponing production and allied operation. |

| | | |
|---|---|---|
| | ii. | Maximum reduction by deferring trade waste disposal operations which emit solid particles, gases, vapors or malodorous substances. |
| | iii. | Maximum reduction of heat load demands for processing. |
| | iiii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing or soot blowing. |
| d. Manufacturing industries require relatively short lead times for shut-down including the following classifications.<br>Primary Metals Industries<br>Chemical Industries<br>Mineral Processing Industries<br>Grain Industry | i. | Elimination of air pollutants from manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment. |
| | ii. | Elimination of air pollutants from trade waste disposal processes which emit solid particles, gases, vapors, or malodorous substances. |
| | iii. | Maximum reduction of heat load demands for processing. |
| | iiii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing or soot blowing. |

C. Emergency Stage

1. The following emission reduction plan shall be instituted in any region that the emergency level has been reached.

a. There shall be no open burning by any persons of tree waste, vegetation, refuse, or debris in any form.

b. The use of incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited.

2. All places of employment described below shall immediately cease operations causing emissions of air contaminants.

a. Mining and quarrying of nonmetallic minerals.

b. All construction work except that which must proceed to avoid emergent physical harm.

c. All manufacturing establishments except those required to have in force an air pollution emergency plan.

d. All wholesale trade establishments; i.e., places of business primarily engaged in selling merchandise to retailers, or industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies, except those engaged in the distribution of drugs, surgical supplies and food.

e. All offices of local, county and State government including authorities, joint meetings, and other public bodies excepting such agencies which are determined by the chief administrative officer of local, county, or state government, authorities, joint meetings and other public bodies to be vital for public safety and welfare and the enforcement of the provisions of this order.

f. All retail trade establishments except pharmacies, surgical supply distributors, and stores primarily engaged in the sale of food.

g. Banks, credit agencies other than banks, securities and commodity brokers, dealers, exchanges and services; offices of insurance carriers, agents brokers, real estate offices.

h. Wholesale and retail laundries, laundry services and cleaning and dyeing establishments, photographic studios; beauty shops, barber shops, shoe repair shops.

i. Advertising offices, consumer credit reporting, adjustment collection agencies, duplicating, addressing, blueprinting, photocopying, mailing, mailing list and stenographic services, equipment rental services, commercial testing laboratories.

j. Automobile repair, automobile services, garages.

k. Establishment rendering amusement and recreational services including motion picture theaters.

l. Elementary and secondary schools, colleges, universities, professional schools, Junior colleges, vocational schools, and public and private libraries.

3. All commercial and manufacturing establishments not included in this order will institute such actions as will result in maximum reduction of air pollutants from their operation by ceasing, curtailing, or postponing operations which emit air pollutants to the extent possible without causing injury to persons or damage to equipment.

4. The use of motor vehicles is prohibited except in emergencies with the approval of local or State police.

5. Any person responsible for the operation of a source of air pollutants listed below shall take all required control actions for this Emergency Level.

| Source of Air Pollution | | Control Action |
|---|---|---|
| a. Coal or oil-fired electric power generating facilities. | i. | Maximum reduction by utilization of fuels having lowest ash and sulfur content. |
| | ii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing or soot blowing. |

| | | |
|---|---|---|
| | iii. | Maximum reduction by diverting electric power generation to facilities outside of Emergency Area. |
| b. Coal and oil-fired process steam generating facilities. | i. | Maximum reduction by reducing heat and steam demands to absolute necessities consistent with preventing equipment damage. |
| | ii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing and soot blowing. |
| | iii. | Taking the action called for in the emergency plan. |
| c. Manufacturing industries of the following classifications.<br>Primary Metals Industries<br>Petroleum Refining<br>Chemical Industries<br>Mineral Processing Industries<br>Grain Industry<br>Paper and Allied Products | i. | Elimination of air pollutants from manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury or damage to equipment. |
| | ii. | Elimination of air pollutants from trade waste disposal processes which emit solid particles, gases, vapors or malodorous substances. |
| | iii. | Maximum reduction of heat load demands for processing. |
| | iiii. | Maximum utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing or soot blowing. |

6. In addtion as a condition to their license, each source emitting more than 100 tons per year of any pollutant shall submit an acceptable contingency plan specific for its operation.

4. Notification of Malfunction or Breakdown

Any person operating equipment that is permitted to operate during an emergency episode, that malfunctions or breaksdown causing any emission standard, regulation or standby emergency episode plan to be violated, shall notify the Environmental Improvement Commission within 4 hours by telephone.

5. Additional Orders

In addition to the emission reduction and source curtailments required above, the Commission may, pursuant to 38 M.R.S.A., Section 593, issue such additional emergency orders as it deems necessary.

BASIS STATEMENT: The basis of the regulation is to protect public health by taking special emission reducing measures to limit the severity of ambient air pollution episodes.

AUTHORITY: 38 M.R.S.A., Section 347

EFFECTIVE DATE: January 31, 1972

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 110 AMBIENT AIR QUALITY STANDARDS

SUMMARY: This regulation establishes ambient air quality standards that are maximum levels of a particular pollutant that is permitted in the ambient air. This regulation also establishes ambien increments which define the maximum ambient of increase of a particular pollutant that can be permitted for a given area depending on the classification of that area depending on the classification of that area. Area classification is dealt with in another regulation.

1. Scope

A. These standards are applicable in all ambient air quality control regions of the State of Maine.

B. All ambient air quality standards are expressed at 25 degrees centigrads and 760 millimeters of mercury pressur.

2. Particulate Matter Ambient Air Quality Standard

A. The maximum 24 hour particulate matter concentration at any location shall not exceed 150 micrograms per cubic meter.

B. The annual geometric mean of the 24 hour particulate matter concentrations at any location shall not exceed 60 micrograms per cubic meter.

3. Sulfur Dioxide Ambient Air Quality Standards

A. The maximum 3 hour average sulfur dioxide concentration at any location shall not exceed 1150 micrograms per cubic meter.

B. The maximum 24 hour average sulfur dioxide concentration at any location shall not exceed 230 micrograms per cubic meter.

C. The annual arithmetic mean of the 24 hour average sulfur dioxide concentrations at any location shall not exceed 57 micrograms per cubic meter.

4. Carbon Monoxide Ambient Air Quality Standards

A. The maximum carbon monoxide concentration for any 8 hour period at any location shall be 10 milligrams per cubic meter, which standard may be exceeded once per year.

B. The maximum carbon monoxide concentration for any 1 hour period at any location shall be 40 milligrams per cubic meter, which standard may be exceeded once per year.

5. Photochemical Oxidant Ambient Air Quality Standard

A. The maximum photochemical oxidant concentration for any 1 hour period at any location shall be 160 micrograms per cubic meter, which standard may be exceeded once per year.

6. Hydrocarbon Ambient Air Quality Standard

A. The maximum hydrocarbon concentration for any 3 hour period at any location shall be 160 micrograms per cubic meter, which standard may be exceeded once per year.

7. Nitrogen Dioxide Ambient Air Quality Standard

A. The annual arithmetic mean of the 24 hour average nitrogen dioxide concentration at any location shall not exceed 100 micrograms per cubic meter.

8. Reserved

9. Reserved

10. Establishment of Ambient Increments

A. In addition to the ambient air quality standards adopted by the Board and enacted as 38 M.R.S.A. 584-A, any Class I Region or part thereof within the State (including those federal lands designated by the Clean Air Act Amendments of 1977 shall be subject to a maximum allowable increase in concentration of sulfur dioxide and particulate matter over the baseline concentration of such pollutant, which increase shall not be exceeded more than once annually.

Such maximum allowable increase shall consist of:

1. Particulate Matter.

a. An increase in the annual geometric mean at any location shall not exceed 5 micrograms per cubic meter.

b. An increase in concentration for an 24-hour period at any location shall not exceed 10 micrograms per cubic meter.

2. Sulfur Dioxide

a. An increase in the annual arithmetic mean at any location shall not exceed 2 micrograms per cubic meter.

b. An increase in concentration for any 24-hour period at any location shall not exceed 5 micrograms per cubic meter.

c. An increase in concentration for any three-hour period at any location shall not exceed 25 micrograms per cubic meter.

B. In addition to the ambient air quality standards adopted by the Board and enacted as 38 M.R.S.A. 584-A, any Class II region or part thereof within the State shall be subject to a maximum allowable increase in concentration of particulate matter and sulfur dioxide over the baseline concentration of such pollutant, which increase shall not be exceeded more than once annually. Such masimum allowable increase shall consist of:

1. Particulate Matter.

a. An increase in the annual geometric mean at any location shall not exceed 19 micrograms per cubic meter.

b. An increase in concentration for any 24-hour period at any location shall not exceed 37 micrograms per cubic meter.

2. Sulfur dioxide.

a. An increase in the annual arithmetic mean at any location shall not exceed 20 micrograms per cubic meter.

b. An increase in concentration for any 24-hour period at any location shall not exceed 91 micrograms per cubic meter.

c. An increase in concentration for any three-hour period at any location shall not exceed 512 micrograms per cubic meter.

C. In addition to the ambient air quality standards adopted by the Board and enacted as 38 M.R.S.A. 584-A, any Class III Region or part thereof within the State shall be subject to a maximum allowable increase in concentration of particulate matter and sulfur dioxide over the baseline concentration of such pollutant, which increase shall not be exceeded more than once annually. Such maximum allowable increase shall consist of:

1. Particulate Matter.

a. An increase in the annual geometric mean at

any location shall not exceed 37 micrograms per cubic meter.

b. An increase in concentration for any 24-hour period at any location shall not exceed 75 micrograms per cubic meter.

2. Sulfur dioxide.

a. An increase in the annual arithmetic mean at any location shall not exceed 40 micrograms per cubic meter.

b. An increase in concentration for any 24-hour period at any location shall not exceed 182 micrograms per cubic meter.

c. An increase in concentration for any three-hour period at any location shall not exceed 700 micrograms per cubic meter.

11. Exclusions From The Increment

A. Concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 2 (a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such order;

B. Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities; and

C. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration.

These regulations shall be effective upon filing with the Office of the Secretary of State and shall supersede all previous regulations on this subject.

After public hearings on February 26, 27, 28, March 1, 2, and 3 the above regulation is adopted this 28th day of March 1979.

BASIS STATEMENT: This regulation reflects those ambient air quality standards that the Board has determined are necessary to control air pollution. The Board examined the existing quality of the ambient air, the uses of land, the effectiveness of control and the federal standard for the same pollutant. These standards are set to preserve and enhance Maine's air quality.

AUTHORITY: 38 MRSA, Section 584

EFFECTIVE DATE: October 22, 1971

MAY 07 19[illegible]

Chapter 111 PETROLEUM LIQUID STORAGE VAPOR CONTROL

SUMMARY: This regulation requires all owners of fixed roof storage tanks, storing gasoline, crude oil or any petroleum liquid whose vapor presure is greater than 10.5 kilo pascals to install floating roofs to reduce the hydrocarbon vapors lost to the atmosphere.

1. Scope

A. This section shall be applicable in the Metropolitan Portland, Portland Peninsula, Central Maine Air Quality Control Regions of the State of Maine.

B. The section shall apply to all fixed roof storage vessels with capacities greater than 150,000 liters (39,000 gallons) containing volvtile petroleum liquids whose true vapor pressure is greater than 10.5 kilo Pascals (1.52 psia).

2. Prohibition

No owner or operator of a fixed roof storage vessel shall permit the use of such vessels unless:

A. The vessels have been retrofitted with an internal floating roof equipped with a closure seal, or seals, to close the spece between the roof edge and tank wall; or
the vessels have been retrofitted with equally effective alternative control, approved by the Commissioner and,

B. the vessel maintained such that there are no visible holes, tears, of other openings in the seal of any seal fabric or materials; and,

C. all openings, except stub drains are equipped with covers, lids, or seals such that;

1. the cover, lid, or seal is in the closed position at all times except when in actual use; and,

2. automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports; and,

3. rim vents, if provided, are set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting; and,

D. routine inspections are conducted through roof hatches once every six (6) months.

E. A complete inspection of cover and seal is conducted whenever the tank is emptied for nonoperational reasons or once per year.

3. Emission Testing

The determination of compliance under this section shall be made by visual inspection of the floating cover through the roof hatches by Department staff or other qualified representatives of the Department. The source shall be found in compliance if:

A. The seal is intact and uniformly in place around the circumference of the cover between the cover and tank well, and

B. the cover is uniformly floating on or above the liquid and there are no visible defects in the surface of the cover or liquid accumulated on the cover; and

C. all records are being properly maintained.

4. Compliance Schedule

The owner or operator of a fixed roof petroleum storage vessel covered under the scope of this section proposing to install a floating roof or other acceptable volatile organic compound emission control equipment shall adhere to the increments of progress contained in the following schedule and shall report to the Department within 15 days of the prescribed deadline the status of compliance with the increment of progress:

A. final plans for the floating roof, other necessary modifications or other acdeptable volatile organic compound emission control equipment, shall be submitted before November 1, 1979.

B. Contracts for installation of the floating roof, other modifications other acceptable volatile organic compound emission control equipment or purchase orders for component parts must be issued before March 1, 1980.

C. Initiation of on site construction or installing of acceptable volatile organic compound emission control equipment must begin before Jyly 1, 1980.

D. Final compliance shall be achieved before July 1, 1981.

5. Records

The owner or operator of a fixed roof storage vessel covered under the scope of this section shall assure the following records are maintained and made available to the Department:

A. Reports of the results of inspections conducted under paragraphs and of this section;

B. a record of the monthly throughput quantities and types of volatile petroleum liquids for each storage vessel.

These regulations shall be effective upon filing with the Office of the Secretary of State and shall supersede all previous regulation on this subject.

After public hearings on February 26, 27, 28, March 1, 2, and 3 the above regulation is adopted this 28th day of March 1979.

BASIS STATEMENT: Gasoline is a hydrocarbon vapor that aids the formation of ozone in the atmosphere. It is necessary to control such hydrocarbon vapors present in the atmosphere because Maine is violating the federal ozone ambient air quality standard. This regulation controls the maximum amount of gasoline emissions so to reduce the ozone formed.

AUTHORITY: 38 MRSA, Section 585, 585-A

EFFECTIVE DATE: MAY 07 1979

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 112 PETROLEUM LIQUIDS TRANSFER VAPOR RECOVERY

SUMMARY: This regulation requires bulk gasoline terminals loading tank trucks or trailers and who pump more than 20,000 gallons of gasoline per day to install a vapor control system. This system must control lost gasoline vapors so that not more than 80 milligrams of vapor escapes for each liter of gasoline transferred.

1. Scope

A. This section shall be applicable in the Metropolitan Portland, Portland Peninsula, Central Maine Air Quality Control Regions of the State of Maine.

B. This section shall apply to all bulk gasoline terminals in existance prior to December 31, 1978 and having a daily throughput 20,000 gallons and the appurtenant equipment necessary to load tank, truck or trailer compartment.

2. Prohibition

No owner or operators of any bulk gasoline terminal may load gasoline into any tank trucks or trailer unless:

A. The bulk gasoline terminal is equipped to vent all displaced vapors and gases only to a vapor control system, properly installed, in good working order, in operation and consisting of one of the following:

1. an absorber or condensation system which processes and recovers vapors and gases from the equipment being controlled; or,

2. a vapor collection system which directs all vapors to a fuel gas system; or

3. any other control system approved by the Commissioner.

B. A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and

C. all loading and vapor lines are equipped with fittings which make vapor-tight connections and which close automatically when disconnected; and,

D. the pressure in the vapor collection system is not allowed to exceed the tank truck or trailer pressure relief settins.

E. Tank truck or trailer hatches are closed and there are no leaks at hatch covers or pressure relief valves. Tank trucks or trailers must be 90 percent vapor tight.

3. Emission Standard

No owner or operator of any bulk gasoline terminal shall allow the mass emissions of volatile organic compounds from such terminal to exceed 80 milligrams per liter (4.7 grains per gallon) of gasoline transferred.

4. Compliance Schedule

The owner or operator of a bulk gasoline terminal covered under the scope of this section proposing to install a vapor recovery system or other acceptable volatile organic compound emission control equipment shall adhere to the increments of progress contained in the following schedule and shall report to the Department within 15 days of the prescribed deadline the status of compliance with the increment of progress:

A. Final plans for the acceptable volatile organic compound emission control equipment, shall be submitted before November 1, 1979.

B. Contracts for installation of the acceptable volatile organic compound emission control equipment and/or purchase orders for component parts must be issued before March 1, 1980.

C. Initiation of on site construction or installing of acceptable volatile organic ompound emission control equipment must begin before July 1, 1980.

D. Final compliance shall be achieved before July 1, 1981.

5. Reports

The owner or operator of any bulk gasoline terminal shall submit a report to the Department certifying that each increment of progress has been met.

6. Emission Testing

Compliance with this standard shall be determined by methods promulgated in EPA-450/2-78-041 "Measurement of Volatile Organic Compounds," or other methods approved by the Commissioner.

These regulations shall be effective upon filing with the Office of the Secretary of State and shall supersede all previous regulations on this subject.

After public hearings on February 26, 27, 28, March 1, 2, and 3 the above regulation is adopted this 28th day of March 1979.

BASIS STATEMENT: Gasoline is a hydrocarbon vapor that aids the formation of ozone in the atmosphere. It is necessary to control such hydrocarbon vapors present in the atmosphere, because Maine is violating the federal ozone ambient air quality standard. This regulation controls the maximum amount of gasoline emission so to reduce the ozone formed.

AUTHORITY: 38 MRSA, Section 585, 585-A

EFFECTIVE DATE: MAY 07 1979

# Chapter 113 GROWTH OFFSET REGULATION

SUMMARY: This regulation defines how ambient air quality standards will be maintained and how additional emissions will be permitted in areas where standards are being violated or the increment has been consumed. In such areas new sources of emissions will be required to obtain offsets. Generally, this is done by finding other emissions within the area that will be reduced or whose impact will be reduced to the previous level.

## 1. Scope

This regulation applies to:

A. All new major emitting sources of particulate matter proposed for the municipalities of Bangor, Brewer, Augusta, Thomaston and Baileyville or any proposed major emitting source that will significantly affect the particulate air quality levels in any of those municipalities that make application for an air emission license after January 1, 1979.

B. All new major emitting sources of sulfur dioxide proposed for the municipality of Millinocket or any proposed major emitting source that will significantly affect the sulfur dioxide levels in that municipality that make application for an air emission license after January 1, 1979.

C. All new major emitting sources of carbon monoxide located in or significantly affecting the designated nonattainment areas for carbon monoxide in Bangor or Lewiston.

D. Any new major emitting source of any pollutant for which there is an ambient air quality standard and which emission takes place in an area where the PSD increment has been depleted, or which affects such an area.

E. Any new major emitting source that proposes to locate in or so as to significantly impact any other nonattainment area, for which there is an Implementation Plan revision in effect.

F. All new major emitting sources of volatile organic compounds in the Metropolitan Portland and Central Maine Air Quality Control Regions.

2. Prohibition

A. Except as provided in subsections (B) or (C) of this section any source covered under the scope of this regulation must, prior to obtaining an air emission license, obtain an emission reduction (offset) from existing sources whose emissions of the same pollutant affects the same area as the proposed source. The required offset shall provide that by the time the source is to commence operation, the total allowable emissions from the proposed source, from existing emissions sources and from new or modified sources which are not major sources, will be sufficiently less than existing allowable emissions so as to represent Reasonable Further Progress. Reasonable Further Progress means planned annual incremental reductions in emissions of the applicable air contaminant which are sufficient to provide for attainment of the applicable ambient air quality standard as expeditiously as practicable, but not after the attainment date required by the Federal Clean Air Act.

B. However, sources which can demonstrate by onsite monitoring data that they will be located in an area where ambient air quality standards are not being violated (i.e. clean portions of designated nonattainment areas) shall only be required to provide offsets as follows:

1. A source whose allowable emissions would not cause, or significantly contribute to, a violation of an ambient air quality standard requires no offset;

2. A source whose allowable emissions would otherwise cause a new violation of an ambient air quality standard shall obtain an air quality impact reduction (offset) sufficient to prevent the violation;

3. A source whose allowable emissions would otherwise significantly contribute to an existing violation of an ambient air quality standard shall obtain an air quality impact reduction (offset) sufficient to assure reasonable further progress toward attainment of the standard; and

4. A source whose allowable emissions would otherwise significantly contribute to an existing violation of an ambient air quality standard in an area for which there is no approved attainment plan shall obtain an air quality impact reduction (offset) sufficient to prevent the violation.

C. Any proposed air contaminant sources included in the scope of this regulation and emitting Volatile Organic Compounds must, prior to obtaining an air emission license, obtain an emission reduction (offset) of equivalent emissions from any up-wind sources within 200 miles.

Reductions in nitrogen oxide emissions as $NO_2$ may be used to offset Volatile Organic Compound emissions. Up-wind sources are those south and west of the proposed source, or as approved by the Board on a case-by-case basis.

D. Any offset obtained under this section must be legally enforceable prior to the issuance of any air emission license and in effect by the time of start up of the proposed source.

E. No offset credit will be allowed for any emission reduction or air quality improvement gained by achieving compliance with existing regulations or new implementation plan provisions.

3. Exemptions

A. A source subject to this regulation may be wholly or partially exempted by the Board in cases where the source must switch fuels due to the lack of adequate fuel supplies or where the source is required by governmental regulations to install additional process equipment that causes additional emissions. This exemption may be granted only if (a) the source demonstrates that it made its best efforts to obtain sufficient offsets to comply with this regulation and that such efforts were unsuccessful or the source has secured all available offsets and (b) the source will continue to seek the necessary offset and obtain it when it becomes available.

4. Banking

A. The base time for determining the offset is January 1, 1979. Any emission reductions or air quality impacts that are collected or occur after this date may be retained by the Department and be available for use as offsets for future growth. Any banked offset established by means of voluntary emission reductions beyond that level required by the applicable emission standards will be retained by the Department for a period of two years for the sole use of that source. If not used in this period any further reservation of the banked offset is subject to determination by the Board. Any use of banked offsets requires specific consultation by the Department with municipal, county and other regional officials and must be consistant with land use and development plans in that area. A public hearing must be held on the use of a banked offset if a legitimate request is received.

These regulations shall be effective upon filing with the Office of the Secretary of State and shall supersede regulations on this subject adopted March 28, 1979.

After public hearings on February 26, 27, 28, March 1, 2, and 3; and August 21, 22, 23, 24, and 27 the above regulation is adopted this 12 Th day of December 1979.

BASIS STATEMENT: The basis of this regulation is to control the additional air pollution in areas that are at or violating the allowed air pollution levels so that the ambient air quality standards are maintained and where those standards are violated there is orderly and timely progress toward attaining and maintaining the standard.

AUTHORITY: 38 MRSA, Section 343, 585-A

EFFECTIVE DATE: May 7, 1979
Amended JAN 16 1980

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 114 CLASSIFICATION OF AIR QUALITY CONTROL REGIONS

SUMMARY: This regulation determines those areas that have been officially found to be exceeding the ambient air quality standards and are therefore nonattainment areas. It also designates which class of increment that will apply in each area.

1. For Prevention of Significant Deterioration Purposes the Board Hereby Classifies Air Quality Control Regions as Follows:

A. The Metropolitan Portland Air Quality Region, Portland Peninsula Air Quality Region, Central Maine Air Quality Region, Downeast Air Quality Region, the Aroostook Air Quality Control Region, and Northwest Maine Air Quality Region shall be Class II Regions.

B. The Department shall have the authority to designate certain Regions or portions thereof as a non-attainment area according to the criterial and procedures set forth in the Federal Clean Air Act, as amended.

C. The Board hereby recognizes the classification and regulatory requirements of those federal lands which have been established as mandatory Class I areas by the Federal Clean Air Act: Acadia National Park located in the Downeast Air Quality Region; Moosehorn National Wildlife Refuge located in the Downeast Air Quality Region; and the Roosevelt Campobello International Park located in New Brunswick, Canada.

D. Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body under the terms and procedures set forth in the Clean Air Act, 42 U.S.C.A. § 7474(e).

E. Prior to the proposal of any redesignation the Board shall hold a public hearing which shall be conducted in the area proposed to be redesignated. Prior to the public hearing a report shall be made available with a description and analysis of health, environmental, economic, social and energy impacts of the proposed redesignation. Should the area proposed for redesignation include or be deemed to effect federally owned lands, the Board shall consult with the appropriate federal land manager prior to such redesignation.

2. The Board classifies the following areas as non-attainment areas:

A. For Total Suspended Particulates

1. The municipality of Augusta

2. The municipality of Thomaston

3. The municipalities of Bangor and Brewer

4. The municipality of Baileyville

B. For Sulfur Dioxide

1. The municipality of Millinocket

C. For Carbon Monoxide

1. In the municipality of Lewiston the area bounded by and including Maine Street, Park Street, Willow Street and Canal Street.

2. In the municipality of Bangor the area bounded by and including Kenduskeag Stream, Franklin Street, Columbia Street, and Water Street.

D. For Ozone (photochemical oxidants)

1. All of the Metropolitan Portland, Portland Peninsula, Central Maine Air Quality Control Regions.

These regulations shall be effective upon filing with the Office of the Secretary of State and shall supersede all previous regulations on this subject.

After public hearings on February 26, 27, 28, March 1, 2, and 3 the above regulation is adopted this 28th day of March 1979.

BASIS STATEMENT: The basis of this regulation is to formally indicate where nonattainment areas are because air polluting sources located in them must take additional measures to reduce their emissions. This regulation also indicates where the different classes of increments apply in order to comply with federal PSD permitting requirements. Since it is possible to designate and dedesignate the classification of areas, a means is necessary to inform the interested where the different classifications apply.

AUTHORITY: 38 MRSA, Sections 583, 585-A

EFFECTIVE DATE: [illegible]

Chapter 130 FEE SCHEDULE - BUREAU OF AIR QUALITY CONTROL

SUMMARY: This regulation states the method of determination of those fees that an applicant must pay prior to obtaining an air emission license. Fees are calculated on an annual basis and payable for the duration of the license.

1. Air Emissions - MRSA, Title 38, Section 390

A. Fuel Burning Sources

1. A fossil fuel burning source with a rated capacity of 25,000,000 BTU or less shall be subject to an annual license fee of $25.00.

2. A fossil fuel burning source with a rated capacity of more than 25,000,000 BTU shall be subject to an annual fee according to the following formula:

$$\text{Annual Fee} = \frac{\text{rated capacity of equipment in BTU} \times \$500.00}{500{,}000{,}000 \text{ BTU}}$$

B. Incinerators

1. An incinerator with a rated capacity of five (5) tons or less shall be subject to an annual license fee of $25.00.

2. An incinerator with a rated capacity of more than five (5) tons shall be subject to an annual license fee according to the following formula:

$$\text{Annual Fee} = \frac{\text{rated capacity in tons}}{100 \text{ tons}} \times \$500.00$$

C. General Process Particulate Sources

1. An industrial process of 50,000 pounds per hour or less shall be subject to annual license fee of $25.00.

2. An industrial process of more than 50,000 pounds per hour shall be subject to an annual license fee according to the following formula:

$$\text{Annual Fee} = \frac{\text{pounds per hour}}{1{,}000{,}000 \text{ pounds per hour}} \times \$500.00$$

D. A Source classified as a lesser source shall be subject to a fee of $25.00 for the five year license period.

E. Petroleum Storage Facilities

1. Storage vessels with capacities less than 60,000 gallons requiring an air emission license shall be subject to an annual license fee of $25.00.

2. Storage vessels with capacities of 60,000 gallons or more and requiring an air emission license shall be subject to an annual license fee according to the following formula:

$$\text{Annual Fee} = \frac{\text{capacity (gallons)}}{300{,}000 \text{ gallons}} \times \$500.00$$

F. Bulk Gasoline Terminals

1. Bulk gasoline terminals with daily throughputs less than 40,000 gallons and requiring an air emission license shall be subject to an annual license fee of $25.00.

2. Bulk Gasoline Terminals with a daily throughput of 40,000 gallons or more shall be subject to an annual license fee according to the following formula:

$$\text{Annual Fee} = \frac{\text{daily throughput (gallons)}}{100{,}000 \text{ gallons}} \times \$500.00$$

2. Maximum Fee - No fee assessed under these regulations shall exceed $500 per year.

3. Payment Due

A. All fees for licenses shall be paid in advance for the period of the license and is due on the anniversary date of that license.

B. The failure to remit the proper fee prior to the due date will require the licensee to pay the fee due plus a $25.00 reinstatement fee.

4. Exemptions

A. Municipalities

B. Quasi-municipal corporations

C. Private educational institutions formally recognized by the

Department of Education and Cultural Services.

D. Non-profit health institutions licensed by the Department of Health and Welfare.

E. Public educational institutions.

F. State Agencies.

These regulations shall be effective upon filing with the Office of the Secretary of State and shall supersede all previous regulations on this subject.

After public hearings on February 26, 27, 28, March 1, 2, and 3 the above regulation is adopted this 28th day of March 1979.

BASIS STATEMENT: The basis of this regulation is to ensure that the licensee pays a fee that reflects what it costs to process his application and to ensure compliance.

AUTHORITY: 38 MRSA, Section 343

EFFECTIVE DATE: October 3, 1974
Amended May 20, 1977
Amended MAY 0 7 1979

# SOLID WASTE MANAGEMENT

MAINE REVISED STATUTES ANNOTATED
Title 38, Chapter 13,
§§ 1301-1319-A

## § 1301. Short title

This chapter shall be known and may be cited as the "Maine Hazardous Waste, Septage and Solid Waste Management Act."

## § 1302. Declaration of policy

The Legislature declares it to be the policy of the State of Maine consistent with its reponsibility to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent water, air and land pollution, that it shall encourage hazardous waste, septage and solid waste programs, public or private, which will reduce the volume of hazardous waste, septage and solid waste production, improve efforts to reuse and recover valuable resources currently being wasted and which will not adversely affect the public health, safety and welfare of the citizens nor degrade the environment.

The Legislature also finds and declares that economic, efficient and environmentally sound method of waste disposal is of the highest priority. Municipalities and other persons are generating increasing amounts of hazardous waste, septage and solid waste with no systematic or consistent methods being used to reduce the volume of waste or to soundly dispose of it. Failure to plan properly for future hazardous waste, septage and solid waste may further deplete already taxed natural resources and aggravate environmental and public health problems resulting from present inadequate practices of resource recovery and conservation waste storage and management, transportation, treatment and disposal.

## § 1303. Definitions

The following words when used in this chapter shall have the following meanings unless the context in which they are used clearly shows a different meaning.

1. **Board.** "Board" means the Board of Environmental Protection.

1-A. Conveyances. "Conveyances" means any aircraft, watercraft, vehicles or other machines used for transportation on land, water or in the air.

2. **Department.** "Department" means the Department of Environmental Protection.

3. **Disposal.** "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous or solid waste, sludge or septage into or on any land or water so that the hazardous or solid waste, sludge or septage or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

4. **Generation.** "Generation" means the act or process of producing hazardous or solid waste, sludge or septage.

4-A. Handle. "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

5. Hazardous waste. "Hazardous waste" means a waste substance or material, in any physical state, designated as hazardous by the board under section 1303-A. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or a part or constituent may have value or other use of may be sold or exchanged does not exclude it from this definition.

6. **Manifest.** "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transport.

7. Resource conservation. "Resource conservation" means the reduction of the amounts of solid waste which are generated, the reduction of overall resource consumption and the utilization of recovered resources.

8. Resource recovery. "Resource recovery" means the recovery of materials or substances that still have useful phy-

sical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

9. **Septage.** "Septage" means waste, refuse effluent, sludge and any other materials from septic tanks, cesspools or any other similar facilities.

10. **Solid waste.** "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

11. **Storage.** "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes.

12. Transport. "Transport" means the movement of hazardous or solid waste, sludge or septage from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal. Movement of hazardous waste within a licensed waste facility is not "transport."

13. **Treatment.** "Treatment" means any process designed to change the character or composition of any hazardous waste so as to render the waste less hazardous.

14. Waste facility. "Waste facility" means any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous or solid waste, sludge or septage. A land area or structure shall not become a waste facility solely because:

A. It is used by its owner for disposing of septage from his residence; or

B. It is used to store hazardous wastes generated on the same premises for less than 3 months.

15. Waste management. "Waste management" means purposeful, systematic and unified control of the handling and transporting of hazardous or solid waste, sludge or septage.

§ 1303-A Hazardous Waste; Handling and Transporting

1. Identification of hazardous wastes.

A. The board may adopt rules identifying hazardous wastes. These rules may identify any substance as a hazardous waste if that substance is identified as hazardous by a particular substance, by characteristics, by chemical class or as waste products of specific industrial activities in proposed or final rules of the United States Environmental Protection Agency.

B. The board may identify other substances as hazardous wastes under the following conditions;
(1) The substance exhibits hazardous characteristics included in proposed or final United States Environmental Protection Agency rules; and
(2) The substance is identified by a particular substance, by chemical class or as waste products of specific industrial activities.

C. Rules identifying hazardous wastes under paragraph B shall be submitted to the Joint Standing Committee on Energy and Natural Resources for

review. These rules shall remain in effect until 90 days after the adjournment of the next regular session of the Legislature, unless these rules are approved by Joint Resolution.

2. Handling of hazardous wastes. The board may adopt rules relating to the handling of hazardous wastes, including;

A. Containerization and labeling of hazardous wastes, consistent with applicable rules of other federal and state agencies;

B. Reporting of handling of hazardous wastes; and

C. Wastes which are not capatible.

3. Transportation of hazardous wastes. The board may adopt rules relating to transportation of hazardous wastes including;

A. Licensing of transporters of hazardous wastes, conveyances used for the transportation of hazardous wastes and the operators of these conveyances;

B. A manifest system for hazardous wastes which takes into consideration the requirements of the United States Resource Recovery and Conservation Act of 1976, Public Law 94-580, and this subchapter. The manifest system shall provide a means by which hazardous waste is accounted for, from its point of generation through all intermediate points to its point of ultimate disposal, shall allocate responsibilities and liabilities at each point among persons handling the hazardous waste and shall require recordkeeping and regular reporting to the department at each point by the person handling the hazardous waste.

4. Waste facilities for hazardous wastes. The board may adopt rules relating to the interim and final licensing and operation of waste facilities for hazardous wastes. These rules may include;

A. Standards for the safe operation and maintenance of the waste facilities, including, but not limited to, recordkeeping, monitoring before and during operation of the facility and after its termination of use or closure, inspections and contingency plans to minimize potential damage from hazardous waste;

B. The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities; and

C. The termination, closing and potential future uses of the waste facilities.

5. Evidence of financial capacity. The board may adopt rules relating to evidence of financial capacity of hazardous waste facilities' operators or owners, and those who transport hazardous waste, to protect public health, safety and welfare and the environment, including, but not limited to:

A. Liability insurance;

B. Bonding; and

C. Financial ability to comply with statutory and regulatory requirements or conditions.

## § 1304. Department; powers and duties

1. Rules. Subject to the Maine Administrative Procedure Act, Title 5, chapter 375, the board may adopt, amend and enforce rules as it deems necessary to govern waste management, including the location, establishment, construction and alteration of waste facilities. The rules shall be designed to encourage logical utilization of recoverable resources, minimize pollution of the state's air, land and surface and ground water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety. In adopting these rules, the board shall also consider economic impact, technical feasibility and such differences as are created by population, hazardous or solid waste, sludge or septage volume and geographic location.

2. **Site location.** The board may provide by rules that no person may locate, establish, construct, alter or operate any waste disposal facility unless approved by the board under sections 481 to 488.

3. **Municipal status reports.** The department shall review reports submitted by municipalities as required by section 1305. Report forms shall be prepared and distributed by the department. Required information shall include, but not be limited to, the following:

**A.** Location of solid waste disposal facility sites within the municipality whether publicly or privately owned or operated, their mode of operation and anticipated useful life;

**B.** Ordinances or regulations adopted by or proposed for the municipality which regulate the use of waste disposal facilities within the municipality;

**C.** All legal arrangements established by municipalities for providing a solid waste disposal facility for solid waste generated within the municipality;

**D.** Any plan for solid waste management officially adopted by the municipality.

4. **Technical assistance.** The department is authorized to establish guidelines for effective waste management, to provide technical assistance to persons planning, constructing or operating waste facilities, and to conduct applied research activities in the field of waste management, including methods of recycling hazardous or solid waste, sludge or septage.

4-A. **Right of entry.** For the purposes of developing or enforcing any rule authorized by this Act, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

A. Enter any commercial or industrial facility where hazardous or solid wastes, sludge or septage is generated, stored, treated or disposed of;

B. Inspect and obtain samples of any hazardous or solid waste, sludge or septage, including samples from any vehicle in which hazardous or solid waste, sludge or septage are being transported, as well as samples of any containers or labels; and

C. Inspect and copy any records, reports, information or test results relating to hazardous or solid waste, sludge or septage.

5. **Planning grants.** The department is authorized to receive funds, public and private, and to use the funds for the administration of this chapter. The board may make grants from the funds to municipalities and regional planning agencies or their agents, as designated by the municipality, for the purpose of planning and implementing waste management activities and waste facilities pursuant to guidelines established by the board.

6. Study. The department shall conduct and publish a study of hazardous waste management in this State. The study shall include, but not be limited to:

A. A description of the sources of hazardous waste generation within the State, including the types and quantities of those wastes; and

B. A description of current hazardous waste management practices and costs, including treatment and disposal, within the State.

7. Hazardous waste plan. After publication of the study, the department shall develop and publish a plan for the safe and effective handling of hazardous wastes. The plan shall include, but not be limited to:

A. Identification of those locations within the State which are suitable for the establishment of waste facilities for hazardous waste;

B. Identification of those locations within the State which are not suitable for the establishment of waste facilities for hazardous waste;

C. Methods of encouraging the recycling and recovery of hazardous wastes; and

D. Any other matters the department determines to be necessary for prompt, safe and effective hazardous waste management.

8. Licenses for waste facilities.

A. The board shall issue a license for a waste facility whenever it finds it will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance. Licenses shall be issues under the terms and conditions as the board may prescribe, and for a term not to exceed 5 years. The board may establish reasonable time schedules for compliance with this subchapter and regulations

promulagated by the board.

B. If the facility is for hazardous waste, the board shall also find that issuing the license is consistent with the standards, requirements and procedures in its rules relating to hazardous waste. To the extent practicable, the board shall coordinate the issuing of this license with the issuing of other licenses of the board for the facility.

C. The board shall issue an interim license for a waste facility for hazardous wastes or shall deem the facility to be so licensed if:

(1) The waste facility is in existence on the effective date of this Act;

(2) The owner or operator has:

(a) Notified the department of its location;

(b) Provided a detailed description of the operation of the facility;

(c) Identified the hazardous waste it handles; and

(d) Applied for a license to handle hazardous wastes;

(3) The waste facility is not altered or operated except in accordance with the board's rules; and

(4) If the waste facility has a discharge or emission license under sections 414 or 591, and the facility is operated in accordance with that license.

D. Iterim licenses shall expire on the earliest of the following dates:

(1) The date of the final administrative disposition of the application for a hazardous waste facility license;

(2) The date of a finding of the board that disposition has not been made because of the applicant's failure to furnish information reasonably required or requested to process the application;

(3) The date of expiration of the license issued under section 414 or 591;

(4) The date set in rules adopted by the board; or

(5) January 1, 1982.

## § 1305. Municipalities; powers and duties

**1. Disposal facilities.** Each municipality shall provide a solid waste disposal facility for domestic and commercial solid waste generated within the municipality and may provide such a facility for industrial wastes and sewage treatment plant sludge.

**2. Ordinances.** This chapter shall not be construed as limiting the authority of any municipality to enact ordinances for the regulation of solid waste disposal, provided that such ordinances are not less stringent than or inconsistent with this chapter or the regulations adopted thereunder.

**3. Contracts.** Municipalities may contract with any person for the collection, transportation, storage, processing, salvaging or disposal of solid wastes.

**4. Municipal status reports.** The municipal officers of each municipality shall, on or before the first day of November, 1973, and on or before the first day of June each year thereaf-

ter, submit on forms prepared by the department, information relating to solid waste management within the municipality.

**5. Municipal permits.** All permits issued pursuant to Title 30, sections 2451 to 2460 shall, in addition to requirements imposed by those sections, be conditioned on compliance with rules and regulations adopted by the board concerning the operation of solid waste disposal facilities. Copies of permits issued by the municipality shall be submitted to the department within 30 days of issue.

**6. Municipal septage sites.** Each municipality shall provide for the disposal of all refuse, effluent, sludge and any other materials from all septic tanks and cesspools located within the municipality. In addition, any person may provide a site for disposal of septage. Before making application to the Department of Environmental Protection for approval of any site, that person shall first have written approval for the site location from the municipality in which it is located. The municipality or the municipal officers authorized to act for the municipality, after hearing, shall approve any such private site if it finds that the site does not constitute a hazard to the health or safety of the residents of the municipality.

## § 1306 Repealed. 1980, c.699, § 13

## § 1306-A. Criminal provisions.

1. Class C crimes. Any person who with respect to any substance or material which, in fact, has been identified as hazardous waste by the board and which such person knows or has reason to believe has been so identified or may be harmful to human health, knowingly:

A. Transports any such substance or material without, in fact, having a proper license or permit as may be required under this subchapter;
B. Transports any such substance or material to a waste facility knowing or consciously disregarding a risk that such facility does not have a proper license or permit as may be required under this subchapter;
C. Treats, stores or disposes of any such substance or material without, in fact, having obtained a proper license or permit to do so as may be required under this subchapter; or
D. Treats, stores or disposes of any substance or material at any location knowing or conscis- disregarding a risk that such location does not have a proper license or permit as may be required under this subchapter for such treatment, storage or disposal;

is guilty of a Class C crime and may be punished accordingly except notwithstanding Title 17-A, section 1301, subsection 1, paragraph A-1, or subsection 3, paragraph C, the fine for such violation shall not exceed $25,000 for each day of such violation. In a prosecution under paragraph B or paragraph D, the conscious disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

2. Class D crimes. A person is guilty of a Class D crime if, with respect to any substances or material which, in fact, has been identified as hazardous waste by the board and which such person knows or has reason to believe has been so identified or may be harmful to human health, he knowingly:

A. Establishes, constructs, alters or operates any waste facility for any such substance or material without, in fact, having obtained a proper license or permit as may be required under this subchapter;

B. Handles or transports any such substances or material in any manner which, in fact, violates the terms of any condition, order, regulation, license, permit, approval or decision of the board or order of the commissioner with respect to the handling or transporting of such substance or material; or

C. Transfers any such substance or material to any other person whom he knows or has reason to believe:

(1) Does not have a license or permit to handle such substance or material as may be required under this subchapter; or

(2) Will handle such substance or material in violation of this subschapter or rules adopted under it.

