

Request for Approval of Routine Program Changes to the Maine Coastal Program

Submitted to:

National Oceanic & Atmospheric Administration
Office of Ocean & Coastal Resource Management
Washington, DC



Maine State Planning Office
Maine Coastal Program
Augusta, Maine
November 2011

Routine Program Change Request

Maine Coastal Program

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INTRODUCTION

In 1978, the National Oceanic and Atmospheric Administration (NOAA) approved the Maine Coastal Program (MCP). The original program was based on eleven environmental laws. The MCP's enforceable policies have evolved over time as the State of Maine (State) has amended and supplemented these original core law authorities. The State Planning Office (SPO) has periodically submitted program changes to NOAA's Office of Ocean and Coastal Resource Management (OCRM) for its review and approval of their incorporation into the MCP as enforceable policies and tools to improve program administration and implementation.

This submission contains the following public laws enacted by the 125th Maine Legislature, First Regular Session, in session from December 1, 2010, to June 29, 2011: Public Law 2011 chapters: 12, sections 1-3; 47, section 2; 64, sections 1-5 and 12; 65, sections 1-2; 121, sections 1-2; 160, section 1; 194, sections 1-3; 205, sections 1-3; 206, sections 7-31, 35, and 36; 211, section 23; 231, sections 1-2; 243, sections 1-4; 245, section 1; 250, sections 1-9; 266, section B-7; 275, sections 1-2; 276, sections 1-3; 304, sections A-1 and H-1-11, -13, and -18-23; 317, section 1; 350, sections 1-2; 359, sections 1 and 3; 357, sections 1-3; 420, sections A-34 and -35; and 435, section 1.

SPO has determined that these changes are routine program implementation and has requested that NOAA concur with this determination. SPO has provided notice of these proposed changes to the MCP in accordance with 15 C.F.R. §923.84 (b)(2). A copy of that notice is attached as Appendix A. The text of these public laws is available online at: www.mainelegislature.org/ros/LOM/LOMDirectory.htm

Appendix B provides the text of these public laws. Appendix C is a table which provides section-by-section explanation of these changes. Appendix D provides the text of repealed provisions.

OVERVIEW

Inclusion of each of these changes among the enforceable policies of the MCP is a routine program change as defined by 15 C.F.R. §923.80(d). None of these changes presents a significant issue regarding special management areas, coastal program boundaries, program authorities or organization, or coordination, public involvement, or the national interest, and thus each proposed change is a routine program change under the criteria of 15 C.F.R. §923.80(d).

Approval of these changes will facilitate administration of the MCP by updating the Program's core laws and thus promoting consistency between application of pertinent provisions in state environmental laws as enforceable policies of the MCP and as state environmental and natural resources licensing and permitting requirements under state law.

The proposed routine program changes make minor, technical changes, or clarifications or incremental changes regarding existing core law authorities. Appendix C provides a section-by-section summary of these changes.

Appendix A

Public Notice



100 Legals

**Notice of Proposed
Routine Program
Changes to the Maine
Coastal Program**

Section 307 of the Coastal Zone Management Act (CZMA), the so-called "federal consistency" provision, provides that federal agencies shall conduct their activities consistently with the provisions of state environmental laws and rules that NOAA has approved as enforceable policies of Maine's coastal zone management program. In accordance with 15 C.F.R. §923.84, the Maine State Planning Office (SPO) is submitting to the federal National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (NOAA), for review and approval as enforceable policies of the Maine Coastal Program the following public laws enacted by the 125th Maine Legislature, First Regular Session: Public Law 2011 chapters: 12, sections 1-3; 47, section 2; 64, sections 1-5; 65, sections 1-2; 121, sections 1-2; 160, section 1; 194, sections 1-3; 205, sections 1-3; 206, sections 7-31, 35, and 36; 211, section 23; 231, sections 1-2; 243, sections 1-4; 245, section 1; 250, sections 1-9; 266, section B-7; 275, sections 1-2; 276, sections 1-3; 304, sections A-1 and H-1-11, -13, and -18-23; 317, section 1; 350, sections 1-2; 359, sections 1 and 3; 357, sections 1-3; 420, sections A-34 and -35; and 435, section 1.

SPO has determined that these changes are routine program implementation and has requested that NOAA concur with this determination.

PUBLIC COMMENTS

A copy of the State's filing submitting these changes to NOAA is available for download at <http://www.maine.gov/spo/coastal/downloads/routinechanges/October-2011filing.pdf>. A hard copy may be obtained from Lorraine Lessard, Maine Coastal Program, State Planning Office, 38 State House Station, Augusta Maine 04333, tel: 207-624-6222; email: Lorraine.Lessard@maine.gov. Interested parties have three weeks from the date of this notice to submit comments to NOAA on whether the requested changes are routine program implementation. Comments may be sent to:

John King NOAA Ocean Service, Office of Ocean and Coastal Resource Management, SSMC4, 11th floor, 1305 East West Highway, Silver Spring, MD 20910 John.King@noaa.gov

Appendix B

Text of Public Laws

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Allow Storage of Lobster Traps on Docks

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-Q, sub-§28, as enacted by PL 2009, c. 75, §4, is amended to read:

28. Release of water from dam after petition by owner for release from dam ownership or water level maintenance. Activity associated with the release of water from a dam pursuant to an order issued by the department pursuant to section 905; ~~and~~

Sec. 2. 38 MRSA §480-Q, sub-§29, as enacted by PL 2009, c. 75, §5, is amended to read:

29. Dam safety order. Activity associated with the breach or removal of a dam pursuant to an order issued by the Commissioner of Defense, Veterans and Emergency Management under Title 37-B, chapter 24; and

Sec. 3. 38 MRSA §480-Q, sub-§30 is enacted to read:

30. Lobster trap storage. The storage of lobster traps and related trap lines, buoys and bait bags on docks in, on, over or adjacent to a coastal wetland. For purposes of this subsection, "dock" means a dock, wharf, pier, quay or similar structure built in part on the shore and projected into a harbor and used as a landing, docking, loading or unloading area for watercraft.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

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An Act To Amend the Laws Governing Aquatic Nuisance Species

Be it enacted by the People of the State of Maine as follows:

Sec. 2. 38 MRSA §410-N, sub-§1, ¶A, as enacted by PL 1999, c. 722, §1, is amended to read:

A. "Aquatic plant" means a ~~vaseular~~ plant species that requires a permanently flooded freshwater habitat.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

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An Act To Amend the Natural Resources Protection Act Regarding Coastal Sand Dune Systems

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-B, sub-§2-E is enacted to read:

2-E. Footprint. "Footprint" means the outline that would be created on the ground by extending the exterior walls of a building to the ground surface.

Sec. 2. 38 MRSA §480-B, sub-§5-B is enacted to read:

5-B. Impervious area. "Impervious area" means an area that is a building, parking lot, roadway or similar constructed area. "Impervious area" does not mean a deck or patio.

Sec. 3. 38 MRSA §480-Q, sub-§28, as enacted by PL 2009, c. 75, §4, is amended to read:

28. Release of water from dam after petition by owner for release from dam ownership or water level maintenance. Activity associated with the release of water from a dam pursuant to an order issued by the department pursuant to section 905; ~~and~~

Sec. 4. 38 MRSA §480-Q, sub-§29, as enacted by PL 2009, c. 75, §5, is amended to read:

29. Dam safety order. Activity associated with the breach or removal of a dam pursuant to an order issued by the Commissioner of Defense, Veterans and Emergency Management under Title 37-B, chapter 24; and

Sec. 5. 38 MRSA §480-Q, sub-§30 is enacted to read:

30. Minor expansions to buildings in a coastal sand dune system. Expansion of an existing residential or commercial building in a coastal sand dune system if:

- A. The footprint of the expansion is contained within an existing impervious area;
- B. The footprint of the expansion is no further seaward than the existing building;
- C. The height of the expansion is within the height restriction of any applicable law or ordinance; and
- D. The expansion conforms to the standards for expansion of a building contained in the municipal shoreland zoning ordinance adopted pursuant to article 2-B.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

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An Act To Improve Harbor Safety by Clarifying Requirements for Maintenance Dredging Permits

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-E, sub-§7, as enacted by PL 1997, c. 240, §1, is repealed and the following enacted in its place:

7. Individual permit; maintenance dredging. Notwithstanding section 480-X, if an analysis of alternatives to the dredging project has been completed by the applicant within the previous 10 years pursuant to section 480-X and rules adopted to implement that section as part of an individual permit application, the applicant may update the previous analysis for purposes of obtaining an individual permit for maintenance dredging under this subsection.

Sec. 2. 38 MRSA §480-E, sub-§8, as enacted by PL 1997, c. 240, §1, is repealed and the following enacted in its place:

8. Permit by rule; maintenance dredging renewal. An individual permit for maintenance dredging may be renewed with a permit by rule only if the area to be dredged is located in an area that was dredged within the last 10 years and the amount of material to be dredged does not exceed the amount approved by the individual permit.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

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An Act To Amend the Law Concerning Overboard Discharge Systems

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §413, sub-§3, as amended by PL 2009, c. 654, §3, is further amended to read:

3. Transfer of ownership. Application for transfer of a license must be made no later than 2 weeks after the transfer of ownership or interest in the source of the discharge is completed. If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, except that the parties to the transfer are jointly and severally liable for any violation until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

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

This subsection applies to overboard discharge licenses issued before September 1, 2010.

Sec. 2. 38 MRSA §413, sub-§3-A, ¶¶A and B, as enacted by PL 2009, c. 654, §4, are amended to read:

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

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

B. If there is a transfer, or if a significant action is proposed, the owner of an overboard discharge must conduct an alternatives analysis and may be required to remove the overboard discharge system as provided in this paragraph.

(1) Except when it has been demonstrated within 5 years prior to a transfer, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard discharge, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

(2) Except when it has been demonstrated within 5 years prior to the significant action, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to the significant action the owner of the overboard discharge shall determine the feasibility of a technologically proven alternative to the overboard discharge that is consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

(3) The determination concerning whether there is a technologically proven alternative to an overboard discharge must be based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection that the system constitutes a best practicable treatment under section 414-A, subsection 1-B. If an alternative to the overboard discharge is identified, the alternative system must be installed within ~~90~~180 days of property transfer or significant action, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A. On a property transfer, a commercial establishment may request an extension of the ~~90-day~~180-day period based on information that an extension is necessary due to technical, economic or environmental considerations. The department may authorize an extension for a commercial establishment for as short an additional period as the department considers reasonable but in no case may an extension be authorized to continue beyond the expiration of the current waste discharge license or 2 years from the property transfer, whichever is later. Within 10 business days of receipt of a complete extension request, the department shall issue a written decision approving or denying the extension.

(4) When the ownership of a property containing an overboard discharge has been transferred, the transferee may request from the department a waiver from the requirement in subparagraph (3) to install an alternative system. The department shall grant the waiver upon demonstration by the transferee that the transferee's annual income as defined in section 411-A, subsection 2-A is less than \$25,000. A request for a waiver must be submitted with an application for transfer of the overboard discharge license in accordance with paragraph A.

Nothing in this paragraph requires a municipality to withhold a local permit or approval associated with a significant action until the provisions of this paragraph have been met.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

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An Act To Clarify Maine's Phaseout of the "Deca" Mixture of Polybrominated Diphenyl Ethers

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, under current law a person may not replace the "deca" mixture of polybrominated diphenyl ethers with a chemical that is a brominated or chlorinated flame retardant; and

Whereas, a manufacturer that wants to replace the "deca" mixture of polybrominated diphenyl ethers with a brominated or chlorinated flame retardant that may be a safer alternative than the "deca" mixture will not be able to move forward with that replacement until this legislation takes effect; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1609, sub-§14, ¶B, as enacted by PL 2009, c. 610, §7, is amended to read:

B. Effective June 1, 2011, a person subject to the restrictions under this section may not replace the "deca" mixture of polybrominated diphenyl ethers with a chemical alternative that the commissioner, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, determines:

- (1) Has been identified as or meets the criteria for identification as a persistent, bioaccumulative and toxic chemical by the United States Environmental Protection Agency;
- (2) Is a brominated or chlorinated flame retardant, unless the person demonstrates to the satisfaction of the commissioner that the flame retardant is a safer alternative; or
- (3) Creates another chemical as a breakdown product through degradation or metabolism that meets the provisions of subparagraph (1).

A replacement to the "deca" mixture of polybrominated diphenyl ethers may contain an amount of the chemicals listed or described in subparagraphs (1), (2) and (3) equal to or less than 0.1%, except that a replacement may contain an amount of a halogenated organic chemical containing the element fluorine equal to or less than 0.2%.

PUBLIC Law, Chapter 160, LD 930, 125th Maine State Legislature
An Act To Clarify Maine's Phaseout of the "Deca" Mixture of Polybrominated Diphenyl Ethers

Upon request by the commissioner, a person subject to the restrictions under this subsection shall provide the commissioner with all existing information about the hazard and exposure characteristics of the replacement chemical that is known to, in the possession or control of or reasonably ascertainable by the person.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective May 26, 2011.

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An Act To Review State Water Quality Standards

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §420, sub-§1-B, ¶F is enacted to read:

F. The department may require mercury testing once per year for facilities that maintain at least 5 years of mercury testing data.

Sec. 2. 38 MRSA §420, sub-§2, ¶J is enacted to read:

J. Notwithstanding any other provision of law to the contrary, the department shall use a one in 10,000 risk level when calculating ambient water quality criteria for inorganic arsenic.

Sec. 3. 38 MRSA §464, sub-§4, ¶¶J and K are enacted to read:

J. For the purpose of calculating waste discharge license limits for toxic substances, the department may use any unallocated assimilative capacity that the department has set aside for future growth if the use of that unallocated assimilative capacity would avoid an exceedance of applicable ambient water quality criteria or a determination by the department of a reasonable potential to exceed applicable ambient water quality criteria.

K. Unless otherwise required by an applicable effluent limitation guideline adopted by the department, any limitations for metals in a waste discharge license may be expressed only as mass-based limits.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

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An Act To Restore Exemptions in the Natural Resources Protection Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-Q, sub-§2, as amended by PL 2009, c. 460, §1, is further amended to read:

2. Maintenance and repair. Maintenance and repair of a structure, other than a crossing, in, on, over or adjacent to a protected natural resource ~~and maintenance and repair of a private crossing of a river, stream or brook~~ if:

A. Erosion control measures are taken to prevent sedimentation of the water;

~~B. Crossings do not block passage for fish or other aquatic organisms in water courses. Culverts and installation techniques utilized must achieve natural stream flow. This paragraph applies only to water courses containing fish;~~

C. There is no additional intrusion into the protected natural resource; and

D. The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair, or if the structure has been officially included in or is considered by the Maine Historical Preservation Commission eligible for listing in the National Register of Historic Places, the dimensions of the repaired structure do not exceed the dimensions of the historic structure.

This subsection does not apply to: the repair of more than 50% of a structure located in a coastal sand dune system; the repair of more than 50% of a dam, unless that repair has been approved by a representative of the United States Natural Resources Conservation Service; or the repair of more than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality;

Sec. 2. 38 MRSA §480-Q, sub-§2-A, as amended by PL 2009, c. 460, §2, is repealed.

Sec. 3. 38 MRSA §480-Q, sub-§2-D is enacted to read:

2-D. Existing crossings. A permit is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area, as long as:

A. Erosion control measures are taken to prevent sedimentation of the water;

B. The crossing does not block passage for fish in the protected natural resource area; and

C. For replacement crossings of a river, stream or brook:

(1) The replacement crossing is designed, installed and maintained to match the natural stream grade to avoid drops or perching; and

(2) As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom a minimum of one foot or at least 25% of the culvert or other structure's diameter, whichever is greater, except that a crossing structure does not have to be embedded more than 2 feet.

For purposes of this subsection, "repair and maintenance" includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than 50% of the crossing structure is being replaced.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

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An Act To Amend the Laws Administered by the Department of Environmental Protection

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation corrects a water quality classification that will enable the United States Army Corps of Engineers to dredge under a permit issued by the Department of Environmental Protection, and the dredging must be completed prior to the expiration of the 90-day period; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 7. 38 MRSA §420-D, sub-§4, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is amended to read:

4. Degraded, sensitive or threatened regions or watersheds. The department shall establish by rule a list of degraded, sensitive or threatened regions or watersheds. These areas include the watersheds of surface waters that:

- A. ~~Are~~ Have been degraded or are susceptible to degradation of water quality or fisheries because of the cumulative effect of past or reasonably foreseeable levels of development activity within the watershed of the affected surface waters; and
- B. Are not classified as "watersheds of bodies most at risk" under subsection 3.

Sec. 8. 38 MRSA §420-D, sub-§5, as amended by PL 2005, c. 602, §2, is further amended to read:

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; ~~and~~ sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or 1319-X, waste facility licenses. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B.

