

# MAINE STATE LEGISLATURE

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# ACTIVITY SHEET

COMMITTEE: Environment and Natural Resources

LD: 1398

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

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HEARING DATES: 04/26/2011

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1398

H.P. 1027

House of Representatives, April 4, 2011

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

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Reference to the Committee on Environment and Natural Resources suggested and ordered  
printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative HAMPER of Oxford.  
Cosponsored by Representatives: DUCHESNE of Hudson, LONG of Sherman, PARKER of  
Veazie.

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

2 **Sec. 1. 5 MRSA §12004-I, sub-§22-B**, as enacted by PL 1991, c. 804, Pt. C, §1,  
3 is amended to read:

4 **22-B.**

5 Environment: Pollution Prevention ~~Expenses Only Not~~ 38 MRSA §343-D  
6 Natural Resources and Small Business Authorized  
7 Assistance Advisory  
8 Committee Panel

9 **Sec. 2. 32 MRSA §4174**, as amended by PL 1989, c. 890, Pt. A, §§4 and 40, is  
10 further amended by adding at the end a new paragraph to read:

11 The Department of Environmental Protection may allow an operator to review with  
12 department staff an operator certification test that the operator has completed in order to  
13 identify subject areas for which questions were answered incorrectly and further study is  
14 advisable.

15 **Sec. 3. 32 MRSA §10010-A**, as amended by PL 1997, c. 364, §11, is repealed.

16 **Sec. 4. 38 MRSA §342-B, sub-§4-A** is enacted to read:

17 **4-A. Exemption from liability for discharges during approved site investigation**  
18 **work.** Notwithstanding subsection 3, paragraph A and subsection 4, paragraph A, a  
19 fiduciary or lender is exempt from liability under subsection 2 if the fiduciary or lender  
20 causes, contributes to or exacerbates a discharge, release or threat of release while  
21 undertaking investigations in accordance with a voluntary response action plan approved  
22 by the commissioner under section 343-E.

23 **Sec. 5. 38 MRSA §343-D**, as amended by PL 2009, c. 121, §2 is further amended  
24 to read:

25 **§343-D. Pollution Prevention and Small Business Assistance Advisory Panel**

26 The Pollution Prevention and Small Business Assistance Advisory Committee Panel,  
27 established by Title 5, section 12004-I, subsection 22-B and referred to in this section as  
28 the "committee the panel," serves as a review body to assess the progress in the reduction  
29 of toxics use, toxics release and hazardous waste and implementation of the provisions of  
30 chapter 26, the Office of Pollution Prevention and the Technical and Environmental  
31 Assistance Program and may render advisory opinions to the commissioner on the  
32 effectiveness of each.

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

35 A. The Governor shall appoint 2 representatives from the business community, 2  
36 elected or appointed municipal officials who are not owners or representatives of

1 owners of small business stationary sources, ~~and 2 representatives of organized labor,~~  
2 2 representatives of public health organizations, 2 representatives of environmental  
3 organizations and 2 representatives from the department.

4 B. The President of the Senate shall appoint ~~one member from a public health~~  
5 ~~organization, one member from an environmental organization~~ and one public  
6 member who is an owner or represents an owner of a small business stationary  
7 source.

8 C. The Speaker of the House of Representatives shall appoint ~~one member from a~~  
9 ~~public health organization, one member from an environmental organization~~ and one  
10 public member who is an owner or represents an owner of a small business stationary  
11 source.

12 ~~D. The commissioner shall appoint a designee to represent the department.~~

13 E. The Senate Minority Leader and the House Minority Leader shall each appoint  
14 one member who is an owner or represents an owner of a small business stationary  
15 source.

16 ~~F. The Director of the Bureau of Air Quality Control shall appoint a designee to~~  
17 ~~represent the bureau.~~

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

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

23 **2. Terms.** Except for the commissioner, who ~~shall serve~~ serves a term coincident  
24 with that person's appointment as the commissioner, all members are appointed for  
25 staggered terms of 4 years. A vacancy must be filled by the same appointing authority  
26 that made the original appointment. ~~Appointed members may not serve more than 2, 4-~~  
27 ~~year terms.~~ There is no limit on the number of terms an individual may serve.

28 **3. Compensation.** ~~Members are entitled to compensation for expenses according to~~  
29 ~~Title 5, section 12004-I, subsection 22-B.~~

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

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

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

38 **7. Staff support.** The commissioner shall provide the ~~committee panel~~ with staff  
39 support.