## § 1306-B. Forfeiture; civil liability

1. Forfeiture. All conveyances which are used or intended for use in handling or transporting hazardous waste in violation of this subchapter and all materials, products and equipment used or intended for use in such transportation or transported shall be subject to forfeiture to the State.

A. Property subject to forfeiture, except conveyances, may be declared forfeited by a court having jurisdiction over the property or having final jurisdiction over a related criminal proceeding under this subchapter.

B. The court may order forfeiture of all conveyances subject to forfeiture, except as follows.

(1) No conveyance used by a common carrier in the transaction of business as a common carrier shall be forfeited unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of this subchapter.

(2) No conveyance shall be forfeited by reason of an act or omission established by the owner to have been committed or omitted by another person while the conveyance was unlawfully in the possession of another person in violation of the criminal laws of the United States or of any state.

(3) No conveyance shall be subject to forfeiture unless the owner knew or should have known that that conveyance was used in and for the handling of hazardous waste in violation of this subchapter. Proof that the conveyance was used on 3 or more occasions for the purpose of handling hazardous waste in violation of this subchapter shall be prima facie evidence that the owner knew thereof or should have known thereof.

C. The Attorney General may seek forfeiture of a conveyance according to the procedure set forth in Title 22, section 2387, subsections 4, 5 and 6 except that:

(1) A final order issued by the court under that procedure shall provide for disposition of the conveyance by the Department of Finance and Administration, including official use by a public agency or sale at public auction or by competitive bidding;

(2) The proceeds of a sale shall be used to pay the reasonable expenses for the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and to pay any bona fide mortgage thereon, and the balance, if any, shall be deposited in the General Fund; and

(3) Records, required by Title 22, section 2387, subsection 5, shall be open to inspection by all federal and state officers charged with enforcement of federal and state laws relating to the handling of hazardous waste.

2. Civil liability. A person who disposes of hazardous waste, when that disposal, in fact, endangers the health, safety or welfare of another, is liable in a civil suit for all resulting damages. It is not necessary to prove negligence. For the purposes of this section, damages shall be limited to damages to real estate or personal property or loss of income directly or indirectly as a result of a disposal of hazardous wastes. Damages awarded may be mitigated if the disposal in the result of an act of war or an act of God.

Nothing in this section shall include any action for damages which heretofore may be maintained under the common law or the laws of this State.

## § 1307. Repealed. 1977, c. 300, § 54

## § 1308. Exemptions

Rules and regulations adopted pursuant to this chapter concerning the location, establishment and construction of solid waste disposal facilities, but not concerning alteration or operation, shall not affect such facilities in existence prior to October

3, 1973. Landscape refuse and fill disposal sites established in connection with public works projects and commonly known as "stump dumps" are exempt from this chapter.

**§ 1309. Interstate cooperation**

The Legislature encourages cooperative activities by the department with other states for the improved management of hazardous wastes; for improved, and so far as is practicable, uniform state laws relating to the management of hazardous wastes; and compacts between this and other states for the improved management of hazardous wastes.

## § 1310. Emergency

If the commissioner finds, after investigation, that any waste, whether or not a hazardous waste, being handled or transported by a person in a manner which may create a danger to public health or safety, he may order the person handling or transporting that waste to immediately cease or prevent that activity and to take such action as may be necessary to terminate or mitigate the danger or likelihood of danger. He may also order any person contributing to the handling or transportation to cease or prevent that contribution.

Any order issued under this section shall contain findings of fact describing, insofar as possible, the waste, the site of the activity and the danger to the public health or safety.

Service of the commissioner's findings and an order shall be made pursuant to the Maine Rules of Civil Procedure.

The person to whom the order is directed shall comply immediately. An order may not be appealed to the Superior Court, but a person to whom it is directed may apply to the board for a hearing on the order. The hearing shall be held by the board within 48 hours after receipt of application. Within 7 days after the hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter VII.

## § 1310-A. Municipal hazardous waste control

Nothing in this chapter shall be construed as a preemption of the field of hazardous waste regulation and study on the part of the State. Municipalities may study hazardous waste and adopt and enforce hazardous waste control and abatement ordinances, to the extent that these ordinances are not less stringent than this chapter or than any standard under, or other action promulgated pursuant to, this chapter. Local ordinance provisions which touch on matters not dealt with by the chapter or which are more stringent than this chapter shall bind persons residing in the municipality.

## § 1310-B. Confidential information

1. Public records. Except as provided in subsections 2 and 3, information obtained by the department under this subchapter shall be a public record as provided by Title 1, subchapter I.

2. Hazardous waste information. Information relating to hazardous waste submitted to the department under this subchapter may be designated by the person submitting it as being only for the confidential use of the department and the board, their agents and employees, the Department of Agriculture and the Department of Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General. The designation shall be clearly indicated on each page or other portion of information. The department shall establish procedures to insure that information so designated is segregated from public records of the department. The department's public records shall include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the department shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the commissioner that the designated information should not be disclosed because the information is a trade secret, production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and wo uld make available information not otherwise publicly available. Unless such a demonstration is made, the information shall be disclosed and shall become a public record. The commissioner may grant or deny disclosure for the whole or any part of the designation information requested and within 15 days shall give written notice of his decision to the submittor and the person requesting the designated information. A person aggrieved by a decision of the commissioner may appeal to the Superior Court in accordance with the provisions of section 346.

3. Release of information. The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

4. License and enforcement information. Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

5. Rules. The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, subchapter I.

6. Prohibition; penalties

A. It is unlawful to disclose designated information to

any person not authorized by this section.

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C.

C. Any person who knowingly discloses designated information, knowing that he is not authorized to do so, is subject to a civil penalty of not more than $5,000.

D. In any action under this subsection, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available.

§ 1311. Findings; intent

The Legislature finds that proper disposal of solid wastes, and protection of land, air and water resources is important to the public health, safety and welfare; that the Legislature has mandated that municipalities provide for the proper disposal of solid wastes; that waste disposal facilities must comply with strict state and federal requirements; and that the operating costs of these facilities are high, putting an increasing burden on local property taxes.

It is the intent of this chapter that the State will participate with municipalities in up to 50% of the cost of maintaining and operating solid waste disposal facilities that are in substantial compliance with the requirements of this chapter.

The Legislature further intends that the State will participate with counties in up to 50% of the cost of maintaining and operating solid waste disposal facilities that are in substantial compliance with this chapter and that are assisting municipalities with the proper disposal resource recovery or transfer of solid waste.

§ 1312. Solid waste subsidy

1. Establishment. There is established a fund to provide an annual solid waste subsidy to be paid to qualifying municipalities and counties.

2. Calculation. This subsidy shall provide a percentage, up to 50%, of the actual eligible cost of solid waste facility operation and maintenance for the prior year. This percentage of state participation shall be calculated by dividing the legislative appropriation for this fund by the sum of the reported elibible costs from all municipalities and counties. Each municipality and county shall receive a subsidy equal to this percentage multiplied by their actual eligible costs for the prior year.

## § 1313. Eligible facilities

1. Facilities. All municipalities and counties operating or contracing with the following types of solid waste disposal facilities will be eligible for the solid waste subsidy:

A. Municipal facilities;

B. Private facilities;

C. County facilities; and

D. Facilities operated by regional refuse districts and other public or quasi-public entities.

2. Compliance. Those facilities that the board has determined are in substantial compliance with the following criteria will be eligible for the solid waste subsidy:

A. Operational criteria in rules adopted under section 1304, subsection 1, for facilities established on or before October 3, 1973; and

B. Site and operational criteria in section 421 and rules adopted under section 1304 for facilities established after October 3, 1973.

3. Appeals. Municipalities and counties may appeal determination of compliance in accordance with provisions of chapter 2.

## § 1314. Eligible costs

The following costs of operating and maintaining solid waste disposal facilities will be eligible for subsidy:

1. **Salaries and wages.** Salaries and wages of persons for time actually employed at the facilities;

2. **Utilities.** Cost of all utilities used at facilities;

3. **Road maintenance.** Road maintenance for roads used exclusively for the facility;

4. **Miscellaneous supplies and services.** Miscellaneous supplies and services, including pest control, used at the facility;

5. **Cover material.** Cover material:

A. Cost of purchased cover material; or

B. Value of cover material based on rates to be determined by the department;

6. **Equipment costs.** Equipment costs:

A. Cost of rental of equipment used at the facility; or

B. Operation, maintenance and capital cost of equipment owned by the municipality and used at the facility. Capital costs shall be amortized over the expected life of the equipment. Only annual costs in proportion to the fraction of time the equipment is used at the facility shall be eligible for reimbursement;

7. **Transfer stations.** All annual costs, including equipment and transportation, resulting from operation of waste transfer stations;

8. **Resource recovery.** All annual costs resulting from recycling, resource recovery and energy production from solid wastes; and

9. Exclusions. Costs for transport, storage, treatment and disposal of municipal or industrial sludge are not eligible for subsidy.

## § 1315. Administration

1. Municipal reporting of costs. The solid waste subsidy shall be based on costs for the prior calendar year. All mu-

nicipalities and counties shall report actual eligible costs to the department by February 1st.

2. Determination of subsidy. The Legislature shall by May 1st annually enact legislation appropriating a fund for this subsidy. A subsidy index shall be calculated by dividing this fund by the sum of the eligible annual costs reported by municipalities and counties for the prior calendar year. If the subsidy index is greater than 0.50, it shall be established at 0.50. All money not expended from the fund shall lapse. Each municipality and county shall receive an amount equal to this subsidy index times the municipality's or county's reported costs.

3. Authorization of payment. The commissioner shall authorize subsidy payments to the eligible municipalities and counties. The subsidy shall be paid to each municipality and county in 2 equal installments, the first on June 1st and the 2nd on October 1st each year for the prior year's costs.

4. Audits. Each municipality and county shall maintain records and accounts sufficient to document reported costs, and these records and accounts shall be available for audit for at least 3 years.

5. Appeal. The computation of the solid waste subsidy for any municipality or county may be appealed in writing to the board by the municipal officers or county commissioners within 30 days from the date of notication of the computed amount. The board shall review the appeal and make an adjustment if, in its judgment, an error has been made. The board's decision shall be final as to facts supported by the records of the appeal.

## § 1317. Definitions

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

1. Discharge. "Discharge" includes, but is not limited to any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping onto the land or into the water or ambient air.

2. Hazardous matter. "Hazardous matter" means substances identified by the board under section 1319 that present a present or potential danger to the people of the State or to its natural environment when deposited on land or discharged on or into waters of the State or ambient air.

3. Remove or removal. "Remove" or "removal" means the mitigation of the danger created by hazardous matter by either:

A. Treatment or cleanup of a discharge of hazardous matter; or

B. Any action necessary to prevent or minimize danger from a discharge or threatened discharge.

4. Responsible party. "Responsible party" means the person having care, custody, possession or control of hazardous matter.

§ 1317-A Discharge prohibited

The discharge of hazardous matter into or upon any waters of the State, or into or upon any land within the state's territorial boundaries or into the ambient air is prohibited unless licensed or authorized under state or federal law.

§ 1318. Mitigation of penalties

1. Reporting. The immediate reporting of a discharge or threatened discharge by the responsible party or by the person causing the discharge may be considered in mitigation of any criminal or civil penalties assessed under this subchapter.

2. Removal. If the responsible party of person causing the discharge immediately reports and removes the discharge in accordance with the rules and orders of the board, he shall not be subject to criminal or civil penalties under this subchapter.

§ 1318-A. Recovery by the State for expenditures for removal of discharges

1. Responsible party. The responsible party of the person causing the discharge is liable for all acts and omissions of its servants and agents which are committed within the course and scope of their employment.

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

In any suit to enforce claims of the State under this section, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge and that the discharge occurred while the hazar-

dous matter was in the custody or control of the person causing, permitting or responsible for the discharge.

§ 1318-B. Procedures for removal of discharges of hazardous matter

1. Reporting. The responsible party of the person causing the discharge shall report a discharge immediately to the local public safety agency or to the Department of Public Safety, which shall immediately notify the Department of Environmental Protection.

2. Preservation of public order. The local public safety agency or the Department of Public Safety shall exercise authority for preservation of public order and safety, and shall coordinate the response to the spill.

3. Department of Environmental Protection to direct removal. The Department of Environmental Protection shall have authority and responsibility to plan, implement and, with the cooperation of the appropriate public safety agency, direct that part of the response to a discharge of hazardous matter which involves removal.

A. The responsible party or the person causing the discharge shall immediately undertake removal of the discharge.

B. The department may undertake the removal of the discharge and may retain agents and make contracts for this purpose.

C. Any unexplained discharge of hazardous matter occurring within state jurisdiction, or on land or in water or air beyond state jurisdiction that for any reason penetrates within state jurisdiction, shall be removed by or under the direction of the department.

§ 1319. Powers of the board

1. Identification of hazardous matter.

A. Any substance which has been designated as hazardous by the United States Environmental Protection Agency in proposed or final regulations under the United States Clean Water Act, Section 311, Public Law 92-500, may be identified by rule as hazardous matter by the board.

B. Any substance which has not been so designated by the United States Environmental Protection Agency may be identified by rule as hazardous matter by the board.

C. Rules adopted under paragraph B shall be submitted to the Joint Standing Committee on Energy and Natural Re-

sources for review. These rules shall become effective after the next regular session of the Legislature only if approved by Joint Resolution.

2. Rules. The board shall have authority to adopt rules in order to:

A. Prescribe procedures for reporting discharges prohibited by this subchapter;

B. Prescribe procedures, methods, means and equipment to be used in the removal of discharges of hazardous matter; and

C. Exempt type of methods of discharges of hazardous matter from the requirements of this subchapter that the board determines do not present danger, imminent, present or delayed, to the people of the State or to its natural environment.

§ 1319-A. Duties of the commissioner

1. Facilities. The commissioner may undertake studies and evaluations necessary to develop suitable waste facilities.

2. Training. The commissioner may train state and local personnel to remove discharges of hazardous matter. Insofar as practical, the commissioner shall rely on existing sources to deliver this training.

3. Study. The Board of Environmental Protection shall study the need for one or more hazardous waste facilities to handle certain types of hazardous wastes generated within the State. In making their evaluation, the board shall consider the study conducted pursuant to the Revised Statues, Title 38, section 1304, subsection 6, the plan prepared under the Revised Statues, Title 38, section 1304, subsection 7, the capabilities and probabilities of existing generators treating or disposing of their own hazardous wastes, the probabilities of private firms establishing commercial hazardous waste facilities in Maine, the probabilities and costs of transporting hazardous waste to waste facilities outside of Maine, and the capabilities of existing commercial waste facilities in Maine and out of state.

The board shall submit its findings, including recommended legislation and recommended funding, to the Governor and the appropriate committee of the Legislature assigned in this area of energy and natural resources during the first regular session of the 110th Legislature.

Upon acceptance, by the Governor and the committee, of the the board's determination of necessity for one or more hazardous waste facilities, the board shall prepare a plan

which provides for the location and acquisition of suitable sites, and the planning, construction, maintenance and operation of hazardous waste facilities on those sites. The plan shall include the board's recommendation for public or private financing of all projects proposed by the plan. Specifically, the board shall prepare a budget covering a period of not less than 3 years and shall provide one or more methods of assessing generators of hazardous waste a fee to fund all reasonable and necessary planning, engineering, acquisition and construction of hazardous waste facilities, and shall provide one or more methods of assessing generators of hazardous waste a fee to fund all reasonable and necessary planning, engineering, acquisition and construction of hazardous waste facilities, and shall provide one or more methods for assessing fees on users of the hazardous waste facilities to cover maintenance and operating costs, insurance, monitoring, closing costs and other necessary expenditures.

The board, when proposing site locations, shall consider the geographic location of probable generators, the distances and costs involved in the transport of hazardous waste to waste facilities, the compatibility of potential wastes and the board's rules and regulations.

1. Compact the refuse in a series of layers, each layer not more than 2 feet thick before compaction, the days aggregate of layers subject to daily cover requirements;
2. Handle the cover material.
3. Grade the base and cover;
4. Assist vehicles;
5. Build and maintain roads; and
6. Control dust and vectors.

R. Maintenance and backup equipment shall be available within 48 hours after a breakdown.

S. Daily cover shall be placed at the end of each working day over the entire refuse cell to a minimum compacted thickness of at least 6 inches. The purpose of daily cover is to minimize rodent and other vector problems and to minimize the possibility of fires.

T. Intermediate cover shall be placed to a minimum compacted thickness of one foot, including daily cover, in cases where daily cover is exposed for more than 14 days.

U. Final cover shall have a minimum compacted thickness of 2 feet including any previous cover. It shall be placed within 14 days of final refuse placement except during winter operations. Final cover shall minimize infiltration from surface water and shall inhibit settling, cracking and other erosion; final cover shall be well graded, containing a minimum of 15% fines and compactable to a reasonably water shedding surface. The final cover shall prevent ponding of water at the base of the disposal area and shall be placed in such a manner so to maintain a surface slope sufficient to keep the surface well drained. The final grade of the side slopes shall not be greater than 3:1. The area shall be seeded as soon as practical. Temporary cover may be placed during winter months provided:
1. Snow is removed prior to melt; and
2. Final cover is placed as soon as realistically possible.

V. **Operating Manual**

An operation manual shall be submitted for approval. The following items shall be included:
1. Type of operation (area, trench);
2. Face width;
3. Lift height;
4. Estimated area to be utilized during each year of operation;
5. Operating hours;
6. Type and number of equipment available including standby equipment;
7. Special procedures for winter operation (stockpiling, pretrenching, etc.);
8. Seeding schedule for completed areas of fill;
9. Erosion control methods (seeding, rip-rap, etc.);
10. Safety procedures;

D. Salvaging shall be controlled - permits shall be issued by the facility administrators. Salvaging shall not be allowed at the operating face.

E. An attendant shall be on duty during all operating hours.

F. All sites shall provide a method of communication to emergency medical, fire, and law enforcement facilities.

G. Fire control facilities shall be provided.

H. Fences and gates shall be installed to limit access to the site.

I. Final grade shall be compatible with surrounding property.

J. An area shall be provided for "hot loads"; these loads shall be extinguished either by the attendant or by the local fire department.

K. The disposal area shall be kept well drained. The base of the disposal area shall have a slope adequate for drainage. This shall apply to the bottom of trenches if a trench method is to be utilized. No refuse will be placed in surface water of any type.

L. Monitoring wells may be required.

M. All-weather access roads are required.

N. Litter fencing shall be provided as needed.

O. Operating records shall be kept by the operator. These should include estimates of refuse volume or weight, or the rate at which available land is being used, occurrence of fires, need for vector control, equipment maintenance or unusual financial expenditures. Such records shall be available to Department personnel.

P. Face width should maximize efficiency, being small enough to maintain, though large enough to handle the traffic.

Q. Equipment shall be provided to:

19. Proposed siltation basins, where applicable;
20. The baseline for x-sections in Section 407.4; and
21. Leachate collection and treatment facilities, if proposed.

D. **Cross Sections**

Show the following items in cross sections for every 100 feet along the length of the proposed disposal area. Use a horizontal scale of 1" = 100' or less and same as used above in Design Information, Section 407.2. Use a vertical scale equal to or a multiple of the contour interval shown in Design Information Section 407.2G above. The vertical exaggeration shall not exceed 20:1.

1. Bedrock surface (if closer to surface than groundwater);
2. Seasonal high water table;
3. Water drainage features; swales; ditches; tiles, etc.;
4. Existing land surface;
5. Base grade;
6. Proposed lifts;
7. Proposed cover;
8. Final grade of completed landfill; and
9. Final elevation of completed landfill.

E. **Qualifications of Persons Preparing Plans**

It is recognized that both the description of the site and the sophistication of design and engineering for the facility will vary a great deal, depending on the specific location and the volume and type of waste to be disposed there. It is also recognized that the ability of persons and municipalities to accomplish this type of work varies greatly.

To make sound judgements, the Department needs complete and accurate information.

Therefore:

1. All survey work accomplished and reported must be by a Registered Surveyor.
2. Design plans submitted need not be done by a Professional Engineer but must be complete and accurate.

13. **Operating Criteria**

A. All normal domestic and commercial wastes shall be accepted.

B. Junked vehicles and white goods shall not be incorporated into the disposal area is a reprocessing center is available. A separate storage area may be provided.

C. Hazardous wastes may be accepted only if special provisions have been made and approved by the Department of Environmental Protection.

1. Area where refuse is to be placed.
2. Property boundaries;
3. Access roads;
4. Area and sequence of site to be developed in forst, second, and third year of operation;
5. Location of test pits, wells, or borings;
6. Proposed drainage system;
7. Two foot contours showing:
   a. The existing area; and
   b. Proposed final disposal area surface;

   If the area is sufficiently steep so that 5 foot or some other contour interval will show drainage, the two foot contours should be phased out.

8. Location of alternate disposal faces for poor weather operation, special and/or hazardous wastes, and hot loads; and
9. Location of salvage material storage.

## C. Additional Design Map Information

For the proposed area and for the area within 300' outside the site boundary, show the following:

1. All occupied dwellings;
2. Public water supplies;
3. All private wells;
4. All surface bodies of water;
   a. Springs;
   b. Rivers;
   c. Lakes;
   d. Ponds;
   e. Swamps;
   f. All other pertinent bodies of water;
   g. Natural drainage area; and
   h. 100 year floor plain, where applicable.
5. All existing roads;
6. Power lines;
7. Pipelines;
8. Public buildings and/or facilities;
9. Sand and gravel pits;
10. Proposed final surface drainage system;
11. All proposed water quality monitoring points;
12. Proposed boundary fencing and accesses;
13. Access roads;
14. Gas venting devices, if proposed;
15. Proposed equipment shelter, maintenance area and employee facilities;
16. Proposed utilities;
17. Scales and weighing station, if proposed;
18. Fire and first aid equipment, if proposed;

E. **Boring or Test Pit Logs and Map**

A number of test pits or borings sufficient to describe the surficial materials on the site and the proximity of the site to groundwater or bedrock shall be dug and analyzed.

A. A map of scale 1" = 100' (or less) shall be provided to include the following:

1. Legal boundaries of the site;
2. Area(s) where refuse is to be placed; and
3. Locations of borings and/or test pits.

B. The location and log of a number of borings and/or test pits with approximate elevations sufficient to reasonably indicate groundwater gradient and direction must be shown. Boring and test pit logs shall indicate the following:

1. Surficial units including at least till, clay, sand, gravel, soil and bedrock; more detailed descriptions of overburden units may be used;
2. Depth to groundwater;
3. Depth to bedrock if bedrock is reached before groundwater; and
4. Surficial units for borrow pit, as in B.1 above.

12. Design Approval

A. **Design Information**

The amount of design information required and the sophistication of engineering and design needed to utilize a site in a way to protect public safety and health and surface and groundwater resources, necessarily varies with both the physical characteristics of the site and the amount and type of waste to be disposed.

The Department will review the plans for their adequacy in describing at least the following:

1. The site as it presently exists;
2. The site as it will appear at the time it is closed;
3. Any drainage system(s) proposed;
4. Any other features proposed;

The Department will review the design to see if it adequately handles at least the following:

5. Diversion of surface water away from the site;
6. Surface drainage of the site;
7. Grading for bottom drainage of the site;
8. For high groundwater areas, for areas shallow to bedrock, and for areas proposed where surficial materials, soils, contain more than 40 percent fines; proper drainage of the bottom of the site;
9. For areas where surficial materials, soils, contain less than 15 percent fines; protection of the groundwater from rapid percolation of leachates;
10. Protection for public health and safety; and
11. Aesthetic considerations; litter and view from homes, businesses, and roadways.

B. **Detailed Site Map and Plan**

A map of the same scale as on the Map of Borings or Test Pits (item 406.5) shall be provided. It shall show the following:

3. The site should be moderately sloped, i.e., less than 15 percent.

4. The site boundary shall not lie closer to a classified body of water than 300 feet.

5. The site boundary shall not lie closer to the nearest residence or potable water supply than 1,000 feet.

Site not meeting these criteria, but which through good design and operation can be shown to provide adequate protection to surface and groundwater resources, may be approved by the Board upon proper application. Sites meeting these criteria but which are determined by the Department to provide special danger to a surface or groundwater resource may be either disapproved or approved under more stringent criteria. Such special danger might potentially exist because of the proximity of the site to an aquifer, because of the proposed deposit of special wastes at the site, or because of some other special physical condition.

## B. Public Notification

For all proposed sites and for sites proposed for significant expansion of the volume of waste to be accepted the following procedure must be followed. (Normally a 25% increase in waste volume acceptance within one year will be deemed significant. The addition of waste of a hazardous or unusual nature not already accepted at the facility, or expanded acceptance of junked automobiles or white goods shall be sufficient to deem the expansion significant.) Other facilities in operation before October 3, 1973, which are not in violation of present law and which, by alteration will meet the operational criteria established herein, are not subject to the procedure for site approval.

## C. Site Map

The most up-to-date U.S.G.S. Topographic map either 15' or 7½' shall be submitted. The following items, if not shown on the topographic map must be located for the area within a line 1,000 feet outside of the site boundary.

A. Legal boundaries of the site;

B. All buildings;

C. All supplies of potable surface and groundwater—municipal and private;

D. All commercial-industrial water supplies;

E. All surface bodies: ponds and lakes; streams and rivers; swamps and marshes;

F. All gravel pits, stone quarries, mines;

G. All pipe lines, surface or buried;

H. All springs and seeps;

I. Existing zoning;

Keyed to this map:

J. Indicate for wells; where known; depth to bedrock; static water level; yield; total depth; and

K. Indicate where know, seasonal variation of water table in gravel pits, quarries, and dug wells.

## D. Hyrdologic, Geologic and Soils Information

All hydrologic and geologic information pertinent to the site that is available from state and federal agencies, such as bedrock geology, soils, surficial geology, depth to bedrock, depth to water table, well locations and characteristics, shall be submitted to the Department.

F. **Final Cover**

A minimum final cover of 2 feet after compaction is required on all refuse. For facilities in operation before October 3, 1973, variance to the amount of cover may be given if no direct or indirect discharge of pollutants or harborage of vectors will occur. Cover material shall have a minimum of 15% fines.

G. **Grading**

The top slope of the final cover shall be sufficient to encourage proper drainage. The face shall be stabilized and covered. The maximum face slope shall not exceed 2:1.

H. **Seeding**

The closed area shall be seeded.

I. **Problem Correction**

Leachate and gas problems shall be corrected.

J. **Inspection**

The operator shall request DEP inspection before removing equipment from site so deficiencies may be corrected.

K. **Certificate of Completion**

The site shall be subject to inspection by the Department one year after closing. Any deficiencies found which may have detrimental health or environmental effect shall be corrected. If satisfactory maintenance is being provided, a certificate of completion will be awarded.

## II. Site Approval

A. **Site Characteristics**

The Department recognizes that because the surficial geology of Maine is both complex and varied, a single set of physical conditions cannot be described which would be applicable for safe and economic land disposal throughout Maine. Differences in the amount and type of waste to be disposed at a particular site increase the complexity of appropriate standards.

Because it is desirable to keep the waste dry and to keep it separated from groundwater, the following set of physical conditions are found by the Department to be desirable and, in general, adequate for protection of ground and surface water resources providing the facility is well designed and operated.

1. The surficial material soils, underlying the refuse to a depth of at least 5 feet shall be well graded granular material containing from 15-40% fines, and being relatively free of cobbles in excess of 6 inches in diameter.
2. All refuse shall be placed at least five feet above groundwater.

activity. Water supports the biological and chemical activity which produces potentially harmful by-products in the form of leachate. Water is also the primary vehicle which can transport these noxious substances away from the disposal site to ground and surface water resources. In addition, the regulations provide controls for other health, safety, and environmental matters.

Although the following regulations are believed to reflect the best state of the art for land disposal economically accessible to Maine communities, and will provide very much greater protection to land and water resources and to public health when compared with disposal methods now commonly used, it is recognized that compliance with these regulations does not provide an absolute guarantee against pollution. In those special cases where compliance with these regulations proves not to be sufficient, additional requirements may be imposed to provide additional protection to health, safety, and the environment. A variance procedure to enable disposal operation under a "Conditional Use Permit" has been established to allow maximum flexibility in considering sound solid waste activity.

## B. Closing Requirements for Disposal Facilities

Solid waste facilities in existence before October 3, 1973 which, with alteration, cannot meet the operational requirements promulgated herein are required to be closed.

All land disposal facilities which close after October 3, 1973 are subject to this section. Facilities in operation before October 3, 1973 which, with alteration, can meet the Operational Criteria and which are not in violation of other laws are not required to be closed.

## C. Closing Plan

A closing plan shall be submitted to the Department of Environmental Protection for approval at least 30 days prior to the start of closing operations; which operations begin with 30 days notice to the Public and/or users of the site.

This plan shall include:

1. Schedule for notifying the Public of the closing;
2. Rat extermination schedule;
3. Method to be used to keep area drained;
4. Method to correct any existing leachate or gas problems;
5. Fire extinguishment schedule;
6. Schedule for placing final cover and seeding; and
7. Schedule for inspection and maintenance.

## D. Public Notification

The public shall be notified at least 30 days prior to the date the last refuse will be accepted by signs posted at the site and by notification in the local press. The date the last refuse will be accepted at the old site, the address of the new disposal facility, and the hours of operation of the new disposal site shall be included on the signs and in the notification.

## E. Restricted Access

Restricted access and/or adequate policing shall be provided.

B. **Disposal of Residual**

Residuals from incineration or similar burning methods which are designated for land disposal are subject to regulations promulgated under Chapter IV. Land Disposal, except for daily cover requirements Any effluent disposed in waters of the State shall be subject to Water Quality regulations and licensing criteria.

C. **Plan**

Any person owning or operating an incinerator or other equipment using burning as a method of solid waste volume reduction shall submit a plan to the Department for approval showing how the incinerator will be integrated into the solid waste system. Such a plan should include but shall not be limited to the following items..

1. Nature and volume of material to be burned;
2. Disposition of residual;
3. Location of processing and storage facilities;
4. A financial report of estimated costs;
5. A description of the facility and/or equipment to be used;
6. Safety equipment and procedures; and
7. Fire protection facilities.

## 9. Storage and Transfer Facilities

A. **Review and Approval**

Municipal and/or regional storage and transfer facilities including those facilities leased or contracted are subject to Departmental inspection, review and approval. The storage of all solid waste shall be practiced in such a manner to minimize attraction and harborage of vectors, to prevent health and safety hazard, to minimize odor, unsightliness, environmental impact, and public nuisance.

B. **Space Requirements**

Sufficient facilities and space shall be provided to contain all waste generated during periods between regularly scheduled collection or removal as may be necessary to meet the intent of paragraph 403.1 above.

## 10. Land Disposal

A. **Policy Statement** – The Department recognizes that for the short term land disposal will remain the predominant method of waste disposal in Maine. Because it is the necessary final link in the chain of disposal activity, and because there is significant potential for environmental harm to land and ground water resources, in-depth regulation has been determined to be necessary. The following regulations are based on the presumption that significant protection to the environment can be accomplished by controlling water in and around disposal

will reduce the volume of solid waste generated which will reuse and recover valuable resources currently being wasted and which will conserve natural resources. Assistance given to these activities will be of the first priority.

The varied nature of resource recovery activity and the generally sound environmental basis on which they are undertaken preclude the necessity and value of specific regulation. A review of such proposed activity with respect to health, safety and environmental soundness is deemed to be in the best interest of the State. Specific activity may, in the future, be subject to regulation.

### B. Requirements

Each person who owns or operates a facility for long term resource recovery activity shall submit a plan to the Department for approval. Such a plan should include, but shall not be restricted to the following items:

A. Nature and volume of material to be recovered;
B. Disposition of recovered waste;
C. Disposition of material to be disposed of rather than sold, reprocessed, etc.;
D. Location of processing facilities;
E. Location of storage facilities;
F. Description of transportation network and facilities;
G. A financial report of estimated cost/gain balances;
H. A description of the facility and/or equipment to be used;
I. Safety equipment and procedures; and
J. Fire protection facilities.

### C. Disposal of Residual

Any residual from a resource recovery activity which is designated for land disposal shall be subject to regulations promulgated under Chapter IV, Land Disposal. Any effluent disposed in waters of the State shall be subject to Water Quality regulations and licensing criteria.

### D. Exemptions

Resource recovery activity of a voluntary and intermittent basis such as local paper drives, bottle drives, etc., are not subject to reporting or review requirements.

## 8. Incineration

### A. Emissions

Incinerators or other equipment using burning as a method of waste volume reduction, whether or not in conjunction with resource or energy recovery, are subject to Air Quality Control Regulations.

T. **Landfill equipment** - any equipment on site used for handling refuse cover and for other support activites.

U. **Leachate** - liquid which has percolated through solid waste or other medium and has extracted dissolved or suspended materials from it.

V. **Lift** - a compacted layer of solid waste and the top layer of cover material.

W. **Lift height** - vertical thickness of a compacted volume of solid waste plus thickness of cover material immediately above.

X. **Mottling** - the blotched or streaked pattern caused by the dissolution of inorganics, usually iron, indicative of the soil having been in contact with groundwater.

Y. **Municipality** - A city or town.

Z. **Overburden** - all soil material overlying bedrock.

AA. **Person** – An individual, firm, corporation, partnership, association, municipality, quasi-municipal corporation, state agency or any other legal entity.

BB. **Potable water supply** - any ground or surface water supplies to be used for drinking.

CC. **Recoverable Resources** – Materials that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

DD. **Salvaging** – controlled removal of reusable waste materials.

EE. **Solid waste** – Unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

FF. **Solid waste facility** – Any land area or structure or combination of land area and structures, including dumps, used for storing, salvaging, processing, reducing, incinerating or disposing of solid wastes.

GG. **Special wastes** - those wastes which may not be considered hazardous but may still require more complex management due to other characteristics such as high moisture content or bulk.

HH. **Static water level** – that level water seeks when not being pumped; i.e., undisturbed water level.

II. **Stratigraphy** – geology of the layered succession of soil and rock deposits.

JJ. **Surficial units** – identifiable differences in overburden. (Boulder units, soil units, gravel, sand, specific till types, etc.)

KK. **Vector** – a carrier, usually an arthropod, bird, or rodent that is capable of transmitting a pathogen from one organism to another.

LL. **White goods** – large appliances including but not limited to stoves, refrigerators, freezers, washing machines, clothes dryers, dishwashers and air conditioners.

MM. **Zones** – The northern zone shall include: Aroostook County; that part of Penobscot County north of and including Medway, TAR7 and Long A; that part of Piscataquis County north of and including TBR10, TBR11, Bowdoin College Grant, Greenville and Little Squaw; that part of Somerset County north of and including Square Town (T2R5), Moxie Gore (T1R5), West Forks Plantation, Lower Enchanted (T2R5), BKPWKR (T3R5), and King & Bartlett (T4R5); and that part of Franklin County north of and including Jim Pond (T1R5), Alder Stream (T2R5), and Seven Ponds (T3R5). The southern zone shall include all of Maine not in the northern zone.

7. <u>Resource Recovery Activity</u>

A. **Policy Statement** – The Department desires to encourage solid waste programs, public or private, which

4. Prohibited Acts

After July 1, 1975 no person shall operate a solid waste facility without a plan approval and/or conditional use permit obtained from the Department in accordance with these regulations.

5. Site Location of Development

Facilities established after October 3, 1973 and subject to these solid waste management regulations, and facilities proposed for significant expansion of the volume of waste to be accepted shall also be subject to review and approval by the Board of Environmental Protection under Title 38, MRSA Sections 481 to 488, which concerns Site Location of Development.

6. Definitions

A. **Backup equipment** - land disposal equipment under contract or by some other means available to the operator within 48 hours of breakdown of the primary equipment.

B. **Board** The Board of Environmental Protection.

C. **Boundary, property** - property line of total area owned, rented or leased by operator.

D. **Boundary, site** – line surrounding area to be developed for the disposal or process facility.

E. **Commissioner** – The Commissioner of the Department of Environmental Protection.

F. **Closing operation** – the processes of rodent extermination, fire extinguishment, slope stabilization, placing cover material, grading, seeding, etc. for the closing of an existing open dump or disposal facility or one established under this law.

G. **Closing plan** – pre-determined method and schedule for completing above operations.

H. **Cover material** – any soil material that is well graded, relatively free of organics and stones greater than 6 inches diameter that is used for cover in a landfill operation.

I. **Cover, daily** – soil that is used to cover compacted solid waste at the end of each operating day.

J. **Cover, intermediate** – this solid material must be placed on filled areas where the daily cover will be exposed for more than 14 days.

K. **Cover, final** – this soild material must contain a minimum of 15% fines and must be placed on each filled area when final elevation has been reached.

L. **Department** – The Department of Environmental Protection.

M. **Drainage system, surface water** - system of berms, dikes and ditches and culverts arranged so as to minimize the amount of surface water running over and through the refuse.

N. **Drainage and collection system, leachate** – system for draining any potential leachate from base of disposal facility and collecting it at a pre-determined point.

O. **Face slope** – this is the slope on which the landfill equipment must work in order to compact and cover the refuse.

P. **Face width** – this is the horizontal length of the working face.

Q. **Fines** – soil material which passes the #200 U.S. Standard Sieve.

R. **Hazardous wastes** – any waste having a greater potential as a health or safety hazard or for environmental harm than household or commercial wastes, which may include but is not limited to industrial and treatment plant waste. Upon request the Department, based on sufficient information supplied by the applicant, will make a determination whether a particular waste is hazardous and whether proposed methods and sites are sufficient for safe disposal of that waste.

S. **Hot loads** – any load of refuse which is on fire when delivered to the site.

1. Legal Authority

The Solid Waste Management Act was passed by the Maine 106th Legislature and subsequently signed by the Governor to become Chapter 387 of Public Law.

This law amended Title 38, Maine Revised Statutes by becoming Chapter 13 of those statutes.

Section 1304 of those statutes charges the Department of Environmental Protection with writing rules and regulations it deems necessary governing solid waste management. It shall be unlawful for any person to establish, construct, alter or operate any waste disposal facility or to store, collect, transport, process or dispose of solid waste contrary to regulations promulgated by the Department.

Those regulations were legally adopted and promulgated, to become effective July 1, 1975, and are herein published.

2. Legislative Declaration of Policy (Title 38, MRSA § 1302)

The Legislature declares it to be the policy of the State of Maine consistent with its responsibility to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent water and air pollution, that it shall encourage solid waste programs, public or private, which will reduce the volume of solid waste production, improve efforts to reuse and recover valuable resources currently being wasted and which will not adversely affect the public health, safety and welfare of the citizens nor degrade the environment.

The Legislature also finds and declares that economic, efficient and environmentally sound methods of waste disposal are of the highest priority. Municipalities are generating increasing amounts of solid waste with no systematic or consistent methods being used to reduce the volume of waste or to soundly dispose of it. Failure to plan properly for future solid waste may further deplete already taxed natural resources and aggravate environmental and public health problems resulting from present inadequate practices of resource recovery and solid waste disposal.

3. Preamble

It shall be the purpose of the Department of Environmental Protection, consistent with declared Legislative Policy, to provide through these regulations, effective controls for the management of solid waste.

These regulations are intended to provide necessary health, safety and environmental controls, while at the same time leaving available maximum alternatives for communities, alone or together, to manage solid waste generated within the community. The regulations are intended to provide maximum flexibility to accommodate such differences between Maine municipalities as are created by population, waste volume, and geographic location.

The Department will carry out its solid waste management responsibilities by providing to the maximum of its resources educational, technical assistance, and other cooperative activity.

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 400 SOLID WASTE MANAGEMENT REGULATIONS

SUMMARY: These Rules outline the procedures and requirements for gaining approval of a plan to operate a solid waste facility including, landfills, storage and transfer facilities, incineration facilities and resource recovery facilities. The rules apply to all solid waste facilities, public and private, in operation after July 1, 1975. In addition new sites and facilities significantly expanded after October 3, 1973 are required to have site location of development approval.

11. Operating and safety procedures for any area used for temporary storage of junked vehicles, white goods, etc.

12. Schedule for removing junked cars, white goods, etc.;

13. Number of personnel and their specific duties;

14. Fire prevention and fighting procedures;

15. Handling and disposal procedures for special wastes;

16. Fees;

17. Accounting procedures; and

18. Name responsibility for maintenance of access roads.

W. **Occurrence Reports**

Within 48 hours of an unusual or unauthorized occurrence a written report shall be submitted to the Department stating the nature of the occurrence. Reports shall be made for at least the following occurrences:

1. Bodily injury at the facility;
2. Health problems traced to the facility or suspected of being associated with the facility;
3. Fire;
4. Disposal of any hazardous waste not previously authorized;
5. The breakdown of equipment; and
6. Other unusual occurrences.

## 14. Conditional Operating Criteria for Facilities Serving Less Than 5,000 Persons

Upon receiving proper application the Board may authorize, by issuing a conditional use permit, the disposal of domestic and commercial solid waste and small quantities of non-hazardous industrial waste, at facilities serving less than 5,000 persons under the following reduced operating criteria. The Board may authorize such reduced operating criteria only for those facilities which, because of their proper siting, provide adequate protection to ground and surface waters. The Board may issue a conditional use permit authorizing reduced operational criteria at a disposal facility only after the legislative body, Town Meeting or Council, of the town in which the facility is located specifically approves the application for operation of the facility under reduced operational criteria.

A. All normal domestic and commercial wastes shall be accepted.

B. Junked vehicles and white goods shall not be incorporated into the disposal area if a reprocessing center is available. A separate storage area may be provided.

C. Salvaging shall be controlled – permits shall be issued by the facility administrators. Salvaging shall not be allowed at the operating face.