Sec. 9. 38 MRSA §420-D, sub-§7, ¶F, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is repealed.

Sec. 10. 38 MRSA §420-D, sub-§11, as amended by PL 2007, c. 593, §1, is further amended to read:

11. Compensation project or fee. The department may establish a nonpoint source reduction program to allow an applicant to carry out a compensation project or pay a compensation fee in lieu of meeting certain requirements, as provided in this subsection.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A~~2-A.

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through implementation of a compensation project or payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to payment of the costs and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and implementing compensation projects. If the authorized agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than \$25,000 per pound of available phosphorus.

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation project must be carried out or a compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the State Planning Office.

(5) Projects carried out or funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid.

~~(6) As an alternative to paying a compensation fee, the department may allow an applicant to meet a municipally required mitigation option if the department determines that the local mitigation option will provide at least as much long-term reduction in phosphorus loading to the lake as likely would have occurred under payment of the compensation fee.~~

B. The department may allow an applicant with a project within the direct watershed of a coastal wetland, river, stream or brook to address all or part of the storm water quality standards for the project through implementation of a compensation project or payment of a compensation fee as provided by rules adopted pursuant to this subsection.

Sec. 11. 38 MRSA §469, as amended by PL 2009, c. 163, §22, is further amended to read:

§ 469. Classifications of estuarine and marine waters

~~All estuarine and marine waters lying within the boundaries of the State and which are not otherwise classified are Class SB waters.~~

1. Cumberland County. All estuarine and marine waters lying within the boundaries of Cumberland County and that are not otherwise classified are Class SB waters.

A. Cape Elizabeth.

(1) Tidal waters of the Spurwink River system lying north of a line at latitude 43°-33'-44" N. - Class SA.

B. Cumberland.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Portland boundary at approximately latitude 43°41'-18"N., longitude 70° - 05'-48"W. and running northeasterly to a point located on the Cumberland-Harpswell boundary at approximately latitude 43° - 42'-57"N., longitude 70° - 03'-50" W.; thence running

southwesterly along the Cumberland-Harpswell boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running northeasterly along the Cumberland-Portland boundary to point of beginning - Class SA.

C. Falmouth.

(1) Tidal waters of the Town of Falmouth located westerly and northerly, to include the Presumpscot estuary, of a line running from the southernmost point of Mackworth Island; thence running northerly along the western shore of Mackworth Island and the Mackworth Island Causeway to a point located where the causeway joins Mackworth Point - Class SC.

D. Harpswell.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Harpswell boundary at approximately latitude 43° - 42'-57" N., longitude 70° - 03'-50" W. and running northeasterly to a point located at latitude 43° - 43'-08" N., longitude 70° - 03'-36" W.; thence running southeasterly to a point located at latitude 43° - 42'-02" N., longitude 70° - 00'-00" W.; thence running due south to the Harpswell-Portland boundary; thence running northwesterly along the Harpswell-Portland boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running northwesterly along the Cumberland-Harpswell boundary to point of beginning - Class SA.

E. Portland.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Portland boundary at approximately latitude 43° - 41'-18" N., longitude 70° - 05'-48" W. and running southeasterly along the Cumberland-Portland boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running southeasterly along the Harpswell-Portland boundary to longitude 70° - 00'-00" W.; thence running due south to a point located at latitude 43° - 38'-21" N., longitude 70° - 00'-00" W.; thence running due west to a point located at latitude 43° - 38'-21" N., longitude 70° - 09'-06" W.; thence running northeasterly to point of beginning - Class SA.

(2) Tidal waters of the City of Portland lying northwesterly of a line beginning at Spring Point Light in South Portland to the easternmost point of Fort Gorges Island, thence running northerly to the southernmost point of Mackworth Island - Class SC.

E-1. Scarborough.

(1) Tidal waters of the Scarborough River system lying north of a line running easterly from a point where the old Boston and Maine Railroad line intersects the marsh at latitude 43°-33'-06" N., longitude 70°-20'-58" W. to a point of land north of Black Rock at latitude 43°-33'-06" N., longitude 70°-19'-25" W., excluding those tidal waters of Phillips Brook lying upstream of a point 500 feet south of U.S. Route 1 - Class SA.

(2) Tidal waters of the Spurwink River system lying north of a line extending from Higgins Beach at latitude 43°-33'-44" N. to the town line - Class SA.

F. South Portland.

(1) Tidal waters of the City of South Portland lying westerly of a line beginning at Spring Point Light to the easternmost point of Fort Gorges Island in Portland - Class SC.

2. Hancock County. All estuarine and marine waters lying within the boundaries of Hancock County and that are not otherwise classified are Class SB waters.

A. Bar Harbor.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 16'-36" N., southerly of latitude 44° - 20'-27" N., and westerly of longitude 68° - 09'-28" W. - Class SA.

A-1. Brooksville.

(1) Tidal waters of the Bagaduce River lying southerly of Young's Island - Class SA.

B. Bucksport.

(1) All tidal waters - Class SC.

C. Cranberry Isles.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying within 0.5 mile of the shore of Baker Island - Class SA.

D. Mount Desert.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 16'-36" N. and easterly of longitude 68° - 13'-08" W. - Class SA.

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W., except those waters of Broad Cove lying west of a line running from the point of land immediately south of the cove northerly to Navigation Can #7 and those waters lying within 500 feet of overboard discharges licensed as of January 1, 1999 - Class SA.

(3) Tidal waters of Somes Sound lying within 500 feet of overboard discharges licensed as of January 1, 1999 - Class SA.

E. Orland.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

E-1. Penobscot.

(1) Tidal waters of the Bagaduce River lying southerly of Winslow Island and easterly of the westernmost point of Young's Island - Class SA.

E-2. Sedgewick.

(1) Tidal waters of the Bagaduce River - Class SA.

F. Southwest Harbor.

(1) Tidal waters lying northerly of latitude 44° - 12'-44" N., southerly of latitude 44° - 14'-13" N. and westerly of longitude 68° - 18'-27" W. - Class SA.

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W. - Class SA.

G. Tremont.

(1) Tidal waters lying northerly of latitude 44° - 12'-44" N., southerly of latitude 44° - 14'-13" N. and easterly of longitude 68° - 20'-30" W. - Class SA.

H. Verona Island.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

I. Winter Harbor.

(1) Tidal waters lying south of a line running west from the northernmost tip of Frazer Point to longitude 68° -05'-00" W. and east of longitude 68° -05'-00" W. - Class SA.

3. Knox County. All estuarine and marine waters lying within the boundaries of Knox County and that are not otherwise classified are Class SB waters.

A. Isle Au Haut.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 00'-00" N., southerly of latitude 44° - 03'-06" N., easterly of longitude 68° - 41'-00" W. and westerly of longitude 68° - 35'-00" W. - Class SA.

B. Owls Head.

(1) Tidal waters lying westerly of a line running between the southernmost point of land on Jameson Point and the northernmost point of land on Battery Point - Class SC.

C. Rockland.

(1) Tidal waters lying westerly of a line running between the southernmost point of land on Jameson Point and the northernmost point of land on Battery Point - Class SC.

3-A. Lincoln County. All estuarine and marine waters lying within the boundaries of Lincoln County and that are not otherwise classified are Class SB waters.

A. Boothbay.

(1) Tidal waters lying south of the northernmost point of Damariscove Island and west of longitude 69° -36'-00" W. - Class SA.

4. Penobscot County. All estuarine and marine waters lying within the boundaries of Penobscot County and that are not otherwise classified are Class SB waters.

A. Hampden.

(1) Tidal waters lying southerly of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class SC.

B. Orrington.

(1) Tidal waters lying southerly of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class SC.

5. Sagadahoc County. All estuarine and marine waters lying within the boundaries of Sagadahoc County and that are not otherwise classified are Class SB waters.

A. Georgetown.

(1) Tidal waters located within a line beginning at a point on the shore located at latitude 43° - 47'-16" N., longitude 69° -43'-09" W. and running due east to longitude 69° -42'-00" W.; thence running due south to latitude 43° - 42'-52" N.; thence running due west to longitude 69° -44' -25" W.; thence running due north to a point on the shore located at latitude 43° - 46'-15" N., longitude 69° -44'-25" W.; thence running northerly along the shore to point of beginning - Class SA.

B. Phippsburg.

(1) ~~Tidal~~Offshore waters east of longitude 69°-50'-05" W. and west of longitude 69°-47'-00" W., including the tidal waters of the Morse River and the Sprague River, - Class SA.

(2) Tidal waters of The Basin, including The Narrows east of a line drawn between 69°-51'-57" W. and 43°-48'-14" N. - Class SA.

(3) Tidal waters of the Kennebec River in Phippsburg within 500 feet of shore, beginning at a point of land at the head of Atkins Bay located at longitude 69°-48'-14" W. and latitude 43°-44'-40.4" N. and extending along the southeast shore of Atkins Bay to a point 500 feet off Fort Popham located at longitude 69°-47'-00" W. and latitude 43°-45'-23.89" N. - Class SA.

6. Waldo County. All estuarine and marine waters lying within the boundaries of Waldo County and that are not otherwise classified are Class SB waters.

A. Frankfort.

(1) All tidal waters - Class SC.

B. Prospect.

(1) All tidal waters - Class SC.

C. Searsport.

(1) Tidal waters located within a line beginning at the southernmost point of land on Kidder Point and running southerly along the western shore of Sears Island to the southernmost point of Sears Island; thence running due south to latitude 44°-25'-25"N; thence running due west to longitude 68°-54'-30"W; thence running due north to the shore of Mack Point at longitude 68°-54'-30" W; thence running along the shore in an easterly direction to point of beginning - Class SC.

D. Stockton Springs.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

E. Winterport.

(1) All tidal waters - Class SC.

7. Washington County. All estuarine and marine waters lying within the boundaries of Washington County and that are not otherwise classified are Class SB waters.

A. Beals.

(1) Tidal waters lying east of the line extending from the westernmost point of Three Falls Point to the easternmost point of Crumple Island; thence south along longitude 67°-36'-47" W. - Class SA.

(2) Tidal waters lying south of a line extending from the easternmost point of the southern shore of the Mud Hole; thence extending along latitude 44°-29'-00" N. to the town line - Class SA.

B. Calais.

(1) Tidal waters of the St. Croix River and its tidal tributaries lying westerly of longitude 67°-14'-28" W. - Class SC.

C. Cutler.

(1) All tidal waters except those waters in Machias Bay and Little Machias Bay north of a line running from the town line due east to the southernmost point of Cross Island; thence running northeast to the southeasternmost point of Cape Wash Island; thence running northeast to the westernmost point of Deer Island; thence running due north to the mainland; and those waters lying northwest of a line running from the easternmost point of Western Head to the easternmost point of Eastern Knubble - Class SA.

D. Eastport.

(1) Tidal waters lying southerly of latitude 44°-54'-50" N., easterly of longitude 67°-02'-00" W. and northerly of latitude 44°-53'-15" N. - Class SC.

E. Edmunds.

(1) All tidal waters - Class SA.

F. Lubec.

(1) Tidal waters, except those lying within 500 feet of West Quoddy Head Light, south of a line beginning at a point located on the northern shore of West Quoddy Head at latitude 44°-49'-22" N., longitude 66°-59'-17" W. and running northeast to the international boundary at latitude 44°-49'-45" N., longitude 66°-57'-57" W. - Class SA.

(2) Tidal waters west of a line running from the easternmost point of Youngs Point to the easternmost point of Leighton Neck in Pembroke - Class SA.

G. Milbridge.

(1) Tidal waters south of a line running from the Steuben - Milbridge town line along latitude 44°-27'-39" N. to the northernmost point of Currant Island; thence running easterly to a point 1,000 feet from mean high tide on the northernmost point of Pond Island; thence along a line running 1,000 feet from mean high tide along the east side of Pond Island to the southernmost point of the island; thence running due south - Class SA.

H. Pembroke.

(1) Tidal waters west of a line running from the easternmost point of Leighton Neck to the easternmost point of Youngs Point in Lubec - Class SA.

I. Steuben.

(1) Tidal waters southeast of a line beginning at Yellow Birch Head at latitude 44°-25'-05" N.; thence running to longitude 67°-55'-00" W.; thence running due south along longitude 67°-55'-00" W. - Class SA.

(2) Tidal waters southwest of a line beginning at a point located south of Carrying Place Cove at latitude 44°-26'-18" N., longitude 67°-53'-14" W.; thence running along latitude 44°-26'-18" N. east to the town line - Class SA.

J. Trescott.

(1) All tidal waters - Class SA.

K. Whiting.

(1) Tidal waters of the Orange River - Class SA.

8. York County. All estuarine and marine waters lying within the boundaries of York County and that are not otherwise classified are Class SB waters.

A. Biddeford.

(1) Tidal waters of the Saco River and its tidal tributaries lying westerly of longitude 70°-22'-54" W. - Class SC.

B. Kennebunk.

(1) Tidal waters of the Little River system lying north of latitude 43°-20'-10" N. - Class SA.

C. Kittery.

(1) Tidal waters of the Piscataqua River and its tidal tributaries lying westerly of longitude 70°-42'-52" W., southerly of Route 103 and easterly of Interstate Route 95 - Class SC.

(2) Tidal waters lying northeast of a line from Sisters Point; thence south along longitude 70°-40'-00" W. to the Maine-New Hampshire border; thence running southeast along the Maine-New Hampshire border to Cedar Ledge beyond the Isles of Shoals, except waters within 500 feet of the Isles of Shoals Research Station - Class SA.

D. Old Orchard Beach.

(1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of longitude 70°-23'-08" W. - Class SC.

E. Saco.

(1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of longitude 70°-23'-08" W. - Class SC.

(2) Tidal waters of the Saco River and its tidal tributaries lying westerly of longitude 70°-22'-54" W. - Class SC.

F. Wells.

(1) Tidal waters of the Little River system lying north of latitude 43°-20'-10" N. - Class SA.

G. York.

(1) Tidal waters lying southwest of a line from Seal Head Point east along latitude 43°-07'-15" N. - Class SA.

Sec. 12. 38 MRSA §542, sub-§6, as amended by PL 1977, c. 375, §2, is further amended to read:

6. Oil. "Oil" means oil, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

Sec. 13. 38 MRSA §562-A, sub-§15, as amended by PL 1995, c. 361, §3, is further amended to read:

15. Oil. "Oil" means oil, oil additives, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other nonhazardous waste, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

Sec. 14. 38 MRSA §563, sub-§1, ¶A, as amended by PL 2001, c. 626, §12, is further amended to read:

A. A person may not install, or cause to be installed, a new or replacement underground oil storage facility ~~without first having registered~~ unless the facility with the commissioner is registered in accordance with ~~the requirements of subsection 2, and having paid the registration fee in accordance with the requirements of subsection 4,~~ at least 10 business days ~~but no more than 2 years~~ prior to installation and the registration fee is paid in accordance with subsection 4. If compliance with this time requirement is impossible due to an emergency situation, the owner or operator of the facility at which the new or replacement facility is to be installed shall inform the commissioner as soon as the emergency becomes known.

The owner or operator shall make available a copy of the facility's registration at that facility for inspection by the commissioner and authorized municipal officials.

Sec. 15. 38 MRSA §566-A, sub-§2, as repealed and replaced by PL 1991, c. 66, Pt. A, §27, is amended to read:

2. Notice of intent. The owner or operator of an underground oil storage facility or tank or, if the owner or operator is unknown, the current owner of the property where the facility or tank is located shall provide written notice of an intent to abandon an underground oil storage facility or tank to the commissioner and the fire department in whose jurisdiction the underground oil facility or tank is located ~~at least 30 days~~ prior to abandonment.

Sec. 16. 38 MRSA §568-A, sub-§1, ¶B-2, as enacted by PL 1997, c. 374, §4, is amended to read:

B-2. An applicant is not eligible for coverage for any discharge discovered or reported to the commissioner after October 1, 1998 if the discharge is from an underground oil storage facility or tank that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department or from an aboveground oil storage facility that has underground piping that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department. ~~An applicant who would otherwise not be eligible for coverage pursuant to this paragraph is not subject to this exclusion from coverage for such a discharge discovered or reported to the commissioner on or before October 1, 1999 if the facility or tank was not operated or used to store oil after the applicable compliance date under section 563-A and the applicant.~~ This exclusion from coverage does not apply to a discharge from an aboveground oil storage facility if the facility is used exclusively to store home heating oil, consists of tanks with a capacity of 660 gallons or less and has an aggregate tank capacity of 1,320 gallons or less.