1           **8. Duties; powers.** The ~~committee~~ panel may review and may render advisory  
2 opinions to the commissioner on the operation and effectiveness of the following  
3 programs:

4           A. Toxics Use, Toxics Release and Hazardous Waste Reduction Program,  
5 established in chapter 26. The ~~committee~~ panel may:

6           (1) Review program priorities for toxics use, toxics release and hazardous waste  
7 reduction and may identify user groups as priorities for department technical  
8 assistance activities;

9           (2) Review the criteria for the submission of toxics use, toxics release and  
10 hazardous waste reduction plans;

11           (3) Study and evaluate the practicability of achieving reductions in the use or  
12 release of specific substances through the use of substitutes, alternate procedures  
13 or processes or other means of achieving toxics use, toxics release and hazardous  
14 waste reduction;

15           (4) Recommend revisions to the department, if appropriate, to toxics use, toxics  
16 release and hazardous waste reduction goals and to the Toxics Use, Toxics  
17 Release and Hazardous Waste Reduction Program; and

18           (5) Evaluate existing programs related to chemical production and use,  
19 hazardous waste generation, industrial hygiene, worker safety and public  
20 exposure to toxics and toxics releases and recommend coordination of  
21 information and program changes or development;

22           B. The Technical and Environmental Assistance Program established under section  
23 343-B. In reviewing that program, the ~~committee~~ panel may:

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

27           (2) Prepare periodic reports to the Governor on the compliance status of the  
28 Technical and Environmental Assistance Program. The reports must be  
29 forwarded to the federal Environmental Protection Agency complying with the  
30 requirements of the federal Paperwork Reduction Act of 1980, Public Law 96-  
31 511, as amended; the federal Regulatory Flexibility Act, 5 United States Code,  
32 Sections 601 to 612; and the federal Equal Access to Justice Act, Public Law 96-  
33 481, as amended; and

34           C. The Office of Pollution Prevention established under section 342, subsection 4,  
35 paragraph B.

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

39           **Sec. 6. 38 MRSA §343-D**, as amended by PL 2009, c. 579, Pt. B, §§6 and 7 and  
40 affected by §13, is further amended to read:

1           **§343-D. Pollution Prevention and Small Business Assistance Advisory Panel**

2           The Pollution Prevention and Small Business Assistance Advisory ~~Committee~~ Panel,  
3 established by Title 5, section 12004-I, subsection 22-B and referred to in this section as  
4 the "~~committee~~ the panel," serves as a review body to assess the progress in the reduction  
5 of toxic chemicals and implementation of the provisions of chapter 27, the Office of  
6 Pollution Prevention and the Technical and Environmental Assistance Program and may  
7 render advisory opinions to the commissioner on the effectiveness of each.

8           **1. Appointment; composition.** The ~~committee~~ panel consists of 16 voting  
9 members.

10           A. The Governor shall appoint 2 representatives from the business community, 2  
11 elected or appointed municipal officials who are not owners or representatives of  
12 owners of small business stationary sources, and 2 representatives of organized labor,  
13 2 representatives of public health organizations, 2 representatives of environmental  
14 organizations and 2 representatives from the department.

15           B. The President of the Senate shall appoint ~~one member from a public health~~  
16 ~~organization, one member from an environmental organization~~ and one public  
17 member who is an owner or represents an owner of a small business stationary  
18 source.

19           C. The Speaker of the House of Representatives shall appoint ~~one member from a~~  
20 ~~public health organization, one member from an environmental organization~~ and one  
21 public member who is an owner or represents an owner of a small business stationary  
22 source.

23           ~~D. The commissioner shall appoint a designee to represent the department.~~

24           E. The Senate Minority Leader and the House Minority Leader shall each appoint  
25 one member who is an owner or represents an owner of a small business stationary  
26 source.

27           ~~F. The Director of the Bureau of Air Quality Control shall appoint a designee to~~  
28 ~~represent the bureau.~~

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

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

34           **2. Terms.** Except for the commissioner, who ~~shall serve~~ serves a term coincident  
35 with that person's appointment as the commissioner, all members are appointed for  
36 staggered terms of 4 years. A vacancy must be filled by the same appointing authority  
37 that made the original appointment. ~~Appointed members may not serve more than 2, 4-~~  
38 ~~year terms.~~ There is no limit on the number of terms an individual may serve.