D. An attendant shall be on duty during all operating hours.

E. All sites shall provide a method of communication to emergency medical, fire and law enforcement facilities.

F. Fire control facilities shall be provided.

G. Fences and gates shall be installed to limit access to the site.

H. An area shall be provided for "hot loads"; these loads shall be extinguished either by the attendant or by the local fire department.

I. The disposal area shall be kept well drained. The base of the disposal area shall have a slope adequate for drainage. This shall apply to the bottom of trenches if a trench method is to be utilized. No refuse shall be placed in surface water of any type.

J. All weather access roads are required.

K. Litter fencing shall be provided as needed.

L. Operating records shall be kept by the operator. These should include estimates of refuse volume or weight, or the rate at which available land is being used, occurrence of fires, need for vector control, equipment maintenance or unusual financial expenditures. Such records shall be available to Department personnel.

M. Face width should maximize efficiency, being small enough to maintain, though large enough to handle the traffic.

N. Equipment shall be provided to:

1. Compact the refuse in a series of layers, each layer not more than 2 feet thick before compaction, the days aggregate of layers subject to daily cover requirements;
2. Handle the cover material;
3. Grade the base and cover;
4. Assist vehicles;
5. Build and maintain roads; and
6. Control dust and vectors.

O. Maintenance and backup equipment shall be provided within one week after a breakdown.

P. From April 1 through December 15 in the southern zone and from April 16 through November 30 in the northern zone daily cover shall be placed at the end of each working day over the entire refuse cell to a minimum compacted thickness of at least 6 inches. The purpose of daily cover is to minimize rodent and other vector problems and to minimize the possibility of fires.

Q. Intermediate cover shall be placed to a minimum compacted thickness of one foot, including daily cover, in cases where daily cover is exposed for more than 14 days. It shall meet the same physical conditions as final cover.

R. Final cover shall have a minimum compacted thickness of 2 feet including any previous cover. It shall be placed within 30 days of final refuse placement. Final cover shall minimize infiltration from surface water and shall inhibit settling, cracking and other erosion; final cover shall be well graded, containing a minimum of 15% fines and compactable to a reasonably water shedding surface. The final cover shall prevent ponding of water at the base of the disposal area and shall be placed in such a manner so to maintain a surface slope sufficient to keep the surface well drained. The final grade of the side slopes shall not be greater than 3:1. The area shall be seeded as soon as practical.

S. Between September 15 and November 15, a thorough rodent extermination program shall be executed using a single dose of poison.

T. On a weekly basis from December 16 through March 31 in the southern zone and from December 1 through April 15 in the northern zone refuse shall be pushed into layers two feet thick and then compacted. The aggregate of layers shall not exceed 8 feet in thickness before intermediate cover is placed.

U. Before April 1 in the southern zone and before April 15 in the northern zone, snow shall be pushed off the refuse not already having final cover and intermediate cover shall be placed on all exposed refuse to a thickness of 1 foot after compaction.

V. **Operation Manual** – An operation manual as described in item 408.22 shall be submitted for approval.

W. **Occurrence Reports** – Within 48 hours of an unusual or unauthorized occurrence a written report shall be submitted to the Department stating the nature of the occurrence. Reports shall be made for at least the following occurrences:

1. Bodily injury at the facility;
2. Health problems traced to the facility or suspected of being associated with the facility;
3. Fire;
4. Disposal of any hazardous waste not previously authorized;
5. The breakdown of equipment; and
6. Other unusual occurrences.

## 15. Conditional Operating Criteria for Facilities Receiving Less Than Ten Tons Per Week

A. All facilities receiving less than 10 tons per week are granted a conditional use permit to operate under the following reduced operating criteria, unless the Board of Environmental Protection concludes that operation under the reduced criteria would result in increased environmental impact on ground and surface waters, or would pose danger to public health and safety.

B. The reduced operating criteria are outlined in sections 410.1 through 410.19.

C. Junked vehicles and white goods shall not be incorporated into the disposal area if a reprocessing center is available. A separate storage area may be provided.

D. Salvaging shall be controlled -- permits shall be issued by the facility administrators. Salvaging shall not be allowed at the operating face.

E. The facility may be open only two days consecutively on a weekly basis. Sites open for more than two days per week do not qualify for these reduced operating criteria.

F. An attendant shall be on duty during all operating hours.

G. Fire control facilities shall be provided.

H. Fences and gates shall be installed to limit access to the site.

I. The disposal area shall be kept well drained. The base of the disposal area shall have a slope adequate for drainage. This shall apply to the bottom of trenches if a trench method is to be utilized. No refuse will be placed in surface water of any type.

J. Litter fencing shall be provided as needed.

K. Face width should maximize efficiency, being small enough to maintain, though large enough to handle the traffic.

L. Equipment shall be provided to:

1. Compact the refuse in a series of layers, each layer not more than 2 feet thick before compaction, the aggregate of layers subject to cover requirements.

2. Handle the cover material;
3. Grade the base and cover;
4. Assist vehicles;
5. Build and maintain roads; and
6. Control dust and vectors.

M. Maintenance and backup equipment shall be provided within one week after a breakdown.

N. From April 1 through December 15 in the southern zone and from April 16 through November 30 in the northern zone on a biweekly basis, the refuse shall be pushed into layers two feet thick, compacted and covered with 6 inches of soil material having at least 15 percent fines.

O. Between September 15 and November 15, a thorough rodent extermination program shall be executed, using a single dose poison.

P. Before December 15, all refuse deposited within that year must be covered to a total depth of 1 foot, including previous cover, with soil material containing a minimum of 15% fines, well graded, and free of cobbles greater than 6 inches in diameter.

Q. From December 16 through March 31 in the southern zone and from December 1 through April 15 in the northern zone refuse may be deposited at the facility without compaction or cover. The total lift height during this period shall not exceed 8 feet.

R. Before April 1 in the southern zone and before April 15 in the northern zone, snow shall be pushed off uncovered refuse, the refuse shall be graded and compacted, the face shall be graded to a slope no steeper than 3:1 and compacted, and all uncovered refuse shall be covered by at least 1 foot of soil material containing a minimum of 15 percent fines, well graded, and free of cobbles.

S. Final cover shall have a minimum compacted thickness of 2 feet including any previous cover. It shall be placed on areas of the site reaching final grade. Final cover shall minimize infiltration from surface water and shall inhibit settling, cracking and other erosion; final cover shall be well graded, containing a minimum of 15% fines and compactable to a reasonably water shedding surface. The final cover shall prevent ponding of water at the base of the fill and shall be placed in such a manner so to maintain a surface slope sufficient to keep the surface well drained. The final grade of the side slopes shall not be greater than 3:1. The area shall be seeded as soon as practical.

T. **Operation Manual** – An operation manual as described in item 408.22 shall be submitted for approval.

U. **Occurrence Reports** – Within 48 hours of an unusual or unauthorized occurrence a written report shall

be submitted to the Department stating the nature of the occurrence. Reports shall be made for at least the following occurrences

1. Bodily injury at the facility;
2. Health problems traced to the facility or suspected of being associated with the facility;
3. Fire;
4. Disposal of any hazardous waste not previously authorized;
5. The breakdown of equipment; and
6. Other unusual occurrences.

## 16. Variance Procedures and Conditional Use Permits

### A. Variance

Any person responsible for solid waste activity may apply to the Board for a variance from regulations promulgated herein. The application shall be accompanied by such information and data as the Board may reasonably require. The Board may grant such variance for whatever period it deems appropriate if it finds that:

1. Proposed activity will not endanger human health and safety;
2. Proposed activity reasonably ensures preservation of environmental quality; and
3. Compliance with the rules and regulations from which a variance is sought either:
   1. Produces serious hardship, or
   2. Would not provide a greater degree of health, safety, or environmental protection than the proposed alternative.

### B. Conditional Use Permit

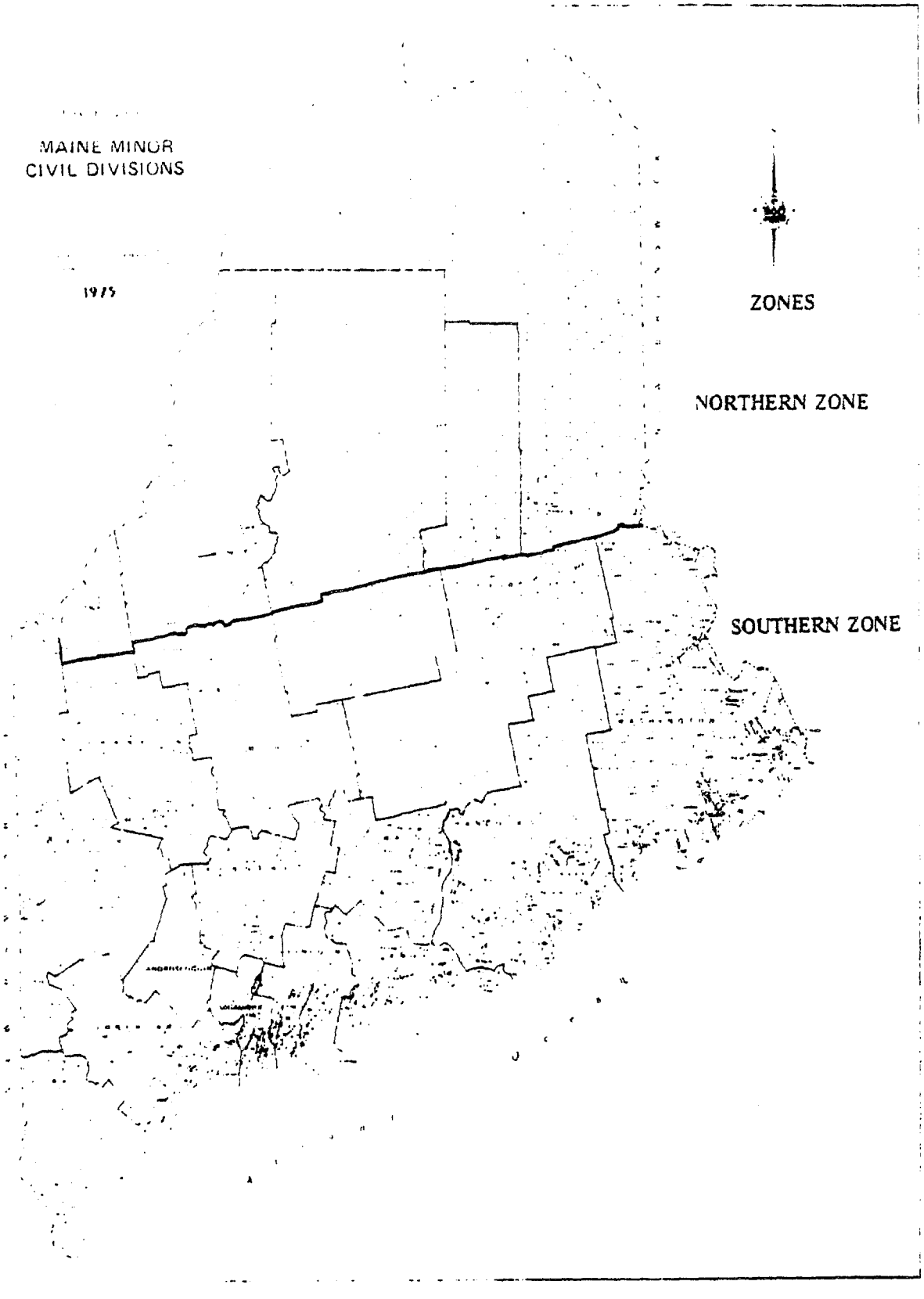
The Board, upon approving a variance, shall issue a Conditional Use Permit for the proposed activity. Such a permit may include such conditions of location, design, and operation as the Board may reasonably require, and may be granted for whatever time period the Board deems appropriate.

### C. Revocation of Permit

If the construction, operation, and maintenance of the solid waste facility are not according to the terms of the Conditional Use Permit, the permittee shall be given 30 days from the date of mailing of the violation notice by the Commissioner to comply with the conditions of the Conditional Use Permit. The violation notice shall be sent certified mail, return receipt requested. If the operator fails to comply with the conditions of the Conditional Use Permit within the 30 day period, the Board of Environmental Protection may revoke the Conditional Use Permit. In the event of an emergency, as determined by the Commissioner, he may revoke the Conditional Use Permit without giving the permitted 30 days to correct the deficiencies.

## OPERATING CRITERIA COMPARISON
## APPENDIX A

| | STANDARD<br>Over 5,000 People | CONDITIONAL<br>Less Than 5,000 Open Weekly | CONDITIONAL<br>10 Ton/Week or Less 2 Day/Week Operation |
|---|---|---|---|
| 1. All Normal Domestic and Commercial Wastes Accepted | YES | YES | YES |
| 2. Junked Vehicle & White Goods Separate Area | YES | YES | YES |
| 3. Salvaging by Permits | YES | YES | YES |
| 4. Attendant – During All Operating Hours | YES | YES | YES |
| 5. Special Hazardous Waste Provision | YES | CONDITIONAL | CONDITIONAL |
| 6. Communication With Fire Dept., Medical and Law | YES | YES | NO |
| 7. Fire Control Facilities Shall Be Provided | YES | YES | YES |
| 8. Fences & Gates | YES | YES | YES |
| 9. Final Grade Complaince | YES | NO | NO |
| 10. Hot Load Area | YES | YES | NO |
| 11. Disposal Area – Well Drained | YES | YES | YES |
| 12. Litter Fencing as Needed | YES | YES | YES |
| 13. All-Weather Access Road | YES | YES | NO |
| 14. Face Width Restricted | YES | YES | YES |
| 15. Operating Records | YES | YES | NO |
| 16. Equipment Required | YES | YES | YES |
| 17. Maintenance Backup Equipment | 48 Hours | 1 Week | 1 Week |
| 18. Daily Cover | | | |
| All Year (every day) | YES | NO | NO |
| April 1-Dec. 15 | | YES | YES (every 2 weeks) |
| Dec. 16-March 31 | | NO | NO |
| 19. Intermediate Cover (Every 14 Days) | YES | YES | Once in spring, once in fall |
| 20. Final Cover | YES | YES–within 30 days of final Refuse placement | YES–as required |
| 21. Operation Manual | YES | YES | YES |
| 22. Occurrence Reports | YES | YES | YES |


MAINE MINOR
CIVIL DIVISIONS
1975
ZONES
NORTHERN ZONE
SOUTHERN ZONE

BASIS STATEMENT: These Rules are intended to protect the public health, safety or welfare, enhance and maintain the environment, conserve natural resources and prevent water and air pollution by encouraging solid waste facilities that reduce the volume of waste generated, improve efforts to reuse and recover valuable resources.

AUTHORITY: 38 M.R.S.A. Section 1304

EFFECTIVE DATE: August 3, 1976
Amended April 3, 1976

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 420 REGULATIONS FOR SEPTIC TANK SLUDGE DISPOSAL ON LAND

SUMMARY: These Rules establish the "Maine Guidelines for Septic Tank Sludge Disposal on Land" booklet as the basis for reviewing applications seeking approval of sites for for disposal of septic tank and cesspool materials. In addition, provisions are made for applications, inspection of sites, discontinuing sites and operation and maintenance of sites.

1. "Maine Guidelines for Septic Tank Sludge Disposal on Land"

The provisions of "Maine Guidelines for Septic Tank Sludge Disposal on the Land" published by the Life Science and Agriculture Experiment Station and the Cooperative Extention Service at the University of Maine at Orono and the Maine Soil and Water Conservation Commission (Miscellaneous Report 155) will be used as criteria for review of applications seeking approval of sites to be used for the disposal of septic tank and cesspool materials.

2. Size - Volume Considerations

The area needed for disposal shall be determined using the procedure outlined under Suggestions for Site Selection Determination in the "Maine Guidelines for Septic Tank Sludge Disposal on the Land."

3. Application for Site Approval

Application for site approval shall be made using the appropriate Department of Environmental Protection form entitled Application for Department of Environmental Protection Approval of Septic Tank Waste Disposal Sites. Adequate soil and groundwater information shall be supplied to the Department by submission with the application of a boring and test pit log of surficial units to bedrock or groundwater, whichever comes first. Boring and test pit logs shall indicate adequately surficial units including clay, silt, sand and gravel.

4. Inspection and Approval

Following receipt of the completed application for site approval, the Department of Environmental Protection will inspect the site and determine whether it should recommend approval or disapproval. The Department may recommend disapproval of sites due to geological sensitivity such as proximity to major aquifers, public water supplies and bedrock faults.

5. Reinspection

All sites are subject to reinspection by the Department at any time and access for that purpose shall be provided.

6. Discontinuing Site

If the site for septic tank sludge disposal is permanently discontinued it must be plowed under and revegetated within six (6) months. Any deficiencies found which may have detrimental health or environmental effects shall be corrected. The site shall be subject to inspection by the Department 30 days after closing and again one (1) year after closing.

7. Disposal Rates

The maximum acceptable disposal rates for septic tank sludge on the land shall be those rates listed in the "Maine Guidelines for Septic Tank Sludge Disposal on the Land."

8. Health and Safety Precautions

Any and all health and safety precautions outlined in the "Maine Guidelines for Septic Tank Sludge Disposal on the Land" shall be considered regulations of this Department. In those special cases where compliance with these regulations proves not to be sufficient, additional requirements may be imposed to provide protection to health, safety and the environment.

9. Closing of Wooded Sites

A discontinued wooded site shall be properly posted and the public excluded for a period of two years. Wooded sites need not be plowed or revegetated.

10 Siting Variance Procedures

Upon proper application from a person responsible for the disposal of septic tank or holding tank sludge, the Board may, from a review of the topography, surface water, groundwater conditions, soils, and geology, grant a variance from the site approval regulations promulgated herein if it finds that:

A. Use of the proposed site will not endanger human health and safety; and
B. Use of the proposed site reasonably ensures preservation of environmental quality.

11. Unlicensed Disposal

It shall be illegal to dispose of septic tank or cesspool waste not in accordance with these regulations.

12. Effective Date

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: These rules are inteded to protect the public health, safety and welfare as well as the surface and ground water supplies of the State of Maine.

AUTHORITY: 38 MRSA, Sections 343, 361, 1320, 1321, and 1322.

EFFECTIVE/DATE: August 3, 1976
Amended Date: February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 430 REGULATIONS FOR MUNICIPAL TREATMENT PLANT SLUDGE DISPOSAL ON LAND

SUMMARY: These Rules provide that the booklet titled "Maine Guidelines for Municipal Sewage Treatment Plant Sludge Disposal on the Land" will be used as the criteria for reviewing applications seeking approval of municipal sewage treatment plant sludge disposal sites. In addition provisions are made for applications, reporting, inspections, closing and site operations and maintenance.

1. Legal Authority

Pursuant to the authority contained in Section 1304 of Title 38 of the Maine Revised Statutes, the Board of Environmental Protection, after due notice and public hearing thereon, hereby adopts the following as regulations governing municipal treatment plant sludge disposal on land. These regulations are designed and shall be interpreted to encourage logical utilization of recoverable resources, to minimize pollution of the state's air, land and water resources, to prevent the spread of disease or other health hazards, to prevent contamination of drinking water supplies and protect public health and safety.

2. Use of "Maine Guidelines for Municipal Sewage Treatment Plant Sludge Disposal on the Land"

The provisions of Maine Guidelines for Municipal Sewage Treatment Plant Sludge Disposal on Land, published by the Life Science and Agriculture Experiment Station and the Cooperative Extension Service at the University of Maine at Orono and the Maine Soil and Water Conservation Commission (Miscellaneous Report, April 1975) will be used as criteria for review of applications seeking approval of municipal sewage treatment plant sludge disposal sites.

3. Size-Volume Considerations

The area needed for disposal shall be determined using the procedure outlined in the Maine Guidelines for Municipal Treatment Plant Sludge Disposal on the Land for the appropriate type of sludge.

4. Applications

Application for site approval shall be made using the appropriate Department of Environmental Protection form entitled Application for Department of Environmental Protection approval of Municipal Treatment Plant Sludge Disposal Sites. Adequate soil and groundwater information shall be supplied to the Department by submission with the application of boring and test pit log using the unified soil classification of surficial units to bedrock, or groundwater, whichever comes first. Boring and test pit logs shall indicate adequately surficial units including clay, silt, sand and gravel.

5. Inspection and Approval

Following receipt of the completed application for site approval, the staff of the Department of Environmental Protection will inspect the site and will forward recommendations to the Board of Environmental Protection which will decide whether it shall be approved or disapproved. The Department may disapprove sites for such reasons as excessively high groundwater,

shallow to bedrock soils, excessive permeability, excessive slope, or insufficient distances from aquifers, potable water supplies, or classified bodies of water.

6. Reinspection

All sites are subject to reinspection by the Department at any time.

7. Closing Sites

If the site for municipal treatment plant sludge disposal is permanently discontinued, it must be closed according to the following plan, based upon the method of disposal used:

A. Sites where field spreading has taken place must be plowed and revegetated.

B. Sites where composting has been the method of disposal used must be cleaned of all debris left from the composting process, and must be plowed and revegetated if possible.

C. Sites where trenching has taken place must be revegetated.

D. Sites on which lagoon have been used must be closed according to the Regulations for the Discontinuance of Wastewater Treatment Lagoons as required by the Department.

Any deficiencies found which may have detrimental health or environmental effects shall be corrected. The site shall be subject to inspection by the Department at any time for two years after the date on which it was closed. Any site closed must be reported to the Department in writing within ten days of the closing date.

8. Disposal Rates

The maximum acceptable disposal rate for municipal sewage treatment plant sludge disposal on the land shall be dependent on the heavy metal content and/or the Nitrogen content of the sludge being disposed of. (Reference pages 19-21 of Maine Guidelines for Municipal Sewage Treatment Plant Sludge Disposal on the Land. If the heavy metal content of the sludge is not the significant parameter determining disposal rate, the disposal rate shall be determined from the pro-rated Nitrogen loadings for the specific soils type found on the disposal site and also from the specific analysis of the sludge being disposed.

9. pH Control

Soils composing a disposal site for municipal sewage treatment, plant sludge must have a pH of 6.5 by the end of the first year of the disposal sites use, or such time as deemed practical by the Department.

10. Chemical Composition Reporting

The treatment plant using a sewage treatment plant sludge disposal site must furnish a chemical analysis as to the chemical composition of all sludges being disposed of on the applicant's site quarterly. This report will contain the data requested by the Department for each site stating specifically the heavy metals, Nitrogen, and percent solids concentrations and such other parameters as requested by the Department.

11. Health and Safety Precautions

Any and all health and safety precautions outlined in the Maine Guidelines for Municipal Sewage Treatment Plant Sludge Disposal on the Land are incorporated herein by reference and shall be considered regulations of this Department. In those special cases where in the judgement of the Board of Environmental Protection, compliance with these guidelines will not be sufficient, additional requirements may be imposed.

12. Violations

Any person violating any provision of Chapter 13 of Title 38 of the Maine Revised Statutes or of these rules or regulations shall be punished by a fine of not more than $500 for each day a violation exists. The Superior Court shall have jurisdiction to enjoin any violation of this chapter or the rules and regulations promulgated thereunder.

Done and Dated this 25th day of February 1976.

BASIS STATEMENT: These Rules are intended to provide for the logical utilization of recoverable resources, to minimize pollution of surface and groundwaters and to protect the public health, safety and welfare.

AUTHORITY: 38 M.R.S.A. Section 1304

EFFECTIVE DATE: April 21, 1976

# ALTERATION OF RIVERS, STREAMS AND BROOKS

MAINE REVISED STATUTES ANNOTATED
Title 12 §§ 7776-7780

**§ 7776. Prohibited acts**

A person, municipality, state agency or other legal entity is guilty, except as provided in section 7780, of unlawful alteration of a river, stream or brook if he or it dredges or causes to be dredged, fills or causes to be filled, or erects or causes to be erected a causeway, bridge, marina, wharf, dock or other permanent structure, above head of tide, in, on or over any river, stream or brook, or on the land adjacent to any river, stream or brook in such a manner that any dredged spoil, fill or structure may fall or be washed into such waters, without first obtaining a permit therefor from the commissioner.

**§ 7777. Permits**

1. **Eligibility.** In order to obtain a permit, an applicant shall demonstrate to the satisfaction of the commissioner that the proposed activity will not:
   A. Unreasonably interfere with existing recreational and navigational uses;
   B. Cause unreasonable soil erosion;
   C. Unreasonably interfere with the natural flow of any waters;
   D. Unreasonably harm any wildlife habitat; and
   E. Lower the quality of any waters.

2. **Issuance.** The commissioner shall grant the permit upon such terms as he deems necessary to insure that the proposed activity will comply with the standards set out in subsection 1.

3. **Fees.** The commissioner may charge such fees as he deems necessary to properly administer this subchapter.

4. **Conditions of application.** If the river, stream or brook is utilized by a water company, a municipality or a water district as a source of supply, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the water company or water district by certified mail.

**§ 7778. Appeal**

1. **Commissioner.** If an application for a permit is denied or is granted upon terms objectionable to the applicant, the applicant may, within 30 days of receipt of notice of the decision, file notice of appeal with the commissioner. The commissioner may then, within 30 days of receipt of the notice of appeal, provide the applicant with the opportunity for a hearing which shall be before him or his designee, and of which a transcript shall be made.

2. **Superior Court.** Any person aggrieved by a final order or decision of the commissioner may appeal therefrom to the Superior Court.

**§ 7779. Injunction and restoration**

In the event of the violation of this subchapter, the Attorney General may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

**§ 7780. Exceptions**

1. **Public works and private crossing and dam projects.** Notwithstanding section 7776, that section shall not apply to river, stream or brook crossings in connection with public works projects which alter not more than a total of 300 feet in any mile of shore nor to private crossing or dam projects which alter not more than a total of 100 feet in any mile of shore. Alterations to both shores of the river, stream or brook shall be combined in arriving at a total shore footage.

2. **Railroad repair and maintenance.** Notwithstanding section 7776, that section shall not apply to emergency repairs, maintenance of railroad structures, track or roadbed within the located right-of-way of any railroad.

## Chapter 15

## REGULATIONS FOR THE PROCESSING OF APPLICATIONS FOR STREAM ALTERATIONS

15.01 Definitions. In processing applications under the Stream Alteration Act, the following definitions shall apply:

A. "Crossing." Crossing shall mean any project extending from one bank to the opposite bank of a river, stream or brook, or to an island in a river, stream or brook whether under, through or over that watercourse. Such projects include, but may not be limited to roads, fords, bridges, water lines, sewer lines, and cables. Maintenance work on a crossing shall be considered part of the original project.

Title 12, Section 2212. Exemptions

This subchapter shall not apply to river, stream or brook crossings in connection with public works projects which shall alter not more than a total of 300 feet in any mile of shore nor to private crossing or dam projects which shall alter not more than a total of 100 feet in any mile of shore. Alterations to both shores of the river, stream or brook shall be combined in arriving at a total shore footage.

B. "Dam." Dam shall mean any earthen, rock, concrete, wooden, metal or similar structure which impounds water. Dredging or filling of the river, stream or brook in conjunction with dam construction shall be considered as part of the dam project, i.e., dredging to deepen the impoundment, coffer damming, alterations below the dam to facilitate or

stabilize against or channelize discharge from the dam. Maintenance work on a dam or dam project shall be considered part of the original project.

(See Exemptions under "Crossing")

C. "Head-of-tide." Head-of-tide shall mean furthest upstream point of tidal action or influence.

D. "Permanent Structure." Permanent structure shall mean any structure, including but not limited to a causeway, pier, dock, concrete slab, pile, marina, retaining wall, and building, which is fixed in or over the water for a period exceeding seven (7) months each year.

E. "Public Works Project." Public works project shall mean a federal, state, or local government project for public use or service including but not limited to highways, dams, waterlines, sewerage, and recreational facilities.

F. "River, Stream or Brook." River, stream or brook shall mean a channel between defined banks created by the action of surface water and characterized by the lack of terrestrial vegetation and by the presence of a bed, devoid of topsoil, containing water borne deposits on exposed soil, parent material or bedrock. Non-permanent or intermittent watercourses are included in this definition. Completely man-made channels are not included in this definition except where they involve "dredged spoil, fill or structure (which) may fall or be washed into" natural channels.

15.02 Scope of Rules.

These regulations shall be applicable to the processing of all applications made to the Department of Inland Fisheries and Wildlife for new, renewed, amended or transferred permits, approvals or other determinations under Title 12 M.R.S.A. §§2206 to 2212. These rules shall be construed to secure the just, speedy and inexpensive determination of such matters.

15.03 Activities Covered by the Act and These Regulations.

The purpose and effect of the Act relating to the dredging, filling or otherwise altering of rivers, streams and brooks is reasonably evident from the language of §§2206 and 2207 of the statute. Under the Act, any dredging, filling or activities causing filling, or the erection of any permanent structure in, on, over or abutting any river, stream or brook cannot be conducted without first obtaining a permit from the Commissioner, Department of Inland Fisheries and Wildlife. Any of these activities that directly or indirectly influence the uses or qualities of any river, stream or brook are subject to the requirements of the statute. The objective of the regulation of such activities is to avoid unreasonable --

A. Interference with recreational or navigational uses of such waters;

B. Soil erosion;

C. Interference with the natural flow of such waters;

D. Harm to any fish or wildlife habitat; and

E. The lowering of the quality of any such waters.

15.04 Advisory Rulings.

All requests for advisory rulings on applicability of statutes or other matters shall be made in writing and addressed to the Commissioner, Department of Inland Fisheries and Wildlife. Such requests shall state the facts upon which the advisory ruling is to be made, and shall be answered in writing.

15.05 Delegation.

Nothing in these regulations shall prohibit the Commissioner from delegating authority, where appropriate, for the administration of the Act to members of the staff of the Department of Inland Fisheries and Wildlife.

15.06 Application Requirements.

A. Application forms shall be promulgated by the Department and shall require such information as the Commissioner deems necessary or desirable in order to obtain information relevant to the permit. Applications shall be submitted to the Department in writing and shall be accompanied by such fees as are required by regulations. No action shall be taken on any application if the Commissioner determines that: (1) the application is incomplete, or (2) the application is not accompanied by the proper fee; and the Commissioner shall notify the applicant of any such deficiency within 10 days of receipt of such application.

B. The Department will not consider an application where the applicant has not demonstrated (1) that he has sufficient title, right and interest in all of the property which is proposed for alteration; and

(2) that the applicant has the technical and financial capacity to complete satisfactorily the proposed alteration, in accordance with any conditions specified in a permit granted by the Commissioner therefor.

15.07 Filing and Public Notice of Application; Comment Period.

The Commissioner may require as a part of any application that the applicant provide any such notice as may be required by this section. Such requirements shall be made a part of the appropriate application forms.

A. Commissioner's Discretion to Provide Additional Notice.

Upon receipt of a properly completed application, the Commissioner may cause public notice of the receipt of such application to be published in a paper of general circulation in the vicinity of the proposed activity, notifying the general public of the receipt of the application and soliciting public comments thereon. The Commissioner may also take such other steps as he deems desirable to advise municipal officers, state, local or regional officials, neighboring property owners, or other interested persons or organizations that the application has been filed and the nature thereof.

B. Mailing List for Notice of Applications.

The Commissioner shall mail notice of each such application to any organization of state-wide membership that has requested that it be notified on a continuing basis. Requests for continuing notification under this subsection must be made by each such organization on an annual basis and approved by the Commissioner.

C. Multiple-Application Notices.

Where the Commissioner deems it appropriate, he may provide notice in accordance with this subsection in a document providing notice of more than one application.

D. Filing Requirements.

The applicant shall file the original of his application and all documents in support thereof with the Commissioner, Department of Inland Fisheries and Wildlife, Augusta, Maine, and if the property is located within an organized municipality, with the planning board or agency of such municipality, or, if no such planning body exists, with its municipal officers.

1. Applications for stream alteration permits in areas under the jurisdiction of the Land Use Regulation Commission shall be filed with that Commission rather than with Inland Fisheries and Wildlife.

2. The Maine Department of Transportation and cooperators of Soil and Water Conservation Districts may file an abbreviated application.

E. Time for Comments on Applications.

The Commissioner shall provide a period of not less than fifteen (15) days following the latter of the date of applicant's public notice or the Commissioner's additional notice of such application during which time interested persons may submit their written views on the application. All such comments submitted during the comment period shall be considered by the Commissioner in making his final determination on the application.

F. Contents of Public Notice of Applications.

The public notice to be made by the applicant under this subsection shall include as a minimum the following information:

1. The name and address of each applicant.

2. A brief description of each applicant's proposed activities or operations that require approval of the Commissioner.

3. The name of any waterway to which the proposed activity relates, the municipality and county in which such activity is located, and the location of such activity within the minicipality.

4. The date on which the application will be filed with the Department of Inland Fisheries and Wildlife and with the appropriate municipality, in the event that the proposed activity is to take place in organized territory, together with a statement of where the application may be reviewed, and further information obtained.

5. A brief description of the procedures for the making of final determinations by the Commissioner, including the comment period required by subsection (e) of this subsection and the other means by which interested persons may influence or comment upon such determinations.

6. A statement that interested parties may request a public hearing with respect to the application.

15.08 Public Access to Information.

A. The Commissioner shall make available to the public for inspection and copying the following:

1. All applications or other forms submitted in support of any permit application,

2. All correspondence, in or out, and any attachments thereto,

3. Written comments received from the public, other governmental agencies or other sources regarding any application for a permit,

4. The transcripts of all hearings, and

5. All permits or other determinations.

B. The Commissioner shall provide facilities for the inspection of information and shall insure that Department employees honor requests for such inspection promptly without undue requirements or restrictions. Persons wishing to copy papers and documents shall make arrangements therefor with the Commissioner.

15.09 Decisions.

A. Except where otherwise required by law, the Commissioner, within a reasonable period of time after receipt of the application, shall either:

1. Approve the application, without conditions other than conditions required by statute, and set forth, in writing, his findings that the applicant has met each of the criteria of the statute.

2. Approve the application, subject to conditions determined by the Commissioner to be necessary to carry out the objectives of the statute as a pre-condition for approval, and also set forth, in writing, his findings containing an explanation sufficient to inform interested persons of the basis for the approval;

3. Deny the application and set forth, in writing, his findings containing an explanation sufficient to inform interested persons of the basis for his disapproval, or

4. Schedule a hearing in accordance with the regulations for hearings on applications.

15.10 Service.

All applications shall contain a designation of a person on whom all orders and notices may be served. All orders issued by the Commissioner and notices of appeal pursuant to these regulations shall be made by certified or registered mail, return receipt requested.

15.11 Inspection and Compliance.

In order to insure the proper processing of the application and in order to insure compliance with any permit granted, the applicant shall afford representatives of the Department of Inland Fisheries and Wildlife, the Department of the Attorney General, and other investigating agencies,

including, but not limited to, the Soil and Water Conservation Commission, the Department of Environmental Protection, the Land Use Regulation Commission, and the State Planning Office access to the premises of the applicant at any reasonable time for the purpose of inspection of the proposed site and/or compliance by a permittee with conditions of any permit issued pursuant to these regulations.

15.12 Assignment or Transfer of Permits.

The transfer or assignment of ownership of any permit is prohibited without the prior written consent of the Commissioner. Applications for such transfers or assignments and the processing thereof shall be governed by these regulations.

Any proposed transferee or assignee shall demonstrate on a form to be supplied by the Commissioner for that purpose that he has the technical and financial capacity to (1) comply with all conditions of the applicable permit, and (2) satisfy all applicable statutory criteria.

For the purposes of this subsection, a "transfer" shall be defined as the sale or lease of the property which is the subject of the permit or the sale of 50 percent or more of the stock of or interest in a corporation or partnership which owns the property that is the subject of the permit, during the time the conditions of the permit are in operation and the owner of the property has liability for any violations of the permit.

15.13 Burden of Proof.

An applicant for a new, renewed or transferred permit shall have the burden of proof and the burden of going forward, unless otherwise provided by law or regulations. The "burden of proof" shall be defined as the burden of presenting sufficient evidence for the Commissioner to

make the affirmative findings required by law regarding matters about which no questions are raised and the burden of presenting a preponderance of the evidence regarding a matter about which a question is raised.

15.14 False Statements.

Any permit granted in whole or part upon any information which is false or misleading shall, upon notice, be subject to revocation.

15.15 Administrative Appeals.

A. Within 30 days of the receipt of a final decision denying an application or granting an application with conditions, which decision was made without a hearing, or such other period of time as provided by law, the applicant may file a notice of appeal with the Commissioner. Such notice shall be delivered to the Commissioner, Department of Inland Fisheries and Wildlife, Augusta, Maine, by personal service or by registered or certified mail. The notice of appeal shall set forth, in detail, the finding, conclusions or conditions to which such applicant objects, the basis of such objections and the nature of the relief requested. The Commissioner shall, within 30 days of receipt of such notice of appeal, provide the applicant with the opportunity to appear before the Commissioner to answer questions as to his notice of appeal, or such other matters as he may permit. The Commissioner shall either:

1. dismiss the appeal;

2. grant the appeal and issue such appropriate orders as are necessary; or

3. order a public hearing on such appeal, and the Commissioner shall notify the applicant of his decision by registered or certified mail not less than 20 days after the close of the hearing.

B. Appeals of final decisions of the Commissioner shall be governed by Section 11002 of the Administrative Procedure Act, 5 M.R.S.A. § 8001 et seq.

Basis Statement: The purpose of these regulations is to provide a standardized procedure for the processing of applications under the Stream Alteration Law.

Authority: 12 M.R.S.A. §1960

Effective Date: June 29, 1979

Chapter 17

# REGULATIONS FOR THE CONDUCT OF HEARINGS ON APPLICATIONS FOR STREAM ALTERATIONS

17.01 Scope of Rules.

These regulations shall be applicable to all hearings before the Commissioner, Department of Inland Fisheries and Wildlife on applications for new, renewed, amended or transferred permits, approvals or other determinations on specific matters pursuant to Title 12, Maine Revised Statutes, Sections 2206 - 2212. These rules shall be construed to secure the just, speedy and inexpensive determination of such matters.

17.02 Consolidation.

On motion and for good cause shown, or on his own initiative, the Commissioner may consolidate for hearing two or more proceedings if he finds that such action will be conducive to just and proper dispatch of his business and that opportunities for public participation will not be compromised.

17.03 Hearings When Called.

The Commissioner shall provide an opportunity for the applicant, or any interested agency, person or group of persons to request a public hearing with respect to any application. Any such request for public hearing shall be filed within the 15 day period prescribed in section 15.07 (E) of the Regulations for Processing Applications and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The Commissioner may hold a hearing if he determines that there is a significant public interest in holding such a hearing, or if the applicant requests a hearing.

17.04 Notice.

Notice of hearings shall be given by:

A. Mail to the party making the application and any intervenors who have qualified under Section 17.11(A) of this regulation;

B. Publication at least twice in a newspaper of general circulation in the area to be affected by the proposed activity;

C. Publication in any trade, industry, professional or interest group publication which Inland Fisheries and Wildlife deems effective in reaching those who would be entitled to intervene under Title 5 §9054 subsection 1;

D. Mail to organizations of state-wide membership approved in accordance with Section 15.07(B) of the Regulations for Processing Applications;

E. Mail to any person who has requested in writing to be notified of a hearing regarding a specific application; and

F. Each hearing notice shall include:

1. A statement of the legal authority under which the hearing is being conducted.

2. A reference to the particular substantive statutory and rule provisions involved.

3. A short and plain statement of the nature and purpose of the proceeding and matters asserted.

4. A statement of the time and place of hearing.

5. A statement of the manner and time within which evidence and argument may be submitted to file for consideration.

6. When a hearing has been set, a statement of the manner and time within which application for intervention may be filed.

17.05 Location.

Hearings held pursuant to these Rules shall be held either in Augusta or in the general location of the proposed activity for which a permit is sought, at the discretion of the Commissioner.

17.06 Hearing Procedure.

A. Presiding Officer

1. The Presiding Officer at any hearing shall be the Commissioner, if present and willing to preside, or his designee.

2. The Presiding Officer shall have the authority to:

a. require and administer oaths or affirmations;

b. rule upon issues of evidence;

c. regulate the course of the hearing;

d. rule upon issues of procedure;

e. grant or deny petitions for intervention which have not previously been ruled upon by the Commissioner;

f. certify questions to the Commissioner for his determination;

g. take such other actions as may be ordered by the Commissioner or that are necessary for the efficient and orderly conduct of the hearing, consistent with these regulations and applicable statutes.

3. Whenever any action or order is required of the Presiding Officer and the Presiding Officer is unavailable, such action or order may be issued by the Commissioner.

4. In special cases, where good cause appears, the Presiding Officer may permit deviation from these procedural rules insofar as he may find compliance therewith to be impractical or unnecessary.

B. Conferences

1. The Commissioner or the Presiding Officer may, upon notice to the applicant, any parties intervening pursuant to Section 17.11(A) of these Regulations and any other persons whom the Commissioner or the Presiding Officer deems appropriate, hold a pre-hearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents, arranging for the exchange of proposed exhibits or prepared expert testimony, limitation of number of witnesses, procedure at the hearing, and such other matters which may expedite the orderly conduct and disposition of the proceedings.

2. In any proceeding, the Presiding Officer may, in his discretion, call the applicant, any parties intervening pursuant to the provisions of Section 17.11(A) of these Regulations, and any other persons whom the Presiding Officer deems appropriate for a conference to effectuate the purposes of this regulation.

3. The action taken at any such conference and the agreements made thereat by the parties concerned shall be stated on the record by the Presiding Officer, and any person may ask questions about or raise objections to such actions or agreements at the time they are stated.

C. General Conduct

1. Opening Statement

The Presiding Officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. Transcription of Testimony

All testimony at hearings before the Commissioner shall be recorded and, as necessary, transcribed.

3. Witnesses

Witnesses shall be sworn. Witnesses will be required to state for the record their name, residence, business or professional affiliation, whether or not they represent another individual, firm, association, organization, partnership, trust company, corporation, state agency or other legal entity for the purpose of the hearing.

4. Testimony in Written Form

At any time, prior to and during the course of the hearing, the Commissioner or Presiding Officer may require that all or part of the testimony to be offered at such a hearing be submitted in written form at such time as he may specify. Such written testimony shall be submitted in such form and at such time as the Presiding Officer may specify. All persons offering testimony in written form shall be subject to cross-examination provided in Section 17.12(B) for public inspection and the party submitting the written testimony may be required to serve a copy thereof on the applicant and all intervening parties by the time specified in order that all person participating in such hearings may have a reasonable opportunity to examine such testimony and prepare such questions or cross-examination as they deem necessary. This rule shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who requests and is granted time to testify at a hearing.