~~(1) Can not secure financing to remove the facility or tank as evidenced by letters from 3 financial institutions; or~~

~~(2) Can not obtain the services of a certified underground oil storage tank installer or remover required pursuant to section 566 A as evidenced by letters from 3 certified underground oil storage tank installers or removers.~~

Sec. 17. 38 MRSA §568-A, sub-§2-B is enacted to read:

2-B. Failure to pay deductibles. An order issued under subsection 1, paragraph F-1 may be conditioned on payment of the applicable deductibles. If an applicant fails to pay the deductible amounts as determined under subsection 2 within 180 days of receipt of a bill from the department or within 180 days of a decision by the review board or an appellate court upholding the determination, whichever is later, the commissioner may seek reimbursement from the applicant or any other responsible party of all costs incurred by the State in the removal, abatement and remediation of the discharge for which coverage was sought.

Sec. 18. 38 MRSA §569-C is enacted to read:

§ 569-C. Limited exemption from liability for state or local governmental entities

1. Limited exemption from liability. Liability under section 570 does not apply to the State or any political subdivision that acquired ownership or control of an oil storage facility through tax delinquency proceedings pursuant to Title 36, or through any similar statutorily created procedure for the collection of governmental taxes, assessments, expenses or charges, or involuntarily through abandonment, or in circumstances in which the State or political subdivision involuntarily acquired ownership or control by virtue of its function as a sovereign. The exemption from liability provided under this subsection does not apply if:

A. The State or political subdivision causes, contributes to or exacerbates a discharge or threat of discharge from the facility; or

B. After acquiring ownership of the facility and upon obtaining knowledge of a release or threat of release, the State or political subdivision does not:

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

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

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

2. Reimbursement for department expenses. Notwithstanding the exemption from liability provided in subsection 1, the State or any political subdivision that acquires or has acquired ownership of property that encompasses an oil storage facility pursuant to any of the proceedings referred to in subsection 1 is liable for any costs incurred by the department pursuant to this chapter during the period in which the State or political subdivision had ownership of the property, up to the amount of the proceeds from the sale or disposition of the

property minus any unpaid taxes on the property and the out-of-pocket costs of the sale or disposition.

Sec. 19. 38 MRSA §584-A, as amended by PL 2009, c. 121, §15, is repealed and the following enacted in its place:

§ 584-A. Ambient air quality standards

For purposes of statutory interpretation, rules, licensing determinations, policy guidance and all other actions by the department or the board, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard established pursuant to Section 109 of the federal Clean Air Act, 42 United States Code, Section 7409, as amended. The department shall implement ambient air quality standards as required by the federal Clean Air Act, 42 United States Code, Section 7409 and regulations promulgated under that section by the United States Environmental Protection Agency. Nothing in this section may be construed to limit the authority of the department to adopt emission standards designed to achieve and maintain ambient air quality standards.

Sec. 20. 38 MRSA §1303-C, sub-§6, ¶E, as enacted by PL 1999, c. 525, §1, is repealed and the following enacted in its place:

E. A solid waste facility owned and controlled by a single entity that:

(1) Generates at least 85% of the solid waste disposed of at a facility, except that the facility may accept from other sources, on a nonprofit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis; or

(2) Is an owner of a manufacturing facility that has, since January 1, 2006, generated at least 85% of the solid waste disposed of at the solid waste facility, except that one or more integrated industrial processes of the manufacturing facility are no longer in common ownership, and those integrated industrial processes will continue to generate waste that will continue to be disposed of at the solid waste facility. This exemption only applies if the source and type of waste disposed of at the solid waste facility remains the same as that previously disposed of by the single entity.

For the purposes of this paragraph, "single entity" means an individual, partnership, corporation or limited liability corporation that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph.

For purposes of this paragraph, "integrated industrial processes" means manufacturing processes, equipment or components, including, but not limited to, energy generating facilities, that when used in combination produce one or more manufactured products for sale; or

Sec. 21. 38 MRSA §1393, sub-§1, ¶B, as enacted by PL 2007, c. 569, §6, is amended to read:

B. After September 30, 2008, a person may not install in a wellhead protection zone:

- (1) An aboveground oil storage facility;
- (2) An automobile graveyard as defined in Title 30-A, section 3752, subsection 1 or an automobile recycling business as defined in Title 30-A, section 3752, subsection 1-A;
- (3) An automobile body shop or other ~~commercial~~ automobile maintenance and repair facility;
- (4) A dry cleaning facility that uses perchloroethylene;
- (5) A metal finishing or plating facility; or
- (6) A commercial hazardous waste facility as defined under section 1303-C, subsection 4.

Sec. 22. 38 MRSA §1393, sub-§2, ¶A, as enacted by PL 2007, c. 569, §6, is amended to read:

A. A facility in existence ~~or under construction~~ on the effective date of the prohibition established under subsection 1. ~~As used in this paragraph, "under construction" means that a substantial amount of money or effort has been expended toward completion of the facility as determined by the commissioner. The test of substantiality involves an assessment of the amount of money or effort expended in relation to the amount required to complete the facility;~~

Sec. 23. 38 MRSA §1393, sub-§2, ¶B, as enacted by PL 2007, c. 569, §6, is amended to read:

B. The replacement or expansion of an underground oil storage facility in existence on September 30, 2001 or a facility identified in subsection 1, paragraph B in existence on September 30, 2008 as long as the replacement or expansion occurs on the same property ~~and~~, the facility meets all applicable requirements of law; and, in the case of replacement, the facility owner:

- (1) Within 30 days after removal of the existing facility, notifies the commissioner and municipal code enforcement officer in writing of the owner's intent to replace the facility; and
- (2) Commences construction of the replacement facility within 2 years after removal of the existing facility;

Sec. 24. 38 MRSA §1661-C, sub-§9, ¶A, as amended by PL 2009, c. 501, §22, is further amended to read:

A. After ~~June 30~~December 31, 2011, a person may not sell or offer to sell or distribute for promotional purposes a mercury-added button cell battery identified in this paragraph or a product that contains a mercury-added button cell battery identified in this paragraph:

- (1) A zinc-air button cell battery;
- (2) An alkaline manganese button cell battery; or
- (3) A silver oxide button cell battery stamped with the designation 357, 364, 371, 377, 395, SR44W, SR621SW, SR626SW, SR920SW or SR927SW or a silver oxide button cell battery that is interchangeable with a battery that is stamped with one of those designations; and

Sec. 25. 38 MRSA §1661-C, sub-§11 is enacted to read:

11. Mercuric oxide batteries. A person may not sell, distribute or offer for sale in this State a consumer mercuric oxide button cell battery. The sale and use of all other types of mercuric oxide batteries is subject to the requirements of section 2165.

Sec. 26. 38 MRSA §1661-C, sub-§12 is enacted to read:

12. Alkaline manganese and zinc-carbon batteries. A person may not sell, distribute or offer for sale in this State the following batteries:

- A. An alkaline manganese battery that contains any added mercury; or
- B. A zinc carbon battery that contains any added mercury.

Sec. 27. 38 MRSA §1665-A, sub-§5, ¶B, as repealed and replaced by PL 2005, c. 561, §9, is amended to read:

B. Pay for each mercury switch brought to the consolidation facilities as partial compensation for the removal, storage and transport of the switches a minimum of \$4 if the vehicle identification number or year, make and model of the source vehicle is provided. If the vehicle identification number or year, make and model of the source vehicle is not provided, no payment is required;

Sec. 28. 38 MRSA §1665-B, sub-§1, ¶D, as enacted by PL 2009, c. 277, §4, is amended to read:

D. "Wholesaler" means a business that the department determines is primarily engaged in the distribution and selling of ~~electrical supplies or large quantities of~~ heating, ventilation and air conditioning components to contractors that install ~~electrical or~~ heating, ventilation and air conditioning components.

Sec. 29. 38 MRSA §1665-B, sub-§2, ¶A, as amended by PL 2009, c. 277, §6, is further amended to read:

A. Establish and maintain a collection and recycling program for out-of-service mercury-added thermostats. The collection and recycling program must be designed and implemented to ensure that:

- (1) A maximum rate of collection of mercury-added thermostats is achieved;
- (2) Handling and recycling of mercury-added thermostats are accomplished in a manner that is consistent with section 1663, with other provisions of this chapter and with the universal waste rules adopted by the board pursuant to section 1319-O;
- (3) Authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed \$25 to all ~~heating, ventilation and air conditioning supply, electrical supply and plumbing supply distributor~~wholesaler locations that sell thermostats and to all retailers and electrical supply wholesalers who volunteer to participate in the program; and
- (4) By January 1, 2007, authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed \$25 to municipalities and regions requesting bins for mercury-added thermostat collection at universal waste collection sites or at periodic household hazardous waste collection events, as long as the collection sites or events are approved by the department for mercury-added thermostat collections;

Sec. 30. 38 MRSA §1665-B, sub-§2, ¶E, as enacted by PL 2005, c. 558, §1, is amended to read:

E. Within 3 months after the department develops phase one of the plan required by subsection 4, provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat ~~by a contractor or service technician,~~ with or without a cover, to an established wholesaler recycling collection point;

Sec. 31. 38 MRSA §1665-B, sub-§2, ¶F, as amended by PL 2009, c. 277, §7, is further amended to read:

F. Within 3 months after the department develops phase 2 of the plan required by subsection 4, provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat ~~by a homeowner,~~ with or without a cover, to an established retail recycling collection point;

Sec. 35. 38 MRSA §2165, sub-§6, as amended by PL 2009, c. 86, §2, is repealed.

Sec. 36. 38 MRSA §2165, sub-§8, as corrected by RR 1991, c. 2, §150, is amended to read:

8. Penalty. A violation of subsection 2 is a civil violation for which a forfeiture of not more than \$100 per battery disposed of improperly may be adjudged. A violation of subsection 4 is a civil violation for which a forfeiture of not more than \$100 may be adjudged. ~~A violation of subsection 6 is a civil violation for which a forfeiture of not more than \$100 per battery sold,~~

PUBLIC Law, Chapter 206, LD 1398, 125th Maine State Legislature
An Act To Amend the Laws Administered by the Department of Environmental Protection

~~distributed or offered for sale may be adjudged.~~ Each day that a violation continues or exists constitutes a separate offense.

Effective June 3, 2011, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Streamline the Waste Motor Oil Disposal Site Remediation Program

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, waste oil was discharged between 1953 and 1981 at 4 sites in Maine: Plymouth, Casco, Ellsworth and Presque Isle; and

Whereas, the 4 sites require significant cleanup, costing some \$30,000,000; and

Whereas, the costs of cleanup place an intolerable financial burden on businesses, municipalities, schools and state agencies throughout the State that contributed waste oil to one or more of the sites; and

Whereas, the public health, safety and welfare require that the sites be cleaned up expeditiously; and

Whereas, it is in the public interest to ensure the continued financial viability of the businesses, municipalities, schools and state agencies that contributed waste oil to one or more of the sites; and

Whereas, the Finance Authority of Maine has issued revenue bonds to partially fund the cost of the cleanup of these sites but revenues are insufficient to support additional bonds to fully resolve the sites; and

Whereas, a stakeholder group convened by the Department of Environmental Protection at the direction of the Legislature has developed a complete resolution to this problem that uses revenues more efficiently rather than increasing existing premiums; and

Whereas, immediate changes to the waste motor oil disposal site remediation program are necessary to implement these efficiencies; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 23. 38 MRSA §568-B, sub-§2, ¶E, as amended by PL 2001, c. 356, §8, is further amended to read:

PUBLIC Law, Chapter 211, LD 1434, 125th Maine State Legislature
An Act To Streamline the Waste Motor Oil Disposal Site Remediation Program

E. To ~~consult with the Finance Authority of Maine at such times as are necessary, but no less than annually, to review income and disbursements from the Waste Oil Clean-up Fund under Title 10, section 1023-L.~~ The board, at such times and in such amounts as it determines necessary, and in consultation with the Finance Authority of Maine, shall direct the transfer of funds from the Underground Oil Storage Replacement Fund to the Groundwater Oil Clean-up Fund.

Effective June 3, 2011, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Exclude Cupolas from the Measurement of Height for Structures in the Shoreland Zone

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §436-A, sub-§7-A is enacted to read:

7-A. Height of a structure. "Height of a structure" means the vertical distance between the mean original grade at the downhill side of the structure, prior to construction, and the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area.

Sec. 2. 38 MRSA §439-A, sub-§9 is enacted to read:

9. Cupolas. For the purpose of determining the height of a structure, a municipal ordinance adopted pursuant to this article may exempt a cupola, dome, widow's walk or similar feature added to a legally existing conforming structure if:

A. The legally existing conforming structure is not located in a Resource Protection District or a stream protection district as defined in guidelines adopted by the board; and

B. The cupola, dome, widow's walk or other similar feature:

(1) Does not extend beyond the exterior walls of the existing structure;

(2) Has a floor area of 53 square feet or less; and

(3) Does not increase the height of the existing structure, as determined under section 436-A, subsection 7-A, by more than 7 feet.

For purposes of this subsection, "cupola, dome, widow's walk or other similar feature" means a nonhabitable building feature mounted on a building roof for observation purposes.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Laws Governing the Ground Water Oil Clean-up Fund

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §568-A, sub-§2, as amended by PL 2009, c. 501, §9, is further amended to read:

2. Deductibles. Except as provided in subsection 2-A, applicants eligible for coverage by the fund under subsection 1 shall pay on a per occurrence basis the applicable standard deductible amount specified in paragraph A. In addition to the applicable standard deductible amount required under paragraph A, the applicant shall pay on a per occurrence basis one or more of the conditional deductible amounts specified in paragraphs B and C to the extent applicable.

A. Standard deductibles are calculated under this paragraph based on the number of underground storage facilities or the capacity of gallons owned by the aboveground storage facility owner at the time the covered discharge is discovered. Standard deductibles are as follows.

(1) For expenses related to a leaking underground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Number of underground storage facilities owned by the facility owner	Deductible
1	\$2,500
2 to 5	5,000
6 to 10	10,000
11 to 20	25,000
21 to 30	40,000
over 30	62,500

(2) For expenses related to a leaking aboveground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Total aboveground oil storage capacity in gallons owned by the facility owner	Deductible
Less than 1,320	\$500
1,321 to 50,000	2,500
50,001 to 250,000	5,000
250,001 to 500,000	10,000
500,001 to 1,000,000	25,000
1,000,001 to 1,500,000	40,000
greater than 1,500,000	62,500

(3) For facilities with both aboveground and underground tanks when the source of the discharge cannot be determined or when the discharge is from both types of tanks, the standard deductible is the applicable amount under subparagraph (1) or (2), whichever is greater.

B. Conditional deductibles for underground facilities and tanks are as follows.

(1) For nonconforming facilities and tanks, the deductible is \$10,000 for failure to meet the compliance schedule in section 563-A, except that those facilities or tanks required to be removed by October 1, 1989 have until October 1, 1990 to be removed before they are considered out of compliance.

(2) For failure to pay registration fees under section 563, subsection 4, the deductible is the total of all past due fees.

(3) For motor fuel storage and marketing and retail facilities, the deductibles are:

- (a) Five thousand dollars for failure to comply with applicable design and installation requirements in effect at the time of the installation or retrofitting requirements for leak detection pursuant to section 564, subsections 1 and 1-A;
- (b) Five thousand dollars for failure to comply with section 564, subsection 1-B and any rules adopted pursuant to that subsection;
- (c) Five thousand dollars for failure to comply with section 564, subsection 2-A, paragraphs B to F and I, and any rules adopted pursuant to that subsection; and
- (d) Ten thousand dollars for failure to comply with section 564, subsection 2-A, paragraph H, and any rules adopted pursuant to that subsection.

(4) For consumptive use heating oil facilities with an aggregate storage capacity of less than 2,000 gallons, the deductibles are:

- (a) Two thousand dollars for failure to comply with section 565, subsection 1, if applicable;
- (b) Two thousand dollars for failure to comply with section 565, subsection 2, regarding monitoring; and
- (c) Two thousand dollars for failure to comply with section 565, subsection 2, regarding any requirement to report evidence of a possible leak or discharge.

(5) For consumptive use heating oil facilities with an aggregate storage capacity of 2,000 gallons or greater, the deductibles are:

- (a) Five thousand dollars for failure to comply with section 565, subsection 1, if applicable;
- (b) Five thousand dollars for failure to comply with section 565, subsection 2, regarding monitoring; and
- (c) Ten thousand dollars for failure to comply with section 565, subsection 2, regarding any requirement to report evidence of a possible leak or discharge.

(6) For waste oil and heavy oil and airport hydrant facilities with discharges that are not contaminated with hazardous constituents, the deductibles for failure to comply with rules adopted by the board are:

- (a) Five thousand dollars for rules regarding design and installation requirements in effect at the time of the installation;
- (b) Five thousand dollars for rules regarding retrofitting of leak detection and corrosion protection, if applicable;
- (c) Five thousand dollars for rules regarding overfill and spill prevention;
- (d) Five thousand dollars for rules regarding the monitoring of cathodic protection systems;
- (e) Five thousand dollars for rules regarding testing requirements for tanks and piping on evidence of a leak;
- (f) Five thousand dollars for rules regarding maintenance of a leak detection system; and
- (g) Ten thousand dollars for rules regarding the reporting of leaks.