39           **3. Compensation.** ~~Members are entitled to compensation for expenses according to~~  
40 ~~Title 5, section 12004-I, subsection 22-B.~~

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

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

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

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

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

13           A-1. The reduction of toxic chemicals pursuant to chapter 27;

14           B. The Technical and Environmental Assistance Program established under section  
15 343-B. In reviewing that program, the committee panel may:

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

19                   (2) Prepare periodic reports to the Governor on the compliance status of the  
20 Technical and Environmental Assistance Program. The reports must be  
21 forwarded to the federal Environmental Protection Agency complying with the  
22 requirements of the federal Paperwork Reduction Act of 1980, Public Law 96-  
23 511, as amended; the federal Regulatory Flexibility Act, 5 United States Code,  
24 Sections 601 to 612; and the federal Equal Access to Justice Act, Public Law 96-  
25 481, as amended; and

26           C. The Office of Pollution Prevention established under section 342, subsection 4,  
27 paragraph B.

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

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

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

36           A. ~~Are~~ Have been degraded or are susceptible to degradation of water quality or  
37 fisheries because of the cumulative effect of past or reasonably foreseeable levels of  
38 development activity within the watershed of the affected surface waters; and

39           B. Are not classified as "watersheds of bodies most at risk" under subsection 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 **§469. Classifications of estuarine and marine waters**

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

- 1           **I. Cumberland County.** All estuarine and marine waters lying within the  
2 boundaries of Cumberland County and that are not otherwise classified are Class SB  
3 waters.
- 4           A. Cape Elizabeth.
- 5           (1) Tidal waters of the Spurwink River system lying north of a line at latitude  
6 43°-33'-44" N. - Class SA.
- 7           B. Cumberland.
- 8           (1) Tidal waters located within a line beginning at a point located on the  
9 Cumberland-Portland boundary at approximately latitude 43°41'-18"N., longitude  
10 70° - 05'-48"W. and running northeasterly to a point located on the Cumberland-  
11 Harpswell boundary at approximately latitude 43° - 42'-57"N., longitude 70° -  
12 03'-50" W.; thence running southwesterly along the Cumberland-Harpswell  
13 boundary to a point where the Cumberland, Harpswell and Portland boundaries  
14 meet; thence running northeasterly along the Cumberland-Portland boundary to  
15 point of beginning - Class SA.
- 16          C. Falmouth.
- 17          (1) Tidal waters of the Town of Falmouth located westerly and northerly, to  
18 include the Presumpscot estuary, of a line running from the southernmost point of  
19 Mackworth Island; thence running northerly along the western shore of  
20 Mackworth Island and the Mackworth Island Causeway to a point located where  
21 the causeway joins Mackworth Point - Class SC.
- 22          D. Harpswell.
- 23          (1) Tidal waters located within a line beginning at a point located on the  
24 Cumberland-Harpswell boundary at approximately latitude 43° - 42'-57" N.,  
25 longitude 70° - 03'-50" W. and running northeasterly to a point located at latitude  
26 43° - 43'-08" N., longitude 70° - 03'-36"W.; thence running southeasterly to a  
27 point located at latitude 43° - 42'-02" N., longitude 70° - 00'-00" W.; thence  
28 running due south to the Harpswell-Portland boundary; thence running  
29 northwesterly along the Harpswell-Portland boundary to a point where the  
30 Cumberland, Harpswell and Portland boundaries meet; thence running  
31 northwesterly along the Cumberland-Harpswell boundary to point of beginning -  
32 Class SA.
- 33          E. Portland.
- 34          (1) Tidal waters located within a line beginning at a point located on the  
35 Cumberland-Portland boundary at approximately latitude 43° - 41'-18" N.,  
36 longitude 70° - 05'-48" W. and running southeasterly along the Cumberland-  
37 Portland boundary to a point where the Cumberland, Harpswell and Portland  
38 boundaries meet; thence running southeasterly along the Harpswell-Portland  
39 boundary to longitude 70° - 00'-00" W.; thence running due south to a point  
40 located at latitude 43° - 38'-21" N., longitude 70° - 00'-00" W.; thence running  
41 due west to a point located at latitude 43° - 38'-21" N., longitude 70° - 09'-06"  
42 W.; thence running northeasterly to point of beginning - Class SA.

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

5 E-1. Scarborough.

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

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

14 F. South Portland.

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

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

20 A. Bar Harbor.

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

24 A-1. Brooksville.

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

27 B. Bucksport.

28 (1) All tidal waters - Class SC.