17.07 Continuance

All hearings conducted pursuant to these regulations may be continued for reasonable cause and reconvened from time to time and from place to place by the Commissioner or the Presiding Officer as circumstances require. All orders for continuance shall specify the time and place at which such

hearing shall be reconvened. The Commissioner or the Presiding Officer shall notify interested persons and the public in such a manner as is appropriate to insure that reasonable notice will be given of the time and place of such reconvened hearing.

17.08 Regulation of Certain Devices.

The placement and use of television cameras, still cameras, motion picture cameras or microphones at hearings, for the purpose of recording the proceedings thereof, may be regulated by the Commissioner or the Presiding Officer.

17.09 General Evidence.

A. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Commissioner.

B. Official Notice

The Commissioner may, at any time, take official notice of relevant laws, official regulations and transcripts of other hearings, judicially recognizable facts, generally recognized facts of common knowledge to the general public and physical, technical or scientific facts within his specialized knowledge. The Commissioner shall include in his final decision those facts of which he took official notice, unless those facts are included in the transcript of the record.

C. Proof of Official Record

The Presiding Officer may require that an official record or lack thereof

be evidenced by an official publication or by a copy or a statement attested by a person having, or who would ordinarily have, the legal custody of the record.

D. Documentary and Real Evidence

All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The Commissioner or the Presiding Officer may require, after prior oral or written reasonable notice, that any party offering any documentary or photographic evidence shall provide the Commissioner with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably susceptible of reproduction. The applicant and intervening parties and state, federal or municipal agencies shall provide each other with copies of any exhibit offered in evidence unless otherwise ordered by the Presiding Officer. All documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will also be available for public examination at the Department's offices in Augusta during normal business hours.

E. Record of Application

In all proceedings, the application as filed with the Department, including exhibits and amendments thereto, shall be placed into evidence.

F. Objections

All objections to rulings of the Presiding Officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. If during the course of or after the close of the hearing

and during his deliberations the Commissioner determines that the ruling of the Presiding Officer was in error, he may reopen the hearing or take such other action as he deems appropriate to correct such error.

17.10 Offer of Proof.

An offer of proof may be made in connection with an objection to a ruling of the Presiding Officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

17.11 Public Participation.

A. Intervention

1. Any person who desires to participate as a party, offer testimony and evidence and participate in oral cross-examination shall file a petition for leave to intervene at any time prior to the commencement of the hearing, unless otherwise ordered by the Commissioner. A petition shall be granted if it demonstrates that the petitioner has a direct and substantial interest which may be affected by the proceedings, that the petitioner has reasonably specific contentions regarding the subject matter of the hearing and the appropriate statutory criteria, and that he is prepared and capable of participation in the hearing in order to support such contentions. A petition for leave to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to file on time. A person permitted to intervene shall become a party to the proceeding and shall be permitted to participate fully in all phases of the hearing, subject, however to such reasonable terms as the Commissioner or Presiding Officer may direct. Petitioners may be required to consolidate or join their appearances in

part or in whole if their interests or contentions are substantially similar and such consolidation would expedite or simplify the hearing, without prejudice to the rights of any party or petitioner. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

2. Unless otherwise specified by the Commissioner in granting a petition to intervene, intervenor status shall be deemed to have been granted for the duration of (A) the hearing, (B) the post-hearing consideration of the application, and (C) any appeals arising from the Commissioner's action on the application. In addition, any applicant whose application is approved shall be required to provide notice to any intervenors of the filing of any documents presented to the Department indicating (A) actions to comply with conditions attached to the approval or (B) proposals to vary or amend development activities or timetables as approved by the Commissioner, provided, however, that the applicant's responsibility under this paragraph (2) shall be deemed fulfilled when such notice is mailed to the person designated to represent an intervenor in the petition for intervention.

3. Nothing in this regulation shall be construed to require representation by legal counsel in order for a person to be granted intervenor status.

4. If the petition for intervention is denied, a written statement as to why the intervention was denied shall be placed in the record.

B. Participation by Interested Persons

Any person who is not an intervening party under subsection (A) may, in the discretion of the Presiding Officer, be permitted to participate in a hearing by making oral or written statements of his position on the issues,

attend and participate in pre-hearing and mid-hearing conferences and submit written or oral questions through the Presiding Officer, within such limits and on such terms and conditions as may be fixed by the Commissioner or Presiding Officer.

C. State, Federal or Municipal Agencies

The Presiding Officer shall afford a representative of an interested federal, state, municipal or other governmental agency which has not petitioned to intervene a reasonable opportunity to participate in such hearing and introduce evidence and question witensses. Such representative shall be permitted such rights as are granted by this paragraph only if he is representing the views and position of the agency on whose behalf he appears, and not his own personal views and opinions.

17.12 Testimony and Questions.

A. Direct Testimony

Direct Testimony shall be offered in the following order:

1. The applicant and such representatives and witnesses as he chooses.

2. Intervenors.

3. State, municipal and other governmental agencies and representatives thereof.

4. Other interested persons.

5. Department staff members and consultants.

B. Cross-Examination and Questions.

At the conclusion of the testimony of each witness, the Presiding Officer; counsel, staff and consultants of the Department; federal, state and other governmental representatives; the applicant and intervenors shall have the right of oral cross-examination. All other persons may have the

opportunity to question such witnesses through the Presiding Officer. Cross-examination shall be conducted in the following order:

1. The Presiding Officer may ask questions at any time and may permit counsel, staff members and consultants of the Department to ask questions at any time.

2. The applicant.

3. Intervenors.

4. Federal, state and other governmental representatives.

5. Other persons if permitted.

The Presiding Officer may require that all examination, either written or oral, be conducted at the conclusion of the testimony of each category of witness rather than at the conclusion of the testimony of each individual witness. In unusually complex situations or where there are large numbers of participants in the hearing or where the circumstances are such that oral examination by the public would unreasonably impede the orderly procedure of such hearing, the Presiding Officer may require that such examination be conducted in the form of written questions submitted to the Presiding Officer and read to the witness or may prohibit parties who are not intervenors from asking any questions.

C. Redirect and Rebuttal Evidence

1. A party who has rested its case cannot thereafter introduce further evidence except in rebuttal unless by leave of the Presiding Officer.

2. All parties shall have the right of redirect and re-cross-examination of any witness. Such re-examination shall be limited to matters brought out in the last examination by any other person except by leave of the Presiding Officer.

3. All parties shall have the right to submit rebuttal evidence. Rebuttal evidence shall be directed only to matters brought out by another party except by leave of the Presiding Officer.

D. Varying Order of Appearance

When circumstances warrant, the Commissioner or the Presiding Officer may vary the order in which witnesses appear and the order in which testimony is given or witnesses cross-examined.

17.13 Conclusion of Hearing.

At the conclusion of the hearing, no other evidence or testimony will be allowed into the record, except as specified by the Presiding Officer.

17.14 Decision.

The decision of the Presiding Officer shall:

A. Be made in writing, or

B. Be stated in the record,

C. Include finding of fact sufficient to apprise the parties and interested members of the public of the basis of the decision.

D. Be delivered in the form of an exact copy to each party to the proceeding or his representative of record.

17.15 Reopening the Record.

At any time prior to a final decision, the Commissioner may reopen the record for further proceedings consistent with these regulations provided, however, that the Commissioner shall give notice of such further proceedings, in writing, to the applicant and intervenors at least 10 days prior to such proceedings, and further provided that the Commissioner shall notify other interested persons and the public in such manner as is appropriate.

17.16 Briefs, Proposed Findings.

All persons participating in any hearing shall have the right to submit to the Commissioner written proposed findings of fact, briefs and recommended conditions to be imposed on the applicant, if any. Such proposed findings, briefs, and recommended conditions shall be submitted in writing not later than seven days after the close of the hearing or within such other time as ordered by the Presiding Officer or the Commissioner. This paragraph shall not apply to the Department staff, consultants, and counsel, all of whom shall have the right to submit such proposals at any time.

17.17 Oral Argument.

Oral argument may be permitted before the Commissioner at the conclusion of the evidence or at a time and place to be fixed by the Commissioner, or the Presiding Officer at his discretion.

17.18 The Record.

The record shall consist of the following.

A. All applications, pleadings, motions, preliminary and interlocutory rulings and orders.

B. Evidence received or considered.

C. A statement of facts officially noticed.

D. Offers of proof, objections and rulings thereon.

E. Proposed findings and exceptions if any.

F. The recommended decision, opinion, or report, if any, by the Presiding Officer.

G. The decision of the Department

H. All staff memoranda submitted to the members of the Department or other presiding officers by Department staff in their connection with their consideration of the case, except memoranda of counsel to the Department.

17.19 Decision on the Record

All material, including records, reports, and documents in the possession of the agency, of which it desires to avail itself as evidence in making a decision, shall be offered and made part of the record, and no other factual information or evidence shall be considered in rending a decision.

17.20 Petition for Correction of Error or Reconsideration of Officially Noticed Facts.

A. Filing of Petition

Within 30 days after receipt of publication of any decision or order, any party aggrieved by a decision or order of the Commissioner may petition the Commissioner to seek the correction of any misstatement of fact or clerical error contained in the final decision or to challenge any material fact of which the Commissioner took official notice. The Commissioner shall determine whether to (1) dismiss the petition as without merit, (2) correct the error, (3) reopen the hearing to correct such error or to hear evidence relating to the noticed material, or (4) take such other steps as he deems appropriate. Failure to invoke the provisions of this section shall have no effect upon an aggrieved party's right of appeal to a court of law.

B. Stay

Neither the filing nor the granting or denial of petitions filed hereunder shall stay the decision or order of the Commissioner unless the Commissioner orders otherwise.

17.21 Copies of Record.

Copies of the transcript of the testimony of any hearing and copies of evidentiary materials may be purchased directly from the independent

official reporter, if any, or if not, through the Department, at actual cost. The Department shall make a copy of the record, including recordings, at the Augusta Office and make it available for inspection during normal business hours. Nothing in this section shall be interpreted to mean that the Department must disclose any portion of the record made confidential by State or Federal law.

17.22 Forms.

All motions, proposed findings, petitions and briefs, and to the extent practicable, written testimony filed with the Commissioner except for documents not susceptible of reproduction in the manner herein provided or for other good cause shown, shall be typewritten or printed on white opaque paper 8 1/2 by 11 inches in size, bound and typed matter shall be double spaced. The first page of each such document shall be headed by the title

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and shall have a caption with (1) the title of the matter in hearing giving the name of the applicant, the activity in issue and the location (e.g., in the matter of Scott Paper Company, Bridge Construction, Moose River, Rockwood, Maine), (2) the Department's application number (e.g., Application #270) and (3) the title of the document (e.g., Petition to Intervene). The final page shall be dated and signed.

17.23 Service and Filing of Documents.

A. Service

A copy of all motions, petitions, briefs and prefiled written testimony, permitted or required to be filed with the Commissioner pursuant to these regulations, except briefs or proposed finding prepared by the Department,

its consultants or counsel, shall be served upon applicants and intervenors in the proceeding or their representatives in a manner pursuant to Rule 4(d) of the Maine Rules of Civil Procedure.

B. Filing

An original and two (2) copies of all such motions, petitions, briefs and prefiled testimony shall be filed with the Commissioner by delivery to the Commissioner, Department of Inland Fisheries and Wildlife, Augusta, Maine 04333.

C. Representatives

The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made.

D. Service of Papers by the Commissioner

The Commissioner and Presiding Officer shall assure that all orders, decisions, notices and other papers issued by the Commissioner are served upon all parties to the proceeding in the manner prescribed by this section.

17.24 Computation of Time.

All computations of time under these rules shall be in the same manner as provided by Maine Rules of Civil Procedure, Rules 6(a), (b) and (e).

Basis Statement: The purpose of these regulations is to provide a standardized procedure for the conduct of hearings under the Stream Alteration Law.

Authority: 12 M.R.S.A. §1960.

Effective Date: June 29, 1979

# OIL DISCHARGE PREVENTION AND POLLUTION CONTROL

MAINE REVISED STATUTES ANNOTATED
Title 38 §§ 344-349, 541-560

## § 344. Processing of applications

**1. Time limit processing application.** Whenever the Board of Environmental Protection receives a properly completed application for any license, permit, approval or certificate under any of the statutes which it administers, it shall make a final decision as expeditiously as possible, but in no case shall such final decision be later than 180 days after acceptance of the application.

**2. Exceptions.** The Board of Environmental Protection may waive the 180-day requirement of subsection 1:

**A.** At the request of the applicant; or

**B.** After consultation with the applicant, if ⅔ of the members of the board eligible to vote do so vote.

**3. Notification to applicant.** The Commissioner of Environmental Protection shall, within 10 working days of receipt of an application, notify applicants of the official date on which the application was accepted or return the application to the applicant specifying in writing the reasons for returning the application.

The commissioner shall give reasonable notice to the applicant of the date the board will act on the application and that a draft order relating to the application is available in the Augusta office of the department. Draft orders shall be available to any persons at the Augusta office of the department prior to the date the board acts on the application.

All correspondence notifying the applicant of Board of Environmental Protection decisions shall be by certified mail, return receipt requested.

**4. Delegation.** The Board of Environmental Protection is authorized to delegate to the Commissioner of Environmental Protection and the department staff, authority to approve, approve with conditions or disapprove applications for approvals by the board made pursuant to any of the laws which the board is required to administer. Delegation of authority under sections 413, 414, 414-A, 484 and 590 shall be limited to the applications meeting the following criteria:

**A.** Applications for development of a subdivision of less than 75 acres, with fewer than 25 lots to contain fewer than 25 housing units;

**B.** Applications for a maximum daily discharge of less than 50,000 gallons per day; and

**C.** Applications for incinerators in Classes I through IV or for a boiler at a facility with a total boiler capacity of less than 100,000,000 B.T.U.'s.

Such delegation shall be in accordance with the standards found in the applicable statute, with all procedural steps applicable to applications not delegated, and with regulations adopted by the board, which regulations shall include assurance that any interested person aggrieved by a decision of the commissioner or the department staff made pursuant to this section shall have a right to appeal such decision to the board.

**5. Reconsideration.** Within 30 days of the applicant's receipt of a board decision, any person aggrieved by the decision

may petition the Board of Environmental Protection, in writing, for correction of any part of the decision which the petitioner believes to be in error and not intended by the board, or for an opportunity to present new or additional evidence to secure reconsideration of any part of the decision or challenge any facts of which official notice was taken. Such petition shall set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered.

The board shall, within 30 days of receipt of such petition and after appropriate notice, grant the petition in full or in part, order a public hearing or dismiss the petition. Any public hearing held under this section shall be held within 45 days of the board's decision to hold such hearing and the commissioner shall provide reasonable notice to interested persons. The time for appeal of a final decision of the board on any application shall be computed from the date of receipt by petitioner of the board's decision pursuant to this subsection.

The running of the time for appeal is terminated by a timely petition for reconsideration filed pursuant to this subsection, and the full time for appeal commences to run and is to be computed from the date upon which notice is received of any administrative action denying the petition or any order or decision of the board as a result of the petition; provided that the filing of a petition for reconsideration shall not be deemed an administrative or judicial prerequisite for the filing of an appeal.

**6. Fees.** The board may establish reasonable fees for the reproduction of materials in its custody, including all or part of any application submitted to the department. All such fees may be retained by the department to reimburse expenses incurred in reproducing such materials.

## § 345. Hearings

**1. Hearings.** Except as provided in section 347, whenever the board or Department of Environmental Protection is required or empowered to conduct a hearing pursuant to any provision of law, such hearing may be held and conducted by any member of the board or any employee or representative of the Department of Environmental Protection so authorized by the board.

**2. Notification.** Prior to any hearing conducted by the board or department, the department shall:

**A.** Publish notice of the hearing twice in a newspaper of general circulation in the area affected. The date of the first publication shall be at least 20 days prior to the date of the hearing and the 2nd publication shall be in the same newspaper no more than 10 days, prior to the date of the hearing. In addition, the notice may be published in any other trade, industry, professional or interest group publication which the board deems necessary to reach persons affected;

**B.** Provide notice of the hearing to any applicant by registered mail at least 10 days before the date of the hearing; and

**C.** Provide notice of the hearing at least 10 days before the date of the hearing by regular mail to persons who have filed with the commissioner within the past year a written request to receive notification of hearings.

**3. Contents of notice.** The public notice and notice of hearing to applicant and others shall contain:

**A.** A reference to the statutory authority for conduct of the hearing;

**B.** A statement of the purpose of the hearing, including, for hearings involving the adoption, repeal or modification of a regulation, a concise description of the regulation proposed;

**C.** A statement of time, date and place of the hearing and the manner in which views may be submitted for consideration by the board; and

**D.** A statement of the place and time where relevant material may be examined, and the name, address and telephone number of the person from whom further information may be obtained.

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

**5. Record.** A full and complete record shall be kept of all hearings.

**6. Written decisions.** Every decision of the board, other than those concerning the adoption, repeal or modification of regulations, shall be in writing and shall include findings of fact and conclusions of law. A copy of the decision shall be delivered personally or by certified mail, return receipt requested, to each party of record to the hearing as recognized by department hearing regulations. Written notice of the party's rights to review or appeal of the decision, within the agency or by the courts, as the case may be, and of the action required and the time within which the action must be taken in order to exercise the right of review or appeal, shall be given to each such party with the decision.

## § 346. Judicial appeals

**1. Appeal to the Superior Court.** Except as provided in section 347, subsection 2, any person aggrieved by any order or decision of the board may appeal there from to the Superior Court. These appeals to the Superior Court shall be taken in accordance with Title 5, chapter 375, subchapter VII.

**2.** Repealed. 1977, c. 694, § 759, eff. July 1, 1978.

**2-A. Appeal to Supreme Judicial Court.** Any party to the appeal in the Superior Court under this section may obtain review by appeal to the Supreme Judicial Court sitting as the law

court. The appeal shall be taken as in other civil cases.

**3. Limitation.** No riparian or littoral owner on any body of water shall have a cause of action either at law or in equity against any licensee licensed under section 414 to discharge into the same body of water nor be deemed an aggrieved person under this section based on the fact that such licensee is not a riparian or littoral owner on such body of water. No such owner shall have a cause of action either at law or in equity against such licensee nor be deemed an aggrieved person under this section based on the fact that such licensed discharge will prevent the owner from having the reasonable use and enjoyment of such body of water, provided that such licensed discharge will not either of itself or in combination with existing discharges to the body of water lower the statutory classification of such body of water, nor cause actual damages to such owner.

## § 347. Violations

**1. General procedures.** Whenever it appears to the Board of Environmental Protection, after investigation, that there is a violation of any provision of the laws or regulations which it administers, or of the terms or conditions of any of its orders, which does not create a substantial or immediate danger to public health or safety, the board may notify the Attorney General or schedule a hearing thereon. If a hearing is scheduled, the commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of such hearing. The notice shall specify the act done or omitted to be done which is claimed to be in violation of law.

At such hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by him to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the board shall, as soon thereafter as practicable, make findings of fact based on the record and, if it finds that a violation exists, it shall issue an order aimed at ending the violation.

**2. Emergency procedures.** Whenever it appears to the board, after investigation, that there is a violation of any provision of the laws or regulations which it administers or of the terms or conditions of any of its orders, which is creating or is likely to create a substantial and immediate danger to public health or safety, it may order the person or persons causing or contributing to such a hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the board's findings and order issued under this emergency procedure shall be made by the sheriff or a deputy sheriff within the county where the person, to whom the order is directed, operates or resides. In the event such persons are so numerous that the specified method of service is a practical impossibility or the board is unable to identify the person or persons causing or contributing to such a hazard, the board shall make its order known through prominent publication in news media serving the affected area.

The person to whom such order is directed shall comply there-

with immediately. Such order may not be appealed to the Superior Court in the manner provided in section 346, but such person may apply to the board for a hearing on such order, which hearing shall be held by the board within 48 hours after receipt of application therefor. Within 7 days after such hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

**3. Modification, revocation or suspension of licenses.** After written notice and opportunity for a hearing, the board may modify in whole or in part any license or issue an order prescribing necessary corrective action, or, with or without a hearing, may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board finds:

**A.** The licensee has violated any condition of the license;

**B.** The licensee has obtained a license by misrepresentation or failure to disclose fully all relevant facts;

**B-1.** The licensed discharge poses a threat to human health or welfare;
**B-2.** The license fails to include any standard or limitation applicable on the date of issuance;

**C.** There has been a change in any condition or circumstances that requires revocation, suspension or a temporary or permanent modification of the terms of the license; or

**D.** The licensee has violated any provision of the laws administered by the board.

For the purpose of this subsection, the term "license" and "licensee" shall include respectively any license, permit, approval or certification issued by the board and the holder thereof.

**4. Oaths.** Any member, authorized employee or representative of the board presiding at any hearing under this section may administer oaths and affirmations to any witness appearing at such hearing.

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

**6. Enforcement orders.** All orders of the board shall be enforced by the Attorney General. If any order of the board is not complied with within the time period specified, the board shall immediately notify the Attorney General of this fact.

## § 348. Judicial enforcement

**1. General.** In the event of a violation of any provision of the laws administered by the Department of Environmental Protection or of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection or decree of the court, as the case may be, the Attorney General may insti-

tute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the Department of Environmental Protection.

**2. Restoration.** The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the Department of Environmental Protection or of any order, rule, regulation, license, permit, approval or decision of the Board of Environmental Protection or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible.

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

## § 349. Penalties

1. Criminal penalties. Notwithstanding Title 17-A, section 4-A and except as provided in subsection 4, or section 1306-A, any person who violates any provision of the laws administered by the department or the terms or conditions of any order, regulation, license, permit, approval or decision of the board shall be subject to a fine, payable to the State, of not more than $25,000 for each day of such violation.

2. Civil penalties. Any person who violates any provision of the laws administered by the department or any order, regulation, license, permit, approval or decision of the board shall be subject to a civil penalty, payable to the State, of not more than $10,000 for each day of such violation or, if the violation relates to hazardous waste, of not more than $25,000 for each day of the violation.

**3. Falsification and tampering.** Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any rule, regulation, license, permit, approval or decision of the board, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any rule, regulation, license, permit, approval or decision of the board shall, upon conviction, be subject to a fine of not more than $10,000, or by imprisonment for not more than 6 months, or both.

**4. Violations.** Any person who violates any of the follow-

ing provisions shall be guilty of a Class E crime for each day of such violation:

**A.** Section 419; (high phosphorous detergent);

**B.** Section 391 or regulations under section 394 (Great Ponds);

**C.** Section 423; (Discharge from watercraft);

**D.** Section 471; (Alteration of wetlands);

**E.** Section 1306; (Solid waste);

F. Repealed. 1980, c.663, § 226

**G.** Title 12, section 4757; (Regulations for state-held wetlands);

**H.** Title 12, chapter 421 and orders thereunder; (Wetlands zoning);

**I.** Title 12, chapter 423–A and regulations thereunder (Minimum lot size); and

**J.** Sections 1320 and 1321; (Septic materials disposal);

## § 541. Findings; purpose

The Legislature finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities.

The Legislature further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses.

The Legislature further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters is a hazardous undertaking; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer and storage of such products pose threats of great danger and damage to the marine, estuarine 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-related activities; and to the beauty of the Maine coast; 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 oil, petroleum products and their by-products and related activities.

The Legislature intends by the enactment of this legislation to exercise the police power of the State through the Board of Environmental Protection by conferring upon said board the ex-

clusive 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 such occurrences may be promptly made whole; and to establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

The Legislature further finds and declares that the preservation of the public uses referred to in this subchapter is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety, and that the state's interest in such preservation outweighs any burdens of absolute liability imposed by the Legislature upon those engaged in transferring oil, petroleum products and their by-products and related activities.

## § 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:

**1. Barrel.** "Barrel" shall mean 42 U. S. gallons at 60 degrees Fahrenheit.

**2.** Repealed. 1973, c. 625, § 277.

**3. Board.** "Board" shall mean the Board of Environmental Protection.

**4. Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

**5. Fund.** "Fund" shall mean the Maine Coastal Protection Fund.

**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.

**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 500 barrels, nor any facility not engaged in the transfer of oil to or from waters of the State. A vessel shall be 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.

**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.

**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.

**10. Transferred.** "Transferred" shall include both onloading and offloading between terminal and vessel and vessel to vessel.

**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.

## § 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 any river, stream, sewer, surface water drain or other waters of the State is prohibited.

Notwithstanding the prohibition of this section, the Board of Environmental Protection may license the discharge of waste, refuse or effluent, including natural drainage contaminated by oil, petroleum products or their by-products, into or upon any coastal waters if, and only if, it finds that such discharge will be receiving the best available treatment and that such discharge will not degrade existing water quality nor perceptibly violate the classification of the receiving waters, nor create any visible sheen upon the receiving waters.

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

## § 544. Powers and duties of the board

The powers and duties conferred by this subchapter shall be exercised by the Board of Environmental Protection and shall be deemed to be an essential governmental function in the exercise of the police power of the State.

**1. Jurisdiction.** The powers and duties of the board under this subchapter shall extend to the areas described in section 543 and to a distance of 12 miles from the coastline of the State.

**2. Licenses.** Licenses required under this subchapter shall be secured from the board subject to such terms and conditions as are set forth in this subchapter.

## § 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.

**1. Expiration of license.** Licenses shall be issued upon application and shall be for a period of not less than 12 months to expire no later than 24 months after the date of issuance. The board 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 regulations. Licenses shall be issued subject to such terms and conditions as the board may determine as necessary to carry out the purposes of this subchapter.

**2. Renewal of licenses.** As a condition precedent to the issuance or renewal of a license the board shall require satisfactory evidence that the applicant has or is in the process of implementing state and federal plans and regulations for control of pollution related to oil, petroleum products and their by-products and the abatement thereof when a discharge occurs.

**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 75 feet or less in overall length.

**4. Certain vessels included.** Licenses issued to any fixed or permanent oil terminal facility shall 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.

## § 546. Regulatory powers of board

**1 to 3.** Repealed. 1977, c. 300, § 36.

**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.

**B.** Procedures and methods of reporting discharges and other occurrences prohibited by this subchapter.

**C.** Procedures, methods, means and equipment to be used by persons subject to regulations by this subchapter.

**D.** Procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants.

**E.** Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds.

**F.** The establishment from 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.

**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.

**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.

## § 547. Emergency proclamation; Governor's powers

Whenever any disaster or catastrophe exists or appears imminent arising from the discharge of oil, petroleum products or their by-products, 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 such proclamation shall be filed with the Secretary of State. The Governor shall have general direction and control of the Board of Environmental Protection and shall be responsible for carrying out the purposes of this subchapter.

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.

In performing his duties under this subchapter, the Governor is further authorized and empowered:

**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;

**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.

**3. Civil defense.** The provisions of Title 37–A, chapter 3,[1] as they shall apply to eminent domain and compensation, mutual aid, immunity, aid in emergency, right of way, enforcement and compensation, shall apply to disasters or catastrophes proclaimed by the Governor under this subchapter.

## § 548. Removal of prohibited discharges

Any person discharging oil, petroleum products or their by-products in the manner prohibited by section 543 shall immediately undertake to remove such discharge to the board's satisfaction. Notwithstanding the above requirement the board may undertake the removal of such discharge and may retain agents and contracts for such purposes who shall operate under the direction of the board.

Any unexplained discharge of oil, petroleum products or their by-products within state jurisdiction or discharge of oil, petroleum products or their by-products occurring in waters be-

yond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the board. Any expenses involved in the removal of discharges, whether by the person causing the same, the person reporting the same or the board by itself or through its agents or contractors shall be paid in the first instance from the Maine Coastal Protection Fund and any reimbursements due that fund shall be collected in accordance with section 551.

## § 549. Personnel and equipment

The board shall establish and maintain at such ports within the State, and other places as it shall determine, such employees and equipment as in its judgment may be necessary to carry out this subchapter. The board, subject to the Personnel Law, may employ such personnel as may be necessary to carry out the purposes of this subchapter, and shall prescribe the duties of such employees. The salaries of such employees and the cost of such equipment shall be paid from the Maine Coastal Protection Fund established by this subchapter. The board and the Maine Mining Bureau 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 board in their line of duty under this subchapter shall have the powers of a constable.

## § 550. Enforcement; penalties

Any person who causes or is responsible for a discharge in violation of section 543 shall not be subject to any fines or civil penalties if such person promptly reports and removes such discharge in accordance with the rules, regulations and orders of the board.

## § 551. Maine Coastal Protection Fund

The Maine Coastal Protection Fund is established to be used by the board as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The fund shall be limited to $4,000,000 until July 1, 1978. Thereafter the fund shall be limited to $6,000,000 and the Board of Environmental Protection shall collect fees in accordance with subsection 4. To this fund shall be credited all license fees, penalties and other fees and charges related to this subchapter, and to this fund shall be charged any and all expenses of the board related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, and 3rd party damages covered by this subchapter.

Moneys in the fund, not needed currently to meet the obligations of the board in the exercise of its responsibilities under this subchapter shall 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 such investment shall be credited to the Maine Coastal Protection Fund.

**1. Research and development.** The Legislature may allocate not more than $100,000 per annum 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 the marine environment. Such allocations shall be made in accordance with section 555.

**2. Third party damages.** Any person, claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil, prohibited by section 543, hereinafter called the claimant, may apply within 6 months after the occurrence of such discharge to the board stating the amount of damage alleged to be suffered as a result of such discharge. The board shall prescribe appropriate forms and details for the applications. The board may, upon petition and for good cause shown, waive the 6 months' limitation for filing damage claims.

**A.** If the claimant, the board and the person causing the discharge can agree to the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board can agree to the damage claim, the board shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Maine Coastal Protection Fund.

**B.** If the claimant, the board and the person causing the discharge cannot agree as to the amount of the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board cannot agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter.

**C.** Third party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

**D.** Damage claims arising under this subchapter shall be recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter are exclusive.

**E.** Awards from the fund on damage claims shall not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with or judgment of the federal courts against the person causing or otherwise responsible for the discharge.

**2-A. Exceptions; 3rd party damage claims.** Subsection 2, 3rd party damages, shall not apply to waters of the State classified under sections 368, 369 and 371, except those waters below head of tide until July 1, 1978.

**3. Board of Arbitration.** The Board of Arbitration shall consist of 3 persons, one to be chosen by the person determined in the first instance by the board to have caused the discharge, one to be chosen by the board to represent the public interest and one person chosen by the first 2 appointed members to serve as a neutral arbitrator. The neutral arbitrator shall serve as chairman. If the 2 arbitrators fail to agree upon, select and name the neutral arbitrator within 10 days after their appoint-

ment then the board shall request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator.

**A.** No member of the board shall serve as an arbitrator.

**B.** A party determined by the board to have caused a discharge shall appoint an arbitrator within such period of time as the board may by regulation prescribe. In the event that the party shall fail to select its arbitrator within 10 days after receipt of notice from the board that such selection is necessary, the board shall request the American Arbitration Association to select an arbitrator to represent the interest of the party in the arbitration proceedings.

In the case where the person causing the discharge is unknown, the board shall request the American Board of Arbitration to appoint an arbitrator to represent the interest of the unknown party.

**C.** One Board of Arbitrators shall be established for and hear and determine all claims arising from or related to a common single discharge.

**D.** Hearings before Boards of Arbitrators shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. The Board of Arbitration shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

**E.** Determinations made by a majority of the Board of Arbitration shall be final, and such determinations may be subject to review by a Justice of the Superior Court but only as to matters relating to abuse of discretion by the Board of Arbitration.

**F.** Representation on the Board of Arbitration shall not be deemed an admission of liability for the discharge.

**4. Funding.**

**A.** License fees shall be determined on the basis of 1.0¢ per barrel of oil transferred by the licensee during the licensing period and shall be paid monthly by the licensee on the basis of records certified to the board, provided that during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement shall be inadequate for such purpose, the license fee shall be determined on the basis of 2.0¢ per barrel. License fees shall be paid to the board and upon receipt by it credited to the Maine Coastal Protection Fund.

**B.** Whenever the balance in the fund has reached the limit provided under this subchapter, license fees shall be proportionately reduced to cover only administrative expenses and sums allocated to research and development, provided that the license fees shall continue without reduction during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement thereunder shall be inadequate for such purpose.

C. All sums received by the board when the balance in the fund has reached $4,000,000 shall, after deduction of administrative expenses and sums allocated to research and development, promptly be remitted to the Treasurer of State to be held distinct from all other moneys of the State for the payment of interest and debt retirement pursuant to the private and special laws of 1969, chapter 239, section 5. When there has been no interest or debt incurred pursuant to the private and special laws of 1969, chapter 239, section 5, or upon payment of all interest and debt so incurred, the Treasurer of State shall credit to the fund all sums received according to this subchapter.

5. **Disbursements from fund.** Moneys in the Maine Coastal Protection Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the board related to the enforcement of this subchapter.

B. All costs involved in the abatement of pollution related to the discharge of oil, petroleum products and their byproducts covered by this subchapter.

C. Sums allocated to research and development in accordance with this section.

D. Payment of 3rd party claims awarded in accordance with this section.

E. Payment of costs of arbitration and arbitrators.

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund.

G. Payments to Treasurer of State pursuant to subsection 4, paragraph B.

6. **Reimbursements to Maine Coastal Protection Fund.** The board shall seek recovery to the use of the fund all sums expended therefrom, including overdrafts, for the following purposes, unless the board finds the amount involved too small or the likelihood of success too uncertain; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal Protection 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 and E in connection with a prohibited discharge;

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursement 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;

C. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection; and

D. The board may file claims with appropriate federal agencies to recover for the use of the fund all disbursement

from the fund in connection with a prohibited discharge.

**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.

**B.** An act of government, either State, Federal or municipal, except insofar as the act was pursuant to section 548;

**C.** An act of God, which shall mean an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such finding by the board immediate credit therefor shall be entered for the party involved. The findings of the board shall be conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred not a right granted.

## § 552. Liabilities of licensees

**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.

**2. State need not plead or prove negligence.** Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, any person, vessel, licensee, agent or servant, including carriers 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 shall be liable to the State of Maine for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D and E, or other damage incurred by the State. In any suit to enforce claims of the State under this section, to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the person causing 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 person causing the discharge or the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter.

## § 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, regulation or order of the board or any official of the department made thereunder, the vessel shall 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.

## § 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.

## § 554. Reports to the Legislature

The board shall include in its recommendations to each Legislature as required by section 361 specific recommendations relating to the operation of this subchapter, specifically including a license fee formula to reflect individual licensee experience, and fee schedule based upon volatility and toxicity of petroleum products and their by-products.

## § 555. Budget approval

The board shall submit to each Legislature its budget recommendations for disbursements from the fund in accordance with section 551. Upon approval thereof the State Controller shall authorize expenditures therefrom as approved by the board.

## § 556. Municipal ordinances; powers limited

Nothing in this subchapter shall 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 shall be valid unless in direct conflict with this subchapter or any rule, regulation or order of the board adopted under authority of this subchapter.

## § 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, regulation or order of the board shall be stayed pending appeal under the provisions of this subchapter.

## § 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 Board of Environmental Protection by conferring upon said board 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 regulations adopted by the board shall be 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 de-

fined in section 582 or explosion from the accumulation of gases aboard such vessels and to prohibit interference with the harvesting of marine resources, aesthetic and recreational uses of such waters.

2. **Definitions.**

**A. Anchorage.** 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 shall not include the mooring of a vessel for bunkering, maintenance, repair or overhaul, or in connection with or as a part of sea trials.

3. **Board to adopt regulations.** The Board of Environmental Protection shall, within 90 days after October 1, 1975, adopt regulations 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 Maine vessels designed or used to carry oil as cargo. All regulations adopted by the Board of Environmental Protection under this section shall not apply to vessels at anchorage prior to July 1, 1975.

4. **Scope of regulations.** In adopting these regulations, in addition to other provisions of this subchapter, the board's consideration shall include, but not be limited to:

**A.** The location, duration and type of anchorage;

**B.** The type and capacity of vessels permitted anchorage;

**C.** The systems and precautions necessary for safety on each vessel;

**D.** The training, number and availability of crew members aboard each vessel;

**E.** A requirement for contingency plans in the event of accident, fire, storm or other unforeseen acts;

**F.** The protection of the natural environment, aesthetic and recreational uses of State waters; and

**G.** The protection of the fisheries or fishing industry of the State.

5. **Exemption.** The board may by regulation exempt certain activities not inconsistent with the purposes of this section.

6. **Prohibition.** No person shall have a vessel at anchorage in Maine waters for more than 7 days without a current license from the board.

7. **Licenses and fees.** The board shall require a license for anchorage of a vessel in Maine waters and charge a fee of ½¢ per deadweight ton for each 30 days of anchorage or part thereof. The board may license properly treated effluents and emissions regulated by this section consistent with the other environmental laws of the State of Maine.

8. **Application for a license.** Any person desiring to have a vessel at anchorage in Maine waters shall apply in writing to the board and, shall cause public notice of the application and a brief summary to be published in a paper of general circulation in the vicinity of the proposed activity and provide such information as the board may require by regulation. The board shall, within 30 days of receipt of such application, 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 board. Such request shall set forth in detail the findings to which he objects, the basis of such objection and the nature of the relief requested.

**9.** Repealed. 1977, c. 300, § 38; 1977, c. 564, § 139–A.

**10. Board shall 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 regulations under this section.

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 600 OIL PREVENTION AND POLLUTION CONTROL REGULATIONS

SUMMARY: These regulations outline the minimum specifications for spill prevention equipment and describe the minimum procedures to be followed during petroleum transfer operations.

Also incorporated into the regulations are several specific requirements for oil terminal operations which are necessary to prevent discharges of oil to the waters of the state which are not directly related to the physical process of petroleum transfer operations.

1. Responsibility of Oil Terminal Facilities
2. Definitions
3. Transfer Operations for Petroleum and Petroleum Products
4. Reports and Notifications Required
5. Licenses and Certificate
6. Ballasting
7. Oil Discharge Containment and Cleanup
8. General Safety Provisions
9. Steaming of Tanks
10. Federal Rules and Regulations
11. Restrictions on the Use of Dispersants
12. Booming of Vessels
13. Vessel Restrictions During Reduced Visibility
14. Hussey Sound Limitations
15. Diking of Tanks
16. Oil Water Separators
17. Vessel to Vessel Transfer Area -- Casco Bay + Penobscot Bay
18. Waiver to Regulations
19. Temporary Waiver to Prevent Hazardous Condition
20. Delegation of Supervisory Authority

APPENDIX I Casco Bay Transfer Area

APPENDIX II Penobscot Bay Transfer Area

APPENDIX III Petroleum Sampling - Storing Procedures

APPENDIX IV Emergency Telephone Numbers

# OIL DISCHARGE PREVENTION AND POLLUTION CONTROL REGULATIONS

## 1. Responsibility of Oil Terminal Facility

These regulations are a statement of minimum requirements of procedures to be followed during transfer of oil or petroleum and petroleum products. Complete elimination of prohibited discharges in particular circumstances may require additional measures.

## 2. Definitions

Words and phrases used in these regulations shall have the same meanings as set forth in 38 MRSA § 542.

A. Commissioner. "Commissioner" shall mean the Commissioner of the Department of Environmental Protection.

B. Board. "Board" shall mean the Board of Environmental Protection.

C. Department Representative. "Department Representative" shall mean a person appointed or employed as the representative or agent of the Department of Environmental Protection.

D. Ballast. "Ballast" shall mean material, usually water, taken on for the balancing or steadying ship.

E. Discharge. "Discharge" shall mean any spilling, leaking, pumping, pouring, emitting, emptying or dumping either directly or indirectly to the waters of the State of Maine.

F. 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.

G. Oil Terminal Facility. "Oil Terminal Facility" shall mean 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 500 barrels, nor any facility not engaged in the transfer of oil to or from waters of the State. A vessel shall be 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.

H. 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.

I. 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.

J. Transfer. "Transfer" shall include both on-loading and off-loading between terminal and vessel and vessel to vessel.

K. 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 including barges and tugs.

3. Transfer Operations for Petroleum and Petroleum Products

A. Pre-Transfer Conference

No person shall commence or cause to be commenced or consent to the commencement of bulk oil transfer operations unless the following items have been reviewed, agreed upon and complied with by both vessel and shore personnel.

1. A licensed officer or a licensed tankerman who has full knowledge of the vessel's tanks and cargo handling system shall be in charge of cargo handling for the vessel at all times.

2. A sufficient number of adequately trained men shall be assigned to be constantly on duty both on the vessel and on the pier during cargo transfer operations to keep the transfer operation under constant observation to insure immediate action in case of a malfunction.

3. Cargo sequence for loading or discharging products and the proper pipeline for each product has been established.

4. The handling rate at which oil will be transferred has been established. (Reduced rates are required when commencing transfer, changing the lineup, topping off tanks or nearing completion of transfer). The amount of time to be given when the vessel or terminal desires to start, or stop, or change the rate of flow has been determined.

5. A positive communication and signal system shall be operable during transfer operations.

6. The emergency procedures to be followed in order to stop and contain any discharge shall have been established.

7. Ship and shore personnel responsible for transfer shall be clearly identifiable at all times. Prior to transfer operations, terminal and vessel personnel responsible for transfer shall be made known to each other.

B. Transfer Procedures

No person shall transfer or cause to be transferred or consent to the transfer of any oil from any oil carrying vessel to an oil terminal facility or from an oil terminal facility to any oil carrying vessel unless:

1. The terminal operator has maintained an inspection and testing program for all oil handling hoses and equipment owned or used by the terminal in order to detect faulty equipment.

2. All equipment through which oil may pass during transfer operations has been inspected visually prior to each operation.

Any hose used in the transfer shall be pressure tested semi-annually and shall not be subjected to transfer pressures greater than 75 percent of the last pressure test or greater than rated hose pressure, whichever is less.

All hoses belonging to or used by the terminal operator and used in the transfer of petroleum products shall be marked with the terminal facility's name and a hose number. These markings shall be in a color sharply contrasting with the color of the hose and shall be in letters and numbers one and one half inches high. The terminal operator shall keep a log book of all tests conducted on the individual hoses. This log book shall contain the hose number, test pressure, date of test, place of test and the signature of the person conducting the test. This log book shall be available for inspection by a representative of the Department of Environmental Protection.