C. Conditional deductibles for aboveground facilities and tanks are as follows.

(1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal pursuant to 16-219 CMR, chapter 34, the deductibles are:

- (a) Five thousand dollars for failure to obtain a construction permit from the Office of the State Fire Marshal, when required under Title 25, chapter 318 and 16-219 CMR, chapter 34 or under prior applicable law;
- (b) Five thousand dollars for failure to design and install piping in accordance with section 570-K and rules adopted by the department;
- (c) Five thousand dollars for failure to comply with an existing consent decree, court order or outstanding deficiency statement regarding violations at the aboveground facility;
- (d) Five thousand dollars for failure to implement a certified spill prevention control and countermeasure plan, if required;
- (e) Five thousand dollars for failure to install any required spill control measures, such as dikes;
- (f) Five thousand dollars for failure to install any required overfill equipment;
- (g) Five thousand dollars if the tank is not approved for aboveground use; and
- (h) Ten thousand dollars for failure to report any leaks at the facility.

(2) For aboveground tanks subject to the jurisdiction of the Oil and Solid Fuel Board, the deductibles are:

- (a) One hundred and fifty dollars for failure to install the facility in accordance with rules adopted by the Oil and Solid Fuel Board and in effect at the time of installation;
- (b) Two hundred and fifty dollars for failure to comply with the rules of the Oil and Solid Fuel Board;
- (c) Two hundred and fifty dollars for failure to make a good faith effort to properly maintain the facility; and
- (d) Five hundred dollars for failure to notify the department of a spill.

The commissioner shall make written findings of fact when making a determination of deductible amounts under this subsection. The commissioner's findings may be appealed to the Fund Insurance Review Board, as provided in section 568-B, subsection ~~3-A~~2-C. On appeal, the burden of proof is on the commissioner as to which deductibles apply.

After determining the deductible amount to be paid by the applicant, the commissioner shall pay from the fund any additional eligible clean-up costs and 3rd-party damage claims up to \$1,000,000 associated with activities under section 569-A, subsection 8, paragraphs B, D and J. The commissioner shall pay the expenses directly, unless the applicant chooses to pay the expenses and seek reimbursement from the fund. The commissioner may pay from the fund any eligible costs above \$1,000,000, but the commissioner shall recover these expenditures from the responsible party pursuant to section 569-A.

An applicant found ineligible for fund coverage for failure to achieve substantial compliance under former subsection 1, paragraph B or failure to apply within 180 days of reporting the discharge may, on or before July 1, 1996, make a new application for fund coverage of any discharge discovered after April 1, 1990, if the applicant agrees to pay all applicable deductible amounts in this subsection and the commissioner waives the 180-day filing requirement pursuant to subsection 1.

Sec. 2. 38 MRSA §568-A, sub-§3-A, as amended by PL 1995, c. 361, §7, is repealed.

Sec. 3. 38 MRSA §568-B, as amended by PL 2009, c. 319, §13, is further amended to read:
§ 568-B.Fund Insurance Review Board created

1. Fund Insurance Review Board. The Fund Insurance Review Board, as established by Title 5, section 12004-G, subsection 11-A, is created ~~for the purposes of hearing and deciding to hear and decide~~ appeals from insurance claims-related decisions ~~of the commissioner as well as adopting rules and guidelines necessary to the furtherance of its duties and responsibilities under this subchapter~~ under section 568-A and monitor income and disbursements from the Ground Water Oil Clean-up Fund under section 569-A. The review board consists of 10 members appointed for 3-year terms as follows:

A. ~~Three~~Two persons representing the petroleum industry, appointed by the Governor, one of whom is ~~nominated by the Maine Oil Dealers Association, one of whom is a retailer who owns fewer than 5 retail outlets, as defined in Title 10, section 1672, subsection 6, and one of whom is a retailer who owns 5 or more retail outlets, as defined in Title 10, section 1672a~~ representative of a statewide association of energy dealers;

A-1. Two persons, appointed by the Governor, who have expertise in oil storage facility design and installation, oil spill remediation or environmental engineering;

B. ~~Five~~Four members of the public ~~who are not employed in the petroleum industry and who do not~~, appointed by the Governor, 2 of whom have expertise in biological science, earth science, engineering, insurance or law. The 4 members may not be employed in or have a direct and substantial financial interest in the petroleum industry to be appointed by the Governor;

C. The commissioner or the commissioner's designee; and

D. The State Fire Marshal or the fire marshal's designee.

Members described in paragraphs A, A-1 and B are entitled to reimbursement for direct expenses of attendance at meetings of the review board or the appeals panel.

2. Powers and duties of review board. The Fund Insurance Review Board has the following powers and duties:

A. To hear appeals from insurance claims-related decisions of the commissioner ~~pursuant to and the State Fire Marshal under~~ section 568-A, subsection 3-A;

B. To adopt rules in accordance with Title 5, chapter 375, subchapter ~~H establishing criteria for determining substantial compliance for aboveground oil storage facilities~~ 2 and guidelines necessary for the furtherance of the review board's duties and responsibilities under this subchapter;

C. To contract with the Finance Authority of Maine for such assistance in fulfilling the review board's duties as the review board may require;

D. To monitor income and disbursements from the Ground Water Oil Clean-up Fund under section 569-A and adjust fees pursuant to section 569-A, subsection 5, paragraph E, as required to avoid a shortfall in the fund; ~~and~~

E. To consult with the Finance Authority of Maine at such times as are necessary, but no less than annually, to review income and disbursements from the Waste Oil Clean-up Fund under Title 10, section 1023-L. The review board, at such times and in such amounts as it determines necessary, and in consultation with the Finance Authority of Maine, shall direct the transfer of funds from the Underground Oil Storage Replacement Fund to the ~~Groundwater~~ Ground Water Oil Clean-up Fund; and

F. To review department priorities for disbursements from the Ground Water Oil Clean-up Fund and make recommendations to the commissioner on how the fund should be allocated.

2-A. Meetings. The Fund Insurance Review Board shall meet 6 times per year unless the review board votes not to hold a meeting. Action may not be taken unless a quorum is present. A quorum is 6 members.

2-B. Chair. The review board shall annually choose a member to serve as chair of the review board.

2-C. Appeals to review board. An applicant aggrieved by an insurance claims-related decision under section 568-A, including but not limited to decisions on eligibility for coverage, eligibility of costs and waiver and amount of deductible, may appeal that decision to the Fund Insurance Review Board. The appeals panel is composed of the public members appointed under

subsection 1, paragraph B. The appeals panel shall hear and decide the appeal. Except as provided in review board rules, the appeal must be filed within 30 days after the applicant receives the decision made under section 568-A. The appeals panel must hear an appeal at its next meeting following receipt of the appeal unless the appeal petition is received less than 30 days before the meeting or unless the appeals panel and the aggrieved applicant agree to meet at a different time. If the appeals panel overturns the decision made under section 568-A, reasonable costs, including reasonable attorney's fees, incurred by the aggrieved applicant in pursuing the appeal to the review board must be paid from the fund. Reasonable attorney's fees include only those fees incurred from the time of an insurance claims-related decision forward. Decisions of the appeals panel are subject to judicial review pursuant to Title 5, chapter 375, subchapter 7.

2-D. Report; adequacy of fund. On or before February 15th of each year, the Fund Insurance Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the department's and the review board's experience administering the Ground Water Oil Clean-up Fund, clean-up activities and 3rd-party damage claims. The report must include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report also must include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this subsection, the review board may order an independent audit of disbursements from the Ground Water Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund.

3. Repeal date. This section is repealed December 31, 2015.

Sec. 4. 38 MRSA §570-H, as amended by PL 2007, c. 292, §37, is repealed.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Concerning the Recording of Plans for Subdivisions

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4408 is enacted to read:

§ 4408. Recording upon approval

Upon approval of a subdivision plan, plat or document under section 4403, subsection 5, a municipality may not require less than 90 days for the subdivision plan, plat or document to be recorded in the registry of deeds.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Increase Recycling Jobs in Maine and Lower Costs for Maine Businesses Concerning Recycled Electronics

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation increases the functions electronics demanufacturing facilities may undertake, which will enable such facilities to expand and it is important that the legislation take effect as soon as possible due to Maine's economy and the need for job expansion; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1319-R, sub-§1, ¶D is enacted to read:

D. If the commissioner determines based on documentation received from an electronics demanufacturing facility licensed by the department that the facility meets the provisions of this paragraph, the commissioner may allow the facility to undertake the controlled breakage of cathode ray tubes. If the commissioner does not approve or deny the facility's request to undertake controlled breakage of cathode ray tubes within 30 calendar days of receiving the documentation, the facility may undertake controlled breakage of cathode ray tubes in accordance with the provisions of this paragraph.

(1) The facility shall ensure that no crushing or treatment of universal waste or hazardous subcomponents occurs other than dismantling except that controlled breakage of cathode ray tubes may be performed in a manner protective of public health and safety and the environment. Controlled breakage of cathode ray tubes may occur only in a dedicated space with ventilation equipment that prevents the release of fugitive emissions to adjacent areas. Lead and cadmium concentrations immediately outside the dedicated space may not significantly exceed background levels of lead and cadmium concentrations or current ambient air quality standards for the State. The facility shall determine background levels through monitoring. The facility shall meet the conditions listed in 40 Code of Federal Regulations, Section 261.39 (2010). As used in this subparagraph, "fugitive emissions" has the same meaning as in section 582, subsection 7-C.

(2) The facility shall obtain certification from an environmental and safety program approved by the department and submit proof of certification to the department, except that if a facility has not completed certification, controlled breakage of cathode ray tubes may begin prior to certification if:

(a) The facility provides information to the department on its process of achieving certification, including a detailed gap analysis; and

(b) The controlled breakage is monitored by an environmental professional to ensure environmental and safety standards are met.

(3) The facility shall develop a written operating manual specifying how to safely break cathode ray tubes. The operating manual must be available to all employees at the facility and include:

(a) Operating and maintenance procedures developed in accordance with any related manufacturer's specifications;

(b) Procedures for testing and monitoring of equipment;

(c) Procedures to address emergency situations, including, but not limited to, procedures to address lead and cadmium hazards, waste handling and equipment failure;

(d) Procedures to assess whether surrounding areas will be negatively affected either by physical proximity to or air exchange with a heating, ventilation and air conditioning system;

(e) Procedures for proper waste management practices; and

(f) Procedures for employee training to ensure employees have been trained in operation and maintenance of equipment, including, but not limited to, engineering controls to mitigate hazardous waste releases and personal protective equipment use.

The department shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 38 MRSA §1610, sub-§2, ¶B, as amended by PL 2007, c. 292, §40, is further amended to read:

B. "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, treatment or disposal facility. "Consolidation facility" includes a transport vehicle owned or leased by a consolidator and used to collect covered electronic devices at municipal collection sites in this State at a cost no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to the rules governing reasonable operational costs adopted under subsection 5, paragraph D, subparagraph 4(1).

Sec. 3. 38 MRSA §1610, sub-§2, ¶B-2 is enacted to read:

B-2. "Covered entity" means a household in this State, a business or nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) that employs 100 or fewer individuals, a primary school or a secondary school.

Sec. 4. 38 MRSA §1610, sub-§2, ¶F, as reallocated by RR 2003, c. 2, §119, is repealed.

Sec. 5. 38 MRSA §1610, sub-§5, ¶A, as amended by PL 2009, c. 397, §7, is further amended to read:

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that computer monitors, televisions, desktop printers and video game consoles generated as waste from ~~households~~covered entities within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling facility, by contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system.

Sec. 6. 38 MRSA §1610, sub-§5, ¶A-1 is enacted to read:

A-1. A covered entity may deliver no more than 7 covered electronic devices at one time to a municipal collection site or consolidator collection event, unless the municipal collection site or consolidator is willing to accept additional covered electronic devices.

Sec. 7. 38 MRSA §1610, sub-§5, ¶B, as amended by PL 2009, c. 397, §7, is further amended to read:

B. A consolidator is subject to the requirements of this paragraph.

(1) A consolidator shall identify the manufacturer of each waste computer monitor and desktop printer delivered to a consolidation facility and identified as generated by a ~~household~~covered entity in this State and shall maintain an accounting of the number of waste ~~household~~ computer monitors and desktop printers by manufacturer. By March 1st each year, a consolidator shall provide this accounting by manufacturer to the department.

(1-A) A consolidator shall maintain a written log of the total weight of televisions and video game consoles delivered each month to the consolidator and identified as generated by a ~~household~~covered entity in the State. By March 1st each year, a consolidator shall provide this accounting to the department.

(2) A consolidator may perform the manufacturer identification required by subparagraph (1) at the consolidation facility or may contract for this identification and

accounting service with the recycling and dismantling facility to which the covered electronic devices are shipped.

(3) A consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system with costs calculated for televisions on a basis proportional to the manufacturer's national market share of televisions in the State multiplied by the total pounds recycled and with costs calculated for video game consoles on a basis proportional to the manufacturer's national market share of video game consoles in the State multiplied by the total pounds recycled. At a minimum, a consolidator shall invoice the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

(4) A consolidator shall transport computer monitors, televisions, desktop printers and video game consoles to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A consolidator shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility that receives covered electronic devices from the consolidator and shall provide the department with a copy of these records within 24 hours of request by the department.

Sec. 8. 38 MRSA §1610, sub-§5, ¶D, as amended by PL 2009, c. 397, §7, is further amended to read:

D. Computer monitor, television, desktop printer and video game console manufacturers are subject to the requirements of this paragraph.

(1) Each computer monitor manufacturer and each desktop printer manufacturer is individually responsible for handling and recycling all computer monitors and desktop printers that are produced by that manufacturer or by any business for which the manufacturer has assumed legal responsibility, that are generated as waste by ~~households~~covered entities in this State and that are received at consolidation facilities in this State. In addition, each computer manufacturer is responsible for a pro rata share of orphan waste computer monitors and each desktop printer manufacturer is responsible for a pro rata share of orphan waste desktop printers generated as waste by ~~households~~covered entities in this State and received at consolidation facilities. The manufacturers shall pay the reasonable operational costs of the consolidator attributable to the handling of all computer monitors, televisions, desktop printers and video game consoles ~~generated as waste by households~~received at consolidation facilities in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. "Reasonable operational costs" includes the costs associated with ensuring that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. The recycling of televisions must be funded by allocating the cost of the program among the manufacturers selling televisions in the State on a basis proportional to the manufacturer's national market share of televisions.

The department shall annually determine each television manufacturer's recycling share based on readily available national market share data. If the department determines that a television manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A television manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share of televisions for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the television manufacturers that have 1/10 of 1% or more of the market. The recycling of video game consoles must be funded by allocating the cost of the program among the manufacturers selling video game consoles in the State on a basis proportional to the manufacturer's national market share of video game consoles. The department shall annually determine each video game console manufacturer's recycling share based on readily available national market share data. If the department determines that a video game console manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A video game console manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share of video game consoles for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the video game console manufacturers that have 1/10 of 1% or more of the market.

(2) Each computer monitor manufacturer, television manufacturer, desktop printer manufacturer and video game console manufacturer shall work cooperatively with consolidators to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidator for allowable costs incurred by that consolidator.

Sec. 9. 38 MRSA §1610, sub-§6-A, as enacted by PL 2009, c. 397, §9 and affected by §14, is amended to read:

6-A. Manufacturer registration. ~~By~~Prior to offering a covered electronic device and by July 1st annually, a manufacturer that offers or has offered a computer monitor, television, or desktop printer, or offers or has offered within the preceding calendar year a television or video game console, for sale in or into this State shall submit a registration to the department and pay to the department an annual registration fee of \$3,000. The annual registration must include:

A. The name, contact and billing information of the manufacturer;

B. The manufacturer's brand name or names and the type of televisions, video game consoles, computer monitors and desktop printers on which each brand is used, including:

- (1) All brands sold in the State in the past; and
- (2) All brands currently being sold in the State;

C. When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

D. When a logo, mark or image is used as a label, the manufacturer must include a graphic representation of the logo, mark or image and a general description of the logo, mark or image as it appears on the manufacturer's electronic products;

E. The method or methods of sale used in the State;

F. Annual national sales data on the weight, number and type of computer monitors, televisions, desktop printers and video game consoles sold by the manufacturer in this State over the 5 years preceding the filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B; ~~and~~

G. The manufacturer's consolidator handling option for the next calendar year, as selected in accordance with rules adopted pursuant to subsection 10-: and

H. A registration fee paid by a manufacturer as follows:

(1) Seven hundred and fifty dollars for manufacturers with less than 0.1% national market share as determined by the department based on the most recent readily available national market share data; and

(2) Three thousand dollars for all other manufacturers, except that computer monitor and desktop printer manufacturers that have not marketed any covered electronic device in the current calendar year and have had less than 50 units managed by approved consolidators in the preceding 3 years are exempted from paying the fee.