29 C. Cranberry Isles.

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

32 D. Mount Desert.

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

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

- 1 22" W., except those waters of Broad Cove lying west of a line running from the  
2 point of land immediately south of the cove northerly to Navigation Can #7 and  
3 those waters lying within 500 feet of overboard discharges licensed as of January  
4 1, 1999 - Class SA.
- 5 (3) Tidal waters of Somes Sound lying within 500 feet of overboard discharges  
6 licensed as of January 1, 1999 - Class SA.
- 7 E. Orland.
- 8 (1) Tidal waters lying northerly of the southernmost point of land on Verona  
9 Island - Class SC.
- 10 E-1. Penobscot.
- 11 (1) Tidal waters of the Bagaduce River lying southerly of Winslow Island and  
12 easterly of the westernmost point of Young's Island - Class SA.
- 13 E-2. Sedgewick.
- 14 (1) Tidal waters of the Bagaduce River - Class SA.
- 15 F. Southwest Harbor.
- 16 (1) Tidal waters lying northerly of latitude 44° - 12'-44" -" N., southerly of  
17 latitude 44° - 14'-13" N. and westerly of longitude 68° - 18'-27" W. - Class SA.
- 18 (2) Tidal waters of Somes Sound lying northerly of a line beginning at a point  
19 located at the Acadia National Park boundary at latitude 44° - 18'-18" N.,  
20 longitude 68° - 18'-42" W. and running northeasterly to a point located at the  
21 Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-  
22 22" W. - Class SA.
- 23 G. Tremont.
- 24 (1) Tidal waters lying northerly of latitude 44° - 12'-44" -" N., southerly of  
25 latitude 44° - 14'-13" N. and easterly of longitude 68° - 20'-30" W. - Class SA.
- 26 H. Verona Island.
- 27 (1) Tidal waters lying northerly of the southernmost point of land on Verona  
28 Island - Class SC.
- 29 I. Winter Harbor.
- 30 (1) Tidal waters lying south of a line running west from the northernmost tip of  
31 Frazer Point to longitude 68°-05'-00" W. and east of longitude 68°-05'-00" W. -  
32 Class SA.
- 33 **3. Knox County. All estuarine and marine waters lying within the boundaries of**  
34 **Knox County and that are not otherwise classified are Class SB waters.**
- 35 A. Isle Au Haut.
- 36 (1) Tidal waters, except those lying within 500 feet of privately owned shoreline,  
37 lying northerly of latitude 44° - 00'-00" N., southerly of latitude 44° - 03'-06" N.,

1 easterly of longitude 68° - 41'-00" W. and westerly of longitude 68° - 35'-00" W.  
2 - Class SA.

3 B. Owls Head.

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

7 C. Rockland.

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

11 **3-A. Lincoln County.** All estuarine and marine waters lying within the boundaries  
12 of Lincoln County and that are not otherwise classified are Class SB waters.

13 A. Boothbay.

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

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

18 A. Hampden.

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

21 B. Orrington.

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

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

26 A. Georgetown.

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

33 B. Phippsburg.

34 (1) Tidal Offshore waters east of longitude 69°-50'-05" W. and west of longitude  
35 69°-47'-00" W., including the tidal waters of the Morse River and the Sprague  
36 River, - Class SA.

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

1                   (3) Tidal waters of the Kennebec River in Phippsburg within 500 feet of shore,  
2                   beginning at a point of land at the head of Atkins Bay located at longitude 69°-  
3                   48'-14" W. and latitude 43°-44'-40.4" N. and extending along the southeast shore  
4                   of Atkins Bay to a point 500 feet off Fort Popham located at longitude 69°-47'-  
5                   00" W. and latitude 43°-45'-23.89" N. - Class SA.

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

8                   A. Frankfort.

9                   (1) All tidal waters - Class SC.

10                  B. Prospect.

11                 (1) All tidal waters - Class SC.

12                  C. Searsport.

13                 (1) Tidal waters located within a line beginning at the southernmost point of land  
14                 on Kidder Point and running southerly along the western shore of Sears Island to  
15                 the southernmost point of Sears Island; thence running due south to latitude 44'-  
16                 25'-25" N.; thence running due west to latitude 44'-25'-25" N., longitude 68'-54'-  
17                 30" W.; thence running due north to the shore of Mack Point at longitude 68'-54'-  
18                 30" W.; thence running along the shore in an easterly direction to point of  
19                 beginning - Class SC.

20                  D. Stockton Springs.

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

23                  E. Winterport.

24                 (1) All tidal waters - Class SC.