3. A drip-pan of sufficient size has been placed at the cargo or bunker manifold and shall be kept in place at all times. It shall be properly positioned and adequately maintained and an ad-absorber shall be available in case of overflows to minimize loss of oil. At no time shall the contents of the drip-pan be allowed to spill in the water. Contents of drip-pans, after removal, shall be disposed of prior to ships departure in a manner acceptable to the Board.

4. Hoses are supported so as to avoid crushing or excessive strain. Flanges, joints and hoses shall be checked visually for cracks and wet spots.

5. Hose handling rigs are of a type which allow adjustment for ship movement and hoses shall be long enough so that they will not be strained by any movement of the ship.

6. Hose ends are blanked tightly when hoses are moved into position to be connected and also immediately after they are disconnected and drained either into the vessel tanks or into suitable shore receptacles before they are moved away from their connections.

7. Hoses are not permitted to chafe on the dock or ship or to be in contact with hot surfaces such as steam pipes or to be exposed to other corrosive sources.

8. Mooring lines are tended to prevent excessive movement of the ship.

9. The surrounding water shall be inspected frequently during transfer operations. A log of all such inspections shall be kept and signed by the person making the inspection.

C. Vessel to Shore Transfer

No person shall transfer or cause to be transferred or consent to the transfer of any bulk oil from any oil carrying vessel to a land based oil terminal facility unless:

1. All cargo risers not intended for use in the transfer are blanked.

2. Sea valves connected to the cargo piping and stern loading connections are tightly closed and sealed with a numbered seal which is to be logged in the ship's log book.

3. Lines and valves in the pump rooms and on deck are checked by the ship's master, senior deck officer or deck officer on duty, or licensed tankerman to see that they are properly set for discharging cargo. An additional check must be made for the same purposes each time the setting is changed.

4. Full rate of discharge is not attained until shore lines are proven clear.

5. A check valve is located in the dock line to prevent backflow in case of hose or manifold failure.

6. On completion of transfer operations, hoses or other connecting devices shall be vented, blown down, or sucked out to drain the remaining oil. A drip pan shall be in place when breaking a con-

nection and the end of the hose or other connecting devices shall be blanked off before being moved.

D. Shore to Vessel Transfer

No person shall transfer or cause to be transferred or consent to the transfer of any bulk oil from a land based oil terminal facility to any oil carrying vessel unless:

1. All sea valves connected to the cargo piping, stern discharge and ballast discharge valves are closed and sealed with a numbered seal which is to be logged in the ship's log book and with the responsible ship's officer.

2. All hose riser valves not to be used are closed and blank flanged,and all air valves on headers are closed.

3. Special attention is paid during the topping off process to the loading rate, the number of tanks open, the danger of air pockets and the inspection of tanks already loading. Notice of the slowdown for topping off must be given to shore personnel.

4. Upon completion of loading, all tank valves and loading valves are closed. After draining, hoses shall be disconnected and hose risers blanked.

E. Persons not under the direct control of a fixed licensed oil terminal shall not take part in a lightering operation without first obtaining an oil terminal license from the Board of Environmental Protection.

F. Vessel Transfers While at Anchor

No vessel while at anchor shall transfer petroleum products while gale warnings (wind velocity 34 knots or more) are in effect or are being displayed by the unit of the Coast Guard having jurisdiction over the area. Vessel to vessel transfers may only be carried on in anchorage areas designated by the Board.

This regulation does not apply to the transfer of fuel for a vessel's own use.

G. Spillage During Transfer

Transfer shall cease if a discharge of oil to the waters of the State occurs during such transfer. Transfer may be resumed when, in the judgement of the Department Representative after consultation, if necessary, with the United States Coast Guard or Local Fire,Chief adequate steps have been taken to control the spill and to prevent further spillage.

H. Scuppers

No person shall transfer or cause to be transferred or consent to the transfer of any bulk oil from any oil carrying vessel to a land based oil terminal facility or from a land based oil terminal facility to any oil carrying vessel or between vessels, nor shall any person take or discharge ballast to or from any oil carrying vessel unless the scuppers of any such vessel are plugged watertight during the oil transfer or ballasting operation, except on tank vessels using water for deck cooling. However, it will be permissible to remove scupper plugs as necessary to allow run off of water provided a vessel crew member stands watch to re-close the scuppers in case of an oil spill.

I. Illumination

No person shall transfer or cause to be transferred or consent to the transfer of any bulk oil after dark from any oil carrying vessel to a land based oil terminal facility or from a land based oil terminal facility to any oil carrying vessel unless the point of transfer is adequately illuminated.

J. Open Hatch Transfer

Transfer of oil by means of a hose through an open hatch is prohibit ed. An exception will be made only when an emergency arises and this is the only means of moving flammable oil from one vessel compartment to another or of unloading the vessel for the purpose of reducing or preventing pollution or for preventing foundering and then only when all possible precautions to prevent discharge to the waters of the State have been taken.

K. Steam or Heating Devices

No person shall discharge exhaust steam containing oil from any coil or other device used to heat oil directly or indirectly into the waters of the State of Maine unless all oil has been removed from such discharge.

L. Catchments

Adequate catchments for leaks and spills must be maintained at the pierheads and the resulting storm and other drainage will not be discharged unless all oil has been removed.

M. Sample Collection

No terminal operator shall transfer or cause to be transferred or consent to the transfer of any bulk oil from any vessel to a land based oil terminal facility or from a land based oil terminal facility to any oil carrying vessel or from one vessel to another until a sample of the oil to be transferred has been collected, identified by proper labelling, and stored

in a place acceptable to the Department of Environmental Protection for a minimum of fifteen days. The Board shall determine the information to be provided with each sample and may require chemical analysis of the sample.

4. Reports and Notifications Required

A. Anticipated Transfer

The Department of Environmental Protection shall be notified at least 12 hours in advance of any transfer of bulk oil by the terminal operator.

1. Terminal name and location or anchorage if offshore transfer.

2. Approximate amount of oil to be transferred.

3. Product type.

4. Vessel name.

5. Expected time and date of vessel arrival.

Should unusual circumstances make it impossible to provide 12 hour notice, the terminal operator shall notify the Department of Environmental Protection as soon as possible. Notification is not required for transfer of oil for a vessel's own use.

B. Oil Spill Reporting Procedure

In the event of any discharge prohibited by Maine Revised Statutes Annotated, Title 38, Section 543, the person, firm or corporation responsible for the discharge shall immediately undertake to remove such discharge as required by Maine Revised Statutes Annotated, Title 38, Section 548. Responsibility for removal shall remain with the person, firm or corporation responsible for the illegal discharge. In addition to the regular procedures followed by the licensee, the following actions are necessary:

1. Telephone Report

An initial telephone report of any discharge to the waters of the State shall be made to the Board or Department Representative as soon as practicable but within two hours. The report shall include:

a. Time of discharge.

b. Location of discharge.

c. Type and amount of oil.

d. Name and telephone number of person making report.

e. Other pertinent information.

2. Written Reports

After removal of such discharge has been completed, the terminal operator shall prepare a complete written report of the occurrence and submit such a report to the Department of Environmental Protection within ten (10) days. If circumstances make a complete report impossible, a partial report shall be submitted. This report shall include but not be limited to, the following information:

a. Date, time and place of discharge.

b. Name of parties involved.

c. Amount and type of oil discharged.

d. Complete description of circumstances causing discharge.

e. Procedures, methods and precautions instituted to prevent a similar occurrence from recurring.

f. Recommendations to the Department of Environmental Protection for changes in regulations or operating procedures.

g. Name and address of any person, firm or corporation suffering damages from the discharge and an estimate of the cost of such damages.

h. In the case of any oil discharge into the waters of the State from an oil terminal facility or vessel going to or coming from such facility:

i. The terminal operator shall submit a report, in writing, to the Department of Environmental Protection setting forth the amount of oil recovered.

ii. If the party recovering the oil is someone other than the terminal operator, he, in addition to the terminal operator shall submit a written report to the Department of Environmental Protection setting forth the amount of oil recovered.

3. Mystery or Unidentified Discharge

Any person sighting oil in the waters of the State,

shall make a report immediately to the DEpartment of Envrionmental Protection giving such information as might be available. Notification should be prompt and made,if any doubt exists, as to whether the Department of Envrionmental Protection is aware of the situation.

4. Department of Environmental Protection Telephone

The Department of Envrionmental Protecion is available 24 hours a day 7 days a week by calling 1-800-482-0777.

5. Licenses and Certificate

A. Terminal License

No oil terminal facility as defined in Maine Revised Statutes Annotated, Title 38, Section 542, Paragraph 7 shall transfer ot cause to be transferred or consent to the transfer of any oil unless said oil terminal holds a valid license issued by the Board of Environmental Protection and is abiding by all the conditions listed on said license.

B. Declaration of Inspection

A copy of the "Declaration of Inspection" required by the United States Coast Guard shall be in the possession of the terminal superintendent or his representative and shall be available to the Department Representative who shall on demand, be given the opportunity to satisfy himself that the condition of the vessel is as stated in the "Declaration of Inspection".

C. Other

The oil terminal operator shall also complete such other forms, check lists and reports as the Board from time to time may require.

6. Ballasting

No person shall ballast or cause any oil carrying vessel to be ballasted unless:

A. Valves on the lines used are set first, then the valves to the tanks to be ballasted are opened, the necessary valves in the pump rooms, except seacocks, are set next and cargo pumps are started before opening seacocks.

B. When ballasting is started, all tanks are inspected to see that only the tanks intended are receiving ballast.

C. The same attention is given to topping off ballasting as to top-

- ping off tanks when loading oil.

D. When completing the loading of ballast, seacocks are closed before stopping the pumps.

This section shall not apply to any vessel with a segregated ballast system in which ballast pumps, pipes and ballast tanks are wholly independent and not connected to the cargo system.

7. Oil Discharge Containment and Clean Up

Maine Revised Statutes Annotated, Title 38, Section 548 requires any person discharging oil, petroleum products, or their by-products in a manner prohibited by Section 543, to undertake immediately to remove such discharge to the Board's satisfaction. Nothing in the rules or regulations adopted by the Board is intended to relieve any person from this responsibility. Any person who has discharged or caused to be discharged oil as prohibited by law shall contain such oil and remove it from the State's waters as quickly and completely as possible.

Notification of the Department of Environmental Protection in no way should delay the proper notification of other authorities such as local and federal agencies concerned. Protection of life and property by proper notification and action is mandatory and should be accomplished in the most expeditious manner possible.

Effective January 1, 1974 each terminal operator shall have a local oil discharge contingency plan approved by this Department. This plan shall be revised and updated by the terminal operator annually and shall be submitted to this Department for approval on or before January 1, each year. The plan shall include, but not be limited to, the following:

A. A comprehensive workable plan to contain and clean up a spill of up to 10,000 gallons of oil.

B. A comprehensive workable plan to contain and clean up a spill of between 10,000 and 100,000 gallons of oil.

C. A comprehensive workable plan to contain and clean up a spill of over 100,000 gallons of oil.

D. A list of all oil spill abatement equipment readily available to the terminal, its location and ownership.

E. A list of all oil spill abatement equipment owned by and located at the terminal.

F. Specific provisions for quick and efficient containment.

G. Specific provisions for removal of oil.

H. Communication systems to be used during clean up operations.

I. Lists of persons and firms, together with a statement of their location and capability, who can be relied upon by the terminal in aiding containment, removal and disposal of oil from discharges of not more than 10,000 gallons; of between 10,000 and 100,000 gallons; and more than 100,000 gallons.

J. A list of persons from federal, state, municipal and other local agencies and other appropriate persons to be notified in the event of an oil spill, together with a statement of the procedures to be employed in notifying such persons.

K. Acceptable method and means of disposing of oily waste and residue recovered from any oil spill.

8. General Safety Provisions

A. Signs

During the time a vessel is in berth, a warning sign carrying letters not less than 2 inches high on a contrasting background shall be displayed on dock and near the gangplank. This sign shall read substantially as follows: WARNING-NO OPEN LIGHTS, NO SMOKING, NO UNAUTHORIZED VISITORS.

B. Hazardous Vapor

When in the opinion of the terminal operator or the Department of Environmental Protection's representative a hazardous vapor condition develops on the dock or on any vessel, all transfer operations involving all such vessels shall be stopped and all sources of ignition such as smoking, use of matches, lighters and open flame except boiler fires shall be eliminated and prohibited.

C. Fire Main and Connections

Sufficient serviceable fire hose to reach all parts of the ship and dock with approved combination nozzles attached shall be connected to the fire main on the vessel and on the dock and made ready for instant use during the time a vessel is in berth. The fire main will have a master valve at the head of the dock so the fire main can be kept dry in winter and wet in summer. The fire main on the dock will be at least 6" in diameter. The fire main shall be charged at all times to the master valve. Fore and aft fire wires shall be rigged on the offshore side of the ship for use by tugs in removing ships from the pier in event of fire. A terminal facility not meeting these requirements shall file with the Department of Environmental

Protection, for approval, an alternate fire protection plan.

D. Tank tops and Hatch Covers

When transferring oil, tank tops and/or hatch covers shall be closed. Ullage caps or plugs shall only be opened on such tanks as are to be loaded or unloaded and all such open ullage holes shall be covered with flame screens which shall be kept in place during the transfer except for the minimum time necessary to observe transfer progress, take samples or take ullage readings. Should a tow boat or other vessel such as a bunker barge, or lighter be moved along side for the purpose of serving the ship and should such floating equipment be steamed propelled or propelled by an internal combustion engine, tank tops, tank hatches or ullage plugs or caps shall be kept open only on those tanks from which oil is being withdrawn and may be kept open only with flame screens in place. When there is no longer any possibility of sparks or other source of ignition, normal procedure may be resumed.

E. Multiple Vessel Mooring

No oil carrying vessel shall be secured along side another oil carrying vessel at a pier except while taking bunker oil fuel aboard from a lighter. A tow boat shall stand by but not be alongside during the transfer of bunker fuel from lighter to oil carrying vessel. The bunkering lighter shall be moved away from the oil carrying vessel immediately after it has pumped its load aboard the oil carrying vessel.

F. Bonding Cable

The Terminal shall provide a suitable static wire, other suitable visible means, or bonding cable incorporating a meter or to provide a positive means of determining a ground. It shall be firmly attached to the ship by an employee or employees of the terminal before cargo hose is brought in contact with the vessel. It shall not be disturbed until cargo hose has been disconnected from the vessel and until just before ship leaves dock at which time it shall be removed by an employee or employees of the terminal. Care shall be exercised not to generate static or other sparks when attaching or detaching bonding clamp.

G. Ports and Doors to Crew Quarters

When loading and unloading all ports and doors facing the cargo decks, or facing a breeze bringing vapors from another vessel shall be closed except when necessary to open for passage of personnel.

H. Blowing of Boiler Tubes

Blowing of boiler tubes or other work on the boilers which may cause sparks or soot from the stacks is prohibited.

I. Fire Main Shore Connection

There shall be immediately available during any transfer operation at least one international shore connection meeting the specifications outlined in 46 CFR subpart 162.034 of Subchapter Q, Specifications, U.S. Coast Guard.

J. Electrical Storms

Transfer operations shall not be started, and if started, shall be discontinued if an electrical storm develops which in the opinion of the Department Representative, terminal supervisor, or watch officer creates a hazard which makes transfer operations dangerous.

9. Steaming of Tanks

Steaming and washing of tanks while a vessel is in Maine waters is prohibited, except in those cases of ships equipment with slop holding tanks or except when the said vessel is moored at a dock with a facility for receiving all of the discharge from the steaming and washing in a land storage facility.

10. Federal Rules and Regulations

This regulation expressly adopts all presently existing rules and regulations of the Federal Government and its agencies which rules and regulations are in any way concerned with or related to the operation of oil terminal facilities, including but not limited to Volume 35 Federal Register Page 14315 (1970).

A. These regulations expressly adopt all present existing rules and regulations of the Federal Government and its agencies which rules and regulations are in any way concerned with or related to the operation of oil terminal facilities, including, but not limited to, those regulations set forth in Volume 37, No. 246, December 21, 1972, pages 28250 through 28261 of the Federal Register.

B. These regulations expressly adopt all present existing rules and regulations of the Federal Government and its agencies which rules and regulations are in any way concerned with or related to oil spill prevention, control and countermeasure plans (SPCC) for non-transportation related onshore and offshore facilities, including but not limited to, those regulations set forth in Volume 38, No. 246, December 11, 1973, pages 36164 through 34170 of the Federal Register.

In the case of any conflict of these regulations with Federal Law or with a mandatory rule, regulation or order of the Federal Government or its agencies, such Federal Law, rule, regulation or order shall govern.

11. Restrictions on the Use of Dispersants for Pollution Control Purposes

A. Definition

1. Dispersants. Dispersants are those chemical agents or compounds which emulsify, disperse or solubilize oil or act to further the surface spreading of oil slicks in order to facilitate dispersal of oil.

2. Sinking Agents. Sinking agents are those chemicals or other agents that can physically sink oil below the water surface.

B. Prohibition

Dispersants or sinking agents shall not be used on or in the waters of the State of Maine except as provided in C below.

C. Authorized Use

Dispersants or sinking agents may be used on or in the waters of the State of Maine only when a Department Representative specifically authorizes their use in designated quantities when and only when their use will:

1. In the judgment of the Department Representative prevent or substantially reduce hazard to human life or limb or substantial hazard of fire to property.

2. In the judgement of the Department Representative, in consultation with appropriate Federal and State agencies, prevent or reduce substantial hazard to major or important segments of vulnerable species of waterfowl.

3. In the judgement of the Department Representative in consultation with appropriate Federal and State agencies result in the least overall environmental damage or interference with designated uses.

12. Booming of Vessels

A. It is the policy of the Board of Environmental Protection that all oil transfers be protected with boom devices. Effective January 1, 1974, all tank ships and tank barges, except those engaged in bunkering operations, from which and to which oil, petroleum products and their by-products are being transferred, shall be protected by an oil boom device which shall enclose both sides of the vessel and be deployed at sufficient distance from the vessel to catch and contain spilled oil, except:

1. When weather, wind, sea or ice conditions are such that a boom cannot be wholly or partially deployed and the terminal operator

reports this fact to the Department. Reporting shall be prior to transfer or whenever conditions develop after development which require removal of the boom. If the Departmental offices are closed, reporting shall be on the next Departmental working day following the transfer; or

2. When a portion of the product transferred has a flash point of -45$^{o}$F or less, and an ignition temperature of 536$^{o}$F or more, such as gasoline.

B. If a terminal operator, believes it is impossible or wholly impracticable to implement the requirements or paragraph 612.1A in whole or in part on a regular basis, the operator may apply to the Board of Environmental Protection for complete or partial exemption from this requirement. The application shall set forth in detail the reasons why such complete or partial exemption should be granted. The Board may set any reasonable conditions in granting any exemption hereunder.

13. Vessel Restriction During Reduced Visibility

No vessel carrying bulk oil, unless equipped with operating radar or propelled by a vessel equipped with operating radar, shall enter or leave any port of the State nor transit the approaches thereto when visibility is one nautical mile or less. This paragraph shall not apply when such vessel has begun its approach to any port prior to visibility being one nautical mile or less and in the best expert judgement of the Master of the vessel and the Pilot, if any, it is safer to continue into the port than to drop the anchor or turn about.

14. Hussey Sound Limitation

No tank ship or tank barge containing oil cargoes which is actually drawing 40 or more feet shall transit Hussey Sound, Casco Bay (port of Portland) regardless of visibility, unless it would be abeam of Soldier's Ledge Buoy within one-half (1/2) hour of the time of high tide.

15. Diking of Tanks

Effective January 1, 1974, all oil terminal facilities shall have dikes circumscribing all tanks, each sufficient to accomodate the oil storage volumetric capacity of the largest tank circumscribed by such dike. The design and construction of the diking undertaken after July 11, 1973 shall conform with API and NFPA standards and the "Rules and REgulations Relating to Gasoline and Other Flammable liquids" of the Maine Department of Public Safety.

16. Oil-Water Separation

Effective June 1, 1974, all oil terminal facilities shall be quipped

with an oil-water separation system capable of receiving all oily water run-off from the facility and reducing the oil content to 15 PPM or less. The installation and use of this separator system shall be approved and licensed by this Department pursuant to 38 MRSA § 413, 414 and 543 if a discharge is proposed to the waters of the State.

17. Vessel to Vessel Transfer Area - Casco Bay

An anchorage area is established one mile square starting at Hussey Sound Buoy 12 Lat. 43° 42' 10" N. Long. 70° 90' 46" W. (formerly Little Chebeague Island Shoal Buoy 6): thence one mile true North to Lat. 43° 43' 10" N. Long. 70° 90' 46" W; thence one mile true west to Lat. 43° 43' 10" N. Long. 70° 11' 90" W; thence one mile true South to Lat. 43° 42' 10" N. Long 70° 11' 90" W; thence one mile true East to the point of origin.

17. Vessel to Vessel Transfer Area - Penobscot Bay

The following anchorage areas are established:

A. The area designated for vessel-to-vessel transfers of oil in Penobscot Bay area is a circle 2 nautical miles in diameter with the center at Latitude 44° 24' 15" North and Longitude 68° 55' 25" West.

B. A second area designated for vessel-to-vessel transfers of oil in Penobscot Bay area is a circle of one nautical mile in diameter with the center at Latitude 44° 25' 00" North and 68° 50' 45" West.

18. Waiver Autnorization for Cause

The Board may waive or modify any of the provisions of any "Oil Discharge Prevention and Pollution Control Regulation" promulgated by it upon application by a terminal operator for good cause shown. No waiver or modification will be granted except upon a showing by the operator that the regulation is impractical as to his operation and does not reasonably achieve the purposes and intent of the Maine Oil Discharge Prevention and Pollution Control Law.

19. Temporary Waiver to Prevent Hazardous Condition

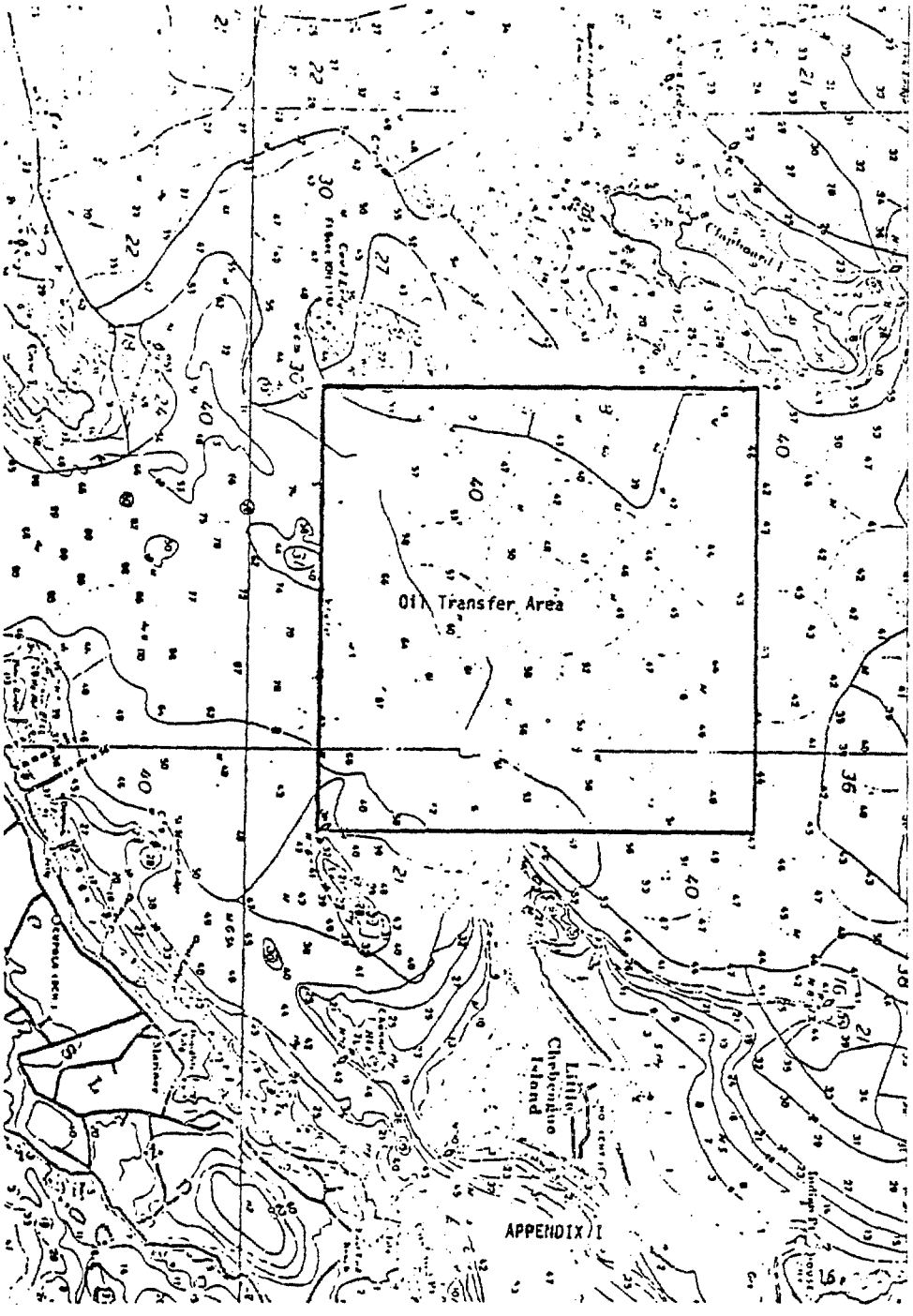
The Commissioner, or his designee may authorize, in writing, a temporary waiver to these regulations where compliance with the regulations may create a hazard to life or property, or result in circumstances likely to create an oil spill. The duration of this temporary waiver shall not exceed 3 weeks, or until the next regular meeting of the Board, whichever occurs first. The Commissioner may not issue any additional waiver for the same transaction or request unless approved by the Board.

20. Delegation of Supervisory Authority

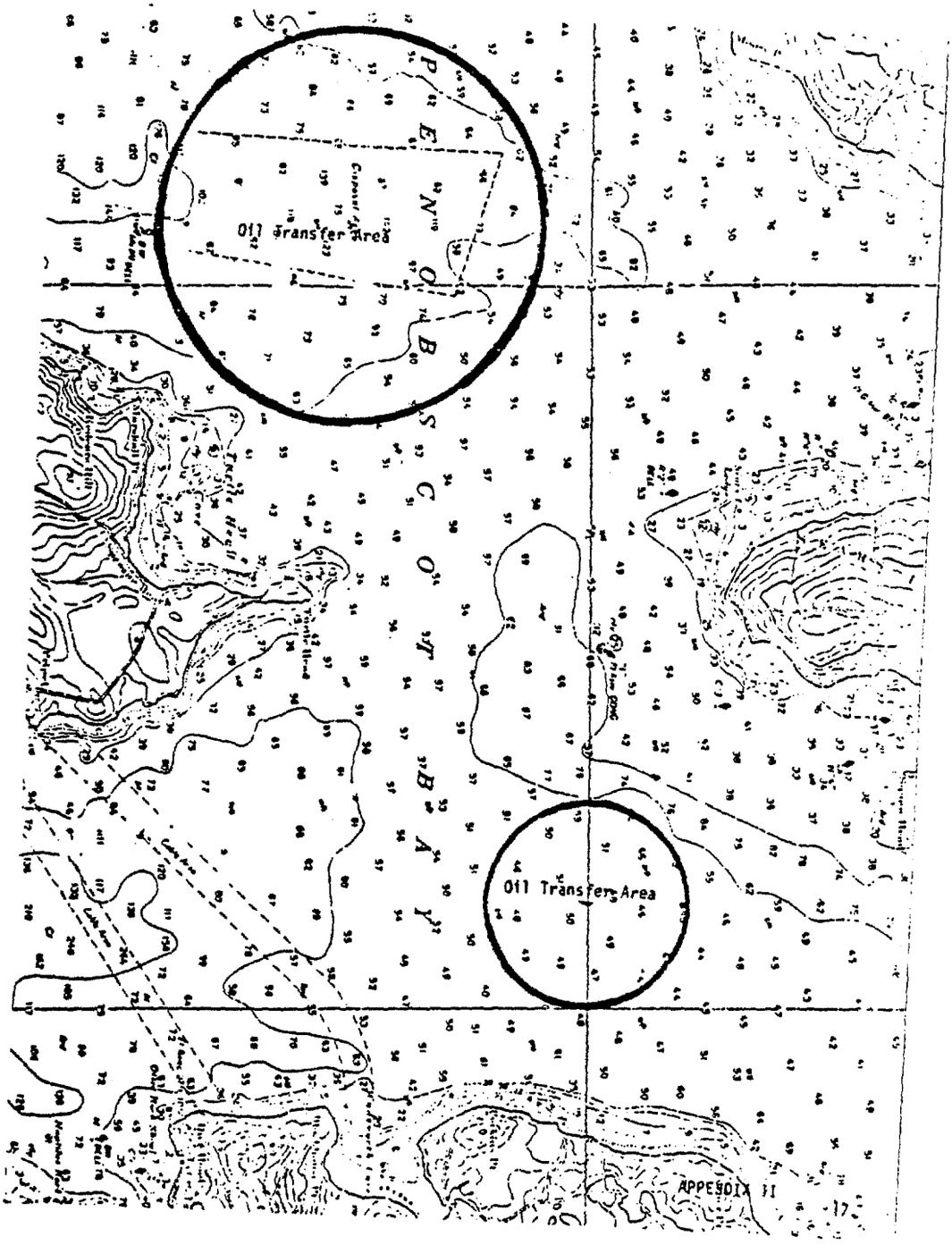
The Commissioner or his authorized representative shall receive reports of oil discharges and shall supervise or undertake the removal of any oil discharge, as the proper representative of the Board, where such actions by the Board are authorized under MRSA, Section 416 or Section 548, and upon the completion of removal of any discharge the Commissioner or his authorized representative may indicate for the Board satisfaction with such removal.

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 21st day of December, 1977.

# APPENDIX I



## APPENDIX II



## APPENDIX III

## PETROLEUM SAMPLING AND STORING PROCEDURE

In general sampling procedure shall follow the guidelines of ASTM and API standards D 270-65 (re-approved 1970) and 2546, respectively.

CONTAINER:

The container should preferably be made of clear glass and be free of all foreign material. It should hold at least one-half (½) pint (eight (8) fluid ounces). The cover shall be adequately secure to prevent the loss of volatile components. Suitable covers include the following: Aluminum-foil lined screw-on caps, teflon-lined screw-on caps, glass stoppers with mating ground-glass joints, and corks wrapped in aluminum foil. The containers should be used only once. If they are reused, they should be thoroughly cleaned with chloroform, carbon-tetrachloride, or dichlormethane followed by washing with hot soap and water, then rinsed with distilled water and dried. Because of the toxic nature of these solvents, their general use is not recommended and disposal of the container after one filling is preferred. Caps and corks may be reused if the lining is replaced with new aluminum foil.

SAMPLING:

A ship's sample shall be taken from each new source. A new source is defined as (1) a different ship, (2) a different type of product, (3) the same type of product from a different origin or any combination of the three. A middle sample (a spot sample at the half-way point in the fluid column) shall be taken by lowering the container by tape or bottle catcher, or other suitable device similar to, but not necessarily limited to, those described in API/ASTM standards shall be used. The container shall be filled, excluding as much air as practicable, and stoppered or capped. No sample transfer shall be allowed; the sampling container shall be the storage container.

LABELING:

A tag or label shall be attached to each collected sample. Whenever available, the following information shall be provided.

1. Ship's name
2. Ship's home port
3. Sample Date
4. Sample Time
5. Tank Sampled
6. Product Type
7. Product Origin
8. Terminal
9. Signature of Sampler
10. AOI specific gravity
11. Boiling Point
12. Sulfur
13. Viscosity
14. Test date
15. Testing lab
16. Analyst

STORAGE:

Samples shall be subjected to storage conditions as soon as possible. Storage shall be in a dark, cool environment. The storage compartment shall be secured by lock and key with one person assigned as custodian. Samples shall be stored under these conditions a minimum of fifteen (15) days. Due to the potential fire hazard of petroleum products, adequate ventilation and other safety precautions should be observed. Samples shall be made available to the Department of Environmental Protection personnel upon request.

## APPENDIX IV

## OIL SPILL NOTIFICATION PROCEDURE

All oil spills shall immediately be reported to the Department of Environmental Protection at 1-800-842-0777, a 24-hour emergency telephone. Standby personnel are available through this emergency number.

Other numbers

| | | |
|---|---|---|
| Maine Department of Marine Resources | | 289-2291 |
| Maine Inland Fish & Wildlife | | 289-3371 |
| Coast Guard, Portland | Mon. thru Fri. | 780-3251 |
| | Sat. and Sun. | 772-8640 |
| Coast Guard, Bucksport | | 469-7911 |
| Environmental Protection Agency Needham Heights, Mass | | 617-223-7265 |
| Department of Environmental Protection Augusta, Maine | | 289-2591 |
| Department of Environmental Protection Field Office, Bangor | | 947-6746 |
| Department of Environmental Protection Field Office, Portland | | 773-6491/2 |

Federal Toll-Free Oil Spill Reporting Telephone Number 1-800-424-8802

BASIS STATEMENT: These regulations were enacted in response to the hazard associated with the transportation, storage, and transfer of petroleum products at marine facilities.

AUTHORITY: 38 M.R.S.A. Section 546, Subsection 4

EFFECTIVE DATE: October 21, 1971

AMENDED DATE: July 12, 1973
January 15, 1974
October 1, 1974
February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 650 DAMAGE CLAIMS - OIL CONVEYANCE FUND

SUMMARY: These rules outline the complete procedures that are to be followed when a 3rd party damage claim is filed with the department. Provisions are made for when a claim must be filed; extension of time for filing; forms; waivers; processing; agreement between parties; mystery spills; arbitration; consolidation of a number of claims; conduct of hearings; and decisions.

1. Scope of Rules

These rules are adopted by the Board of Environmental Protection of the State of Maine pursuant to the authority granted to it by the provisions of 38 MRSA, Sections 361, 546 and 551.

These rules are applicable to the processing of all claims for damages as the result of a discharge of oil, petroleum products or their by-products prohibited by 38 MRSA, Section 543 and for the payment of such claims from the Maine Coastal Protection Fund.

2. Definitions

A. B.O.A. "B.O.A." shall mean the Board of Arbitration.

B. B.E.P. "B.E.P." shall mean the Board of Environmental Protection.

C. Chairman. "Chairman" shall mean the Chairman of the Board of Arbitration.

D. Claim. "Claim" shall mean a claim filed with the Board of Environmental Protection for recovery from the Maine Coastal Protection Fund for damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil.

E. Claimant. "Claimant" shall mean the person or persons filing a claim with the Board of Environmental Protection for damages to be paid out of the Maine Coastal Protection Fund as the result of the discharge of oil.

F. Coastal Conveyance Act. "Coastal Conveyance Act" shall mean Maine's Oil Discharge Prevention and Pollution Control Law, 38 MRSA, Sections 541-557.

G. Commissioner. "Commissioner" shall mean the Commissioner of the Department of Environmental Protection.

H. Discharge. "Discharge" shall mean a discharge of oil prohibited by 38 MRSA, Section 543.

I. Department. "Department" shall mean the Department of Environmental Protection.

J. Fund. "Fund" shall mean the Maine Coastal Protection Fund established by 38 MRSA, Section 551.

K. Licensee. "Licensee" shall mean any person holding or required to hold a license to operate or cause to be operated an oil terminal facility, pursuant to 38 MRSA, Section 545 and shall include the agents, servants or principal of such person.

L. Oil. "Oil" shall mean oil as that term is defined by 38 MRSA, Section 542-6.

M. Person. "Person" shall mean person as that term is defined by 38 MRSA, Section 542-9.

N. Personal Property. "Personal Property" shall mean tangible property of all types other than real estate and shall include any right, title or interest in or to such tangible property.

O. Real Estate. "Real Estate" shall mean real property or any right, title or interest in or to real property and shall include easements of all types.

P. Respondent. "Respondent" shall mean the person determined in the first instance by the Board of Environmental Protection to have caused the discharge, and shall include the agents, servants or principal of such person. A Respondent may also be a licensee.

Q. Rules. "Rules" shall mean these Rules.

3. Construction

These rules shall be liberally construed so as to secure speedy relief for those persons entitled to compensation on account of damages suffered because of the discharge of oil.

4. Delegation

Nothing in these rules shall be construed to prohibit the Board of Environmental Protection at its discretion, from delegating administrative, supervisory or investigatory authority to the Commissioner nor the Commissioner, at his discretion, from delegating such authority to members of his staff.

5. Claims

Any person claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as the result of a discharge of oil, may submit a claim for such damages to the Board of Environmental Protection.

6. Time for Filing

Except as provided in Rule 7. below, claims must be submitted to the Board of Environmental Protection within six (6) months after the occurrence of the discharge causing the damage.

7. Extension of Time for Filing Claims

Upon written petition by a Claimant, the Board of Environmental Protection may waive the six (6) months limitation for the filing of claims, upon good cause shown.

Petitions for a waiver shall be in such form and contain such information as the Board of Environmental Protection may prescribe from time to time.

"Good cause" shown shall include, but not be limited to, lack of knowledge on the part of the Claimant of the occurrence of the damage, or of the extent of the damage until after the expiration of six (6) months from the occurrence of the discharge.

8. Form of Claims

Claims shall be submitted in such form and contain such information as the Board of Environmental Protection may prescribe from time to time.

The Claimant may submit information and materials including the reports of experts, photographs and other demonstrative evidence in addition to the information and materials required or suggested by the Board of Environmental Protection's claim form.

The Board of Environmental Protection may require additional information and material from a Claimant at any time prior to payment of a claim to aid it and the Board of Arbitration in determining the identity of the Respondent, the cause of the discharge, the validity of the damage claim or the amount of the damage. The Board of Environmental Protection and the Board of Arbitration may refuse to process a claim if the Claimant refuses to supply the Board of Environmental Protection or the Board of Arbitration with such information or materials in the Claimant's possession or subject to the Claimant's control as the Board of Environmental Protection or the Board of Arbitration finds necessary to fully and fairly process the claim.

All damages shall be stated in their entirety in a single application. However, prior to any award of damages upon any claim, or the recovery of reimbursement to the Fund from the Respondent, whichever occurs first, such claim may be amended by the Claimant as to the nature or extent of the damage, the cause of the damage or the amount of the claim.

9. Waiver of Claims Not Presented

Damages not included in a claim at the time an award of damages is made shall be deemed waived; provided however, that claims for damages which could not have been discovered before an award has been made may, upon the Board of Environmental Protection's grant of a petition for an Extension of Time Pursuant to Rule 7. above be the subject of an additional claim.

10. Administration: Board of Environmental Protection

A. The Commissioner shall keep a separate file for each claim submitted, containing a copy of all of the materials and documents relating to it. However, in the case of multiple claims for damages caused by a common single discharge, the Commissioner may keep a master file containing materials and documents common to all claims, without filing copies thereof in each separate claim file. If the Commissioner elects to keep a master file, the fact of its existence shall be noted in each separate claim file.

B. The Commissioner shall keep a "docket sheet" in each claim file which shall be kept current and shall indicate thereon each document received or action taken with regard to the claim, with the date and nature thereof. The "docket sheet" shall also show the amount of any award paid from the Maine Coastal Protection Fund upon any claim and the date of such award.

11. Initial Processing of Claims

A. Cases Involving a Respondent

1. Notice to Party Alleged to Have Caused the Discharge.

a. Upon receipt of a claim, the Commissioner shall immediately notify the person alleged by the Claimant to have caused the discharge, by mailing a Notice of Claim, a copy of the claim and, where practicable, a copy of any supporting documents or materials, by registered or certified mail, return receipt requested, to such person.

b. If the Commissioner has reason to believe that someone other than the person alleged by the Claimant caused the discharge, the Commissioner shall mail a Notice of Claim, a copy of the claim and, where practicable, a copy of any supporting documents or materials, by registered or certified mail, return receipt requested, to such person.

c. When the person alleged by the Claimant or believed by the Commissioner to have caused the discharge is a carrier destined for or leaving a Licensee's facilities at the time of the discharge, or is otherwise the agent or servant of a Licensee, the Commission shall mail a Notice of Claim, a copy of the Claim and, where practicable, a copy of any supporting documents or materials, by registered or certified mail, return receipt requested, to the Licensee.

d. Notice pursuant to this Rule 11.A.1.a. shall be in such form as the Board of Environmental Protection may prescribe from time to time and shall inform the person alleged to have caused the discharge and the Licensee, if any, that they may file Answers, including supporting documents, if any, with the Board of Environmental Protection.

i. admitting the discharge, denying the discharge or taking no position with respect to the cause of the discharge, AND

ii. agreeing with the amount of the claim, disagreeing with the amount of the claim or taking no position regarding the amount of the claim within fifteen (15) business days of their having received notice of the claim.

2. Determination by the Board of Environmental Protection of Respondent.

At the next regularly scheduled meeting of the Board of Environmental Protection, following by at least seven (7) days receipt by it of Answers pursuant to Rule 11.A. hereof, or if no Answers are filed, then following by at least seven (7) days the expiration of the time for answering, the Board of Environmental Protection shall make a determination, based upon the information set forth in the claim, the Answers, and other information which may be submitted to it by the Commissioner, of the identity of the person who caused the discharge together with the identity of the Licensee ultimately responsible, if other than the person determined by the Board of Environmental Protection to have caused the discharge. The Board of Environmental Protection shall immediately notify the Claimant, the Respondent and the Licensee, if any, of its determination.

3. Claims Agreed Upon by the Claimant and the Respondent.

a. In cases where the Claimant and the Respondent, if any, agree to the amount of the claim and responsibility for the damage, the Respondent shall pay the agreed amount to the Claimant, and such payment shall not be deemed an admission of liability for purposes of any other claim or in any other proceeding.

b. i. In cases where the Claimant and the Respondent, if any, agree to the amount of the claim but do not agree on the responsibility for the damage, and the Board of Environmental Protection also agrees to the amount of the claim, the Commissioner shall certify the amount of the claim and the name and address of the Claimant to the Treasurer of the State and the Treasurer shall pay the same from the Funds.

ii. If the Board of Environmental Protection does not agree to the amount of the claim agreed to by the Claimant and Respondent in accordance with this subsection (b), the Commissioner shall convene a Board of Arbitration pursuant to Rule 12. hereof.