A manufacturer's annual registration filed subsequent to its initial registration must clearly delineate any changes in information from the previous year's registration. Whenever there is any change to the information on the manufacturer's registration, the manufacturer shall submit an updated form within 14 days of the change. Registration fees collected by the department pursuant to this subsection must be deposited in the Maine Environmental Protection Fund established in section 351.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 8, 2011.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Make Technical Changes to Marine Resources Laws

Be it enacted by the People of the State of Maine as follows:

PART B

Sec. B-7. 12 MRSA §6173-A, sub-§1, as enacted by PL 2005, c. 683, Pt. F, §1, is amended to read:

1. Confidential information. Information submitted to the department under the provisions of the Maine Working Waterfront Access ~~Pilot~~Protection Program established by ~~Public Law 2005, chapter 462~~section 6042 may be designated by the submitter as proprietary information and as being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, and the Attorney General. The designation must be clearly indicated on each page or other unit of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the submitter and the general nature of the information. Upon a request for information the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is proprietary information. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for all or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department under this subsection may appeal to the Superior Court.

Sec. B-8. Holder of covenant. The Commissioner of Marine Resources may hold working waterfront covenants under the Maine Revised Statutes, Title 33, chapter 6-A on behalf of the Department of Marine Resources. All working waterfront covenants obtained with funding under the provisions of Public Law 2005, chapter 462; Public Law 2007, chapter 39; and Public Law 2009, chapter 414 as amended by Public Law 2009, chapter 645 are deemed to be held by the commissioner on behalf of the department.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Regarding the Disposition of Mercury-added Lamps

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1672, sub-§4, ¶A, as enacted by PL 2009, c. 272, §1, is amended to read:

A. The recycling program required under this subsection must include:

- (1) Convenient collection locations located throughout the State where residents can drop off their household lamps without cost, including but not limited to municipal collection sites and participating retail establishments;
- (2) Handling and recycling equipment and practices in compliance with the universal waste rules adopted pursuant to section 1319-O, subsection 1, paragraph F, with subsection 6 if a crushing device is used and with all other applicable requirements;
- (3) Effective education and outreach, including, but not limited to, point-of-purchase signs and other materials provided to retail establishments without cost; and
- (4) An annual report to the department on the number of mercury-added lamps recycled under the manufacturer's program, the estimated percentage of mercury-added lamps available for recycling that were recycled under the program and the methodology for estimating the number of mercury-added lamps available for recycling, an evaluation of the effectiveness of the recycling program, recommendations for increasing the number of lamps recycled under the recycling program and an accounting of the costs associated with administering and implementing the recycling program.

Sec. 2. 38 MRSA §1672, sub-§6 is enacted to read:

6. Lamp crushing. A recycling program required under subsection 4 may include the use of crushing devices in accordance with the provisions of this subsection.

A. The owner of the crushing device shall:

- (1) Register the device with the department. The registration must include:
 - (a) The owner's name and contact information;
 - (b) The brand of device used;
 - (c) Anticipated usage of the device; and
 - (d) A statement that the operating manual required pursuant to subparagraph (2) is in place;

(2) Develop an operating manual specifying how to safely crush mercury-added lamps. The operating manual must be available to all operators of the device and must include:

- (a) Procedures for operation and maintenance of the device in accordance with written procedures developed by the manufacturer of the device;
- (b) Testing and monitoring procedures;
- (c) Information concerning mercury hazards, crushing procedures, waste handling and emergency procedures;
- (d) An assessment of whether surrounding areas will be negatively affected, either by physical proximity or air exchange with a heating, ventilation and air conditioning system;
- (e) Proper waste management practices;
- (f) Procedures for operator training to ensure operators have been trained in the operation and maintenance of equipment, including, but not limited to, engineering controls to mitigate mercury releases and personal protective equipment use; and
- (g) Procedures to address emergency situations, including, but not limited to, procedures to address mercury hazards, waste handling and equipment failure;

(3) Document maintenance activities, retain maintenance logs, test data from the manufacturer and any additional test data acquired and make available a copy of these records to the department at its request;

(4) Meet all federal Occupational Safety and Health Administration requirements;

(5) Dispose of all material crushed in the device;

(6) Maintain on file an annual report for review by the department, at the discretion of the department, indicating the:

- (a) Total volume of mercury-added lamps crushed;
- (b) Volume and disposition of any carbon or other filter from the device; and
- (c) Names of the destination facilities to which all crushed material was shipped; and

(7) Maintain testing and monitoring data.

B. The crushing device may be operated only in a closed system and in such a manner that any emission of mercury from the crushing device does not exceed 0.3 micrograms per cubic meter when measured on the basis of a time-weighted average over an 8-hour period.

C. The crushing device may be operated only in a secure, ventilated area and may not be operated in an area accessible to the general public.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Extend the Use of Underground Storage Tanks

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §564, sub-§5, as amended by PL 1997, c. 624, §3, is repealed and the following enacted in its place:

5. Mandatory facility replacement. Upon the expiration date of a manufacturer's warranty for a tank, the tank and its associated piping must be removed from service and properly abandoned in accordance with section 566-A, except that a double-walled tank may continue in service up to 10 years beyond the expiration of the warranty if:

A. During the year the warranty expires but on a date before the warranty expires, a precision test is conducted to determine the integrity of the tank. Results of the test conducted must be submitted to the commissioner by the facility owner; and

B. During the 5th to 10th years after the expiration of the warranty, a precision test is conducted annually to determine the integrity of the tank. Results of each test must be submitted to the commissioner by the facility owner.

This subsection does not apply until January 1, 2008 to a tank installed before December 31, 1985 that has been retrofitted to meet the requirements of subsections 1-A and 1-B.

Sec. 2. 38 MRSA §566-A, sub-§1, as amended by PL 2009, c. 501, §7, is further amended to read:

1. Abandonment. All underground oil storage facilities and tanks that have been, or are intended to be, taken out of service for a period of more than ~~12~~24 months must be properly abandoned by the owner or operator of the facility or tank or, if the owner or operator is unknown, dissolved or insolvent, by the current owner of the property where the facility or tank is located. All abandoned facilities and tanks must be removed, except where removal is not physically possible or practicable because the tank or other component of the facility to be removed is:

A. Located beneath a building or other permanent structure;

B. Of a size and type of construction that it cannot be removed;

C. Otherwise inaccessible to heavy equipment necessary for removal; or

D. Positioned in such a manner that removal will endanger the structural integrity of nearby tanks.

Sec. 3. 38 MRSA §566-A, sub-§1-A, as amended by PL 2009, c. 501, §8, is further amended to read:

1-A. Abandoned tanks brought back into service. Underground oil storage tanks and facilities that have been out of service for a period of more than ~~12~~24 months may not be brought back into service without the written approval of the commissioner. The commissioner may approve the return to service if the owner demonstrates to the commissioner's satisfaction that:

- A. The facility is in compliance with this subchapter and rules adopted pursuant to this subchapter;
- B. The underground oil storage tanks and piping have successfully passed testing as directed by the commissioner;
- C. The underground oil storage tanks and piping are constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the commissioner;
- D. The facility has conforming suction or double-walled pressurized piping; and
- E. The return of the facility to service does not pose an unacceptable risk to groundwater resources. In determining if the facility poses an unacceptable risk to groundwater resources, the commissioner may consider the age and maintenance history of the storage tanks and piping, the number and consequences of past oil discharges from the tanks and piping, the proximity of the facility to drinking water supplies and the proximity of the facility to sensitive geologic areas.

The commissioner may not approve the return to service of a single-walled underground oil storage tank that has been out of service for more than ~~12~~24 consecutive months.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Ensure Regulatory Fairness and Reform

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, during the First Regular Session of the 125th Legislature, the Joint Select Committee on Regulatory Fairness and Reform held 7 public meetings throughout the State and received hundreds of recommendations for regulatory reform from the public, the regulated business community, environmental advocacy groups and other stakeholders; and

Whereas, through 2 subsequent public hearings and numerous work sessions on those recommendations, the committee reached unanimous agreement on the provisions in this Act to implement a number of significant and critical regulatory reforms; and

Whereas, these reforms must take effect immediately to ensure regulatory fairness, improve the business climate of the State, encourage job creation and retention and expand opportunities for Maine people; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 38 MRSA c. 2, sub-c. 1-A is enacted to read:

SUBCHAPTER 1-A **ENVIRONMENTAL AUDIT PROGRAM**

§ 349-L. Scope of program

This subchapter is intended to enhance the protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of state and federal environmental requirements. An environmental audit program and a compliance management system developed under this subchapter may be part of a regulated entity's comprehensive environmental management system.

§ 349-M. Definitions

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

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

A. Compliance policies, standards and procedures that identify how employees and agents of the regulated entity are to meet environmental requirements and the conditions of permits, enforceable agreements and other sources of authority for environmental requirements;

B. Assignment of overall responsibility within a regulated entity for overseeing compliance with policies, standards and procedures and assignment of specific responsibility for ensuring compliance at each facility or operation of the regulated entity;

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

D. Procedures to communicate effectively the regulated entity's standards and procedures to all employees and agents of the regulated entity;

E. Appropriate incentives to managers and employees of the regulated entity to perform in accordance with the compliance policies, standards and procedures of the regulated entity, including consistent enforcement through appropriate disciplinary mechanisms; and

F. Procedures for the prompt and appropriate correction of any violations and any necessary modifications to the regulated entity's compliance management system to prevent future violations.

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

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

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

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

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

§ 349-N. Incentives

Subject to section 349-Q, and notwithstanding any other provision of law relating to penalties, the department may adjust or mitigate penalties for violations of environmental requirements in accordance with this section.

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

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

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

A. A prevalent management philosophy or practice that conceals or condones environmental violations; or

B. High-level corporate officials' or managers' conscious involvement in, or willful blindness to, violations of state or federal environmental laws.

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

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

§ 349-O. Conditions of discovery

The incentives established in section 349-N apply to a violation of an environmental requirement only if:

1. Systematic discovery. The violation was discovered through:

A. An environmental audit program; or

B. A compliance management system that demonstrates the regulated entity's due diligence in preventing, detecting and correcting violations. The regulated entity shall notify the department when it has a compliance management system in place and shall make available to the department upon request a copy of the system components. The regulated entity shall

provide accurate and complete documentation to the department describing how its compliance management system meets the criteria specified in section 349-M, subsection 1 and how the regulated entity discovered the violation through its compliance management system. The department may require the regulated entity to make publicly available a description of its compliance management system;

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

A. Emissions violations detected through a continuous emissions monitor or an alternative monitor established in a permit where any such monitoring is required;

B. Violations of National Pollutant Discharge Elimination System discharge limits established under the federal Clean Water Act, 33 United States Code, Section 1342 (2010) detected through required sampling or monitoring;

C. Violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement, unless the audit is a component of agreement terms to implement a comprehensive environmental management system; and

D. Violations discovered by a department inspection;

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

4. Discovery and disclosure independent of government or 3rd-party plaintiff. The regulated entity discovers and discloses to the department the potential violation prior to:

A. The commencement of an inspection or investigation related to the violation. If the department determines that the regulated entity did not know that it was under investigation and the department determines that the entity is otherwise acting in good faith, the department may determine that the requirements of this paragraph are met;

B. The regulated entity's receipt of notice that it is the subject of a lawsuit;

C. The filing of a complaint by a 3rd party;

D. The reporting of the violation to the department or other state agency by an employee other than the person authorized to speak on behalf of the regulated entity under subsection 3; or

E. The imminent disclosure of the violation by a regulatory agency.

For regulated entities that own or operate multiple facilities, the fact that one facility is the subject of an investigation, inspection, information request or 3rd-party complaint does not preclude the department from exercising its discretion to apply the regulated entity's compliance management system to other facilities owned or operated by that regulated entity;

5. Correction and remediation. The regulated entity corrects the violation within 60 days from the date of discovery, unless the amount of time to correct is otherwise prescribed in statute, rule or order, certifies in writing to the department that the violation has been corrected and takes appropriate measures as determined by the department to remedy any environmental or human harm due to the violation. The department retains the authority to order an entity to correct a violation within a specific time period shorter than 60 days whenever correction in a shorter period of time is feasible and necessary to protect public health and the environment adequately. If more than 60 days will be needed to correct the violation, the regulated entity shall so notify the department in writing before the 60-day period has passed. To satisfy conditions of this subsection and subsection 6, the department may require a regulated entity to enter into a publicly available written agreement, administrative consent order or judicial consent decree as a condition of obtaining relief under this subchapter, particularly when compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required;

6. Prevent recurrence. The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental audit program or compliance management system;

7. No repeat violations. The specific violation, or a closely related violation, has not occurred within the past 3 years at the same facility and has not occurred within the past 5 years as part of a pattern at multiple facilities owned or operated by the same regulated entity. For the purposes of this subsection, a violation or closely related violation is any violation previously identified in a judicial or administrative order, a consent agreement or order, a complaint, letter of warning or notice of violation, a conviction or plea agreement or any act or omission for which the regulated entity has previously received penalty mitigation from the United States Environmental Protection Agency or the department;

8. Other violations excluded. The violation did not result in serious actual harm, or present an imminent and substantial endangerment, to human health or the environment, did not violate the specific terms of any judicial or administrative order or consent agreement or was not a knowing, intentional or reckless violation; and

9. Cooperation. The regulated entity cooperates as requested by the department and provides such information requested by the department to determine the applicability of this subchapter.

§ 349-P. Economic benefit

1. Department discretion. In order to ensure that regulated entities that violate environmental requirements do not gain an economic advantage over regulated entities that comply with environmental requirements, this subchapter may not be construed to limit the discretion of the department to recover any economic benefit gained as a result of noncompliance by a regulated entity.

2. Waiver; insignificant economic benefit. The department may waive the entire penalty, including any penalty for economic benefit gained as a result of noncompliance, for a regulated entity that meets all the requirements of section 349-O when, in the department's opinion, the violation does not merit any penalty due to the insignificant amount of any economic benefit.

§ 349-Q. Application

This subchapter does not limit any authority of the department to adjust or otherwise mitigate any penalty imposed or sought by the department for a violation when the regulated entity responsible for the violation does not receive an incentive under this subchapter for the same violation.

§ 349-R. Rules

The board may adopt rules to implement the regulation of environmental audit programs established in this subchapter. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

PART H

Sec. H-1. 38 MRSA §341-B, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

§ 341-B. Purpose of the board

The purpose of the Board of Environmental Protection is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions. The board shall fulfill its purpose through major substantive rulemaking, decisions on selected permit applications, ~~review~~ decisions on appeals of the commissioner's licensing and enforcement actions and recommending changes in the law to the Legislature.

Sec. H-2. 38 MRSA §341-C, sub-§1, as amended by PL 1995, c. 3, §6, is further amended to read:

1. Appointments. The board consists of 407 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.

Sec. H-3. 38 MRSA §341-C, sub-§2, as amended by PL 1997, c. 346, §2, is further amended to read:

2. Qualifications and requirements. Members of the board must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of this Title and all other laws the board is charged with administering. ~~At least 4 members must be residents of the First Congressional District and at least 4 members must be residents of the Second Congressional District.~~ At least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district. The boundaries of the congressional districts are defined in Title 21-A, chapter 15. A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the board. If a county or municipality is a participant in an adjudicatory proceeding before the board, a commissioner, official or employee from that county or municipality may not participate in that proceeding.

Sec. H-4. 38 MRSA §341-D, sub-§1-B, as amended by PL 1999, c. 784, §6, is repealed.

Sec. H-5. 38 MRSA §341-D, sub-§1-C is enacted to read:

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

Sec. H-6. 38 MRSA §341-D, sub-§2, as amended by PL 2009, c. 615, Pt. E, §1, is further amended to read:

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

- ~~A. Involves a policy, rule or law that the board has not previously interpreted;~~
- ~~B. Involves important policy questions that the board has not resolved;~~
- ~~C. Involves important policy questions or interpretations of a rule or law that require reexamination; or~~
- ~~D. Has generated substantial public interest.~~
- E. Will have an environmental or economic impact in more than one municipality, territory or county;
- F. Involves an activity not previously permitted or licensed in the State;
- G. Is likely to come under significant public scrutiny; and
- H. Is located in more than one municipality, territory or county.