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

28                  A. Beals.

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

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

35                  B. Calais.

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

38                  C. Cutler.

- 1 (1) All tidal waters except those waters in Machias Bay and Little Machias Bay  
2 north of a line running from the town line due east to the southernmost point of  
3 Cross Island; thence running northeast to the southeasternmost point of Cape  
4 Wash Island; thence running northeast to the westernmost point of Deer Island;  
5 thence running due north to the mainland; and those waters lying northwest of a  
6 line running from the easternmost point of Western Head to the easternmost point  
7 of Eastern Knubble - Class SA.
- 8 D. Eastport.
- 9 (1) Tidal waters lying southerly of latitude 44°-54'-50" N., easterly of longitude  
10 67°-02'-00" W. and northerly of latitude 44°-53'-15" N. - Class SC.
- 11 E. Edmunds.
- 12 (1) All tidal waters - Class SA.
- 13 F. Lubec.
- 14 (1) Tidal waters, except those lying within 500 feet of West Quoddy Head Light,  
15 south of a line beginning at a point located on the northern shore of West Quoddy  
16 Head at latitude 44°-49'-22" N., longitude 66°-59'-17" W. and running northeast  
17 to the international boundary at latitude 44°-49'-45" N., longitude 66°-57'-57" W.  
18 - Class SA.
- 19 (2) Tidal waters west of a line running from the easternmost point of Youngs  
20 Point to the easternmost point of Leighton Neck in Pembroke - Class SA.
- 21 G. Milbridge.
- 22 (1) Tidal waters south of a line running from the Steuben - Milbridge town line  
23 along latitude 44°-27'-39" N. to the northernmost point of Currant Island; thence  
24 running easterly to a point 1,000 feet from mean high tide on the northernmost  
25 point of Pond Island; thence along a line running 1,000 feet from mean high tide  
26 along the east side of Pond Island to the southernmost point of the island; thence  
27 running due south - Class SA.
- 28 H. Pembroke.
- 29 (1) Tidal waters west of a line running from the easternmost point of Leighton  
30 Neck to the easternmost point of Youngs Point in Lubec - Class SA.
- 31 I. Steuben.
- 32 (1) Tidal waters southeast of a line beginning at Yellow Birch Head at latitude  
33 44°-25'-05" N.; thence running to longitude 67°-55'-00" W.; thence running due  
34 south along longitude 67°-55'-00" W. - Class SA.
- 35 (2) Tidal waters southwest of a line beginning at a point located south of  
36 Carrying Place Cove at latitude 44°-26'-18" N., longitude 67°-53'-14" W.; thence  
37 running along latitude 44°-26'-18" N. east to the town line - Class SA.
- 38 J. Trescott.
- 39 (1) All tidal waters - Class SA.
- 40 K. Whiting.

- 1 (1) Tidal waters of the Orange River - Class SA.
- 2 **8. York County.** All estuarine and marine waters lying within the boundaries of  
3 York County and that are not otherwise classified are Class SB waters.
- 4 A. Biddeford.
- 5 (1) Tidal waters of the Saco River and its tidal tributaries lying westerly of  
6 longitude 70°-22'-54" W. - Class SC.
- 7 B. Kennebunk.
- 8 (1) Tidal waters of the Little River system lying north of latitude 43°-20'-10" N. -  
9 Class SA.
- 10 C. Kittery.
- 11 (1) Tidal waters of the Piscataqua River and its tidal tributaries lying westerly of  
12 longitude 70°-42'-52" W., southerly of Route 103 and easterly of Interstate Route  
13 95 - Class SC.
- 14 (2) Tidal waters lying northeast of a line from Sisters Point; thence south along  
15 longitude 70°-40'-00" W. to the Maine-New Hampshire border; thence running  
16 southeast along the Maine-New Hampshire border to Cedar Ledge beyond the  
17 Isles of Shoals, except waters within 500 feet of the Isles of Shoals Research  
18 Station - Class SA.
- 19 D. Old Orchard Beach.
- 20 (1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of  
21 longitude 70°-23'-08" W. - Class SC.
- 22 E. Saco.
- 23 (1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of  
24 longitude 70°-23'-08" W. - Class SC.
- 25 (2) Tidal waters of the Saco River and its tidal tributaries lying westerly of  
26 longitude 70°-22'-54" W. - Class SC.
- 27 F. Wells.
- 28 (1) Tidal waters of the Little River system lying north of latitude 43°-20'-10" N. -  
29 Class SA.
- 30 G. York.
- 31 (1) Tidal waters lying southwest of a line from Seal Head Point east along  
32 latitude 43°-07'-15" N. - Class SA.