4. Claims Not Agreed Upon by the Claimant and the Respondent.

If the Claimant and the Respondent do not agree to the claim, the Commissioner shall upon notice from the Claimant or the Respondent convene a Board of Arbitration pursuant to Rule 12. thereof.

B. Mystery Spills

In cases where the Claimant has not set forth the name of a person alleged to have caused the discharge and the Board of Environmental Protection or the Commissioner cannot determine any person who may have caused the discharge, within thirty (30) days of the claim having been filed, the Board of Environmental Protection shall determine whether it agrees with the claim.

1. Claims With Which the Board of Environmental Protection Agrees.

If the Board of Environmental Protection agrees to the claim, the Commissioner shall certify the amount of Treasurer of the State and the Treasurer shall pay the same from the Fund.

2. Claims With Which the Board of Environmental Protection Does Not Agree.

If the Board of Environmental Protection does not agree to the claim, the Commissioner shall convene a Board of Arbitration pursuant to Rule 12. hereof.

C. Use of Consultants, Experts and Appraisers

In aiding the Board of Environmental Protection to Exercise its powers under this Rule 11. the Commissioner may engage the services of experts, consultants, appraisers and others as he deems reasonably necessary.

12. Convening of Board of Arbitration

If the Claimant and the Respondent or the Claimant and the Board of Environmental Protection do not agree upon the claim:

A. The Board of Environmental Protection shall designate a person to represent the public interest on the Board of Arbitration.

B. i. Where a Respondent has been determined pursuant to Rule 11.A.2, the Commissioner shall notify the Respondent and the Licensee, if different from the Respondent. The notice shall request that a representative to the Board of Arbitration be designated by the Respondent and shall state that upon failure to designate a representative within

seven (7) days of receipt of such notice the Board of Environmental Protection will request the American Arbitration Association to utilize its procedures for the selection of such member. The notice shall also set forth the name, address and telephone number of the person chosen by the Board of Environmental Protection to represent the public interest on the Board of Arbitration. The notice shall further state that the first meeting of the Board of Arbitration must be held not more than ten (10) days from the date upon which a Chairman is selected pursuant to these rules.

ii. If a person is not designated to represent the Respondent on the Board of Arbitration within seven (7) days of receipt of the notice specified in B.i., the Commissioner shall request the American Arbitration Association to select such member.

C. In cases where a Respondent has not been determined and the Claimant and the Board of Environmental Protection cannot agree on the claim, the Commissioner shall request the American Arbitration Association to utilize its procedures for the selection of a member to represent the unknown person who caused the discharge.

13. Submission of Claims to the Board of Arbitration

Prior to the first meeting of the Arbitrators, or any two of them, the Commissioner shall forward the claim together with all attachments and supporting documents, copies of all notices sent and answers and responses received, investigation reports and all other materials, documents, reports and demonstrative evidence relating to the discharge and the claim for damages, within his possession or subject to his control, to the member of the Board of Arbitration representing the public interest, for inclusion in the file of the Board of Arbitration.

14. Selection of a Chairman

Within ten (10) days of the designation of the person to represent the Respondent or the unknown discharger on the Board of Arbitration, the member of the Board of Arbitration representing the public interest, shall meet with the member representing the Respondent or unknown discharger and the two shall choose a neutral arbitrator who shall be Chairman. If the two members fail to name the neutral arbitrator within five (5) days after their meeting, then the Commissioner shall request the American Arbitration Association to utilize it procedures for the selection of the neutral arbitrator.

15. Multiple Claims from One Discharge

One Board of Arbitration shall be established for and hear and determine all claims requiring a Board of Arbitration determination arising from or related to a common single discharge.

Upon receipt of a claim based upon a discharge for which a prior claim has been submitted the Board of Environmental Protection and the Board of Arbitration shall process the new claim in accordance with the procedures set forth in these Rules and the time limits applicable to the latest claim filed shall govern such combined processing activities as are required in processing the claims.

16. Membership and Compensation

A. Any person may serve on more than one Board of Arbitration, simultaneously or consecutively.

B. Each member of a Board of Arbitration who is not a full-time employee of the State of Maine shall be paid from the Fund, for services rendered, at the rate of $25 per hour or part thereof spent in connection with his services provided, however, that payments shall not exceed a rate of $100 a day. The time shall include travel time. In addition each member shall be reimbursed for all reasonable and necessary expenses incurred including but not limited to food, lodging, transportation and, if the member makes use of his personal motor vehicle, mileage at the statutory rate specified for State employees.

17. Powers and Duties of Board of Arbitration

A. After approval of the Commissioner, the Board of Arbitration or its Chairman, may obtain the services of clerical personnel, reporters, stenographers, consultants, experts, appraisers, attorneys and others on a contractural basis or otherwise, and may rent, lease or otherwise procure such meeting rooms, hearing rooms, services, supplies, equipment and other materials reasonably necessary for the processing and determination of claims provided that the concurrence of the Attorney General shall be required prior to obtaining the services of any attorney or other person intended to perform legal services. The sums necessary to exercise the powers granted hereunder shall be paid from the Fund upon a draft signed by the Chairman and countersigned by the Commissioner.

B. The Board of Arbitration may make use of the staff of the Department for such purposes it deems necessary for the processing and determination of claims. Arrangements for the use of any member of the staff of the Department shall be made through the Commissioner and shall not interfere with the effective administration of the Department. The Board of Arbitration shall reimburse the Department for the salary and expenses of any staff member so used. The Board of Arbitration may also subpoena any member of the staff of the Department as a witness, pursuant to Rule 17.C. hereof.

C. The Board of Arbitration shall have the power to administer oaths and to issue subpoenas for attendance and testimony of witnesses, the production of books, records and other evidence pertinent to the issues presented to it for determination. Witnesses subpoenaed to appear before the Board of Arbitration, shall receive fees and mileage equal to the fees and mileage to which witnesses in the Superior Court are entitled.

D. If at any time during the administrative life of a Board of Arbitration, a member of such Board of Arbitration should for any reason become unwilling or unable to continue as a member of such Board of Arbitration, a new member shall be appointed as a substitute for such member, in accordance with the manner in which such member was originally chosen.

18. Administration - Board of Arbitration

A. The Chairman shall keep a separate file for each claim submitted, containing a copy of all of the materials and documents relating to such claim. However, in the case of multiple claims for damages caused by a single discharge, the Chairman may keep a master file containing materials and documents common to all claims, without filing copies thereof in each separate claim file. If the Chairman elects to keep a master file, the fact of its existence shall be noted in each separate claim file.

B. The Chairman shall keep a "docket sheet" for each claim file which shall indicate thereon the nature of each document received or action taken with regard to such claim, and the date thereof. The "docket sheet" shall also show the amount and date of any award from the Fund for the claim.

C. The Board of Arbitration shall provide immediate written notice of a determination on any claim to the Claimant and the Respondent.

D. Upon the expiration of fifteen (15) days after final determination of an award the Chairman shall submit a notice of award, signed by at least two (2) members of the Board of Arbitration to the Treasurer of the State of Maine for payment to the Claimant, from the Fund; provided that such notice of award shall not be submitted during the pendency of any request for review of a final determination by the Court of highest jurisdiction; but such notice of award shall be submitted to the Treasurer for payment immediately upon termination of the review by the Court if the review results in a determination affirming the award.

19. Consideration of Disputed Claims

In cases where the Claimant and the Respondent or the Claimant and the Board of Environmental Protection do not agree upon the claim and in cases where the Respondent has failed or refused to participate in the proceedings, the Board of Arbitration shall within ten (10) days after the Chairman has been appointed:

A. Make a determination of the claim, or

B. Schedule a hearing on the claim, or

C. Require the Claimant, the Respondent and any appraisers, consultants or experts hired by the Board of Arbitration to submit such additional information, materials and evidence as the Board of Arbitration deems necessary to make a full and fair determination, within such time as may be specified by the Board of Arbitration having due regard to the policy of the Coastal Conveyance Act for the speedy resolution of claims, and thereafter, within ten (10) days of receipt of the materials requested, make a determination of the claim, or schedule a hearing on the claim.

Right to a Hearing

Where a hearing has not been held, the Board of Arbitration shall schedule a hearing upon any claim for which an award has been made or denied, when requested to do so by the Claimant or the Respondent or the Commissioner in cases where no Respondent has been identified within fifteen (15) days of notice of a decision. Such hearing shall be scheduled and conducted within twenty (20) days of receipt of the request for a hearing.

20. Consolidation of Claims for Hearing

The Board of Arbitration may at its discretion, consolidate two or more claims for damage from a common discharge for the purpose of a single hearing in order to save time and expense in processing claims.

21. Rules for the Conduct of Hearings

A. Scope of Rules

These rules govern the practice, procedure and conduct in all hearings held by the Board of Arbitration.

In special cases, where good cause appears, the Board of Arbitration may suspend or otherwise permit deviation from these rules insofar as it may find compliance therewith to be impractical or unnecessary.

B. Notice and Location

1. Notice

Notice of a hearing shall be sent by certified mail, return receipt requested, to the Claimant and the Respondent at least ten (10) days prior to the hearing.

2. Location

Hearings shall be held at such time and place as the Board of Arbitration shall fix.

C. Presiding Officer

The Presiding Officer at any hearing shall be either (1) the Chairman, if willing to preside, otherwise (2) a member of the Board of Arbitration selected by the other members. The Presiding Officer shall have the authority to:

i. Administer oaths or affirmations
ii. Rule upon issues of evidence
iii. Regulate the course of the hearing
iiii. Rule upon issues of procedure
iiiii. Take such other actions as may be ordered by the Board of Arbitration or as are necessary for the efficient and orderly conduct of the hearing, consistent with these rules and applicable statutes.

D. Prehearing and Midhearing Conferences

1. General

The Board of Arbitration, the Chairman or the Presiding Officer, may hold a prehearing conference to consider the formulation or simplification of issues, the possibility of obtaining admissions of act and of documents, arrangements for the exchange of proposed exhibits or prepared expert testimony, limitation of the number of witnesses, establishment of procedure for the hearing, and such other matters as may expedite orderly conduct and disposition of the proceedings.

2. Action Taken

The actions taken at such conferences and the agreemtns made by the parties shall be made a part of the record.

3. Recessing hearing for Conference

During any hearing, the Presiding Officer may, in his discretion call the Claimant and the Respondent for a conference to effectuate the purposes of this Rule. The Presiding Officer shall state on the record the results of such conference.

E. General Conduct

1. Opening Statement

The Presiding Officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. Transcription of Testimony

All testimony at hearings before the Board shall be recorded and, as necessary, transcribed.

3. Testimony under Oath

All witnesses shall be sworn.

4. Subpoenas

On its own motion the Board of Arbitration may, and upon the motion of the Claimant or the Respondent, the Board of Arbitration shall, subpoena witnesses to attend, testify and produce records. A subpoena may be served by the sheriff, by his deputy, by a constable, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one (1) day's attendance and the mileage allowed by Rule 17.C.

5. Testimony in Written Form

At any time, prior to or during the course of the hearing, the Chairman or the Presiding Officer may require that all or part of the testimony to be offered at the hearing be submitted in written form at such time as he may specify. All persons offering testimony in written form pursuant to this rule shall be subject to cross-examination as provided in Rule 21.G.3. hereof. All testimony offered in written form shall be available for inspection as provided in Rule 21.F.4. hereof, and the party submitting the written testimony may be required to serve a copy thereof on the Claimant and the Respondent by a specified time, in order that all persons participating in such hearings may have a reasonable opportunity to examine such testimony and prepare such questions or cross-examination as they deem necessary.

6. Continuance

All hearings conducted pursuant to these rules may be continued for reasonable cause and reconvened from time to time and from place to place by the Chairman or the Presiding Officer as circumstances require. All orders for continuance shall specify the time and place at which such hearing shall be reconvened.

7. Regulation of Certain Devices

The placement and use of television cameras, still cameras, motion picture cameras or microphones at the Board of Arbitration hearings, other than by the official Board of Arbitration reporter for the purposes of recording the proceedings thereof, may be regulated by the Chairman or the Presiding Officer.

F. Evidence

1. General

Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonable men in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded.

2. Official Notice

The Board of Arbitration may, at any time, take notice of judicially cognizable facts and generally recognized facts of common knowledge to the general public. The Board of Arbitration shall include in its final decision those facts of which it took official notice, unless those facts are included in the transcript of the record.

3. Proof of Official Record

The Chairman or the Presiding Officer may require that an official record or lack thereof be evidenced by an official publication or by a copy or a statement attested by a person having, or who would ordinarily have, the legal custody of the record.

4. Documentary and Real Evidence

All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of a copy or exerpts, if the original is not readily available. The Chairman or the Presiding Officer may require, after prior oral or written reasonable notice, that any party offering any documentary or photographic evidence provide the Board of Arbitration with an appropriate number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably susceptible of reproduction. The Claimant and the Respondent shall provide each other with copies of any exhibit offered in evidence unless otherwide ordered by the Presiding Officer. All documents, materials and objects admitted into evidence shall be made available for examination during the course of the hearing. All such evidence will also be available for public examination at such other reasonable times and places as the Chairman may determine.

5. Objections

All objections to rulings of the Presiding Officer regarding evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing. If during or after the close of the hearing and during its deliberations the Board of Arbitration determines that a ruling of the Presiding Officer was in error, it may reopen the hearing or take such other action as it deem appropriate to correct such eeror.

G. Testimony and Cross-Examination

1. Varying Order of Appearance

When circumstances warrant, the Chairman or the Presiding Officer may vary the order in which witnesses appear and the order in which testimony is given or witnesses cross-examined.

2. Direct Testimony

Direct testimony shall be offered in the following order:

a. The Claimant and such representatives and witnesses as he chooses.

b. The Respondent and such representatives and witnesses as he chooses.

c. Board of Arbitration experts and consultants and witnesses called by the Board of Arbitration on its own motion.

3. Cross-Examination and Questions

At the conclusion of the testimony of each witness, the Board of Arbitration members, experts and consultants, the Claimant and the Respondent shall have the right to oral cross-examination. Cross-examination shall be conducted in the following manner:

a. The Claimant
b. The Respondent
c. Board of Arbitration experts and consultants

In addition, Board of Arbitration members and counsel for the Board of Arbitration may ask questions of any witness at any time. The Presiding Officer may require that all cross-examination, either oral or written, be conducted at the conclusion of the testimony of each category of witness rather than at the conclusion of the testimony of each individual witness.

4. Rebuttal Testimony

At the conclusion of all direct testimony and the cross-examination of each witness or category of witness as determined by the Presiding Officer pursuant to Rule 21.G.1. hereof, all persons participating in such hearing shall have the opportunity to submit rebuttal testimony in the order provided in Rule 21.G.2. hereof. Rebuttal testimony will be limited to those matters which were the subject of direct testimony and cross-examination and no new subject matter may be introduced into such a hearing by way of rebuttal.

H. Conclusion of Hearing

After the conclusion of the hearing, no other evidence or testimony will be allowed into the record.

I. Reopening the Record

At any time prior to a final decision, the Board of Arbitration may reopen the record for further proceedings consistent with these rules provided, however, that the Board of Arbitration shall give notice of such further proceedings, in writing, to the Claimant and the Respondent at least five (5) days prior to such proceedings.

J. Briefs, Proposed Findings

All persons participating in any hearing shall have the right to submit to the Board of Arbitration, written proposed findings of facts, briefs and recommended determinations within such time as may be ordered by the Presiding Officer or the Chairman.

K. Oral Argument

Oral argument shall be permitted before the Board of Arbitration at the conclusion of the evidence or at a time and place to be fixed by the Chairman, or Presiding Officer at his discretion.

L. Record

The record of the hearing shall consist of the recording or transcript of the hearing and all exhibits.

22. Decision

A. Time

Within thirty (30) days of the close of the record of the hearing, if any, or within the time limits otherwise applicable pursuant to Rule 19. when no hearing was held, the Board of Arbitration shall issue its decision, in writing, to the Claimant and the Respondent. Except that in a proceeding involving more than one Claimant, the Board of Arbitration may designate an additional time within which to issue its decision, but in no case shall such decision be delayed beyond sixty (60) days after the close of the record.

B. Content

1. A decision issued hereunder shall set forth the name of the Claimant, the name of the Respondent, the date of the discharge, the nature of the discharge, the amount of the claim and the amount of the award, if any. In addition, the decision shall set forth the facts upon which the decision was based and shall also set forth any facts officially noticed by the Board of Arbitration and upon which its decision was based.

2. The notice of decision shall also state that the Claimant and the Respondent may petition for the correction of error or reconsideration of officially noticed facts all as provided in Rule hereof.

3. If no hearing has been held, the notice of decision shall also inform the Claimant and the Respondent that a hearing will be held if either of them so requests in writing, within fifteen (15) days, the decision shall become final.

C. Notice to the Board of Environmental Protection

Upon a decision becoming final and upon certification of the award to the Treasurer of the State, the Chairman shall forward the complete record of the claim, including the tape or transcript of any hearing, all exhibits, attachments, reports, correspondence and all other materials, together with the docket sheet required by Rule 18.B. hereof to the Board of Environmental Protection.

23. Petition for Correction of Error or Reconsideration of Officially Noticed Facts

Within ten (10) days after the receipt of notice of any decision, the Claimant or the Respondent may petition the Board of Arbitration to correct any misstatement of fact or other clerical eeror contained in the final decision or to challenge any material fact of which the Board of Arbitration took official notice. The Board of Arbitration shall determine whether to (1) dismiss the petition as without merit, (2) correct the error, (3) schedule or reopen a hearing to correct such error or to hear evidence relating to the noticed material, or (4) take such other steps as it deems appropriate.

24. Amount of Awards

A. Default Judgments or Awards

In cases of mystery spills or where a Respondent has failed to file an answer or response or to participate in the proceedings, the amount of damages awarded by the Board of Environmental Protection or the Board of Arbitration shall not exceed the amount of the claim as initially filed or as amended from time to time prior to a final decision, so long as any amendment is timely served upon the Respondent where one has been identified.

B. Judgment or Award of Contested Claim

Except as provided in paragraph A above, every award shall grant the relief to which the Claimant is entitled even if that amount exceeds the amount of the claim.

25. Public Records

A. Files and Records

Unless specifically otherwise ordered by the Board of Environmental Protection or the Board of Arbitration pursuant to Rule 25.B below, the files and records of the Board of Arbitration as to claims submitted under the Coastal Conveyance Act shall be open to inspection by any interested person at such reasonable times and places as may be set by the Commissioner.

B. Protective Orders

Upon motion by a Claimant or a Respondent, and upon good cause shown, the Board of Environmental Protection or the Board of Arbitration may order that any or all documents, records and other materials submitted by the person making the motion be sealed and open only to the members and staff of the Board of Environmental Protection, the Board of Arbitration, the Claimant and the Respondent or upon order of court. Orders issued hereunder shall be used only for the purpose of protecting trade secrets, secret processes, formulas or other methods used by the moving party or under his direction and for the purpose of protecting business records and reports including but not limited to financial reports, records, and projections which could reasonably be seen to have a harmful economic, business or financial effect on such person if such materials were disclosed, except that where the Claimant and the Respondent agree and the Board of Environmental Protection or the Board of Arbitration, as appropriate, approves, an order may issue hereunder covering any document, record or other materials which may be harmful to one of the parties.

C. Hearings

All hearings shall be open and any interested person may attend.

26. Miscellaneous

A. Extensions of Time

The Chairman or the Commissioner, as appropriate, shall have the right, upon the motion of the Board of Arbitration, a Claimant or a Respondent, to extend any time limits imposed for such further time as is reasonable and required by the interests of justice.

B. Forms

All motions, proposed findings, petitions and briefs, and to the extent practicable, written testimony filed with the Board of Environmental Protection or the Board of Arbitration, except for documents not susceptible of reproduction in the manner herein provided or for other good cause shown, shall be typewritten or printed on white opaque paper 8½ x 11 inches in size, bound on the left margin. Typed matter shall be double spaced. The first page of each such document shall be headed by the Title:

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION
BOARD OF ARBITRATION (IF BEFORE THE BOARD OF ARBITRATION)
(COASTAL CONVEYANCE ACT)

and shall have (1) a caption as follows: In the matter of Claim of _____ for damages from oil discharge, (2) the title of the document, (3) the name of the person or organization submitting the document, and (4) the date upon which the document was submitted.

C. Service and Filing of Documents

1. Service

A copy of all amendments to claims, motions, petitions, briefs and prefiled written testimony, permitted or required to be filed with the Board of Arbitration pursuant to these rules shall be served upon Claimants and Respondents in the proceeding or their representatives as follows:

Whenever under these rules service is required or permitted to be made upon a party represented by another person the service shall be made upon the representative unless service upon the party himself is ordered by the Board of Arbitration. Service upon a representative who has ceased to represent a party is sufficient compliance with this rule until written notice of change of representative has been served upon the other parties. Service upon the representative or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the Chairman. Delivery of a copy within this rule means: handing it to the representative or to the party; or leaving it at the appropriate office with a designated clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

2. Representatives

The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made.

D. Computation of Time

All computations of time under these Rules shall be in the same manner as provided by Maine Rules of Civil Procedure, Rules 6(a), (b) and (c).

E. Receipt of Claims Regarding Discharge for Which Prior Claim Has Been Filed.

Upon receipt of a claim based upon a discharge for which a prior claim has been referred to the Board of Arbitration, the Board of Arbitration shall process the new claim in accordance with these rules.

F. Supplemental Regulations

Upon written agreement of both the Claimant and the Respondent, the Board of Environmental Protection or the Board of Arbitration may waive, alter, modify, supplement or suspend any part of these Rules, for the purpose of simplifying procedures and speeding the final resolution of claims.

BASIS STATEMENT: The establishment of a third party damage claim is a complex endeaver. The rights of the various parties and the State need to be protected. In addition, a speedy resolution of the claim is vital. These rules provide the foundation for processing claims as well as validating claims.

AUTHORITY: 38 M.R.S.A., Sections 361, 546,& 551

EFFECTIVE DATE: September 30, 1974

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 680 TANKER ANCHORAGE RULES

SUMMARY: These rules provide that the Board has to be satisfied that the long term anchoring of tankers in Maine waters must be safe, environmentally sound and not interfere with existing uses before a tanker will be allowed to anchor for the sole purpose of staying over for a period of time. Exemptions to the permit requirements are allowed for routine activities and emergency storage in the event of shortage of product. Application procedures and information needed to support an application are outlined in detail.

1. General

The Board of Environmental Protection, in regards to the lay-up of idled tankers and tank vessels, has determined that long term lay-ups of these vessels in Maine waters may be permitted when the applicant has proven to the satisfaction of the Board that the proposed lay-up is:

A. Safe in all respects as determined by the Board of Environmental Protection.

B. Environmentally sound as determined by the Board of Environmental Protection.

C. That the location of the lay-up shall not unduly interfere with or obstruct navigable waters, traditionally harvested fishing grounds, or aesthetic and recreational uses of waters of the State.

2. Definition

Anchorage - As applied to these regulations 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 shall not include the mooring of a vessel for bunkering, maintenance, repair or overhaul, or in connection with or as a part of sea trials.

3. Exemptions

A. Certain routine activities
Those vessels at anchorage awaiting assignment following a regularly scheduled unloading operation shall be exempt from obtaining a permit from the Board of Environmental Protection for the long term storage of tank vessels in State of Maine waters if the vessel remains fully crewed during the entire anchorage period that the vessel is awaiting assignment and if the vessel has no oil on board other than that necessary for its own use.

B. Emergency Storage
The Board may exempt specific vessels from the permit requirements after it has been determined by the Governor through the Office of Energy Resources as provided for under the State Emergency Plan from the Office of Energy Resources that an actual or impending petroleum product shortage is imminent for Maine.

This exemption contemplates the possible use of tank vessels in times of emergency to temporarily increase the storage capacity for the State when supplies are short.

4. Application

Any person desiring to have a vessel on long term anchorage (exceeding 7 days) in Maine waters shall file an application to the State of Maine through the office of Oil Conveyance Services of the Department of Environmental Protection; the Division shall then relay to the Board of Environmental Protection the request for anchorage that the applicant has made.

The application shall contain:

A. The identity of the applicant.

B. Name of the vessel or vessels desiring anchorage.

C. Flag of registry.

D. The size and type of the vessel including: length, beam, draft and deadweight tonnage.

E. A brief description of the propulsion and generating machinery on board the vessel along with a crew list that indicates the number of men and their qualifications that are normally required on board the vessel that ensure proper operation during periods when the vessel is being used for routine transportation and transfer of oil.

F. Age of the vessel and place it was built.

G. Owner of the vessel or vessels.

H. Agent or local representative for the vessel.

I. A complete contingency plan for the proposed area.

The applicant must also cause public notice of the application along with a brief summary to be published in a paper of general circulation in the vicinity of the proposed activity and provide other information to the public that the Board may require.

This brief summary shall include but not be limited to: the size of the vessels, the proposed period of lay-up and the location of the lay-up using local terms and local landmarks to describe the proposed location.

The Board shall, within thirty (30) days of receipt of such application, issue a license or deny a license giving the reasons therefore or order a public hearing thereon. Any applicant denied a license without a hearing may request in writing, within thirty (30) days after notice of denial, a hearing before the Board. Such request shall set forth in detail the findings to which the applicant objects, the basis of such objection and the nature of the problem requested. Notice of the time and place of any hearing shall be given to the applicant and the public within ten (10) days of the hearing.

The Board of Environmental Protection shall attempt to coordinate all hearings and other matters pertaining to vessel lay-up with the United States Coast Guard whenever possible in an attempt to avoid unnecessary duplication for the applicant.

5. Requirements

The Board of Environmental Protection requires that the applicant submit in writing, along with the application, a comprehensive proposal for the lay-up of tankers or tank vessels singly or in nests. This proposal will identify the party responsible for the vessel or vessels in lay-up.

This proposal shall include plans for safe and pollution-free lay-up. The plans shall include but not be limited to:

A. The applicant shall submit specific location, duration, and type of anchorage information.

B. The applicant shall assure that the cargo tanks, adjacent cofferdams, ballast tanks, pumping rooms, cargo piping systems, and cargo venting arrangements are thoroughly clean, gas-free, and will be maintained gas-free. Initial gas-free certification shall be made by a licensed *marine chemist. Thereafter, gas-free status shall be checked weekly by a licensed marine chemist until condition is stabilized, after which intervals may be lengthened.

C. The applicant shall submit to the Board, Evidence of Financial Responsibility required by the Federal Water Pollution Control Act, and evidence of suitable liability insurance for each vessel.

D. The applicant shall submit specifications reviewed and approved by a **marine surveyor, qualified in the class of vessel, as to size and scope of chain, number and size of anchors to be used dependent on freeboard, depth of water, type of bottom holding ground and extreme climatic tidal and current conditions in the area. In areas of doubtful holding ground, a statement of a geologist based on test borings may be required. A minimum of 5 feet under-keel clearance must be assured at extreme low tides. Vessels over 30,000 DWT shall be anchored or moored both fore and aft.

E. The applicant shall indicate if the laid up vessel is to be moored to a waterfront facility. The facility and all dolphins and other shoreside mooring fittings, and the number, size, arrangement, and condition of mooring lines shall be certified by a qualifiedmarine surveyor as safe and capable of holding the vessel secure, taking into account freeboard, draft and extreme climatic tidal and current conditions in the area.

F. The applicant shall indicate the systems and precautions necessary for safety on each vessel.

1. Contingency plans for heavy weather.

2. Contingency plans for fire fighting.

3. Contingency plans for tug boats.

4. Contingency plans for emergency evacuation of crews.

5. Plans for safe fendering.

6. Assurance that prescribed navigation lights and shapes will be displayed at appropriate times.

* As licensed by the National Fire Protection Association
** A person employed by the American Bureau of Shipping (ABS) as a marine surveyor.

G. The applicant shall list the number of men that will be assigned to the vessels during the lay-up period. This listing shall indicate the names of the men, the qualifications of the assigned men and the availability of the men.

The Board must be notified if there are any changes to this list of men at any time during the entire lay-up period. The applicant must designate one man as the pollution control coordinator who will be responsible for the on-going environmental requirements during the lay-up period.

H. The applicant shall submit a detailed plan for the disposal of solid waste at the time of application.

I. The applicant shall submit a detailed sewage disposal plan for review at the time of application.

J. The applicant shall permanently maintain standard and emergency communications between shore and the vessels in a lay-up condition.

K. The applicant must submit a current Deratization Certificate.

L. If no live, aboard ship-keeping crew is planned, the applicant must prove to the Board that this is an adequate way to ensure safe lay-up.

If no live, aboard ship-keeping crew is required by the Board the applicant must demonstrate plans to conduct periodic visits by people determined by the Board to be competent to assure safety and compliance with State law.

M. The applicant shall notify the Board of Environmental Protection of changes in flag or registry or change of ownership of the laid up vessels.

N. Before approval of a proposed lay-up, the Board may elect to hold a public hearing.

O. Approval of a lay-up shall be deemed a granting of permission for employees of the Department of Environmental Protection to make periodic inspections of the vessel or vessels to assure that the applicant is in compliance with the terms of the permit during the entire lay-up period.

6. Time Limits

The policy of the Board of Environmental Protection is that the storage of tankers or tank vessels in Maine waters is an emergency or temporary situation, therefore the Board shall place strict time limits on any approved lay-up.

A. Terms of Permit

1. The Board shall issue a permit for a period not to exceed three (3) months.

2. This three month period may be renewed five (5) additional times after the initial permit for a maximum total of eighteen (18) months after which the vessel must leave the waters of the State of Maine.

7. Variances

The Board may authorize a variance to any of the aforementioned regulations upon request by the applicant and after the Board has made a determination that the regulation is impractical to his proposed lay-up. Any variances voted by the Board shall become a part of the permit.

BASIS STATEMENT: Persons who wish to anchor tankers for the purpose of laying up tankers need to know the standard they need to satisfy as well as the procedures that need to be followed to obtain a permit. These rules make applicants aware of the process by which the applications will be evaluated and of their rights and obligations.

AUTHORITY: 38 M.R.S.A., Section 560

EFFECTIVE DATE: January 16, 1976

# MARINE RESOURCES MANAGEMENT LAW

MAINE REVISED STATUTES ANNOTATED
Title 12 §§ 6171, 6191-6193,
6022

### § 6171. Conservation and propagation of marine organisms

**1. Commissioner's powers.** The commissioner may investigate conditions affecting marine resources and, with the advice and consent of the advisory council, may adopt or amend such regulations as he deems necessary to promote the conservation and propagation of marine organisms.

**2. Limitations.** This section grants no authority to adopt regulations for the conservation of Atlantic salmon. A regulation authorized under this section may only limit the taking of marine organisms by one or more of the following:

A. Time;
B. Method;
C. Number;
D. Weight;
E. Length; or
F. Location.

**2-A. Management plans.** The commissioner may only adopt a management plan or other policy on the conservation or regulation of marine organisms after prior notice and public hearing and with the advice and consent of the advisory council.

**3. Emergency regulations.** The commissioner may adopt or amend regulations under the emergency procedures, if immediate action is necessary to protect or conserve any marine organism from unusual damage or imminent depletion. An unusually large concentration of fishermen which might deplete the supply of any marine organism shall justify adopting emergency regulations.

**4. Procedure.** The procedures of subchapter II shall be used in adopting or amending regulations authorized by this section.

### § 6191. Regulation making

**1. Procedures.** In adopting or amending any regulation, the commissioner shall use the procedures required for rulemaking under the Maine Administrative Procedure Act, Title 5, chapter 375,[1] and the additional requirements of this subchapter.

**2. Other requirements.**

A. A public hearing may be held but is not required unless it is requested by an interested person.

B. The person conducting the hearing shall record and retain all relevant evidence provided at the hearing.

C. No regulation, except a regulation authorized under section 6172, shall be adopted or amended without the advice and consent of the advisory council, except as provided in section 6192, subsection 2.

### § 6192. Emergency regulation making

**1. Procedures.** In an emergency adoption or amendment, the commissioner may modify the procedures required under the Maine Administrative Procedure Act and section 6191 in the following manner.

A. In an emergency adoption or amendment of regulations relating to the public health and safety, including regulations authorized under section 6172, prior public notice and hearing shall not be required.

B. In an emergency adoption or amendment of regulations relating to the general welfare, including regulations authorized under section 6171, a prior public hearing shall be held if requested, but notice may be published only once, not less than 5 days prior to the hearing.

**2. Advisory council.** The advice and consent of the advisory council shall not be required prior to an emergency adoption or amendment.

**3. Effective period.** Any emergency regulation shall be effective only for 90 days, or any lesser period of time specified in the emergency regulation. After the expiration of the emergency period, the regulation shall not thereafter be adopted except in the manner provided by section 6191. This subsection shall not apply to emergency regulations authorized under section 6172, which shall be effective until repealed.

**4. Effective date.** Any emergency regulation shall become effective immediately upon publication in a newspaper of general circulation in the area of the State affected, provided it is submitted to the Attorney General and filed with the Secretary of State as required under the Maine Administrative Procedure Act, within the next business day following publication.

**5. Repeal.** Emergency regulations may be repealed in the same manner as they are adopted.

### § 6193. Exception for publication requirements

Emergency regulations authorized under section 6172 shall be exempted from the requirement that they be supplied to persons that have requested them, as required under Title 5, section 8055, subsection 1.

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

1. **Appointment and term.** The commissioner shall be appointed by the Governor and shall be subject to review by the Joint Standing Committee on Marine Resources and to confirmation by the Legislature. His term shall be coterminous with the Governor, but shall continue until his successor is appointed and qualified.

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

3. **Organization and personnel.** The commissioner shall organize the department into the administrative units which he decides are necessary to carry out its duties. The commissioner shall hire all necessary employees of the department subject to the Personnel Law, except as provided in section 6023, and shall prescribe their duties.

4. **Warden code.** The commissioner shall prepare a written code governing the operating procedures of the coastal warden services for submission to the Commissioner of Personnel. The code shall become effective when approved by the Commissioner of Personnel.

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

6. **Enforcement agreements.** The commissioner may enter into reciprocal enforcement agreements with political subdivisions of the State and with other states, regional authorities and the Federal Government.

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

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

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

10. **Ecological impact.** The commissioner shall advise the United States Army Corps of Engineers, the Maine Department of Transportation and appropriate state agencies on the ecological effects of dredging, filling and depositing of soil or otherwise altering coastal wetlands.

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

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

These are the general regulations of the Department of Marine Resources without the regulations concerning opened and closed clam flats. The clam flat regulations change too frequently to warrant publication.

## REGULATIONS OF THE COMMISSIONER

### Cumberland County

**Sec. 1.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 2.** Repealed by P.&S.L. 1961, c. 89, §1.

**Sec. 3.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 4. Taking of quahogs in Maquoit Bay.** It is unlawful to dredge, or to take quahogs by any means, except by the usual manner of hand digging with a so-called clam hoe, or by hand raking and hand tonging, or by picking quahogs out of the mud by hand, from the waters or flats of Maquoit Bay, Cumberland County, namely, all of the territory north and northeast of a line drawn from the most southerly end of Mere Point in the Town of Brunswick to the northeasterly end of Little Flying Point in the Town of Freeport. This section shall not apply to equipment operated by the Department of Marine Resources. (P. & S.L. 1961, c. 44)

**Sec. 5. Taking of quahogs in Middle Bay.** It shall be unlawful to dredge or to take quahogs by any means, except by the usual manner of hand digging with a so-called clam hoe or by hand raking and hand tonging, or by picking quahogs out of the mud by hand from the waters or flats of Middle Bay, Cumberland County, namely all of the territory north and northeasterly of a line drawn from a red marker, on the eastern shore of Mere Point and located at Blackstone Rock on the south shore of Win Smith Cove, so-called, then in an easterly direction to and including the northern shore of Birch Island and continuing in the same general direction to a red painted wood post placed on the northern point of Wilson Cove, so-called, located in the western shore of Harpswell Neck. This section shall not apply to equipment operated by the Department of Marine Resources.

**Sec. 6.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 7.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 8. Fishing in Fore River, Cumberland County.** It shall be unlawful to obstruct in any way by any net, seine, weir or other contrivance for taking fish, more than 1/8 part of the channel of Fore River, Cumberland County.

**Sec. 9. Use of purse, drag or stop seines in certain waters prohibited; regulation of fishing therein.** No person shall use any purse, drag or stop seines in the following waters:

I. Repealed by P.&S.L. 1963, c. 34.

II. In Kennebec River above a line drawn across said river from Fort Popham in the Town of Phippsburg to a point opposite at the lower end of Long Island in the Town of Georgetown.

III. In Sheepscot River above a bridge leading from Wiscasset to Edgecomb.

IV. In the Damariscotta River above a straight line drawn across the River from a point on the shore of Back Narrows on the west side of the River in the Town of Boothbay intersecting the southwestern point of Fort Island and the red nun navigational buoy #10 to a point on the opposite shore in the Town of South Bristol, except that purse, drag or stop seines may be used by holders of permits issued by, and under the conditions of the Commissioner of Marine Resources, up to a straight line drawn from the northernmost point of Fitch Point on the east side of the River in the Town of South Bristol intersecting the day beacon to a point on the opposite shore in the Town of Edgecomb on the west side of the River for the taking of menhaden during the period from June 1 to December 31 of each year. Boats transporting menhaden are limited to 30,590 pounds, 437 bushels, or 25 hogsheads, and must be measured, plainly marked and sealed by the State Sealer of Weights and Measures. Any violation of this regulation shall be cause for suspension of permit.

V. In the Georges River, above a straight line drawn from Hooper's Point in the Town of St. George, westerly across the northern point of Caldwell's Island to a point on the opposite shore of Gay Island in the Town of Cushing, or take smelts in said river and its tributaries in any other way than by hook and line, or dip nets, except that purse, drag or stop seines may be used by holders of permits issued by, and under the conditions of the Commissioner of Marine Resources, up to a straight line drawn from the most southern point of Fort Point, northwest (315° magnetic) to a point on the opposite shore for the taking of menhaden during the period from June 1 to December 31. Boats transporting menhaden are limited to 30,590 pounds, 437 bushels, or 25 hogsheads, and must be measured, plainly marked and sealed by the State Sealer of Weights and Measures. Any violation of this regulation shall be cause for suspension of permit.

VI. Purse, drag or stop seines may be used, from May 15th to December 1st of each year in all bays, inlets, rivers and harbors east of the west shore of the Penobscot Bay and River, except in places where sections of this chapter are to the contrary, in which places purse seines, drag seines and stop seines may be used from May 15th to November 15th of each year for the purpose of catching herring.

**Sec. 10.** Repealed by P.L. 1973, c. 343, § 4.

### Hancock County

**Secs. 11-16.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 17.** Repealed by P.&S.L. 1961, c. 46, § 1.

**Secs. 17-A, 17-B, 17-C.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Secs. 18-31.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 32. Use of purse and drag seines in the waters of Sargentville Harbor.** The use of purse and drag seines is prohibited in the waters of Sargentville Harbor, known as Billings Cove.

**Sec. 33. Fishing in Bagaduce River and its tributaries in Castine, Penobscot and Brooksville.** No person shall use any weir, seine, trap or any other contrivance in catching, fishing for or taking fish in the Bagaduce River or any of its tributaries, in the Towns of Castine, Penobscot and Brooksville, Hancock County, except by the use of gill nets, and permanent weirs, with not less than 50 poles, constructed of laths, brush, wire or twine.

I. The trapping of eels in the Bagaduce River and its tributaries shall be lawful

**Sec. 34. Use of beam trawls in Sedgwick Harbor.** The use of beam trawls or any similar device is prohibited in Sedgwick Harbor, known as Benjamin's River. This section shall not be construed as prohibiting the taking of smelts in the usual manner by the use of purse seines during the time when the use of seines for this purpose is lawful in other waters of the State

**Sec. 35.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 36.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 36-A.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 37.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 38. Taking of alewives in Surry.** It shall be unlawful for any person to take, catch, kill or destroy any alewives other than by seines and weirs in the waters of Patten's Bay in the Town of Surry, Hancock County, westerly of a line running from the southern extremity of Weymouth Point to Brown's Point, so-called, on the eastern side of Newbury Neck including the whole of that portion of Patten's Bay, with the exception of Patten's Pond Stream.

The entire control and authority over said portion of Patten's Bay, and the right to take alewives therein is granted to the inhabitants of said Town of Surry. Said town, at any legal meeting, when an article shall be inserted in the warrant for that purpose, is authorized and empowered to take such action as shall be necessary to protect said town in the entire right of the alewife fishery in said portion of Patten's Bay and for that purpose may authorize the selectmen there chosen, to have entire control, direction, supervision and the right to issue permits for the privilege of taking alewives in said portion of Patten's Bay.

This section is subject to the Revised Statutes of 1964, Title 12, section 3708, as amended.

1969, c. 254, § 2.

**Sec. 39.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 40. Taking of alewives from Walker's Brook.** It shall be unlawful for any person to take, in any manner, more than one peck of alewives per day from the waters of Walker's Brook, so-called, that run between Walker's Pond and the Bagaduce River, in the Town of Brooksville.

**Sec. 41.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 42. Taking of alewives in the Town of Orland regulated.** First four (4) paragraphs repealed by P.L. 1973, c. 343, § 4.

The St. Regis Paper Company or its successors shall be required from the 15th day of April to the first day of December of each year, at their own expense, to keep the fishways at the lower and upper dams of the Eastern River in repair and in such order at all times so that the passage of said fish into, or out of, Lake Alamoosook, so-called, will not be hindered. (P.&S.L. 1959, c. 32).

**Sec. 43. Taking of alewives in Gouldsboro.** Exclusive rights to the taking of alewives from all the waters in the town of Gouldsboro, Hancock County, shall be optional with the town.

The town at its annual meeting, may determine by vote whether the alewife fishing in these waters shall be operated by the town, through its selectmen or a committee appointed for that purpose or the privilege offered for sale by the said selectmen or committee; and likewise may provide for regulations, compatible with good conservation practices, to govern the times when and the manner in which alewives shall be taken therein.