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

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

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

~~Any interested party may request the board to assume jurisdiction of an application.~~

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

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

Sec. H-7. 38 MRSA §341-D, sub-§3, as amended by PL 1995, c. 642, §§1 and 2, is repealed and the following enacted in its place:

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

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

Sec. H-8. 38 MRSA §341-D, sub-§4, ¶B, as amended by PL 2007, c. 661, Pt. B, §2, is repealed.

Sec. H-9. 38 MRSA §341-D, sub-§4, ¶D, as amended by PL 2009, c. 615, Pt. E, §2, is further amended to read:

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board ~~using the standards contained in subsection 5~~ for supplementation of the record. The board may remand the decision to the

department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee serves as a nonvoting member of the board and is entitled to fully participate but is not required to attend hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department.

Sec. H-10. 38 MRSA §341-D, sub-§5, as amended by PL 1993, c. 356, §1, is repealed.

Sec. H-11. 38 MRSA §341-D, sub-§6, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is repealed and the following enacted in its place:

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

Sec. H-13. 38 MRSA §341-E, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

§ 341-E. Board meetings

Board meetings held under section 341-D, ~~subsections 1 to 7~~, are governed by the following provisions.

1. Quorum. ~~Six~~Four members of the board constitute a quorum. A quorum is required to open a meeting and for a vote of the board, ~~6 members constitute a quorum for rule-making hearings held by the board and 3 members constitute a quorum for other hearings held by the board.~~

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

Sec. H-18. 38 MRSA §344, sub-§2-A, ¶A, as amended by PL 2009, c. 615, Pt. E, §3, is further amended to read:

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

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

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

The commissioner may stop the processing time with the consent of the applicant for a period of time agreeable to the commissioner and the applicant.

Sec. H-19. 38 MRSA §347-A, sub-§1, ¶A, as amended by PL 2003, c. 245, §5, is further amended to read:

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

- (1) Resolving the violation through an administrative consent agreement pursuant to subsection 4, signed by the violator and approved by the ~~board~~ commissioner and the Attorney General;
- (2) Referring the violation to the Attorney General for civil or criminal prosecution;
- (3) Scheduling and holding an enforcement hearing on the alleged violation pursuant to subsection 2; or
- (4) With the prior approval of the Attorney General, commencing a civil action pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3.

Sec. H-20. 38 MRSA §347-A, sub-§4, ¶D, as enacted by PL 1993, c. 204, §2, is amended to read:

D. The public may make written comments to the ~~board~~commissioner at the ~~board's~~commissioner's discretion on an administrative consent agreement entered into by the commissioner ~~and approved by the board.~~

Sec. H-21. 38 MRSA §353, sub-§3, as amended by PL 1997, c. 624, §2, is further amended to read:

3. License fee. The license fee must be paid at the time of filing the application. Failure to pay the license fee at the time of filing results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner shall refund the license fee if the board or commissioner denies the application or if the application is withdrawn by the applicant. Notwithstanding the provisions of this subsection, the license fee for a subdivision must be paid prior to the issuance of the license.

The license fees for nonferrous metal mining must be paid annually on the anniversary date of the license for the life of the project, up to and including the period of closure and reclamation.

The license fee for a solid waste facility must be paid annually. Failure to pay the annual fee within 30 days of the anniversary date of a license is sufficient grounds for modification, revocation or suspension of the license under section 341-D, subsection 3, ~~paragraph A~~ or section 342, subsection 11-B.

Sec. H-22. 38 MRSA §414-A, sub-§5, ¶C, as enacted by PL 1997, c. 794, Pt. A, §25, is amended to read:

C. Notwithstanding Title 5, section 10051, the board may modify, ~~revoke or suspend~~ a license and the commissioner may revoke or suspend a license when the board or the commissioner finds that any of the conditions specified in section ~~341-D~~342, subsection ~~3~~11-B exist or upon an application for transfer of a license.

Sec. H-23. 38 MRSA §489-A, sub-§10, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §102, is further amended to read:

10. Appeal of decision by commissioner to review. An aggrieved party may appeal the decision by the commissioner to exert or not exert state jurisdiction over the proposed project to the board. Review and actions taken by the department are subject to appeal procedures governing the department under section 341-D, ~~subsection~~subsection 4 and 5.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Improve Oil Storage Facility Operator Training

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §564, sub-§2-A, ¶L, as enacted by PL 2009, c. 319, §7, is amended to read:

L. Operators to complete a department training program that meets the minimum requirements specified by the United States Environmental Protection Agency under 42 United States Code, Section 6991i (2007). The training program must provide certification for the successful completion of the program, which must be renewed every 2 years. Training may be provided by a 3rd party if approved by the department.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Create a 6-year Statute of Limitations for Environmental Violations

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §347-A, sub-§8, as enacted by PL 2007, c. 337, §1, is repealed.

Sec. 2. 38 MRSA §347-A, sub-§9 is enacted to read:

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

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

- (1) The discovery by the commissioner or the Attorney General of an act or omission giving rise to a violation;
- (2) The identification by the commissioner or the Attorney General of the person responsible for the violation; and
- (3) The last day of an ongoing violation.

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

- (1) The commissioner proposes an administrative consent agreement in writing to the violator pursuant to subsection 4;
- (2) The commissioner schedules an enforcement hearing on the alleged violation pursuant to subsection 2;
- (3) The commissioner, with the prior approval of the Attorney General, files a complaint in District Court pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3; and
- (4) The Attorney General files a complaint in District Court or Superior Court.

C. The commencement of an enforcement action by any of the means set forth in paragraph B tolls the running of the 6-year limitation period for the purpose of bringing any other action pursuant to subsection 1, paragraph A.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §420-D, sub-§7, ¶H is enacted to read:

H. Trail management activities that are part of the development and maintenance of the statewide snowmobile trail system developed as part of the Maine Trails System under Title 12, section 1892, including new construction and maintenance of trails, do not require review pursuant to this section if, for each trail being managed:

- (1) The trail is constructed and maintained in accordance with best management practices for motorized trails established by the Department of Conservation;
- (2) The trail is the minimum feasible width for its designated use; and
- (3) No lane exceeds 12 feet in width and no trail includes more than 2 lanes.

Sec. 3. 38 MRSA §484, sub-§3, ¶H is enacted to read:

H. In making a determination under this subsection regarding a development's effects on significant vernal pool habitat, the department shall apply the same standards applied to significant vernal pool habitat under rules adopted pursuant to the Natural Resources Protection Act. The department may not require a buffer strip adjacent to significant vernal pool habitat unless the buffer strip is established for another protected natural resource as defined in section 480-B, subsection 8.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Conform the Authority of the Department of Environmental Protection to Federal Law

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a recent letter from the Attorney General has brought into question the eligibility of members of the Board of Environmental Protection to legally serve; and

Whereas, this uncertainty has a negative impact on the work of State Government; and

Whereas, the economic health of the State of Maine will suffer if this uncertainty is not remedied with all due speed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §341-A, sub-§3, ¶B, as amended by PL 1997, c. 794, Pt. A, §2, is further amended to read:

~~B. When the State receives authority to issue permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as commissioner who~~
The commissioner may not participate in the review of or act on an application for a National Pollutant Discharge Elimination System permit or the modification, renewal or appeal of a permit under Section 402 of the Federal Water Pollution Control Act, 33 United States Code, Section 1342 if the commissioner receives, or during the previous 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or National Pollutant Discharge Elimination System permit holders or applicants for a license or permit under the Federal Water Pollution Control Act. If the commissioner's authority is restricted under this paragraph, the commissioner shall delegate duties related to the restricted matter to employees of the department who do not hold major policy-influencing positions pursuant to Title 5, section 938 and who do not receive or have not received during the previous 2 years a significant portion of income directly or indirectly from National Pollutant Discharge Elimination System permit holders or applicants. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement. Duties that must be delegated include National Pollutant Discharge Elimination System permitting, enforcement, establishment of

waste load allocations and total maximum daily loads and establishment and implementation of water quality standards but not other Federal Water Pollution Control Act matters such as water quality certification. The restriction imposed by this paragraph may not be interpreted to be more restrictive than federal law or the regulations of the United States Environmental Protection Agency. If a person with a conflict under this paragraph is nominated for the position of commissioner, the Governor shall submit to the President of the Senate and Speaker of the House of Representatives a plan for delegating the duties required to be delegated under this paragraph. The plan must be submitted with the information packet required to be provided by the Governor to the President of the Senate and Speaker of the House of Representatives under Title 3, section 154.

Sec. 2. 38 MRSA §341-A, sub-§3, ¶D is enacted to read:

D. The commissioner is subject to the conflict-of-interest provisions of Title 5, section 18.

Sec. 3. 38 MRSA §341-C, sub-§8, as amended by PL 1997, c. 794, Pt. A, §3, is further amended to read:

8. Federal standards. ~~When the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as a~~ board member who may not participate in the review of or act on an application for a National Pollutant Discharge Elimination System permit or the modification, renewal or appeal of a permit under Section 402 of the Federal Water Pollution Control Act, 33 United States Code, Section 1342 if the board member receives, or during the previous 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act National Pollutant Discharge Elimination System. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement. Board members whose participation is restricted under this paragraph shall recuse themselves and may not participate in any National Pollutant Discharge Elimination System matter as long as the restriction applies. The recusal must be from all National Pollutant Discharge Elimination System permitting, enforcement, establishment of waste load allocations and total maximum daily loads and establishment and implementation of water quality standards but not other Federal Water Pollution Control Act matters such as water quality certification. The restriction imposed by this subsection may not be interpreted to be more restrictive than federal law or the regulations of the United States Environmental Protection Agency.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 15, 2011.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Correct Errors and Inconsistencies in the Laws of Maine

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-34. 38 MRSA §346, sub-§4, as amended by PL 2009, c. 615, Pt. E, §5 and c. 642, Pt. B, §4, is repealed and the following enacted in its place:

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

Sec. A-35. 38 MRSA §1310-B, sub-§2, as amended by PL 2009, c. 579, Pt. A, §1 and c. 610, §1, is repealed and the following enacted in its place:

2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans; chemicals. Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information

relating to mercury reduction plans submitted to the department under section 585-B, subsection 6, information related to priority toxic chemicals submitted to the department under chapter 27 or information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Food and Rural Resources and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.

Effective July 6, 2011, unless otherwise indicated.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Expand Eligibility of Certain Municipal Landfills To Participate in the State's Remediation and Closure Program

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRS §1310-F, sub-§1-B, as repealed and replaced by PL 1997, c. 479, §1, is amended to read:

1-B. Closure cost-share fraction. Subject to the availability of funds, the commissioner shall issue grants or payments for the following percentages of landfill closure costs incurred by municipalities.

A. The state cost share is 75% of closure costs incurred before July 1, 1994.

B. The state cost share is 50% of landfill cover costs and 75% of other closure costs incurred on or after July 1, 1994 and before January 1, 1996.

C. The state cost share is 30% of landfill cover costs and 75% of other closure costs incurred on or after January 1, 1996 and before January 1, 2000.

D. Notwithstanding paragraphs B and C, the state cost share is 75% of closure costs, including landfill cover costs, incurred on or after July 1, 1994 and before January 1, 2000, if:

(1) The costs are incurred pursuant to a written agreement between the municipality and the department executed before July 1, 1994; or

(2) The commissioner determines that the closure work was delayed for reasons beyond the control of the municipality and the costs are identified in and incurred pursuant to a written agreement between the municipality and the department.

E. Notwithstanding paragraphs B, C and D, the state cost share is 75% of closure costs, including landfill cover costs, incurred on or after July 1, 1994 and before December 31, 2015, if:

(1) The commissioner originally issued a license on or before September 1, 1989 for operation of the landfill and found that the landfill met the design requirements and environmental protection standards at the time of licensing; and

(2) The commissioner has since determined that the landfill or portion of the landfill must be closed based on the finding that the landfill is contaminating groundwater and that corrective actions have not been successful.

PUBLIC Law, Chapter 435, LD 262, 125th Maine State Legislature
An Act To Expand Eligibility of Certain Municipal Landfills To Participate in the State's Remediation and Closure
Program

The state cost share is 0% of landfill closure costs incurred on or after January 1, 2000, except that the commissioner may issue grants or payments as provided in paragraph E or for 30% of those costs if incurred pursuant to an alternative closure ~~schedule~~commitment executed before January 1, 2000, and if specifically identified in a department order or license, schedule of compliance or consent agreement.

As used in this subsection, "landfill cover costs" means the cost of materials and the cost of placement of materials associated with the physical construction of that portion of a cover over a landfill that meets the minimum landfill cover permeability of 1×10^{-5} cm./sec. and the thickness standards of 40 Code of Federal Regulations, Part 258, Section 258.60(a).

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

Appendix C

Section-by-Section Explanation of Changes

**Routine Program Changes to the MAINE COASTAL MANAGEMENT PROGRAM:
Core Law Changes, 125th Maine Legislature, First Regular Session
November 2011**

The routine program changes listed in this table, changes to the core laws that provide the Maine Coastal Program's enforceable policies, were enacted by the 125th Maine Legislature, First Regular Session from December 1, 2010, to June 29, 2011. The MAINE COASTAL MANAGEMENT PROGRAM seeks to incorporate the changes, detailed below, as routine program changes for purposes of federal consistency review.

NOTE: See Appendix B for the text of these statutory changes.

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ¹	Date Effective in State
AMENDED:					
Technical change; cross reference.	266(B)(7)	12 MRSA §6173-A, sub-§1*	n/a; program authorities-related		9.28.11
Clarifies that, as under the comparable CWA provision, the Commissioner of the Department of Environmental Protection (DEP) may not participate in the review of or act on an application for a National Pollutant Discharge Elimination System permit or the modification, renewal or appeal of a permit under Section 402 of the Federal Water Pollution Control Act if the commissioner receives, or during the previous two years has received, a significant portion of income directly or indirectly from NPDES permit holders or applicants. If the commissioner's authority is restricted, duties related to the restricted matter must be delegated to employees who do not hold major policy-influencing positions at DEP. The Governor must submit a plan for delegating the restricted duties at the time of nomination of a person for the position of DEP commissioner.	357(1)	38 MRSA §341-A, sub-§3, ¶B*	n/a; program authorities-related		6.15.11
Clarifies the appellate and rulemaking purpose of Board of Environmental Protection (BEP) as per other amendments made by PL 2011 ch. 304.	304(H-1)	38 MRSA §341-B*	n/a; program authorities-related		6.13.11
Reduces the size of the BEP from ten to seven members.	304(H-2)	38 MRSA §341-C, sub-§1*	n/a; program authorities-related		9.16.11

* Changes marked with an asterisk relate to administration of the core laws that provide enforceable policies of the MCP and are not submitted as enforceable policies per se.

¹ All the routine program changes described in this table were enacted during the 125th Maine Legislature's First Regular Session which met from December 1, 2010 to June 29, 2011. All public laws enacted during this legislative session, other than those enacted as emergency measures, took effect as state law on September 28, 2011. Emergency measures took effect on the date that the Governor signed them into law.

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
Modifies the qualifications of BEP members to specify that at least three members must have technical or scientific backgrounds in environmental issues and that no more than four members may be residents of the same congressional district.	304(H-3)	38 MRSA §341-C, sub-§2*	n/a; program authorities-related		9.16.11
Makes members of the BEP subject to restrictions similar to those under 38 MRSA §341-A, sub-§3, ¶B, above.	357(3)	38 MRSA §341-C, sub-§8*	n/a; program authorities-related		6.15.11
Makes the commissioner of DEP responsible for the granting of all licenses and permits, except that the BEP is responsible for licenses and permits that either meet at least three of the four criteria for projects of statewide significance or that are projects in which the applicant and the commissioner jointly request that the BEP assume jurisdiction.	304(H-6)	38 MRSA §341-D, sub-§2*	n/a; program authorities-related		6.13.11
Removes reference to repealed provision (see below).	304(H-9)	38 MRSA §341-D, sub-§4, ¶D*	n/a; program authorities-related		6.13.11
Provides that the DEP commissioner notify the BEP when interested parties' request for BEP jurisdiction over an application does not meet jurisdictional criteria.	304(H-18)	38 MRSA §344, sub-§2-A, ¶A*	n/a; program authorities-related		6.13.11
Authorizes the commissioner of DEP to approve consent agreements rather than the BEP.	304(H-19)	38 MRSA §347-A, sub-§1, ¶A*	n/a; program authorities-related		6.13.11
Makes change in keeping with transfer of authority to approve consent agreements to DEP commissioner (see above).	304(H-20)	38 MRSA §347-A, sub-§4, ¶D*	n/a; program authorities-related		6.13.11
Corrects cross-reference.	304(H-21)	38 MRSA §353, sub-§3*	n/a; program authorities-related		6.13.11
Amends the exemption for certain maintenance and repair activities in the Natural Resources Protection Act (NRPA) (see below).	205(1)	38 MRSA §480-Q, sub-§2	DEP permit		9.28.11
Clarifies the definition of "aquatic plant" in the aquatic nuisance species control law.	47(2)	38 MRSA §410-N, sub-§1, ¶A	DEP order; see 38 MRSA §419-C; DEP permit		9.28.11
Clarifies that Title 38, section 413, subsection 3, which limits application of the subsection to licenses issued before September 1, 2010, only applies to overboard discharge licenses, not all licenses issued by DEP.	121(1)	38 MRSA §413, sub-§3	DEP enforcement action		9.28.11

² All the routine program changes described in this table were enacted during the 125th Maine Legislature's First Regular Session which met from December 1, 2010 to June 29, 2011. All public laws enacted during this legislative session, other than those enacted as emergency measures, took effect as state law on September 28, 2011. Emergency measures took effect on the date that the Governor signed them into law.