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

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

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

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

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

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

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

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

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

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

30           B-2. An applicant is not eligible for coverage for any discharge discovered or  
31 reported to the commissioner after October 1, 1998 if the discharge is from an  
32 underground oil storage facility or tank that is not constructed of fiberglass,  
33 cathodically protected steel or other noncorrosive material approved by the  
34 department or from an aboveground oil storage facility that has underground piping  
35 that is not constructed of fiberglass, cathodically protected steel or other noncorrosive  
36 material approved by the department. ~~An applicant who would otherwise not be~~  
37 ~~eligible for coverage pursuant to this paragraph is not subject to this exclusion from~~  
38 ~~coverage for such a discharge discovered or reported to the commissioner on or~~  
39 ~~before October 1, 1999 if the facility or tank was not operated or used to store oil~~  
40 ~~after the applicable compliance date under section 563-A and the applicant: This~~  
41 exclusion from coverage does not apply to a discharge from an aboveground oil  
42 storage facility if the facility is used exclusively to store home heating oil, consists of

1 tanks with a capacity of 660 gallons or less and has an aggregate tank capacity of  
2 1,320 gallons or less.

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

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

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

9 **2-B. Failure to pay deductibles.** An order issued under subsection 1, paragraph F-1  
10 may be conditioned on payment of the applicable deductibles. If an applicant fails to pay  
11 the deductible amounts as determined under subsection 2 within 180 days of receipt of a  
12 bill from the department or within 180 days of a decision by the review board or an  
13 appellate court upholding the determination, whichever is later, the commissioner may  
14 seek reimbursement from the applicant or any other responsible party of all costs incurred  
15 by the State in the removal, abatement and remediation of the discharge for which  
16 coverage was sought.

17 **Sec. 18. 38 MRS §569-C** is enacted to read:

18 **§569-C. Limited exemption from liability for state or local governmental entities**

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

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

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

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

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

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

37 **2. Reimbursement for department expenses.** Notwithstanding the exemption from  
38 liability provided in subsection 1, the State or any political subdivision that acquires or  
39 has acquired ownership of property that encompasses an oil storage facility pursuant to

1 any of the proceedings referred to in subsection 1 is liable for any costs incurred by the  
2 department pursuant to this chapter during the period in which the State or political  
3 subdivision had ownership of the property, up to the amount of the proceeds from the sale  
4 or disposition of the property minus any unpaid taxes on the property and the out-of-  
5 pocket costs of the sale or disposition.

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

8 **§584-A. Ambient air quality standards**

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

14 **Sec. 20. 38 MRSA §1393, sub-§1, ¶B**, as enacted by PL 2007, c. 569, §6, is  
15 amended to read:

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

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

27 **Sec. 21. 38 MRSA §1393, sub-§2, ¶A**, as enacted by PL 2007, c. 569, §6, is  
28 amended to read:

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

35 **Sec. 22. 38 MRSA §1661-C, sub-§11** is enacted to read:

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

1           **Sec. 23. 38 MRSA §1661-C, sub-§12** is enacted to read:

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

4           A. An alkaline manganese battery that contains any added mercury; or

5           B. A zinc carbon battery that contains any added mercury.

6           **Sec. 24. 38 MRSA §1665-A, sub-§5, ¶B**, as repealed and replaced by PL 2005,  
7 c. 561, §9, is amended to read:

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

13           **Sec. 25. 38 MRSA §1665-B, sub-§1, ¶D**, as enacted by PL 2009, c. 277, §4, is  
14 amended to read:

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

19           **Sec. 26. 38 MRSA §1665-B, sub-§2, ¶A**, as amended by PL 2009, c. 277, §6, is  
20 further amended to read:

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

24           (1) A maximum rate of collection of mercury-added thermostats is achieved;

25           (2) Handling and recycling of mercury-added thermostats are accomplished in a  
26 manner that is consistent with section 1663, with other provisions of this chapter  
27 and with the universal waste rules adopted by the board pursuant to section  
28 1319-O;

29           (3) Authorized bins for mercury-added thermostat collection are made available  
30 at a reasonable one-time fee not to exceed \$25 to all ~~heating, ventilation and air~~  
31 ~~conditioning supply, electrical supply and plumbing supply distributor wholesaler~~  
32 locations that sell thermostats and to all retailers and electrical supply  
33 wholesalers who volunteer to participate in the program; and

34           (4) By January 1, 2007, authorized bins for mercury-added thermostat collection  
35 are made available at a reasonable one-time fee not to exceed \$25 to  
36 municipalities and regions requesting bins for mercury-added thermostat  
37 collection at universal waste collection sites or at periodic household hazardous  
38 waste collection events, as long as the collection sites or events are approved by  
39 the department for mercury-added thermostat collections;