Whenever such regulations are thus provided for, they shall be promulgated by the selectmen of the Town of Gouldsboro and a copy of the same filed immediately with the clerk of said town and the Commissioner of Marine Resources.

If in any year said town shall fail to act as provided for, the taking of alewives in said waters shall be in accordance with the provisions of the general laws of the State and any regulations adopted under authority of this section shall be enforced by the municipal officers of the Town of Gouldsboro.

If, after thorough investigation, it is the opinion of the Commissioner of Marine Resources that the town is not following sound conservation principles in its management of the fishery, said commissioner shall notify the town officials of his findings, and they shall take immediate corrective measures to prevent destruction of the fishery.

This section is subject to the Revised Statutes of 1964, Title 12, section 3708, as amended.

1969, c. 254, § 2.

**Sec. 44.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 44-A.** Repealed by P.L. 1973, c. 343, § 5.

**Sec. 45.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 46.** Repealed by P.&S.L. 1963, c. 31.

**Knox County**

**Secs. 47-52.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 53. Lobster fishing in waters adjacent to Criehaven.** The waters around the Island of Criehaven within the following described limits. Beginning at the southern end of Hogshead, so-called, running west by north 2 nautical miles, thence southwest by south 3½ nautical miles, thence east, southeast, 3 nautical miles, thence northeast 3 nautical miles, thence to the first mentioned bound, shall be closed or opened to lobster fishing whenever a majority of the lobster fishermen at Criehaven so petition the commissioner.

**Sec. 54. Taking of alewives in Georges River.** It shall be unlawful to construct, set, maintain or use any net or seine in the waters of Georges River above a line drawn from Hooper's Point in the Town of St. George, westerly past the northerly end of Caldwell's Island to a point opposite on the shore in the Town of Cushing, for the purpose of taking or catching alewives between April 1st and July 15th. Nothing herein shall be construed to abridge or affect in any manner the rights and privileges now held by law by the Town of Warren in the alewife fishing in the said Georges River.

Between April 20th and June 15th of each year no one shall fish, disturb or molest the alewives, or operate any boat within 1,000 feet of the alewife trap, located approximately 500 feet south of the Lower Warren Village Bridge on the Georges River.

This section is subject to the Revised Statutes of 1964, Title 12, section 3708, as amended.

P.&S.L. 1969, c. 105; 1969, c. 254, § 2.

**Sec. 55.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 56.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 56-A. Use of draggers in part of Penobscot Bay.** It shall be unlawful, from the first day of October to the first day of the following February, to use a dragger or any other dragging apparatus, except standard scallop drags, for the taking of fish or lobsters on the ocean bottom in that part of Penobscot Bay inside a line drawn from Southern Island to south end of Clark Island, to White Head Island, to Two Bush Island, to Metinic Island Ledge Buoy, to Duck Rock Buoy west of Monhegan Island, to Old Man Ledge Buoy, to Burnt Island, to West side of Mosquito Island, thence back to point of beginning. P.L. 1959, c. 363, § § 66, 69.

**Lincoln County**

**Secs. 57-61.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 62.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 63.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 64. Taking of alewives in Damariscotta River.** It shall be unlawful to construct, set, maintain or use any net, weir, seine or other device, in the waters of the Damariscotta River, northerly of the bridge between the Villages of Newcastle and Damariscotta, for the purpose of taking or catching alewives. No one shall fish, disturb or molest the alewives in any way west of the railroad bridge, from April 20th to June 15th. Nothing herein shall be construed to abridge nor affect in any manner the rights and privileges now held by law by the Towns of Newcastle and Nobleboro in the alewife fishery in the said Damariscotta River.

This section is subject to the Revised Statutes of 1964, Title 12, section 3708, as amended.

P.&S.L. 1969, c. 19; 1969, c. 254, § 2.

**Sec. 65.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 66.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 67.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 67-A.** Repealed by P.L. 1973, c. 343, § 5.

**Sec. 68.** Repealed by P.&S.L. 1961, c. 89, § 3.

**Sec. 68-A. Taking of smelts at Damariscotta Mills.** It shall be unlawful to take salt water smelts from the waters above the so-called Fish Stream Bridge at Damariscotta Mills during the months of March, April and May of each year. (P.&S.L. 1965, c. 35).

**Sec. 68-B. Taking of smelts in Eastern River.** The Eastern River in the Town of Dresden is closed to all smelt fishing, except by hook and line.

P.&S.L. 1971, c. 47.

**Sec. 69. Close time about Monhegan.** It shall be unlawful to take, catch, kill or destroy any lobster or lobsters, or set any lobster trap or other device for the purpose of taking, catching, killing or destroying any lobster or lobsters within 2 nautical miles of the shore of Monhegan Island between the 25th day of June of each year and the first day of January following. (P.&S.L. 1961, c. 88)

**Sec. 70.** Repealed by P.L. 1969, c. 10, § 2.

**Sec. 71.** Repealed by P.&S.L. 1977, c. 20, § 1. (NOTE: See Section on P.&S.L. for regulation on Pemaquid River.)

**Sec. 72. Fishing for cod and other ground fish in Sheepscot Bay.** It shall be unlawful to fish for or to take, except with tub or line trawls or by ordinary hook and line, any cod or other ground fish from the waters of Sheepscot Bay that border on the Town of Georgetown, Sagadahoc County, and the Town of Southport, Lincoln County, from Griffith's Head in an easterly direction to lower Mark Island, thence in a southerly direction to the Cuckholds, thence in a northeasterly direction to Ocean Point. (P.&S.L. 1961, c. 89, § 4.)

**Sec. 73. Fishing in the Sheepscot River; eel fishing.** It shall be unlawful to use any type of net or seine in the Sheepscot River and its tributaries between the Wiscasset-North Edgecomb Bridge and the so-called Headtide Dam at Alna.

The fishing of lamprey eels within these waters shall be under the direction of the Commissioner of Marine Resources who may issue permits to take lamprey eels at places and by means designated by him.

This section does not apply to the taking of alewives under section 62, nor to the taking of alewives under any other law. (P.&S.L. 1961, c. 89, § 5)

**Sec. 73-A. Use of draggers in parts of Sheepscot Bay.** It shall be unlawful between the first day of November and the first day of the following February, to use a dragger or any other dragging apparatus, except standard scallop drags, for the taking of fish or lobsters from those parts of Sheepscot Bay, Sagadahoc and Lincoln Counties, inshore from a line drawn from the southern end of Small Point to the southern end of Seguin Island; thence to southern end of Pumpkin Island; thence to Ocean Point. P.L. 1959, c. 363, §§67, 68; P.&S.L. 1961, c. 89, §6; P.&S.L. 1969, c. 46.

**Use of draggers in part of Penobscot Bay; See Sec. 56-A.**

**Sagadahoc County**

**Secs. 74-75.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 76.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 76-A.** Repealed by P.L. 1973, c. 343, § 5.

**Sec. 77.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 78.** Repealed by P.L. 1973, c. 343, § 5.

**Sec. 79.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 80. Taking of smelts in Cathance River.** No smelts shall be taken or fished for in any way other than by hook and line, except in net of 2 inch mesh or more, in the tidal waters of Cathance River, in the village of Bowdoinham, Sagadahoc County.

**Sec. 81. Taking of smelts in the Sasanoa River.** No smelts shall be taken or fished for in the tidal waters of the Sasanoa River, except by hook and line, starting at the western point of Sasanoa Bluff on the west and continuing easterly to the eastern point of Hell Gates on the east.

**Sec. 82. Taking of smelts in Abagadasset River.** The Abagadasset River, in the Town of Bowdoinham, is closed to all smelt fishing except by hook and line.

**Sec. 83. Seining in Sasanoa River.** Fishing with the use of seines in the Sasanoa River below Bath from October 1st to April 1st is prohibited.

**Fishing for cod and other groundfish in Sheepscot Bay; See Sec. 72.**

**Use of draggers in parts of Sheepscot Bay; See Sec. 73-A.**

**Waldo County**

**Secs. 84-88.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 89. Taking of smelts in the Passagassawaukeag River.** It shall be lawful to fish for salt water smelts commercially in the Passagassawaukeag River, Waldo County, from the head of the tide to 2,000 feet below the Memorial Bridge.

**Washington County**

**Secs. 90-103.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 103-A.** Repealed by P.L. 1973, c. 343, § 5.

**Sec. 104.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 105.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 106. Taking of alewives and shad in Dennys River.** It shall be lawful to take alewives and shad, by means of an ordinary hand dip net, during the open season and under the restrictions and conditions provided by the general law of the State of Dennys River, in Edmunds and Dennysville, Washington County, up as far as the lower side of the Upper Bridge, near the Mill, so called.

**Sec. 107.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 108.** Repealed by P.L. 1973, c. 343, § 5.

**Sec. 108-A.** Repealed by P.L. 1973, c. 343, § 5.

**Sec. 108-B. Fishing in Narraguagus River.** It shall be unlawful to use any type of net or seine in the Narraguagus River and its tributaries from May 1st to October 15th of each year in that portion of the river between the so-called Great Bridge in the Town of Milbridge and the bridge at U.S. Route 1 in Cherryfield.

This section does not apply to the taking of alewives under section 108-A, nor to the taking of alewives under any other law. This section shall not apply to the taking of smelts under Title 12, section 4101.

P.&S.L. 1969, c. 104, § 2.

**Sec. 109. Taking of smelts in East Machias River.** It shall be lawful for any person to take smelts, without any limit on the catch, by the use of floating traps, gill nets or bag nets in the tidewaters of the East Machias River in East Machias from October 1st to April 30th each year, with the right to sell smelts on the open market. (P.&S.L. 1961, c. 49)

**Sec. 110.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 111.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 112.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 113.** Repealed by P.&S.L. 1961, c. 89, § 7.

**Sec. 114. Taking of smelts in Addison, Columbia Falls, Harrington, Cherryfield, Milbridge and Steuben.** Smelts may be taken from the tidal waters of the Towns of Addison, Columbia Falls, Cherryfield, Harrington, Milbridge and Steuben and from that part of Chandler River located in the Town of Jonesboro, all in the County of Washington, in the following manner: By hook and line, gill nets, hand dip nets, brush weirs and bag nets, from March 15th to April 30th of each year.

It shall be lawful to sell and to offer for sale within this State and to transport outside the State all smelts legally caught within said tidal waters. (P.&S.L. 1961, c. 47, P.&S.L. 1963, c. 281)

**Sec. 115.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 116. Salmon fishing in Pleasant River.** The taking of salmon in Pleasant River and its tributaries, Washington County is prohibited, except that they may be taken therefrom with unweighted fly hook and line and such hook shall not be larger than No. 4

**Sec. 117. Fishing in Dennys River.** It shall be unlawful to use seine or gill nets in the Dennys River above a line drawn from Hinckley Point in the Town of Dennysville due south to a red painted post in the Township of Edmunds. A hand dip net with a bow not more than 2½ feet in the largest diameter may be used between this line and the No. 1 Highway at the Upper Bridge, so called, for the purpose of catching alewives during the open season and under the conditions and restrictions provided by the general laws of the State.

No person shall catch Atlantic Salmon in Dennys River or its

tributaries except by hook and line.

**Secs. 118-119.** Repealed by P.&S.L. 1967, c. 26, § 3.

**York County**

**Secs. 120-123.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Sec. 124.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 125.** Repealed by P.L. 1973, c. 343, § 4.

**Sec. 126.** Repealed by P.L. 1969, c. 408, § 11.

**Sec. 127.** Repealed by P.L. 1963, c. 277, § § 7, 8.

**Secs. 128-129-A.** Repealed by P.L. 1969, c. 408, § 11.

**Sec. 130. Taking of lobsters in York River.** No person shall catch, take or trap lobsters in York River, York County, from its source to a line running from Rock's Nose, so called, to the red painted rock on Stage Neck, so called, on the opposite shore.

**Sec. 130-A. Taking of alewives in the Salmon Falls and Great Works Rivers.** Exclusive rights to the taking of alewives from the Salmon Falls and Great Works Rivers in the Town of South Berwick, York County shall be optional with the town.

The town, at its annual town meeting, may determine by vote whether the alewife fishing in these waters shall be operated by the town, through its council or a committee appointed for that purpose, or the privilege offered for sale by said council and likewise may provide for regulations, compatible with good conservation practices, to govern the times when and the manner in which alewives shall be taken.

Whenever such regulations are thus provided for, they shall be promulgated by the council of the Town of South Berwick and a copy of the same filed immediately with the clerk of said town and the Commissioner of Marine Resources.

If, in any year, said town fails to act as provided for, the taking of alewives in said waters shall be in accordance with the provisions of the general laws of the State and any regulations adopted under authority of this section shall be enforced by the municipal officers of the Town of South Berwick.

If, after thorough investigation, it is the opinion of the Commissioner of Marine Resources that the town is not following sound conservation principles in its management of the fisheries, said Commissioner shall notify the town officials of his findings and they shall take immediate corrective measures to prevent destruction of the fisheries, subject to section 3708 of Title 12 of the Revised Statutes of 1964, as amended. (P.&S.L. 1973, c. 44)

NOTE: (Effective March 26, 1973)

**Sec. 131. General penalty.** Whoever violates any provision of this chapter shall be punished by a fine of not less than $10 nor more than $300, or imprisonment for not more than 90 days, or by both.

**Sec. 132.** Repealed by P.L. 1975, c. 275.

**PRIVATE AND SPECIAL LAWS ARE NOW REGULATIONS OF THE COMMISSIONER BY VIRTUE OF P.L. 1973, c. 513, § 2.**

**Chapter A.**

**Regulation of Clams and Quahogs**

**Secs. 1-6.** Repealed by P.L. 1963, c. 277, § § 5, 8.

**Chapter B.**

**Regulation of Smelts**

**Sec. 1.** Repealed by P.L. 1973, c. 343, § 3.

**Sec. 2. Taking of smelts in the Penobscot River; penalty.** Except where otherwise provided by special legislation, it shall be lawful to fish for and take smelts from the tidal waters of the Penobscot River between the first day of October and the 15th day of May. During the last 15 days of said open time, such fishing and taking shall be restricted to the use of gill and dip nets only. It shall be lawful to fish for and take smelts from the tributaries of the Penobscot River between the first day of October and the first day of May. Any fish so taken from said waters may be offered for sale and sold within the State or shipped to such places out of the State as the owner may designate.

Whoever violates any provision of this section shall be punished by a fine of not less than $10 nor more than $100, or by imprisonment for not more than 30 days, or by both.

**Sec. 2-A. Taking of smelts in Town of Surry.** It is unlawful to take or to fish for smelts in any of the tidal waters in the Town of Surry, Hancock County, except by hook and line. During the periods each year from April 1st to June 15th only 4 quarts of smelts may be taken during any one day. (P.&S.L. 1963, c. 82; P.&S.L. 1973, c. 43)

NOTE: (Effective March 22, 1973)

**Sec. 3. General penalty.** Whoever violates any provision of chapter B, excepting only those provisions for which specific penalties are provided, shall be punished by a fine of not less than $10 nor more than $300, or by imprisonment for not more than 90 days, or by both.

**Sec. 4. Closed Season: Bagaduce River, Hancock County; penalty.** For conservation purposes there will be a closed season from March 15 to June 15 of each year to the taking of sea run smelts in all brooks and tributaries of the Bagaduce River upstream of the North Brooksville-Sedgwick Bridge.

Whoever violates any provision of this regulation shall be subject to a fine of not less than $25.00 nor more than $500.00 or by imprisonment for not more than 90 days, or by both.

NOTE: (Effective March 26, 1974)

**Chapter C**

**Regulation of Scallops**

**Sec. 1.** Repealed by P.&S.L. 1963, c. 27.

**Sec. 2.** Repealed by P.&S.L. 1965, c. 70.

**Sec. 3. Dragging for scallops in Harrington River and Bay and in Pleasant River in Washington County; penalty.** No person shall drag for scallops in Harrington River and Bay and in Pleasant River, Washington County, within the area described in this section from the 15th day of April to the first day of December of each year.

**I.** The provisions of this section apply only to the specific areas described in this subsection:

A. **Harrington River and Bay.** All the waters that lie northerly of a line beginning at the southern extremity of Foster's Island and running easterly to the most northerly end of Strout's Island, and thence from said Strout's Island to the most southerly extremity of Ripley's Neck in the Town of Harrington.

B. **Pleasant River.** All the waters that lie northerly of a line beginning at the most southerly end of Guard Point in the Town of Harrington and extending in an easterly direction therefrom to the most southerly end of Gibb's Island in the Town of Addison.

**II.** Whoever violates any of the provisions of this section shall be punished by a fine of not less than $50 nor more than $100 for each offense, or by imprisonment for not more than 60 days, or by both. (P.&S.L. 1965, c. 14.)

**Sec. 4. Dragging for scallops in Gouldsboro Bay, Hancock and Washington Counties.** Dragging for scallops in Gouldsboro Bay above or north of a line drawn from Youngs Point in the Town of Gouldsboro, easterly to Dyer Point in the Town of Steuben shall be limited only to the use of one combination of scallop drags not exceeding 4 feet in width.

Whoever violates any provision of this section shall be punished by a fine of not less than $50 nor more than $100, or by imprisonment for not more than 30 days, or by both.

P.&S.L. 1969, c. 104, § 1; P.&S.L. 1973, c. 36.

## Chapter D.

### Regulation of Seals

. 1. **Shooting seals in Casco Bay and certain waters in York unty regulated; penalty.** No person shall, during the months of ne, July and August, destroy seals in Casco Bay and in the water tween Branch River in the Town of Kennebunk and the easterly end Goose Rock Beach in the Town of Kennebunkport, by shooting th rifle or other long-range weapon which might endanger human e, under a penalty of $50 for each offense or by imprisonment for t more than 30 days.

c. 2. **Hunting seals near Green Island forbidden.** It shall be unlaw- l between May 15th and October 15th, for any person to hunt, shoot or kill any seal within 2 miles of any part of Green Island in estern Bay in the County of Hancock.

c. 3. **General penalty.** Whoever violates any provision of chapter , excepting only those provisions for which specific penalties are ovided shall be punished by a fine of not less than $10 nor more an $300, or by imprisonment for not more than 90 days, or by oth.

## Chapter E.

epealed by P.&S.L. 1967, c. 26, § 1.

## Chapter F.

### Marine Worms

. **Sunday digging prohibited.** It shall be unlawful for any person to g or take, from the shores or flats of the State of Maine, more than 25 marine worms from midnight Saturday to midnight Sunday of ch week.

. **Counting, sealing and labeling.**

1. It shall be unlawful for any digger to fail to accurately count, seal and label each container of worms with the digger's name, license number and exact number of worms placed in said container

2. It shall be unlawful for any dealer to prepare worms for shipment or transportation or cause the same to be done unless the container is sealed and labeled with the dealer's name, address, license number and the number of worms placed in said container

3. Every dealer shall prepare his facilities, equipment and procedures necessary to comply with these regulations and 12 M.R.S.A. Section 4301-D, Subsection 1. They will then notify the Commissioner, in writing, who shall cause an inspection to approve or disapprove the proposal for compliance.

## Chapter G.

### Herring

. **Definitions:**

a. Mobile gear means otter trawling, pair trawling, mid-water trawling, and purse seining.

b. Year means period beginning January 1 and ending December 31

. **Spawning Closures:**

a. It shall be unlawful to fish for, take, or possess herring nine inches and larger taken by mobile gear from within the territorial waters of the State of Maine between a line drawn from the southern tip of Schoodic Point to and through the Mount Desert Rock lighthouse to the territorial limit of the State and the United States-Canadian boundary in the vicinity of Quoddy Head and Machias Seal Island during the period from August 26, 1979, to September 22, 1979, both days inclusive.

It shall be unlawful to fish for, take, or possess herring nine inches and larger in length taken by mobile gear from within the territorial waters of the State of Maine between a line drawn from the southern tip of Schoodic Point to and through the Mount Desert Rock lighthouse to the territorial limits of the State and the Maine-New Hampshire boundary in the vicinity of Piscataqua Harbor, the Isles of Shoals, during the period from Sunday, September 2, 1979, to Saturday, September 29, 1979, both days inclusive.

c. Tolerance of 20%. Notwithstanding the spawning closures established in paragraphs a and b, any person may take or possess herring nine inches and larger in length if they comprise 20% or less by volume of an entire lot. The 20% tolerance by volume shall be determined by examination of ½ bushel chosen at random from each thirty (30) hogshead of herring or fraction thereof.

3. **Herring Quota:**

a. It shall be unlawful to fish for, take, or possess herring nine inches or larger in length taken by mobile gear within the territorial waters of the State when 7,650 MT have been taken by mobile gear each year as tabulated by the statistical staff of the Department of Marine Resources, and certified by the Commissioner, except that this quota shall not apply to the taking of herring after October 15 of each year for mobile gear within State territorial waters east of the Cutler radio tower and Cross Island.

b. Tolerance of 25%. Except where the spawning closure established by paragraph 1 is more restrictive, any person may take or possess herring nine inches and larger in length if they comprise less than 25% by volume of an entire lot. The 25% tolerance by volume shall be determined by examination of one-half bushel chosen at random from each thirty (30) hogshead of herring or fraction thereof.

4. **Exception:**

a. These regulations shall not prohibit the use of a purse seine to remove fish caught in a weir or stop seine.

## Chapter H.

### Surf, Hen Clams, Quahogs (Dredging)

1. It shall be unlawful to fish for or take any surf, hen clams or quahogs by any method of dredging or dragging with any combination of dredge or drag with any cutter bar that exceeds 36" in overall width EXCEPT THAT in the area between the Spurwink River in Scarboro and Fletcher's Neck in Biddeford Pool, the cutter bar shall not exceed 24" in overall width.

## Chapter I.

### Nonresident Groundfish Reporting Regulations

1. It shall be unlawful for any nonresident fisherman to enter the territorial waters of the State of Maine for purposes of commercial fishing for groundfish or to depart such waters after commercial fishing for groundfish without reporting the following information to the Department of Marine Resources:

A. Information required day before entering Maine's territorial waters:

I. Time of entering Maine's territorial waters.

II. Exact location of area where fishing operations will be conducted.

III. Weight of each species on board when Maine's territorial waters are entered.

B. Information required before departing Maine's territorial waters:

I. Areas fished within Maine's territorial waters.

II. Type and size of gear used within Maine's territorial waters.

III. Species harvested within Maine's territorial waters.

IV. Weight of each species caught within Maine's territorial waters.

V. Length of majority of fish of each species caught within Maine's territorial waters.

. Information shall be reported in the following manner:

A. By telephoning the office of the Maine Chief of Marine Patrol: 207-289-2291 between the hours of 8:00 a.m. and 5:00 p.m. on the day before entering and the day of departure; and,

B. By written report with exact data to be mailed by registered mail within three (3) days of landing of any fish caught within Maine's territorial waters.

. Upon notification, the nonresident fisherman may be required to ake a Department observer on board and provide proper accommo- iations for said observer.

. Penalty for a violation of these regulations shall be assessed pur- uant to 12 M.R.S.A. Section 6204 and may involve suspension of ny applicable license issued by the Commissioner of the Department f Marine Resources.

Effective: 3/24/79)

# DEPARTMENT OF ENVIRONMENTAL PROTECTION REGULATIONS

PROCESSING OF APPLICATIONS
HEARINGS ON APPLICATIONS
HEARINGS ON APPLICATIONS OF SIGNIFICANT PUBLIC INTEREST
CONDUCT OF ENFORCEMENT HEARINGS

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 1 REGULATIONS FOR THE PROCESSING OF APPLICATIONS

SUMMARY: These rules apply to the processing of all applications made to the Board of Environmental Protection. The most common of these applications are site location of development, alteration of wetlands, waste discharges, air emissions, great ponds alterations, oil terminals, and solid waste. New, renewed, amended or transfer applications are subject to these rules. They are intended to receive the just, speedy and inexpensive determination of such matters.

All previous Regulations for the Processing of Applications are superseded by these Rules.

1. Scope of Regulations

These regulations shall be applicable to processing of all applications made to the Board of Environmental Protection for new, renewed, amended or transferred licenses, permits, certificates, approvals, variances or other determinations on specific matters (hereinafter "licenses"), including but not limited to:

a. mining plans (10 MRSA Section 2205);
b. minimum lot size variances (12 MRSA Section 4807B);
c. wastewater Treatment Plant operator certification, 32 MRSA 4173-4176;
d. tax certifications (36 MRSA, Section 656 (1)(E), section 1760 (29) and (30);
e. waste discharge licenses (38 MRSA, Section 413 and 414);
f. surface waste disposal licenses( 38 MRSA, Section 413 and 414)
g. log storage permits( 38 MRSA Section 418);
h. solid waste disposal area location determinations (38 MRSA Section 421);
i. great ponds activity permits( 38 MRSA Section 393);
j. mixing zones (38 MRSA Section 451);
k. waste discharge permit variances (38 MRSA Section 451-A);
l. wetlands activity permits( 38 MRSA Section 471, et seq.);
m. site location of development permits (38 MRSA Section 483);
n. oil contaminated waste discharge licenses (38 MRSA Section 543);
o. oil terminal licenses( 38 MRSA Section 545);
p. anchorage of oil carrying vessels (38 MRSA Section 560);
q. air emission variances (38 MRSA Section 587);
r. air emission licenses (38 MRSA Section 590);
s. solid waste open burning limitations (38 MRSA Section 599);
t. sanitary districts (38 MRSA Section 1101);
u. septic tank and cesspool materials and fluid hazardous waste land disposal sites (38 MRSA, Section 1320);
v. rapid depreciation certifications (26 USCA, Section 169), and
w. water quality certifications (P.L. 92-500, Section 401).

before the Board of Environmental Protection of the Maine State Department of Environmental Protection (hereinafter called "the Board"). They shall be construed to secure the just, speedy and inexpensive determination of such matters.

2. Advisory Rulings

All requests for advisory rulings on applicability of laws to particular

fact situations or other matters shall be made in writing and addressed to the Commissioner, the Director of the Bureau or Division Chief responsible for administering the statute in question. Such requests shall state the facts upon which the advisory ruling is to be made and shall be answered in writing.

3. Delegation

Nothing in these regulations shall prohibit the Board, where appropriate, from delegating authority to the Commissioner. Nor shall anything in these regulations prohibit the Commissioner, where appropriate, from delegating authority to the staff.

4. Application Requirements

A. Forms. Application forms shall be promulgated by the Department and shall require such information as the Commissioner deems necessary or desirable in order to obtain information relevant to the appropriate license.

B. Acceptance of Application. The Commissioner shall within 10 working days of receipt of an application notify the applicant of the date the application was accepted by the Department or return it specifying in writing the reasons for returning the application.

C. Projects Requiring More Than One Application. Upon receipt of an application for any license from the Board, which application involves an activity or proposal which will require more than one such license from the Board, the Commissioner may require such applicant to submit all other required applications before any such application shall be processed, reviewed and receive further administrative action; provided, however, that all applications for licenses for any one facility under any one statute (e.g., air, water, site location, etc.) shall be filed before any such application is considered.

D. Right Title or Interest. The Department will consider an application only where the applicant has demonstrated that that person has sufficient title or interest in all of the property which is proposed for development or use. The Department will consider that an applicant has demonstrated title, right or interest prima facie when an applicant presents a written statement that that person owns or has binding options to purchase all of the property proposed for development or use and (1) where the property is owned, book and page number references to the applicant's deed to the property (2) where the property is under option, copies of the option agreements, which agreements shall contain terms deemed sufficient by the Board to establish future title. Where the applicant's title, right or interest is based on a lease, such lease must be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the development.

5. Public Notice of Application

A. The Department shall give or cause to be given public notice of an application inviting written comments on the application and offering an opportunity to request a public hearing. Such notice shall include the name, telephone number and address of the person responsible for processing the application.

B. A copy of the application and amendments to an application shall be filed with the town clerk, city clerk or if the project is in an unorganized area, with the County Clerk.

6. Public Access to Information

A. The Commissioner shall make available to the public for inspection and copying the following:

1. All applications or other forms submitted in support of any license application,
2. All correspondence, in or out, and any attachments thereto,
3. Written comments received from any source regarding any application for a license,
4. The transcripts of all hearings and the official, approved minutes of all Board meetings, and
5. All licenses, orders, permits or other Board determinations.

B. The Commissioner shall keep confidential only those documents which may remain confidential pursuant to 1 MRSA Section 402.

C. The Commissioner shall provide facilities for the inspection of information and shall insure that Department employees honor requests for such inspection promptly without undue requirements or restrictions. Persons wishing to copy papers and documents shall make the necessary arrangements with the Commissioner.

D. Copies of documents may be made at the following costs:

1. Copies made by an employee of the Department 25¢ per page;
2. Copies made on department equipment by the person requesting the copy 15¢ per page.

Payment shall be made by check or money order and shall be paid prior to the Department releasing the copies.

7. Hearings

A. The Commissioner shall provide an opportunity for the applicant, or any interested agency, person or group of persons to request a public hearing

with respect to any application. Any such request for a public hearing shall indicate the interest of the party filing such request and the reasons why a hearing is warranted.

B. Hearings on applications are generally discretionary. However, Maine law requires that hearings be held, or opportunity for hearing provided, with regard to the following matters:

1. Establishment of mixing zones for discharges having a waste discharge license or an exemption pursuant to 38 MRSA Section 413 and 414 (38 MRSA Section 451);

2. Revocation, suspension, modification or enforcement of waste discharge licenses (38 MRSA Section 451);

3. Upon the request of any person as to whose development the Board has issued an order under the Site Location of Development Law (38 MRSA Section 483);

4. Granting of a variance from air emission licenses (38 MRSA Section 587);

5. Open burning prohibitions at municipal solid waste disposal sites serving less than 1,000 persons (38 MRSA Section 599-1-c);

6. Upon municipal request where an open burning of solid waste variance is to be denied (38 MRSA Sections 599-5);

7. Upon request of an applicant who disagrees with Board action on his application for a mining permit (10 MRSA Section 2206(1));

8. Revocation of approval of mining plans (10 MRSA Section 2206(4));

9. Approval of sanitary districts (32 MRSA Section 1101(2)); and

10. Revocation of wastewater treatment plant operator certificates.

C. A hearing shall be held, or an opportunity for a hearing shall be provided, prior to any revocation, suspension or amendment of any license where a hearing or opportunity for hearing was required by statute prior to issuance of the license.

D. Hearings shall be conducted pursuant to the Regulations for Hearings on Applications, except that, where the Board determines that the subject matter of the application is of significant public interest, the hearing shall be conducted pursuant to the Special Regulations for Hearings on Applications of Significant Public Interest.

8. Decisions

A. Except where otherwise provided by law, the Board shall, within a reasonable period of time after receipt of the application:

1. Approve the application, without conditions other than conditions required by statute, and set forth, in writing, its findings that the applicant has met each of the criteria of the appropriate statute;

2. Approve the application, subject to conditions not specifically required by statute as a pre-condition for approval and set forth, in writing, its findings with a sufficient explanation to make interested persons aware of the basis for the approval;

3. Deny the application and set forth, in writing, its findings with a sufficient explanation to make interested persons aware of the basis for disapproval, or

4. Schedule a hearing on the application.

However any application for a Site Location approval (38 MRSA Section 483) shall be acted upon within 30 days. Any application for a log storage permit (38 MRSA Section 418) shall be acted upon within 45 days, any application for an air emission license (38 MRSA Section 590). Any application for a mining permit (10 MRSA Section 2205) shall be acted upon, in accordance with subparagraphs 1, 2, or 3 only, within 20 working days, and all action on applications including hearings shall be completed within 180 days, unless specifically extended by the Board.

B. The municipality in which an action for which a license is applied for shall be notified of any final decision regarding an application.

C. The Board delegates to the Department staff authority to approve, approve with conditions or deny certain applications pursuant to statutory criteria and as follows:

1. All applications under the Great Ponds Act, 38 MRSA Section 393,

2. All applications for tax exemption certifications, 36 MRSA Sections 655(1)(N) for personal property, 656(1)(E) for real estate, and 1760(29) and (30) for sales tax, and rapid depreciation certifications,

3. Applications for minimum lot size variances, 12 MRSA Section 4807-B, where such applications involve only one lot, and the applicant does not own or control any contiguous lots, and the sub-surface disposal system has received approval from the Department of Human Resources;

4. Applications received under the Wetlands Act, 38 MRSA Section 471, et seq., involving only one or more of the following proposals:

   A. pile structures entirely above mean low water;

   B. repairs and/or maintenance necessary to preserve or restore an existing structure or land contour, or one which has existed on the applicant's property within one year prior to the date of application, where the proposed project will not result in any harm to the natural environment;

   C. erosion prevention measures;

   D. trenching operations where there will be immediate restoration;

   E. marine railways or ramps where no significant dredging or filling is involved.

5. Applications for discharges of Pesticides pursuant to 38 MRSA Section 413 et seq,

6. Applications for waste discharge licenses, 38 MRSA Section 413, where the application proposes a discharge of less than 50,000 gallons per day, but not including any application which is unusual because of the nature of any substance being discharged, or because of the amount or concentration of such substance, and which may be expected to have an unusual impact upon the receiving waters,

7. Applications by municipalities or quasi-municipal entities, under 38 MRSA Section 451-A, for a variance of water pollution abatement schedules or by persons, firms, corporations or other legal entities for an associated waiver of the requirements of 38 MRSA Section 451,

8. Applications by licensees for minor license revisions based solely upon unforeseeable circumstances entirely outside the control of the licensee,

9. Applications for the renewal of oil terminal licenses by licensees operating in full compliance with the applicable law, including regulations of the Department, and having no history of violation thereof,

10. Applications for air emission licenses for incinerators in

Classes I through IV or for a boiler at a facility with a total boiler capacity of less than 100,000,000 BTU's;

11. Applications for site location permits, 38 MRSA Section 481 et seq., where the application is for development of a subdivision of less than 75 acres, with fewer than 25 lots, and to contain fewer than 25 housing units, including such applications subject also to the jurisdiction of the Land Use Regulation Commission under 12 MRSA Section 685-B;

12. All applications for certification as a wastewater treatment plant operator; and

13. All applications for single family home discharge variances, 38 MRSA, Section 451-A, Sub-section 7.

D. The Board delegates to the Commissioner authority to approve minor alterations to permits or other authorizations previously granted by the Board where the alteration is necessary as a result of:

1. Transfers of ownership;

2. Expansions, partial approvals or changes affecting 10% or less of a total project, where there is no significant opposition to the alteration;

3. The phrasing of the Board's order, where the alteration is consistent with the intent of the Board's order; or

4. Typographical errors or other errors of transcription.

E. The Board delegates to the Commissioner authority under emergency conditions to give temporarily any authorization entrusted to the Board under any statute it administers. Before exercising this authority, the Commissioner must determine that adherence to the normal processing procedures set forth in applicable statutes or regulations could, under the prevailing circumstances, result in harm to human life, property or the natural resources of the State, and that such harm may be avoided or significantly reduced by prompt action. Such a determination shall be set down in writing and shall clearly state the circumstances which constitute the emergency including the harm or injury feared.

Upon making such a determination, the Commissioner shall give or cause to be given as much notice as is reasonably possible to appropriate municipal officials in the area potentially affected by the activity to be authorized, and to such other persons as he believes may be affected directly or otherwise interested, soliciting their comments.

Any authorization given under this emergency provision shall be reduced to writing as soon as practicable, shall make required findings of fact on the basis of information and comments then available, shall be made subject to any conditions deemed necessary or advisable, and shall not extend in time beyond the conclusion of the Board's next regularly scheduled meeting, although it may be issued for any lesser term. At its next regularly scheduled meeting after the granting of an emergency authorization, the Board will review the written determination of emergency, the efforts made to provide notice and an opportunity for comment, the terms of the written authorization, the environmental consequences of the actions authorized or taken, and other relevant information available, and may take any further action authorized by law which it deems advisable.

F. Applications over which the staff of the Department exercises the decisional authority delegated by this regulation shall in all other respect be processed in conformity with these Regulations for Processing Applications.

G. Any person aggrieved by a staff determination made pursuant to this subsection (c)(1), may, within 30 days of the date of receipt of such determination by the applicant, request the Board to review such determination. Such request for review shall set forth in writing the reasons why the review is requested and the actions which the person making the request desires to be taken to the Board. Where review of a staff determination is requested, it shall be conducted as if it were an application filed with the Board not subject to delegation.

H. Unless otherwise provided by statute a staff decision becomes final if no request for review is filed within the periods specified above.

I. At each Board meeting the staff shall make a report to the Board of the decisions rendered by the staff or the Commissioner under the delegated authority of this regulation since its last such report. The report shall include the nature and location of the project or operation under consideration, a brief description of the physical or technical information involved, and a statement of the decision rendered.

In any case where the staff has granted an approval subject to conditions other than the Standard Conditions of Approval, a copy of the order shall be included with the report.

1. Each order, whether issued by the Board or by the staff pursuant to delegated authority, shall include a plain statement of the appropriate rights of administrative and judicial review and the time within which those rights must be exercised.

2. Every decision of the Board or staff on an application or amendment to an application shall be in writing and shall include findings of fact and

conclusions of law.

9. Service

All applications shall contain a designation of a person on whom all orders and notices may be served and to whom all other correspondence regarding the application should be sent. All orders issued by the Board and notices of appeal pursuant to these regulations shall be made by registered mail, return receipt requested.

10. Inspection and Compliance

Authorized representatives of the Department of Environmental Protection or the Attorney General shall be granted access to the premises of the applicant or licensee at any reasonable time for the purpose of inspecting the proposed site and assuring compliance by the licensee with conditions of any license issued pursuant to those regulations.

11. Assignment or Transfer of Licenses

Any license issued by the Board shall cease to be valid upon the transfer or assignment of the property covered by the license unless written consent to transfer of the license is applied for and obtained from the Board. Such written consent must be applied for within two weeks subsequent to any transfer or assignment of property which is subject to a license, provided, that the transfer of ownership of a waste discharge license shall not be permitted. Pending Board determination on the application for approval of a transfer or assignment of ownership of any license, the person to whom such property is transferred or assigned shall abide by all of the conditions of such license, or such license shall be rendered null and void. Applications for such transfer or assignment and the processing thereof shall be governed by these regulations. Any proposed transferee or assignee shall demonstrate the technical and financial capacity to: (1) comply with all conditions of the applicable license, and (2) to satisfy all applicable statutory criteria.

Board approval of any transfer or assignment of ownership of any license pursuant to this section shall not be required for any development which has received a certificate of compliance pursuant to Section 1.16 of these regulations.

For the purposes of this regulation a "transfer" shall be defined as the sale or lease of property which is the subject of the license or the sale of 50 percent or more of the stock of or interest in a corporation or partnership which owns the property which is the subject of the license, during the time the conditions of the license are in operation and the owner of the property is subject to enforcement for violation of the license.

12. Burden of Proof

An applicant for a new, renewed or transferred license shall have the burden of proof and the burden of going forward unless otherwise provided by law or regulation. The "burden of proof" shall be defined as the burden of presenting sufficient evidence for the Board to make the affirmative findings required by law regarding matters about which no questions are raised and the burden of presenting a preponderance of the evidence regarding a matter about which a question is raised.

13. False Statements

Any license granted in whole or part upon any information which is false or misleading shall, upon notice and hearing, be null and void.

14. Availability of Orders

A. All draft orders shall be available to any person at the Department's offices in Augusta at least 6 days before consideration of such draft orders by the Board, except that the Board may consider a draft order which has been available for not less than 24 hours before the meeting at which it is to be considered, if no objections have been received regarding the application upon which the order is based.

B. At least six days before Board action on any application, the applicant shall be mailed a notice indicating when the Board will act on the application and that a draft order relating to the application is available at the Department's office in Augusta where the applicant has properly filed a notice card with the application.

15. Administrative Appeals

A. Petition for reconsideration. Within 30 days of the applicant's receipt of a decision of the Board, any person aggrieved by the decision may petition the Board, in writing, for an opportunity to present new or additional evidence or to: correct any part of the decision believed to be in error and not intended by the Board, or for an opportunity to present new or additional evidence, to secure reconsideration of any part of the decision or challenge any facts of which official notice was taken.

Such a petition shall set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections the nature of the relief requested and the nature of the new or additional evidence.

The Board shall, within 30 days of the receipt of such a petition and after appropriate notice, grant the petition, in full or in part; order a

public hearing, or dismiss the petition. Any public hearing held under this subsection shall be held within 45 days of the Board's decision to hold such a hearing and the Commissioner shall provide reasonable notice to interested persons.

B. Request for hearing. Within 30 days of the applicant's receipt of a decision of the Board made without public hearing, any person aggrieved by the decision may make a written request for a hearing. Such a request shall set forth in detail the basis of the petitioner's aggrievement, the findings, conclusions or conditions to which the petitioner objects, the basis of the objections and the nature of the evidence or argument to be offered.

The Board may, after appropriate notice, conduct a hearing within 30 days of receipt of the request.

In the case of appeals under 10 MRSA Section 2206 (1) (mining permits) an appeal hearing shall be granted an applicant within 20 days of his request and the Board shall notify the applicant of its decision by registered mail within 20 days of the hearing.

C. Judicial Appeal Time. In the event that either a petition for reconsideration or a request for hearing is filed in accordance with subsections (a) or (b) of this regulation, the time for taking an appeal of a Board decision to the Superior Court shall be computed from the date the petitioner for such relief receives notice of the Board's order or decision resulting from the petition or request.

16. Certificates of Compliance

For any license issued in accordance with these regulations the Commissioner may, upon completion of the activity approved by the license, issue to the licensee a certificate of compliance stating that all conditions of the license have been met where, (a) such certificate has been requested by the licensee, and (b) the license was issued for an activity which, when completed, will require no further licenses under the same statute, and (c) an investigation and written report by Department staff indicates that, without exception, all conditions of the license, other than conditions that run permanently with the land, have been fully complied with.

17. Effective Date

These regulations shall be effective upon the date of filing with the Secretary of State and shall replace and supersede previous regulations for processing applications adopted April 24, 1974, and revised September 2, 1976.

After public notice and public hearing November 21, 1977, the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: The Department of Environmental Protection is responsible for administering a number of license type programs. These rules provide guidance to employees, applicants and the public. They outline the rights, responsibilities and obligations of all parties and provide for the equitable processing of applications.