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
Makes the following changes to law that requires that, prior to transferring ownership of property containing an overboard discharge system, the parties determine the feasibility of technologically proven alternatives to the overboard discharge system and install an alternative system if one is identified: allows a transferee with an annual income of less than \$25,000 to request a waiver from the requirement to install an alternative system; increases the timeframe, from 90 days of property transfer or significant action to 180 days of property transfer or significant action, within which an alternative system to the overboard discharge must be installed; and clarifies that an application for transfer of an overboard discharge license must be made no later than two weeks after the transfer of ownership.	121(2)	38 MRSA §413, sub-§3-A, ¶¶A and B	DEP enforcement action		9.28.11
Amends language to conform to changes in the BEP's role made by PL 2011, ch. 304.	304(H-22)	38 MRSA §414-A, sub-§5, ¶C*	n/a; program authorities-related		6.13.11
Amends state water quality laws to allow DEP to require mercury testing once per year.	194(1)	38 MRSA §420, sub-§1-B, ¶F	DEP water discharge permit		9.28.11
Establishes a new risk level for inorganic arsenic when DEP is calculating ambient water quality criteria.	194(2)	38 MRSA §420, sub-§2, ¶J	DEP water discharge permit		9.28.11
Adds the category of “degraded” regions or watersheds to the list of regions or watersheds that DEP is required to establish in its stormwater management rules.	206(7)	38 MRSA §420-D, sub-§4	DEP permit		6.3.11
Provides that if project review is required pursuant to Title 38, section 1310-N, 1319-R or 1319-X, regarding waste facility licenses, review is not required pursuant to the laws governing storm water management.	206(8)	38 MRSA §420-D, sub-§5	DEP permit		6.3.11
Amends provision that authorizes DEP to establish a nonpoint source reduction program to allow an applicant to pay a compensation fee in lieu of meeting certain requirements, by adding the alternative of allowing an applicant to carry out a compensation project in lieu of meeting such requirements. It also deletes a related provision that authorizes DEP to allow an applicant to meet a municipally-required mitigation option in certain circumstances as an alternative to paying a compensation fee.	206(10)	38 MRSA §420-D, sub-§11	DEP permit		6.3.11
Provides that DEP may use any unallocated assimilative capacity that DEP has	194(3)	38 MRSA §464, sub-§4, ¶¶J and K	DEP water discharge license		9.28.11

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
set aside for future growth if use of the unallocated assimilative capacity would avoid an exceedance or reasonable potential to exceed ambient water quality criteria. It provides that metals limits must be expressed as mass-based limits.					
Adds text consistent with the first paragraph of 38 MRSA section 469 to correct the structure of that section and to aid the ease of its use; and amends the laws governing the classification of estuarine and marine waters in Phippsburg to specify missing coordinates.	206(11)	38 MRSA §469	DEP license and/or enforcement order		6.3.11
Makes a technical, drafting-related change.	12(1)	38 MRSA §480-Q, sub-§28	n/a		9.28.11
Makes a technical, drafting-related change.	64(3)	38 MRSA §480-Q, sub-§28	n/a		9.28.11
Makes a technical, drafting-related change.	12(2)	38 MRSA §480-Q, sub-§29	n/a		9.28.11
Makes a technical, drafting-related change.	64(4)	38 MRSA §480-Q, sub-§29	n/a		9.28.11
Corrects cross reference.	304(H-23)	38 MRSA §489-A, sub-§10*	n/a; program authorities-related		6.13.11
Amends the oil spill prevention laws to make it clear that liquid natural gas is not oil.	206(12)	38 MRSA §542, sub-§6	DEP license and/or enforcement order		6.3.11
Amends the oil spill prevention laws to make it clear that liquid natural gas is not oil.	206(13)	38 MRSA §562-A, sub-§15	DEP license and/or enforcement order		6.3.11
Amends the laws on registration of underground oil storage tanks to require that such tanks be registered within two years preceding installation.	206(14)	38 MRSA §563, sub-§1, ¶A	DEP license and/or enforcement order		6.3.11
Requires a training program for operators of underground oil storage facilities to be completed every two years and allows the DEP to approve training done by a third party.	317(1)	38 MRSA §564, sub-§2-A, ¶L	DEP enforcement action		9.28.11
Extends from 12 months to 24 months the time period after which underground oil storage tanks taken out of service must be properly abandoned.	276(2)	38 MRSA §566-A, sub-§1	DEP enforcement action		9.28.11
Prohibits single-walled underground oil storage tanks that have been out of service for a period of more than 24 months from being brought back into service and it prohibits double-walled underground oil storage tanks that have been out of service for a period of more than 24 months from being brought back into service without the written approval of the Commissioner of DEP.	276(3)	38 MRSA §566-A, sub-§1-A	DEP enforcement action		9.28.11

Name/Description of State or Local Law/Regulation/Policy/ Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
Technical changes; cross references.	243(1)	38 MRSA §568-A, sub-§2	n/a		9.28.11
Amends the laws governing abandonment and removal of oil storage facilities to allow flexibility in providing notice to DEP in advance of removal work.	206(15)	38 MRSA §566-A, sub-§2	DEP enforcement action		6.3.11
Amends the oil spill remediation laws to make it clear that the costs of cleaning up discharges from aboveground home heating oil tanks are eligible for coverage by the Ground Water Oil Clean-up Fund whether or not the tank is constructed of fiberglass, cathodically protected steel or other noncorrosive material. It also deletes obsolete language related to eligibility for fund coverage of discharges that were discovered before October 1, 1999.	206(16)	38 MRSA §568-A, sub-§1, ¶B-2	DEP enforcement action		6.3.11
Changes the membership of the Fund Insurance Review Board; alters the duties of the review board to include reviewing DEP priorities for disbursements from the Ground Water Oil Clean-up Fund and making recommendations to the Commissioner of DEP on how the fund should be allocated; provides for the number of meetings to be held by the review board and for the annual selection of a chair; consolidates responsibilities for hearing appeals and reporting to the Legislature in the section of law that deals with the review board; and retains the provision in current law that repeals the review board on December 31, 2015.	243(3)	38 MRSA §568-B*	n/a; n/a; program authorities-related		9.28.11
Clarifies responsibilities of the Fund Insurance Review Board regarding transfer of money to the Ground Water Oil Clean-up Fund.	211(23)	38 MRSA §568-B, sub-§2, ¶E*	n/a; n/a; program authorities-related		6.3.11
Amends the closure and remediation cost-sharing program that was established in the late 1980s to help municipalities close and clean-up landfills as follows: makes the cost-sharing program applicable to municipal landfills that were originally licensed on or before Sept. 1, 1989, and that incur closure costs before Dec. 31, 2015; and makes state-cost share contingent on a finding by the DEP commissioner that the landfill is contaminating groundwater and that corrective actions have not been successful.	435(1)	38 MRSA §1310-F, sub-§1-B	DEP order		9.28.11
Amends the wellhead protection laws to extend the siting restrictions on automobile maintenance shops to public works	206(21)	38 MRSA §1393, sub-§1, ¶B	DEP license		6.3.11

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
garages and other noncommercial facilities where motor vehicles are serviced.					
Amends the wellhead protection laws to eliminate language regarding the applicability of wellhead siting restrictions to development under construction. The language has been rendered obsolete by the passage of time.	206(22)	38 MRSA §1393, sub-§2, ¶A	DEP license		6.3.11
Amends the laws governing wellhead protection to address the removal and replacement of grandfathered facilities in wellhead protection zones.	206(23)	38 MRSA §1393, sub-§2, ¶B,	DEP license		6.3.11
Allows for the replacement of the “deca” mixture of polybrominated diphenyl ethers with a chemical that is a brominated or chlorinated flame retardant if it is demonstrated to the satisfaction of the Commissioner of DEP that the replacement flame retardant is a safer alternative.	160(1)	38 MRSA §1609, sub-§14, ¶B	DEP enforcement action		5.26.11
Technical, drafting-related change.	250(2)	38 MRSA §1610, sub-§2, ¶B	DEP enforcement action		6.8.11
Expands scope of the State’s electronic waste recycling laws from households alone to cover primary and secondary schools and small businesses and non-profit organizations that employ 100 or fewer individuals.	250(3)	38 MRSA §1610, sub-§2, ¶B-2	DEP enforcement action		6.8.11
Conforms provision to reflect scope of law as amended (see prior item).	250(5)	38 MRSA §1610, sub-§5, ¶A	DEP enforcement action		6.8.11
Conforms provision to reflect scope of law as amended (see prior item).	250(7)	38 MRSA §1610, sub-§5, ¶B	DEP enforcement action		6.8.11
Conforms provision to reflect scope of law as amended (see prior item).	250(8)	38 MRSA §1610, sub-§5, ¶D	DEP enforcement action		6.8.11
Clarifies that a manufacturer must register with the State prior to selling covered electronic devices in the State and must report sales information on annual registrations in terms of national numbers; modifies annual manufacturer registration fee from flat fee to a tiered system based on a manufacturer’s annual national unit sales of covered electronic devices; and exempts certain historic manufacturers from the registration fee requirements.	250(9)	38 MRSA §1610, sub-§6-A	DEP enforcement action		6.8.11
Delays the effective date of the existing ban on sale of mercury-added button cell batteries.	206(24)	38 MRSA §1661-C, sub-§9, ¶A	DEP enforcement action		6.3.11
Amends the mercury products laws to clarify that automakers must pay the minimum \$4 amount for mercury switches from motor vehicles if the year, make and model of the vehicle are provided.	206(27)	38 MRSA §1665-A, sub-§5, ¶B	DEP enforcement action		6.3.11

Name/Description of State or Local Law/Regulation/Policy/ Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
Clarifies definition of HVAC “wholesaler” under laws regarding mercury-added products.	206(28)	38 MRSA §1665-B, sub-§1, ¶D	DEP enforcement action		6.3.11
Amends the laws governing recycling of mercury thermostats to clarify the requirements for distribution of collection bins to recycling locations.	206(29)	38 MRSA §1665-B, sub-§2, ¶A	DEP enforcement action		6.3.11
Amends provision requiring thermostat manufacturers to pay a \$5 bounty on each mercury thermostat returned for recycling by clarifying that the bounty is owed whether or not the thermostat is returned to a wholesaler recycling collection point with the exterior cover intact.	206(30)	MRSA §1665-B, sub-§2, ¶E	DEP enforcement action		6.3.11
Amends provision requiring thermostat manufacturers to pay a \$5 bounty on each mercury thermostat returned for recycling by clarifying that the bounty is owed whether or not the thermostat is returned to a retail recycling collection point with the exterior cover intact.	206(31)	MRSA §1665-B, sub-§2, ¶F	DEP enforcement action		6.3.11
Authorizes the use of crushing devices in a mercury-added lamp recycling program as provided in new subsection 6 (see below).	275(1)	38 MRSA §1672, sub-§4, ¶A	DEP enforcement action		9.28.11
ADDED:					
Adds provision to state subdivision laws that requires a municipality to allow at least 90 days to record a subdivision plan, plat or document after municipal approval.	245(1)	30-A MRSA §4408	Civil action		9.28.11
Clarifies that the commissioner of DEP is also governed by the conflict-of-interest provisions of the Maine Revised Statutes, Title 5, section 18.	357(2)	38 MRSA §341-A, sub-§3, ¶D*	n/a; program authorities-related		6.15.11
Cross references revised provision (see below) re: nature of BEP’s rulemaking authority.	304(H-5)	38 MRSA §341-D, sub-§1-C*	n/a; program authorities-related		6.13.11
Repeals the BEP’s authority to revoke or suspend a license or permit and vests that authority with the commissioner. The BEP retains its authority to consider modifications or corrective action on a license, but only on the recommendation of the commissioner of DEP.	304(H-7)	38 MRSA §341-D, sub-§3*	n/a; program authorities-related		6.13.11
Removes the BEP’s authority to advise the commissioner of DEP on enforcement priorities and activities, advise the commissioner on the adequacy of penalties and enforcement activities and approve administrative consent agreements, and retains the BEP’s	304(H-11)	38 MRSA §341-D, sub-§6*	n/a; program authorities-related		6.13.11

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
authority to hear appeals of emergency enforcement orders by the DEP commissioner					
Gives the DEP commissioner authority to revoke or suspend a license or permit (see related provisions divesting BEP of that authority).	304(H-17)	38 MRSA §342, sub-§11-B*	n/a; program authorities-related		6.13.11
Amends BEP quorum requirements in accordance with provision reducing the board to seven members.	304(H-13)	38 MRSA §341-E*	n/a; program authorities-related		6.13.11
Technical correction; reconciles conflicting amendments to the same provision of law (see related repealed section below).	420(A-34)	38 MRSA §346, sub-§4*	n/a; program authorities-related		7.6.11
Establishes a 6-year statute of limitations for actions for civil penalties for violations of laws administered by DEP. An action must be commenced within six years of when the Commissioner of DEP or the Attorney General discovers the act or omission giving rise to the violation or identifies the party responsible for the violation, or of the last day of a continuing violation, whichever occurs latest. Chapter 350 specifies that an enforcement action is commenced when any of the following occurs: 1. The commissioner proposes an administrative consent agreement in writing to the violator; 2. The commissioner schedules an enforcement hearing on the alleged violation; 3. The commissioner, with the prior approval of the Attorney General, files a complaint in District Court; and 4. The Attorney General files a complaint in District Court or Superior Court. Commencing an action tolls the statute of limitations.	350(2)	38 MRSA §347-A, sub-§9	DEP enforcement action; civil action		9.28.11
Establishes a voluntary environmental audit program within DEP that provides incentives, including reduced penalties, to regulated entities that discover, disclose and correct environmental violations through an environmental audit program or a compliance management system.	304(A-1)	38 MRSA c. 2, sub-c. 1-A	DEP enforcement action		6.13.11
Exempts trail management activities from review under the laws governing storm water management on snowmobile trails developed as part of the Maine Trails System under 12 MRSA, section 1892.	359(1)	38 MRSA §420-D, sub-§7, ¶H	DEP permit		9.28.11
Establishes the definition of “height of a structure” in the Shoreland Zoning Act.	231(1)	38 MRSA §436-A, sub-§7-A	Shoreland Zoning Act permit		9.28.11

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
Provides that a municipal zoning ordinance may exempt a cupola, dome, widow's walk or similar feature added to a legally existing conforming structure if the structure is not located in a Resource Protection District as defined by the local shoreland zoning ordinance or a stream protection district and the cupola, dome, widow's walk or similar feature: 1. Does not extend beyond the exterior walls of the existing structure; 2. Has a floor area of 53sf or less; and 3. Does not increase the height of the existing structure by more than seven ft.	231(2)	38 MRSA §439-A, sub-§9	Local land use permit		9.28.11
Creates definition of development "footprint" under the NRPA.	64(1)	38 MRSA §480-B, sub-§2-E	DEP permit		9.28.11
Creates definition of development "impervious area" under the NRPA.	64(2)	38 MRSA §480-B, sub-§5-B	DEP permit		9.28.11
Removes the requirement that an NRPA individual permit is required for maintenance dredging if the amount of material to be dredged exceeds 50,000 cu yards to allow renewal of previously-permitted projects under the existing permit by rule provision.	65(1)	38 MRSA §480-E, sub-§7	DEP permit		9.28.11
Provides that an individual permit for maintenance dredging may be renewed with a permit by rule only if the area to be dredged is located in an area that was dredged within the last 10 years and the amount of material to be dredged does not exceed the amount approved by the individual permit.	65(2)	38 MRSA §480-E, sub-§8	DEP permit		9.28.11
Replaces and clarifies the NRPA's exemption for existing crossings (see related deleted section, 38 MRSA §480-Q, sub-§2-A) (see below).	205(3)	38 MRSA §480-Q, sub-§2-D	DEP permit		9.28.11
Provides that a NRPA permit is not required for the storage of lobster traps and related trap lines, buoys and bait bags on a dock.	12(3)	38 MRSA §480-Q, sub-§30 ³	DEP permit		9.28.11
Allows expansion of an existing residential or commercial building in a coastal sand dune system without an NRPA permit if the footprint of the expansion is contained within an existing impervious area and is no further seaward than the existing building; the height of the expansion is within the height	64(5)	38 MRSA §480-Q, sub-§30 ⁴	DEP permit		9.28.11

³ PL 2011 ch. 12, section 3 and PL 2011, ch. 64, section 5 enacted differing provisions as 38 MRSA §480-Q, sub-§30. This technical, codification error will likely be corrected in errors and inconsistencies legislation in a subsequent legislative session.