1           **Sec. 27. 38 MRSA §1665-B, sub-§2, ¶E**, as enacted by PL 2005, c. 558, §1, is  
2 amended to read:

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

7           **Sec. 28. 38 MRSA §1665-B, sub-§2, ¶F**, as amended by PL 2009, c. 277, §7, is  
8 further amended to read:

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

13           **Sec. 29. 38 MRSA §1665-B, sub-§6**, as enacted by PL 2005, c. 558, §1, is  
14 amended to read:

15           **6. Report.** By March 15, 2007 and annually thereafter, the department shall submit  
16 a report on the collection and recycling of mercury-added thermostats in the State to the  
17 joint standing committee of the Legislature having jurisdiction over natural resources  
18 matters. The report due in 2007 must include a description and discussion of the financial  
19 incentive plan established under this section and recommendations for any statutory  
20 changes concerning the collection and recycling of mercury-added thermostats.  
21 Subsequent reports must include an evaluation of the effectiveness of the thermostat  
22 collection and recycling programs established under this section, information on actual  
23 collection rates and recommendations for any statutory changes concerning the collection  
24 and recycling of mercury-added thermostats. Beginning in 2012, the department may  
25 submit this information as part of the product stewardship program report under section  
26 1772.

27           **Sec. 30. 38 MRSA §1771, sub-§6**, as enacted by PL 2009, c. 516, §1, is amended  
28 to read:

29           **6. Product stewardship program.** "Product stewardship program" means a  
30 program financed without a visible fee at purchase and either managed or provided by  
31 producers and individually or collectively that includes, but is not limited to, the  
32 collection, transportation, reuse and recycling or disposal, or both, of unwanted products.  
33 "Product stewardship program" includes a program financed through an assessment paid  
34 by the producers to a stewardship organization.

35           **Sec. 31. 38 MRSA §1771, sub-§8-A** is enacted to read:

36           **8-A. Stewardship organization.** "Stewardship organization" means a corporation,  
37 nonprofit organization or other legal entity created by a producer or group of producers to  
38 implement a product stewardship program.

39           **Sec. 32. 38 MRSA §2165, sub-§6**, as amended by PL 2009, c. 86, §2, is repealed.



- 1 program to allow an applicant to pay a compensation fee in lieu of meeting certain  
2 requirements, by adding the alternative of allowing an applicant to carry out a  
3 compensation project in lieu of meeting such requirements. It also deletes a related  
4 provision that authorizes the department to allow an applicant to meet a municipally  
5 required mitigation option in certain circumstances as an alternative to paying a  
6 compensation fee.
- 7 9. It amends Title 38, section 469 to add text consistent with the first paragraph of  
8 section 469, to correct the structure of section 469 and to aid the ease of use of the  
9 section.
- 10 10. It amends the laws governing the classification of estuarine and marine waters in  
11 Phippsburg to specify missing coordinates.
- 12 11. It amends the oil spill prevention laws to make it clear that liquid natural gas is  
13 not oil.
- 14 12. It amends the laws on registration of underground oil storage tanks to require that  
15 such tanks be registered within the year preceding installation.
- 16 13. It amends the laws governing abandonment and removal of oil storage facilities  
17 to allow flexibility in providing notice to the department in advance of removal work.
- 18 14. It amends the oil spill remediation laws to make it clear that the costs of cleaning  
19 up discharges from aboveground home heating oil tanks are eligible for coverage by the  
20 Ground Water Oil Clean-up Fund whether or not the tank is constructed of fiberglass,  
21 cathodically protected steel or other noncorrosive material. It also deletes obsolete  
22 language related to eligibility for fund coverage of discharges that were discovered before  
23 October 1, 1999.
- 24 15. It amends the oil spill remediation laws to provide that oil cleanup costs from  
25 leaking storage tanks are eligible for coverage by the Ground Water Oil Clean-up Fund if  
26 the applicant for coverage such as the tank owner or operator pays the applicable  
27 statutory deductibles.
- 28 16. It limits the liability of municipalities that acquire oil storage facilities through  
29 tax delinquency proceedings.
- 30 17. It repeals and replaces Title 38, section 584-A to provide that references to  
31 ambient air quality standards refer to national ambient air quality standards.
- 32 18. It amends the wellhead protection laws to extend the siting restrictions on  
33 automobile maintenance shops to public works garages and other noncommercial  
34 facilities where motor vehicles are serviced.
- 35 19. It amends the wellhead protection laws to eliminate language regarding the  
36 applicability of wellhead siting restrictions to development under construction. The  
37 language has been rendered obsolete by the passage of time.