AUTHORITY: 38 M.R.S.A., Section 343

EFFECTIVE DATE: September 11, 1975
Amended December 24, 1975
Amended August 31, 1976
Amended September 2, 1976
Amended February 8, 1976

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

# Chapter 20 REGULATIONS FOR HEARINGS ON APPLICATIONS

SUMMARY: These rules govern the conduct of routine hearings, on applications, conducted by the Board and/or the Department of Environmental Protection. They are intended to secure the just, speedy and inexpensive determination on such matters. Provisions are made for notice, location, procedures, conduct, continuance, evidence, public participation, testimony, appearance, record as well as other matters essential to orderly proceedings.

These Rules do not apply to Hearing on applications of significant public interest.

All previous Regulations for Hearings on Applications are superseded by these Rules.

1. Scope of Regulations

These regulations shall be applicable to hearings before the Board of Environmental Protection on applications for new, renewed, amended or transferred licenses, permits, certificates, approvals, variances or other determinations on specific matters (hereinafter "licenses") including matters pursuant to those statutes listed in the Regulations For Processing of Applications.

These regulations shall not apply to Enforcement of Violation Hearings pursuant to 38 MRSA, Section 347,and to Hearings on Applications of Significant Public Interest.

These Regulations shall be construed to secure the just, speedy and inexpensive determination of such matters.

2. Notice

A. Prior to any hearing conducted by the Board or the Department the Department shall provide notice.

1. To the applicant at least 10 days prior to the hearing by registered mail, return receipt requested;

2. At least 10 days prior to the hearing by regular mail to persons who have filed a written request, within the calendar year, to be notified of hearings;

3. At least 10 days prior to the hearing to persons who have made timely requests to be notified of a specific

4. By publication twice in a newspaper of general circulation in the area of the proposed activity. The date of the first publication shall be at least 14,but no more than 21 days,prior to the date of the hearing and the second publication shall be at least 7,but no more than 10 days,prior to the date of the hearing.

B. Contents of Notice. Notices of hearings shall contain the following minimum information.

1. Reference to statutory authority;

2. The purpose of the hearing;

3. Time, date, place of the hearing;

4. The manner in which views may be submitted for consideration;

5. The place and time where relevant material may be examined prior to the hearing;

6. The name, address and telephone number of the person to contact for information; and

7. The notice for a hearing involving regulations shall contain a clear concise description of the regulation and the purpose for which the regulation is being proposed.

3. Location

A. Hearings on air emission license applications shall be held within the Air Quality Region where the proposed emission would occur.

B. Hearings on air emission variance applications shall be held in the municipality where the building or business in connection with which the variance is sought is located; except that if the building or business is located in an unorganized area, the hearing shall be held in such place as the Board or the Commissioner deems most convenient to the Board, the applicant and other interested persons; provided, however, that if 5 or more requests for variances are pending within the same air quality region, a single hearing on all such requests may be held at one place within that region.

C. Hearings on sanitary district applications shall be held within the proposed district.

D. All other hearings held pursuant to these regulations shall be held either in Augusta or in the general location of the proposed activity for which the license is sought, at the discretion of the Board or the Commissioner.

4. Hearing Procedures

A. Presiding Officer

1. The presiding officer at any hearing shall be either (a) the Commissioner, if present and willing to preside, (b) a member of the Board selected by those members present at the hearing, or (c) a qualified employee or representative of the Department of Environmental Protection, hereinafter called "the

Department" as designated by the Commissioner.

2. The presiding officer shall have the authority to:

   a. Rule upon issues of evidence;

   b. Regulate the course of the hearing;

   c. Rule upon issues of procedure;

   d. Certify questions to the Board for its determination;

   e. Administer oaths;

   f. Take such other action as may be ordered by the Board or that is necessary for the efficient and orderly conduct of the hearing, consistent with these regulations and applicable statutes.

3. In special cases, where good cause appears, the presiding officer may permit deviation from these procedural regulations insofar as compliance therewith is found to be impractical or unnecessary.

B. General Conduct

1. **Opening Statement.** The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. **Transcription of Testimony.** All testimony at hearings before the Board shall be recorded and, as necessary, transcribed.

3. **Witnesses.** Witnesses shall be sworn. Witnesses will be required to state for the record their names, residence and who they represent, if anyone, for the purpose of the hearing.

4. **Testimony in written form.** At any time, prior to or during the course of the hearing, the presiding officer may require that all or part of the testimony to be offered at such a hearing be submitted in written form at such time and in such form as may be specified. All persons offering testimony in written form shall be subject to questioning. This subsection (b-4) shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who requests and is granted time to testify at a hearing.

5. Continuance

All hearings conducted pursuant to these regulations may be continued for reasonable cause and reconvened from time to time and from place to place by the Commissioner or the presiding officer as circumstances require. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The Commissioner or the presiding officer shall provide reasonable motice to interested persons and the public of the time and place of such reconvened hearing.

6. Regulation and Certain Devices

The placement and use of television cameras, still cameras, motion picture cameras, microphones and other recording devices at Board hearings, may be regulated by the Commissioner or the presiding officer to ensure the orderly conduct of proceedings.

7. General Evidence

A. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissable. Evidence which is irrelevant, immaterial or unduly reprtitious shall be excluded. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board.

B. The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and nonconfidential agency records. Facts officially noticed shall be included and indicated as such in the record.

C. Documentary and Real Evidence

1. All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts ifthe original is not readily available. The Commissioner or the presiding officer may require, after prior oral or written reasonable notice, that any person offering any documentary number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

2. All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence also will be available for public examination at the Department of Environmental Protection offices in Augusta during normal business hours.

D. Record of Application. In any proceeding involving an application the application filed with the Department, including exhibits and amendments thereto, shall be placed into evidence.

E. Objections. All objections to a ruling of the presiding officer regarding evidence or procedure and the grounds thereof shall be timely stated during the course of the hearing. If during the course of or after the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.

8. Offer of Proof

An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proferred evidence or that which is expected to be shown by the answer of the witness.

9. Public Participation

Any person may participate in a hearing by making oral or written statements of such person's position on the issues, and submit written or oral questions through the presiding officer, within such limits and on such terms and conditions as may be fixed by the Board, Commissioner or presiding officer.

10. Testimony and Questions

A.At hearings on applications the testimony shall be offered in the following order:

1. Direct Testimony

Direct testimony shall be offered in the following order:

a. The applicant and representatives and witnesses the applicant selects.

b. Department staff members and consultants.

c. State, municipal and other governmental agencies and representatives thereof.

d. Other interested persons.

2. Questions

At the conclusion of the testimony of each witness, questioning of witnesses shall be in the following order:

a. Board members, counsel, staff members and consultants may be permitted by the presiding officer to ask questions at any time.

b. The applicant.

c. Federal, State and other governmental agency representatives.

d. All other persons may have the opportunity to question such witnesses by oral or written questions through the presiding officer.

The presiding officer may require that all examination, either written or oral, be conducted at the conclusion of the testimony of each category of witnesses rather than at the conclusion of the testimony of each individual witness.

B. At hearings on regulations the testimony shall be offered in the following manner:

1. Direct Testimony

a. Staff presentation explaining the regulations and the purpose of each regulation.

b. Persons favoring the regulations, all or in part.

c. Persons opposing the regulations, all or in part.

d. All other persons who may wish to speak neither for or against the regulation.

2. Questions

At the conclusion of the testimony of each witness or category of witnesses, questioning shall be in the following order:

a. Board members, counsel staff members and consultants may be permitted by the presiding officer to ask questions any time;

b. All other persons may have the opportunity to question a witness by oral or written questions through the presiding officer.

C. Varying Order of Appearance

When circumstances warrant, the Commissioner or the presiding officer may vary the order in which witnesses appear and the order in which testimony is given or witnesses are questioned.

11. Conclusion of Hearing

At the conclusion of the hearing, no other evidence or testimony will be allowed into the record, except as specified by the presiding officer.

12. Reopening the Record

At any time prior to a final decision, the Board or Commissioner may reopen the record for further proceedings consistent with these regulations provided, however, that the Commissioner shall give notice of such further proceedings, in writing, to the applicant at least 10 days prior to such proceedings, and further provided that the Commissioner shall notify other interested persons and the public in such manner as is appropriate.

13. Record

A full and complete record shall be kept of all hearings. The records shall include, but shall not be limited to, the application, supporting documents, all exhibits, proposed finding of facts and conclusions of the presiding officer, if any, staff documents, Board finding of facts and order, and the recording or transcript of the proceedings.

14. Petitions to Correct Misstatements of Fact

The Board may also receive written petitions to correct misstatements of fact in draft orders.

15. Rulings

The Chairman or presiding officer may be overruled by a majority vote of the Board members present on any decision or ruling relating to a hearing.

16. Computation of Time

All computations of time under these Rules shall be in the same manner as provided by Maine Rules of Civil Procedure, Rules 6(a), (b) and (e).

17. Effective Date

The regulations shall be effective upon the date of filing with the Secretary of State and shall supersede all previous regulations adopted by the Board dealing expressly with hearings on applications. These regulations shall apply to all matters pending before the Board on the effective date hereof.

After public notice and public hearing November 21 1977 the above regulation is hereby adopted this 21st day of December, 1977.

BASIS STATEMENT: The Department of Environmental Protection may hold hearings on applications at its discretion or in certain matters it is required to hold hearings by statutes. These Rules provide for the orderly conduct of hearings and enable participants to present their view to the Board.

AUTHORITY: 38 M.R.S.A. Section 343

EFFECTIVE DATE: September 11, 1975
Amended February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 30 SPECIAL REGULATIONS FOR HEARINGS ON APPLICATIONS OF SIGNIFICANT PUBLIC INTEREST

SUMMARY: These rules govern the conduct of hearing for applications where the Board of Environmental Protection has determined that the subject matter of the application is of significant public interest. They are intended to secure the just, speedy and inexpensive determination in such matters. Provisions are made for notice, location, consolidation, public participation, intervention, pre-hearing review, conferences, evidence, testimony, record, questioning, subpoenas, continuances as well as other matters essential to orderly proceedings.

These rules do not apply to hearings on applications where the Board of Environmental Protection has not determined that the subject matter of the application is of significant public interest.

All previous Special Regulations for Hearings on Applications of Significant Public Interest are superseded by these Rules.

1. Scope of Regulations

These regulations shall be applicable to all hearings before the Board of Environmental Protection on applications for new, renewed, amended or transferred licenses, permits, certificates, variances, approvals or other determinations on specific matters (hereinafter "licenses") where the Board has determined that the subject matter of the application is of significant public interest.

These regulations shall not apply to Enforcement Hearings pursuant to 38 MRSA, Section 347, or to Hearings on Applications where no determination of significant public interest has been made by the Board.

These regulations shall be construed to secure the just, speedy and inexpensive determination of such matters.

2. Consolidation

On motion and for good cause shown, or on its own initiative, the Board may consolidate for hearing two or more proceedings if it finds that such action will be conducive to just and proper dispatch of its business, the rights of any party are not prejudiced and that opportunites for public participation will not be compromised.

A consolidation under this section may be for any purpose or issue of the proceedings.

3. Notice

A. Prior to any hearings conducted by the Board or the Department, the Department shall provide notice:

1. to the applicant at least 10 days prior to the hearing by registered mail return receipt requested;

2. to any intervenors who have qualified under Section 30.5 (a) of this regulation at least 10 days prior to the hearing by registered mail return receipt requested;

3. at least 10 days prior to the hearing by regular mail to persons who have filed a written request, within the calender year, to be notified of hearings;

4. at least 10 days prior to the hearing to persons who have made a timely request to be notified of a specific hearing;

5. by publication twice in a newspaper of general circulation in the area of the proposed activity. The date of the first publication shall be at least 14 but no more than 21 days prior to the date of the hearing and the second publication shall be at least 7 but no more than 10 days prior to the date of the hearing.

B. Contents of Notice. Notices of hearings shall contain the following minimum information:

1. reference to statutory authority;

2. the purpose of the hearing;

3. time, date, place of the hearing;

4. the manner in which views may be submitted for consideration;

5. the place and time where relevant material may be examined prior to the hearing; and

6. the name, address and telephone number of the person to contact for information.

A notice for a hearing involving regulations shall contain a clear concise description of the regulation and the purpose for which the regulation is being proposed.

4. Location

A. Hearings on air emission license applications shall be held within the Air Quality Region where the proposed emission would occur.

B. Hearings on air emission variance applications shall be held in the municipality where the building or business in connection with which the variance is sought is located; except that if the building or business in connection with which the variance is sought is located in an unorganized area, the hearing shall be held in such place as the Board or the Commissioner determines is most convenient to the Board, the applicant and other interested parties; provided, however, that if 5 or more requests for variances are pending within the same Air Quality Region, a single hearing on all such requests may be held at one place within that region.

C. Hearings on sanitary district applications shall be held within the proposed district.

D. All other hearings held pursuant to these regulations shall be held either in Augusta or in the general location of the proposed activity for which license or approval is sought, at the discretion of the Board or the Commissioner.

5. Public Participation

A. Intervention

1. Any person who desires to participate as a party, offer testimony and evidence and participate in cross-examination shall file a petition for leave to intervene within 10 days of the Board designation of the hearing as one involving significant public interest unless otherwise ordered by the Board or Commissioner. A petition shall be granted if it demonstrates:

a. that the petitioner has a direct and substantial interest which may be affected by the proceedings;

b. that the petitioner has reasonably specific contentions regarding the subject matter of the hearing and the appropriate statutory criteria; and

c. that the petitioner is prepared and capable of participation in the hearing in order to support such contentions.

2. A petition for leave to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to file on time.

3. A person permitted to intervene shall become a party to the proceeding and shall be permitted to participate in the hearing, subject, however, to such reasonable terms as the Board, Commissioner or Presiding Officer may direct.

4. Petitioners may be required to consolidate or join their appearances in part or in whole if their interest or contentions are substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party or petitioner. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

5. Unless otherwise specified by the Board in granting a petition to intervene, intervenor status shall be deemed to have been granted for the duration of the hearing, the post-hearing consideration of the application, and any appeals arising from Board action on the application. In addition, any applicant whose application is

approved shall be required to provide notice to any intervenors of the filing of any documents presented to the Department indicating (a) actions to comply with conditions attached to the approval or (b) proposals to vary or amend development activities, timetables, emission or effluent levels or volumes of solid waste as approved by the Board, provided, however, that the applicant's responsibility under this paragraph (5) shall be deemed fulfilled when such notice is mailed to the person designated to represent an intervenor in the petition for intervention status.

B. Participation By Interested Persons

Any person who is not an intervening party under subsection (A) may, in the discretion of the Presiding Officer, be permitted to participate in a hearing by making oral or written statements of his position on the issues, attend and participate in pre-hearing and mid-hearing conferences, and submit written or oral questions through the Presiding Officer, within such limits and on such terms and conditions as may be fixed by the Board, Commissioner or Presiding Officer.

C. State, Federal or Municipal Agencies

The Presiding Officer shall afford a representative of an interested federal, state, municipal or other governmental agency which has not petitioned to intervene a reasonable opportunity to participate in such hearing and introduce evidence and question witnesses. Such representative shall be permitted such rights as are granted by this paragraph only if representing the views and position of the agency on whose behalf that representative appears and not personal views and opinions.

6. Pre-hearing Review

A. In all hearings under this regulation, the Board may order that within specified time:

1. Designated intervenors shall review all materials provided by the applicant and prepare in writing and serve on all parties;

a. specific questions which the intervenor believes should be asked about the application and other supporting materials, and

b. requests for additional materials which the intervenor believes the applicant should provide.

2. Without precluding any further inquiry, Board members and staff may also present to the applicant, in writing, specific questions about the application and other supporting materials or requests for additional materials.

3. The applicant shall respond in writing to requests pursuant to paragraphs (1) and (2) providing the answers to questions and the requested materials or a statement as to why answers cannot or should not be provided.

4. The applicant and each intervenor shall provide a list of witnesses and an outline of the areas to be covered in their direct testimony, provided however, that witnesses and areas of testimony may be added at any time with the permission of the Board.

5. When the above is completed, or a reasonable time has passed the Board shall hold a pre-hearing conference and expeditiously thereafter commence the public hearing.

a. Materials provided hereunder or that portion of such materials which are relevant to the hearing may be made part of the record upon request of any party.

b. The provisions of this section may be invoked with the consent of the applicant prior to commencement of the public hearing or where the Board deems necessary for expeditious processing after a hearing has commenced.

7. Staff Review Paper

A. At least 14 days in advance of each hearing the Department staff shall prepare a paper reviewing the application. Such paper shall:

1. Identify issues which the staff believes that the Board must consider in reviewing the application,

2. Present a comparison of the applicant's proposed air emissions and water effluents with any specific air emission or water effluent requirements which would apply to the applicant's proposal under State or Federal statutes or regulations , and

3. Include any recommendations the staff has made to the applicant.

B. The above described staff review paper shall be mailed to the Board, the applicant and any parties and shall be available to the public not less than 7 days in advance of the date set for commencement of the public hearing.

C. Nothing in this Section (30.7) shall be construed to preclude the staff from presenting testimony or questioning the applicant on any matter relevant to the application.

D. Any party may, prior to the commencement of the hearing, provide to the Board written comments regarding the staff review paper.

8. Conferences

A. The Board, the Commissioner or the Presiding Officer may upon notice to the applicant, other parties and any other persons whom the Commissioner or the Presiding Officer deems appropriate, hold conferences for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses and consolidating of the examination of witnesses, specifying procedure at the hearing, and such other matters which may expedite orderly conduct and disposition of the proceedings.

B. All such conferences shall be open to the public, and the action taken, and any agreement made at any such conference shall be stated on the record by the Presiding Officer. Any person may ask questions about or raise objections to such actions or agreements at the time they are stated on the record.

C. At any pre-hearing conference:

1. Intervenors and other persons who will participate in a hearing shall indicate what information they will be requesting of the applicant that is not provided pursuant to Section 30.6.

2. The applicant shall be prepared to make available any background or working papers or other documents, including raw data, which have been prepared in connection with preparation of the application but were not provided with the application where such is requested by the Board, staff or any other person participating in the pre-hearing conference and is deemed relevant and necessary by the Board.

3. Documents or other material requested which are not provided at the pre-hearing conference shall be provided to all parties at a time designated by the Presiding Officer in advance of the hearing, or that portion of the hearing where such material is relevant, which will allow reasonable opportunity to examine the material and prepare testimony and questions.

4. Where the documents or other material requested are of such a nature that they do not lend themselves to reasonable and inexpensive reproduction, the Presiding Officer may designate the manner by which such materials may be reviewed.

9. Hearing Procedures

A. Presiding Officer

1. The Presiding Officer at any hearing shall be either (a) the Commissioner if present and willing to preside, (b) a member of the

Board selected by those members present at the hearing, or (c) if no Board member is present and willing to preside a qualified employee or representative of the Department as designated by the Commissioner.

2. The Presiding Officer shall have the authority to:

a. require and administer oaths or affirmations;

b. rule upon issues of evidence;

c. regulate the course of the hearing;

d. rule upon issues of procedure;

e. grant or deny petitions for intervention which have not previously been ruled upon by the Board;

f. certify questions to the Board for its determination; and

g. take such other actions as may be ordered by the Board or that are necessary forthe efficient and orderly conduct of the hearing, consistent with these regulations and applicable statutes.

3. Whenever any action or order is required of the Presiding Officer and the Presiding Officer is unavailable, such action or or der may be issued by the Commissioner.

4. In special cases, where good cause appears, the Presiding Officer may permit deviation from these procedural rules in so far as compliance therewith is found to be impractical or unnecessary.

B. General Conduct

1. Opening Statement. The Presiding Officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. Transcription of Testimony. All testimony at hearings before the Board shall be recorded and, as necessary, transcribed.

3. Witnesses. Witnesses shall be sworn. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Board. Witnesses will be required to state for the record their name, residence, business or professional affiliation, whether or not they represent another individual, firm, association, organization, government agency or other legal entity for the purpose of

the hearing.

4. Testimony in Written Form. At any time, prior to or during the course of the hearing, the Commissioner or Presiding Officer may require that all or part of the testimony to be offered at such a hearing be submitted in written form at such time as may be specified. Such written testimony shall be submitted in such form and at such time as the Presiding Officer may specify. All persons offering testimony in written form shall be subject to cross-examination. All testimony offered in such written form shall be available for public inspection. The party submitting the written testimony may be required to serve a copy thereof on the applicant and all intervening parties by the time specified, in order that all persons participating in such hearings may have a reasonable opportunity to examine such testimony and prepare such question or cross-examination as they deem necessary.

This rule shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who requests and is granted time to testify at a hearing.

10. General Evidence

A. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board.

B. Official Notice. The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and non-confidential agency records. Facts officially noticed shall be included and indicated as such in the record.

C. Proof of Official Record. The Presiding Officer may require that an official record or lack thereof be evidence by an official publication or by a copy or a statement attested by a person having, or who would ordinarily have, the legal custody of the record.

D. Documentary and Real Evidence. All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.

The Commissioner or the Presiding Officer may require, after prior

oral or written reasonable notice, that any party offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably susceptible of reproduction. The applicant and intervening parties and state, federal or municipal agencies shall provide each other with copies of any exhibit offered in evidence unless otherwise ordered by the Presiding Officer. All documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will also be available for public examination at the Department's office in Augusta during normal business hours.

E. Record of Application. In any proceeding involving an application, the application filed with the Department, including exhibits and amendments thereto, shall be placed into evidence.

F. Objections. All objections to rulings of the Presiding Officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. If during the course of or after the close of the hearing and during its deliberations the Board determines that the ruling of the Presiding Officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.

11. Testimony and Questions

A. Direct Testimony. Direct testimony shall be offered in the following order:

1. the applicant and representatives and witnesses the applicant selects,

2. department staff, members and consultants,

3. state, municipal and other governmental agencies and representatives thereof,

4. intervenors,

5. other interested persons.

B. Cross-Examination and Questions. At the conclusion of the testimony of each witness oral cross-examination of each witness may be permitted in the following order:

1. Board members, counsel, staff members and consultants may be permitted, by the Presiding Officer, to ask questions at any time,

2. the applicant;

3. federal, state and other governmental representatives,

4. intervenors;

5. all other persons may have the opportunity to question such witness by oral or written questions through the Presiding Officer.

The Presiding Officer may require that all examinations, either written or oral, be conducted at the conclusion of the testimony of each category of witnesses rather than at the conclusion of the testimony of each individual witness.

The Presiding Officer may require that all cross-examination be conducted in the form of written questions submitted to the Presiding Officer and read to the witness or may prohibit persons other than the applicant, intervenors, or governmental representatives from asking any questions.

C. Redirect and Rebuttal Evidence. All parties shall have the right to redirect and recross examination of any witness and to submit rebuttal evidence. Such re-examination shall be limited to matters brought out in the last examination by any other person except by leave of the Presiding Officer. Rebuttal evidence shall be directed only to matters brought out by another party except by leave of the Presiding Officer.

D. Varying Order of Appearance. When circumstances warrant, the Commissioner or the Presiding Officer may vary the order in which witnesses appear and the order in which testimony is given or witnesses are cross-examined.

E. 1. Where prior to or during the course of a hearing, the Board determines that testimony and questions at the hearing are likely to be unduly protracted or lengthy, the Board may order that oral cross-examination by each intervenor be limited to a specified duration.

E. 2. The Board may reduce the oral cross-examination time so specified for each intervenor or any one intervenor on its own motion, or on petition of any party where it determines that: (a) the large number of intervenors permitted to participate could unduly extend the proceedings, (b) an intervenor failed to properly utilize pre-hearing review procedures to obtain information, or (c) an intervenor's oral cross-examination is repetitious of areas previously covered by cross-examination in the proceeding.

A petition pursuant to this paragraph shall specify why reduced

cross-examination time is important to the petitioner and would not unduly restrict development of information relevant to the Board's decision and, if applicable, what acts or omissions of an intervenor justify the petition.

E. 3. The Board may increase the oral cross-examination time allocated to each intervenor, or any one intervenor, on its own motion or on petition of any party where it determines that: (a) the subject matter being examined is sufficiently complicated or the issues involved in an application are sufficiently numerous to warrant more extensive cross-examination; (b) new areas of inquiry have been discovered during cross-examination which were not identified in advance of the hearing, or (c) actions by the applicant including delayed or lengthy responses to questions have made it difficult for the intervenor to complete cross-examination within the specified time.

A petition pursuant to this paragraph shall specify why extended cross-examination time is important to the petitioner and include the matters which the petitioner desires to address in extended cross-examination, why these matters could not have been addressed in pre-hearing review or normal cross-examination and, if applicable, what acts or omissions of an applicant justify the petition.

F. The Board may designate times during the hearing when members of the public may ask questions and make statements, and may set time limits on such questions or statements.

12. Continuance

All hearings conducted pursuant to these regulations may be continued for reasonable cause and reconvened from time to time and from place to place by the Commissioner or the Presiding Officer as circumstances require. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The Commissioner or the Presiding Officer shall notify interested persons and the public in such a manner as is appropriate to insure that reasonable notice will be given of the time and place of such reconvened hearing.

13. Regulation of Certain Devices

The placement of television cameras, still cameras, motion picture cameras or microphones at Board hearings may be regulated by the Commissioner or the Presiding Officer in order that the use of such equipment does not interfere with the orderly conduct of the hearing.

14. Subpoenas

A. General. At the request of any party, or at the request of the Board, or any member thereof, the Presiding Officer may issue subpoenas

for the attendance of witnesses or for the production of documents.

B. Form. Every subpoena so issued shall bear the name of the Board, the name of the issuing officer and shall command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place. The subpoena shall also advise of the quashing procedure provided herein.

C. Service. Unless receipt of the subpoena is acknowledged by the witness, it shall be served by a person who is not a party to the proceeding and is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named in it and tendering the fees and milage paid to witnesses in the Superior Courts of this State.

D. Return. The person serving the subpoena shall make proof of service, by filing the subpoena and affidavit or acknowledgement of service with the Commissioner. Failure to make such proof of service shall not affect the validity of such subpoena and service.

E. Quashing. On motion made promptly, and in any event before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Presiding Officer may (1) quash or modify the subpoena on a finding that it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Any person requesting a hearing on a motion to quash a subpoena shall be granted a hearing before the Board upon such motion.

F. Confidentiality. If any person served with such subpoena claims, at or before the hearing that the required production of books, records or other data may disclose secret processes, formulae or methods used by or under the direction of such person which are entitled to protection as trade secrets and the Board or the Presiding Officer determines that such claim is valid, such information from such books, records, or other data shall be disclosed only at a non-public portion of the hearing and the record thereof shall be confidential.

G. Enforcement. If any person refuses to obey a subponea issued by the Board under this section, the Board may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of the subpoena.

H. Costs. The Board may condition denial of the subpoena upon the advancement by the person in whose behalf the subponea is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

15. Offer of Proof

An offer of proof may be made in connection with an objection to a ruling of the Presiding Officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the preferred evidence or that which is expected to be shown by the answer of the witness.

16. Conclusion of Hearing

At the conclusion of the hearing, no other evidence or testimony will be allowed into the record, except as specified by the Presiding Officer.

17. Reopening the Record

At any time prior to a final decision, the Board or Commissioner may reopen the record for further proceedings consistent with these regulations provided, however, that the Commissioner shall give notice of such further proceedings, in writing, to the applicant and intervenors at least 10 days prior to such proceedings, and further provided that the Commissioner shall notify other interested persons and the public in such manner as is appropriate.

18. Proposed Brief and Findings

All persons participating in any hearing shall have the right to submit to the Board written proposed findings of fact, briefs, and recommended conditions, provided that such documents shall be submitted in writing not later than seven days after the close of the hearing or within such other time as ordered by the Presiding Officer or the Commissioner. This paragraph shall not apply to the Department staff consultants and counsel, all whom shall have the right to submit such proposals at any time.

19. Oral Argument

Oral argument may be permitted before the Board at the conclusion of the evidence at a time and place to be fixed by the Commissioner or the Presiding Officer at his discretion.

20. Record

A full and complete record shall be kept of all hearings. The record shall include, but shall not be limited to, the application, supporting documents, all exhibits, proposed finding of facts and conclusions of the Presiding Officer, if any, staff documents, Board finding of facts and order, and the recording or transcript of the proceedings.

21. Proposed Orders

Proposed orders on matters which have been subject to hearing pursuant to this regulation shall be mailed to all parties at least 14 days before Board action on such proposed orders, and all parties may provide comments on such proposed orders at least 5 days in advance of Board action thereon.

22. Forms

All motions, proposed findings, petitions and briefs, and to the extent practicable, written testimony filed with the Board except for documents not susceptible of reproduction in the manner provided or for other good cause shown, shall be typewritten or printed on white opaque paper 8½ by 11 inches in size and bound typed matter shall be double spaced. The first page of each such document shall be headed by the title

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and shall have a caption with (1) the title of the matter in hearing, giving the name of the applicant, the activity in issue and the location (e.g., in the matter of Scott Paper Company, Pulp and Paper Mill, Hinckley, Maine), (2) the Department's application number (e.g., Site Application #86-0931-36261) and (3) the title of the document (e.g., Petition to Intervene). The final page shall be dated and signed.

23. Service and Filing of Documents

A. Service

A copy of all motions, petitions, briefs and pre-filed written testimony, permitted or required to be filed with the Board pursuant to these regulations, except briefs or proposed findings prepared by the Department, its consultants or counsel, shall be served upon applicants and intervenors in the proceeding or their representatives in the manner pursuant to Rule 4 (d) of Maine Rules of Civil Procedure (Attached as Appendix A).

B. Filing

An original and 15 copies of all such motions, petitions, briefs and pre-filed testimony shall be filed with the Board by delivery to the Commissioner, Department of Environmental Protection, Augusta, Maine 04333

C. Representatives

The first document filed by any person in a proceeding shall

designate the name and address of a person on whom service may be made and to whom all correspondence from the Board and staff may be sent.

D. Services Papers by the Board

Except for subpoenas, the Board and Presiding Officer shall assure that all orders, decisions, notices and other papers issued by the Board are served upon all parties to the proceeding in the manner prescribed by this section.

24. Ruling

The Commissioner or Presiding Officer may be overruled by a majority vote of the Board Members present on any decision or ruling relating to a hearing.

25. Computation of Time

All computations of time under these regulations shall be in the same manner as provided by Maine Rules of Civil Procedure, Rules 6 (a), (b), and (e).

26. Effective Date

These regulations shall be effective upon the date of filing with the Secretary of State and shall supersede all previous regulations adopted by the Board dealing expressly with hearings on applications. These regulations shall apply to all matters pending before the Board on the effective date hereof.

After public notice and public hearing on November 21, 1977 the above regulation is hereby adopted this 28th day of December, 1977.

BASIS STATEMENT: The Department of Environmental Protection may hold hearings on applications at its discretion or in certain matters it is required to hold hearings by statutes. Certain projects because of their intrinsic nature develop a significant amount of public interest and groups are organized to make appearance before the Board. These rules provide for the orderly participation of these intervenors, protects the rights of the applicant and enables the Board to conduct proceeding in a timely fashion.

AUTHORITY: 38 M.R.S.A., Section 343

EFFECTIVE DATE: May 15, 1973
Amended February 8, 1978

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 40 REGULATIONS FOR THE CONDUCT OF ENFORCEMENT HEARINGS

SUMMARY: The Board of Environmental Protection may at its discretion conduct enforcement hearings. These rules provide for a presiding officer and his powers, general conduct of the hearing, notice, commencement of proceedings, response to notice, evidence, offer of proof, record, Board actions, consent agreements and other necessary functions for equitable enforcement proceedings. They clearly state the rights, obligation and responsibilities of both the alleged violator and the Department. These rules are intended to secure the just, speedy and inexpensive determination of enforcement action.

1. Scope of Regulations

These regulations govern practice in all enforcement proceedings before the Board of Environmental Protection or the Department of Environmental Protection involving violations of any provisions of the laws or regulations which it administers, or of the terms or conditions of any of its orders or licenses. These regulations shall not apply to hearings on applications, whether ordinary hearings or those involving a significant public interest, but shall apply to hearings which may result in the revocation, modification or suspension of any license whenever such hearings are based upon the violation of any of the provisions of the laws administered by the Board or of the terms or conditions of any license. These regulations shall be construed to serve the just, speedy and inexpensive determination of every enforcement proceeding.

2. Presiding Officer

A. Designation

The Presiding Officer at all hearings may be either:

1. The Commissioner, if present and willing to preside,

2. A member of the Board selected by those members present at the hearing, or

3. If no Board member is present or willing to preside a qualified employee or representative of the Department designated by the Board or Commissioner.

B. Powers

The Presiding Officer shall have authority to:

1. Administer oaths,

2. Rule upon issues of evidence,

3. Regulate the course of the hearing,

4. Rule upon issues of procedures,

5. Hold conferences before or during the hearing for settlement

or simplification of issues or procedure,

6. Regulate the placement of television cameras, still cameras, motion picture cameras or microphones at Board hearings in order that the use of such equipment does not interfere with the orderly conduct of the hearing,

7. When authorized by the Board, issue subpoenas to compel the production of any witness, books, records or other data related to the matters at issue in the hearing, and

8. Take such other actions as may be ordered by the Board or that are necessary for the efficient and orderly conduct of the hearing consistent with these regulations and applicable statutes.

3. General Conduct of Hearing

A. Opening Statement

1. The Presiding Officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. The Presiding Officer shall read the notice of alleged violation.

B. Testimony and Questions

1. Testimony shall be offered in the following order:

a. Direct Testimony;

i. Department staff and Consultants,

ii. Other Departmental Witnesses,

iii. Respondent or Representative, and

iv. Respondent Witnesses.

b. Questions

At the conclusion of the testimony of each witness questioning of witnesses shall be in the following order:

i. Board members and their counsel may be permitted by the presiding officer to ask questions at any time,

ii. Department staff and Consultants, and

iii. Respondent or Representative.

C. Witnesses

All witnesses shall be sworn. Witnesses shall be compelled to attend, testify and produce records if subpoenaed by the Board.

D. Continuance

All hearings conducted pursuant to these regulations may be continued for reasonable cause and reconvened from time to time and from place to place by the Presiding Officer as circumstances require.

4. Commencement of Proceedings

A. Commencement of Proceedings

A proceeding shall be commenced by serving a notice of violation upon the alleged violator (herein called "Respondent").

B. Notice: Form, Contents

The notice shall set forth in clear and concise language the following:

1. A specific designation of the statute, regulation, order or license alleged to be violated;

2. A factual statement sufficient to inform the Respondent with reasonable definiteness of the acts or practices alleged to be in violation of applicable law;

3. Where practical, a form of order which the Department has reason to believe the Board should issue if the facts are as alleged in the Complaint; and

4. The date, time and place of the hearing, which shall not be less than thirty (30) days from the date of service of the notice.

C. Service

Notice under this section shall be served upon the Respondent by registered mail return receipt requested, or by the Sheriff or Deputy Sheriff within the appropriate county. If service under these rules is made by registered mail, the return receipt, properly endorsed and postmarked, shall be prima facie evidence of the completion and date of such service. If service is made by the Sheriff or Deputy Sheriff, Rule 4 of the Maine Rules of Civil Procedure shall apply to the making of such service and proof thereof.

D. Copy of Regulations

A copy of the Department of Environmental Protection Regulations for the Conduct of Enforcement Hearings shall be attached to the notice of violation.

5. Response to Notice

Upon receipt of notice of hearing the Respondent shall file an answer to the allegations contained in such notice not later than ten (10) days prior to the date of hearing contained in the notice. The answer shall contain:

A. Specific admission or denial of each fact alleged in the notice, or if the Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of an allegation, a statement to that effect; and

B. A concise statement of the facts constituting all grounds for defense.

Failure to answer or to respond to any factual allegations shall be deemed as an admission of such facts.

6. Evidence

A. Admissibility

Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The Board and the Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board.

B. Official Notice

The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and nonconfidential agency records. Facts officially noticed shall be included and indicated as such in the record.

C. Documentary and Real Evidence

All documents, materials and objects offered as evidence shall be

numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. All such evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the Department's office in Augusta during normal business hours.

D. Official Record

An official record or lack thereof may be evidenced in the manner provided by Rule 44 of the Maine Rules of Civil Procedure.

E. Objections

All objections to rulings of the Presiding Officer regarding evidence or procedure and the grounds therefore shall be timely made during the course of the hearing. If, during the course of or after the close of the hearing and during its deliberations the Board determines that the ruling of the Presiding Officer was in error, it may reopen the hearing or take such other action as it deems appropriate to correct such error.

F. Offer of Proof

An offer of proof may be made in connection with an objection to a ruling of the Presiding Officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the preferred evidence or that which is expected to be proven by the answer of the witness.

7. Consent Order - Procedures

A. Request for Disposal of Proceedings by Consent Order - How Made

At any time prior to ten (10) days before a scheduled hearing and subject to the provisions of subsection C (2), a Respondent may file with the Board a statement indicating his desire to dispose of the proceeding by the entry of a consent order. On receipt of such statement the Commissioner shall notify the Board and the Respondent that the hearing has been stayed.

Within thirty (30) days after receiving notice of such stay, an executed agreement conforming to the requirements of this section shall be submitted to the Board.

B. Agreement - Contents

Every agreement shall contain, in addition to an appropriate order,

an admission of all jurisdictional facts and express waivers of further procedural steps before the Board, and of the Respondent's right to appeal. The agreement shall also contain provisions that it shall not become part of the official record unless and until it is accepted by the Board. In addition, the agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the notice.

C. Disposition of Proposed Agreement by Board

Upon receiving such agreement the Board may:

1. Accept it and issue the order agreed upon;

2. Reject it, in which case the Board shall send a notice of rejection and an order that hearing be had at a date, place and time specified, not less than fifteen (15) days from the date of notice of rejection. The Respondent shall then file his answer within the period prescribed by section 40.5 and no other agreement may be presented to the Board; or

3. Take such other action as it deems appropriate.

If no agreement is received by the Board within the 30-day period prescribed by section 40.7 of this Regulation the Board shall proceed as though such agreement had been presented and rejected.

The provisions of this Regulation shall not preclude settlement of the proceedings in any other manner.

8. Action by Board when not in Session

Whenever any action or order is required of the Board and the Board is not in session, such actions or orders may be done by the Commissioner, except that the Commissioner shall not take any action to dismiss a hearing, accept or reject a proposed consent order, or otherwise dispose of any action on the merits.

9. Record

A full and complete record shall be kept of all proceedings. The record shall include, but not be limited to, the notice of violation, supporting documents, all exhibits, proposed findings of fact, and conclusions of the presiding officer, if any, staff documents, respondents answer and supporting documents, consent orders, if any, Board finding of facts and order, and the recording or transcript of the proceedings.

10. Orders

After consideration of the record, or in the event of the failure of the Respondent to answer as required in section 40.5 or to appear at the hearing, the Board shall as soon as practicable make findings of fact and, if it finds that a violation exists, issue an order aimed at ending such violation. The order shall state the date upon which it becomes effective and shall advise the party of his right to appeal under appropriate provisions of the law. The findings and order shall be served upon the party as provided in section 40.4 (C). Except as otherwise provided by these regulations all other orders and decisions of the Commissioner, Presiding Officer or Board shall be served in the manner prescribed by section 40.12 (B) herein.

11. Pleadings

A. Filing

An original and 15 copies of all such motions, petitions, briefs and pre-filed testimony shall be filed with the Board by delivery to the Commissioner, Department of Environmental Protection, Augusta, Maine, 04333.

B. Service

A copy of all motions, petitions, briefs and pre-filed written testimony, permitted or required to be filed with the Board pursuant to these regulations, except briefs or proposed findings prepared by the Department, its consultants or councel, shall be served upon parties in the proceeding or their representatives in the manner pursuant to Rule 4 (d) of Maine Rules of Civil Procedure (Attached as Appendix A).

C. Forms

All pleadings shall be typewritten or printed on white opaque paper 8½ x 11 inches in size, bound on the left margin. Typed matter shall be doubled spaced. The first page shall be headed by

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and shall have a caption with (1) the title of the matter (e.g. in the Matter of John Jones, Violation of 38 MRSA Section 451) and (2) the title of the document (e.g. Answer of John Jones). The final page shall be dated and signed by the person who prepared such document.

12. Time: Extension of Time Within Which to Comply with Orders

A. Generally

In computing any period of time prescribed by statute or by these

rules, Rules 6 (a) and 6 (e) of the Maine Rules of Civil Procedure shall apply. When by these rules or by law or order of the Board an act is required or allowed to be done at or within a specified time, the Board may for cause shown at any time within its discretion order the period enlarged if petition therefor is made before the expiration of the period originally prescribed; or upon petition made after the expiration of the period originally prescribed, where the failure to act was the result of excusable neglect.

B. Petitions for Extensions of Time Within Which to Comply with Orders

Any person affected by an order of the Board issued under these regulations may petition the Board for an extension of time within which to comply with the terms of such order. Such petition may be made no earlier than sixty (60) days before compliance with such order is required. Such a petition shall contain a concise statement by the petitioner of the facts which he believes warrant an extension; shall include, where appropriate, affidavits of engineers and contractors, engineering drawings and other material which will aid the Board in acting upon the petition, and shall state a definite date to which extension is desired.

13. Copies of Record

Copies of the transcript of any hearing or evidence submitted may be purchased through the Department or directly from the independent official Board reporter provided that no undue burden is placed on the Department in responding to such request, and further provided that such materials are in a form or size susceptible of reproduction by photocopying or similar means.

14. Signing of Pleading

Every pleading of a Respondent shall be signed by such Respondent or his attorney or representative. Such signature shall constitute a certification by such person that he has read the pleading, that to the best of his knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served and filed.

15. Effective Date

These regulations shall be effective upon the date of filing and with the Secretary of State and shall replace Rules for the Conduct of Enforcement Hearings effective May 15, 1973.

After public notice and public hearing November 21, 1977 the above regulation is hereby adopted this 28th of December, 1977.

BASIS STATEMENT: The Department of Environmental Protection may conduct an enforcement hearing on any alleged violation. These rules provide for the equitable conduct of hearing as well as the basis for communication between the alleged violator and the Staff of the Department. In addition to protect the rights of the alleged violator and provide alternative means of setting enforcement actions.

AUTHORITY: 38 M.R.S.A., Section 343

EFFECTIVE DATE: May 15, 1973
Amended February 8, 1978