⁴ See footnote 2.

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
restriction of any applicable law or ordinance; and the expansion conforms to the mandatory shoreland zoning law standards for expansion of a building.					
Requires the DEP to apply the standards adopted in rule pursuant to the NRPA for significant vernal pool habitat to significant vernal pool habitat reviewed under the laws governing the site location of development. It prohibits DEP from requiring a buffer strip adjacent to significant vernal pool habitat under the laws governing site location of development unless the buffer strip is established for another protected natural resource	359(3)	38 MRSA §484, sub-§3, ¶H	DEP permit		9.28.11
Replaces existing provision to require that a double-walled tank may continue in service up to 10 years beyond the expiration of the warranty if precision tests are undertaken to determine the integrity of the tank.	276(1)	38 MRSA §564, sub-§5	DEP enforcement action		9.28.11
Amends the oil spill remediation laws to provide that oil cleanup costs from leaking storage tanks are eligible for coverage by the Ground Water Oil Clean-up Fund if the applicant for coverage such as the tank owner or operator pays the applicable statutory deductibles.	206(17)	38 MRSA §568-A, sub-§2-B	DEP enforcement action		6.3.11
Limits the liability of municipalities that acquire oil storage facilities through tax delinquency proceedings.	206(18)	38 MRSA §569-C	DEP enforcement action		6.3.11
Replaces former 38 MRSA section 584-A to provide that references to ambient air quality standards refer to national ambient air quality standards.	206(19)	38 MRSA §584-A	DEP license		6.3.11
Amends the single entity ownership exception contained in the definition of “commercial solid waste disposal facility.”	206(20)	38 MRSA §1303-C, sub-§6, ¶E	DEP license		6.3.11
Allows for the controlled breakage of cathode ray tubes by licensed electronics demanufacturing facilities if the facilities demonstrate to DEP that they meet specified environmental health and safety standards.	250(1)	38 MRSA §1319-R, sub-§1, ¶D	DEP enforcement action		6.8.11
Limits to 7 the number of covered electronic devices that may be dropped off at municipal collection sites or consolidator-sponsored collection events, unless the municipal collection site or consolidator is willing to accept additional devices.	250(6)	38 MRSA §1610, sub-§5, ¶A-1	DEP enforcement action		6.8.11
Amends the mercury products laws to consolidate restrictions on the sale of mercury-added batteries.	206(25)	38 MRSA §1661-C, sub-§11	DEP enforcement action		6.3.11

Name/Description of State or Local Law/Regulation/Policy/ Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption ²	Date Effective in State
Amends the mercury products laws to consolidate restrictions on the sale of mercury-added batteries.	206(26)	38 MRSA §1661-C, sub-§12	DEP enforcement action		6.3.11
Establishes the following for use of a crushing device for recycling mercury-added lamps: the owner of the crushing device must register with the DEP, develop an operating manual for safely crushing mercury-added lamps, document maintenance activities, meet federal Occupational Safety and Health Administration requirements, dispose of all material crushed in the device, maintain an annual report for review by the DEP, at the discretion of the department, and maintain testing and monitoring data. Crushing devices may be operated only in a closed system, in such a manner that any emission of mercury does not exceed 0.3 micrograms per cubic meter, and must be operated in a secure, ventilated area not accessible to the general public.	275(2)	38 MRSA §1672, sub-§6	DEP enforcement action		9.28.11
Deletes language in accordance with above-noted provision consolidating bans on mercury-added products.	206(36)	38 MRSA §2165, sub-§8	DEP enforcement action		6.3.11
DELETED					
Repealed and replaced by new provision (see above) regarding the BEP's rulemaking authority.	304(H-4)	38 MRSA §341-D, sub-§1-B	n/a		6.13.11
Repealed and replaced by new provision (see above).	304(H-7)	38 MRSA §341-D, sub-§3	n/a		6.13.11
Repeals provision authorizing the BEP, on its own initiative, to review decisions by the DEP commissioner.	304(H-8)	38 MRSA §341-D, sub-§4, ¶B	n/a		6.13.11
Repeals and replaces provisions to correct an error (see above).	420(A-34)	38 MRSA §346, sub-§4	n/a		7.6.11
Repeals the BEP's authority to reconsider its action on a permit or license application.	304(H-10)	38 MRSA §341-D, sub-§5	n/a		6.13.11
Repealed and replaced (see above).	304(H-11)	38 MRSA §341-D, sub-§6	n/a		6.13.11
Repealed and replaced by new provision creating a general six-year statute of limitations (see above).	350(1)	38 MRSA §347-A, sub-§8	n/a		9.28.11
Repeals exemption from the laws governing storm water management for waste facilities regulated under 38 MRSA sections 1310-N, 1319-R or 1319-X (see related provision above that makes this exemption unnecessary).	206(9)	38 MRSA §420-D, sub-§7, ¶F	n/a		6.3.11

Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change	Public Law # and Section(s)	State Legal Citation	Enforcement Mechanism(s)	Date of State Adoption²	Date Effective in State
Repealed and replaced (see above).	65(1-2)	38 MRSA §480-E, sub-§7-8	n/a		9.28.11
Eliminates a longstanding, duplicate exemption applying to stream crossings in the NRPA.	205(2)	38 MRSA §480-Q, sub-§2-A	n/a		9.28.11
Repealed and replaced (see above).	276(1)	38 MRSA §564, sub-§5	n/a		9.28.11
Removes administrative appeals-related provision that is consolidated in 38 MRSA §568-B, as amended (see above).	243(2)	38 MRSA §568-A, sub-§3-A	n/a		9.28.11
Removes reporting requirement that is consolidated in 38 MRSA §568-B, as amended (see above).	243(4)	38 MRSA §570-H	n/a		9.28.11
Repealed and replaced (see above).	206(19)	38 MRSA §584-A	n/a		6.3.11
Repealed and replaced (see above).	206(20)	38 MRSA §1303-C, sub-§6, ¶E	n/a		6.3.11
Repealed and replaced to correct an error (see above).	420(A-35)	38 MRSA §1310-B, sub-§2	n/a		7.6.11
Deletes unnecessary definition.	250(4)	38 MRSA §1610, sub-§2, ¶F	n/a		6.8.11
Repeals provision banning sale of certain mercury-added batteries (see above). (Other added provisions consolidate these bans into one section.)	206(35)	38 MRSA §21615, sub-§6	n/a		6.3.11

Appendix D

Text of Repealed Provisions

❖ 38 MRSA §341-D, sub-§1-B

1-B. Rulemaking. Subject to the Maine Administrative Procedure Act, the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.

The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal standard, if an applicable federal standard exists.

During the consideration of any proposed rule by the board, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists, and shall explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal standard.

Notwithstanding Title 5, chapter 375, subchapter II, the board shall accept and consider additional public comment on a proposed rule following the close of the formal rule-making comment period at a meeting that is not a public hearing only if the additional public comment is directly related to comments received during the formal rule-making comment period or is in response to changes to the proposed rule. Public notice of the meeting must comply with Title 1, section 406 and state that the board will accept additional public comment on the proposed rule at that meeting.

This subsection takes effect January 1, 1998.

❖ 38 MRSA §341-D, sub-§3

3. Modification, revocation or suspension. After written notice and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board finds that:

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- C. The licensed discharge or activity poses a threat to human health or the environment;
- D. The license fails to include any standard or limitation legally required on the date of issuance;
- E. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license;
- F. The licensee has violated any law administered by the department; or
- G. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

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

❖ **38 MRSA §341-D, sub-§4, ¶B**

B. License or permit decisions made by the commissioner that the board votes to review within 30 days of the next regularly scheduled board meeting following written notification to the board of the commissioner's decision. Except as provided in paragraph D, the procedures for review are the same as provided under paragraph A;

❖ **38 MRSA §341-D, sub-§5**

5. Requests for reconsideration. A person aggrieved by a decision of the board on a permit or license application may petition the board once to reconsider that decision, except that a person may not petition the board to reconsider a decision that is an appeal or review of a final license or permit decision made by the commissioner under subsection 4, paragraph A. A petition for reconsideration must be made in writing within 30 days after the board's decision and may be made for:

- A. Correction of any part of the decision that the petitioner believes to be in error and not intended by the board;
- B. An opportunity to present new or additional evidence to secure reconsideration of any part of the decision; or
- C. A challenge to any fact of which official notice was taken.

The petition must set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of any new or additional evidence to be offered and the nature of the relief requested. Within 30 days of receiving a complete reconsideration petition, the board shall decide whether to reconsider its decision. The board may hold a hearing within 30 days of its decision to reconsider the decision.

In considering the petition, the board may grant the petition in full or in part, or dismiss the petition. The board shall provide reasonable notice to interested persons.

The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that an interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time or the evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The running of the time for appeal under section 346, subsection 1, is terminated by a timely petition for reconsideration filed under this subsection. The full time for appeal commences and is computed from the date of the final board action dismissing the petition or another final board action as a result of the petition.

The filing of a petition for reconsideration is not an administrative or judicial prerequisite for the filing of an appeal under section 346, subsection 1.

❖ **38 MRSA §347-A, sub-§8**

8. Limitations on air and wastewater discharge enforcement actions. The following limitations apply to air and wastewater discharge enforcement actions.

A. If a licensee has reported to the department a violation of chapter 4 or of rules adopted under chapter 4, an enforcement action for civil or administrative penalties brought by the department or the Attorney General for that violation must be initiated within 10 years of the date the licensee reported the violation to the department.

B. If a licensee has reported to the department a violation of chapter 3, subchapter 1, article 2 or of rules adopted under chapter 3, subchapter 1, article 2, an enforcement action for civil or administrative penalties brought by the department or the Attorney General for that violation must be initiated within 10 years of the date the licensee reported the violation to the department.

❖ **38 MRSA §420-D, sub-§7, ¶F**

F. Waste facilities regulated by the department under section 1310-N, 1319-R or 1319-X do not require review under this section. This exemption applies to new facilities, modifications of facilities, transfers of facilities and relicensing of facilities.

❖ **38 MRSA §480-E, sub-§§7 and 8**

7. Individual permit; maintenance dredging. Notwithstanding section 344, subsection 7, an individual permit or consistency determination issued by the department pursuant to this article is required for maintenance dredging if the amount of material to be dredged exceeds 50,000 cubic yards.

Notwithstanding section 480-X, if an analysis of alternatives to the dredging project has been completed by the applicant within the previous 10 years pursuant to section 480-X and rules adopted to implement that section as part of an individual permit application, the applicant may update the previous analysis for purposes of obtaining a permit for maintenance dredging under this subsection.

8. Permit by rule; maintenance dredging. Maintenance dredging may be performed with a permit by rule only if the applicant has been issued an individual permit for dredging in the same location within the last 10 years.

❖ **38 MRSA §480-Q, sub-§2-A**

2-A. Existing road culverts. In any protected natural resource area, a permit is not required for the repair and maintenance of an existing road culvert or for the replacement of an existing culvert, as long as the replacement culvert is:

A.

B. Not more than 25% longer than the culvert being replaced; and

C. Not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this subsection shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block passage for fish in the water course or passage for other aquatic organisms in the water course if passage for fish is required under this subsection. Replacement culverts and techniques used in installing the culverts must achieve natural stream flow. This subsection applies only to water courses containing fish.

❖ 38 MRSA §564, sub-§5

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

This subsection does not apply until January 1, 2008 to a tank installed before December 31, 1985 that has been retrofitted to meet the requirements of subsections 1-A and 1-B.

❖ 38 MRSA §568-A, sub-§3-A

3-A. Appeals to review board. An applicant aggrieved by an insurance claims-related decision of the commissioner, including but not limited to decisions on eligibility for coverage, eligibility of costs and waiver and amount of deductible, may appeal that decision to the Fund Insurance Review Board. The public members of the review board shall hear and render a decision on the appeal. Except as provided in review board rules, the appeal must be filed within 30 days after the applicant receives the commissioner's decision on the matter. The appeals panel must hear an appeal at its next meeting following receipt of the appeal, unless the appeals panel and the aggrieved applicant agree to hear the appeal at a different time. If the appeals panel overturns the commissioner's decision, reasonable costs, including reasonable attorney fees, incurred by the aggrieved applicant in pursuing the appeal to the review board must be paid from the fund. Reasonable attorney fees include only those fees incurred from the time of a claims-related decision forward. Decisions of the appeals panel are subject to judicial review pursuant to Title 5, chapter 375, subchapter VII. The review board may adopt rules determining the timing of filing appeals on questions of eligibility of costs for payment by the fund.

❖ 38 MRSA §570-H

§570-H. Report; adequacy of fund. On or before February 15th of each year, the Fund Insurance Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the department's and the board's experience administering the fund, clean-up activities and 3rd-party damage claims. The report must include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report also must include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its

responsibility under this section, the board may order an independent audit of disbursements from the Groundwater Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund.

❖ 38 MRSA §584-A

§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. For purposes of statutory interpretation, rules, licensing determinations, policy guidance and all other actions by the department or the board relating to the control of particulate matter, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard for particulate matter established pursuant to Section 109 of the federal Clean Air Act as amended, 42 United States Code, Section 7409.

A.

B.

2. Sulfur dioxide.

A. Sulfur dioxide concentration for any 3-hour period at any location shall not exceed 1150 micrograms per cubic meter, except once per year.

B. Sulfur dioxide concentration for any 24-hour period at any location shall not exceed 230 micrograms per cubic meter, except once per year.

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.

4-A. Ozone. For purposes of statutory interpretation, rules, regulations, licensing determinations, policy guidance and all other actions by the department or the board relating to the control of ozone precursors for the purpose of controlling ozone or photochemical oxidant, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard for ozone established pursuant to Section 109 of the federal Clean Air Act as amended, 42 United States Code, Section 7409.

5. Hydrocarbon.

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.

7. Lead. The maximum 24-hour lead concentration at any location shall be 1.5 micrograms per cubic meter, which standard may be exceeded once per year.

8. Chromium.

A. Until the time that an analytical procedure for measuring hexavalent chromium in the ambient air is approved:

(1) The maximum 24-hour total chromium concentration at any location shall not exceed 0.3 micrograms per cubic meter; and

(2) The annual geometric mean of the total chromium concentrations at any location shall not exceed 0.05 micrograms per cubic meter.

B. Subsequent to the establishment of an acceptable analytical procedure for measuring hexavalent chromium in the ambient air:

(1) The maximum 24-hour ambient air quality impact of hexavalent chromium from a potential source of hexavalent chromium air emissions, as defined in section 611, subsection 2, shall not exceed the minimum detection limit of that procedure, or 1.0 nanogram per cubic meter, whichever is greater.

9. Perchloroethylene. The maximum annual concentration of perchloroethylene at any location may not exceed 0.01 micrograms per cubic meter.

10. Toluene. The ambient air quality standards for toluene are as follows:

A. The maximum concentration of toluene at any location may not exceed 15,000 micrograms per cubic meter.

B. The maximum concentration of toluene for any 24-hour period at any location may not exceed 260 micrograms per cubic meter.

C. The maximum annual concentration of toluene at any location may not exceed 180 micrograms per cubic meter.

❖ **38 MRSA §1303-C, sub-§6, ¶E**

E. A solid waste facility owned and controlled by a single entity that generates at least 85% of the solid waste disposed of at the facility, except that the facility may accept from other sources, on a nonprofit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis. For purposes of this paragraph, “single entity” means an individual, partnership, corporation or limited liability company that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph; or

❖ **38 MRSA §1610, sub-§2, ¶F**

F. “Office” means the Executive Department, State Planning Office.

❖ 38 MRSA §2165, sub-§6

6. Mercury content. A person may not sell, distribute or offer for sale in this State the following batteries:

A. An alkaline manganese battery that contains more than .025% mercury except that any alkaline manganese battery resembling a button or coin in size and shape may contain no more than 25 milligrams of mercury;

B. Effective January 1, 1993, a consumer mercuric oxide button cell;

C. A zinc carbon battery manufactured on or after January 1, 1993 that contains any added mercury;
or

D. An alkaline manganese battery manufactured on or after January 1, 1996 that contains any added mercury except that, until June 30, 2011, any alkaline manganese battery resembling a button or coin in size and shape that contains no more than 25 milligrams of mercury may be sold.