1           20. It amends the mercury products laws to consolidate restrictions on the sale of  
2 mercury-added batteries.

3           21. It amends the mercury products laws to clarify that automakers must pay the  
4 minimum \$4 amount for mercury switches from motor vehicles if the year, make and  
5 model of the vehicle are provided.

6           22. It amends the laws governing recycling of mercury thermostats to clarify the  
7 requirements for distribution of collection bins to recycling locations. It also amends the  
8 provisions requiring thermostat manufacturers to pay a \$5 bounty on each mercury  
9 thermostat returned for recycling by clarifying that the bounty is owed whether or not the  
10 thermostat is returned with the exterior cover intact.

11          23. It consolidates reporting requirements under the thermostat recycling and product  
12 stewardship laws.

13          24. It amends the product stewardship laws to make explicit that product  
14 manufacturers may create a stewardship organization to implement their responsibilities  
15 for managing the environmental impacts of their products.

STATE OF MAINE  
125TH LEGISLATURE

LEGISLATIVE NOTICES

JOINT STANDING COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Sen. Thomas B. Saviello, Senate Chair  
Rep. James M. Hamper, House Chair

PUBLIC HEARING: Tuesday, April 26, 2011, 1:00 PM, Cross Building Room 216

- (L.D. 1398) Bill "An Act To Amend the Laws Administered by the Department of Environmental Protection" (HP1027) (Presented by Representative HAMPER of Oxford) (Cosponsored by Representative DUCHESNE of Hudson, Representative LONG of Sherman, Representative PARKER of Veazie) Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
- (L.D. 1156) Bill "An Act To Exempt from Subdivision Requirements Land Sold by 65 Years of Age or Older Persons" (HP0854) (Presented by Representative KNIGHT of Livermore Falls) (Cosponsored by Senator KATZ of Kennebec, Senator LANGLEY of Hancock, Senator MASON of Androscoggin, Senator TRAHAN of Lincoln, Representative FOSSEL of Alna, Representative HARMON of Palermo, Representative PICCHIOTTI of Fairfield, Representative WINTLE of Garland)
- (L.D. 1328) Bill "Resolve, To Create a Working Group To Study the Subdivision Laws" (HP0974) (Presented by Representative MORISSETTE of Winslow) (Cosponsored by Senator WHITTEMORE of Somerset, Representative BENNETT of Kennebunk, Representative COTTA of China, Representative FITTS of Pittsfield, Representative HARVELL of Farmington, Representative KESCHL of Belgrade, Representative O'CONNOR of Berwick, Representative PARRY of Arundel, Representative SIROCKI of Scarborough)
- (L.D. 1387) Bill "An Act To Restore Exemptions in the Natural Resources Protection Act" (HP1020) (Presented by Representative CEBRA of Naples) (Cosponsored by Senator SAVIELLO of Franklin) Submitted by the Department of Transportation pursuant to Joint Rule 204.
- (L.D. 1250) Bill "An Act To Improve Oil Storage Facility Operator Training" (SP0371) (Presented by Senator DIAMOND of Cumberland) (Cosponsored by Senator MCCORMICK of Kennebec, Senator SAVIELLO of Franklin, Representative GOODE of Bangor, Representative PLUMMER of Windham, Representative RUSSELL of Portland)
- (L.D. 1390) Bill "An Act To Revise the Reporting Requirements for Oil Spills" (SP0430) (Presented by Senator SNOWE-MELLO of Androscoggin)
- (L.D. 515) Bill "An Act To Review State Water Quality Standards" (SP0148) (Presented by Senator SAVIELLO of Franklin)
- (L.D. 1458) Bill "An Act To Transfer Recycling Technical Assistance and Solid Waste Policy Responsibilities from the State Planning Office to the Department of Environmental Protection" (HP1073) (EMERGENCY) (Presented by Representative MOULTON of York) (Cosponsored by Senator SULLIVAN of York, Representative GRAHAM of North Yarmouth, Representative HINCK of Portland)

CONTACT PERSON:

Krysta LillyBrown  
100 State House Station  
Augusta, ME 04333-0100  
287-4149

WORK SESSION AGENDA

ENVIRONMENT AND NATURAL RESOURCES

5/3/2011

1:00 PM

Cross Building Room 216

- (L.D. 1398) Bill "An Act To Amend the Laws Administered by the Department of Environmental Protection" (HP1027) (Presented by Representative HAMPER of Oxford) (Cosponsored by Representative DUCHESNE of Hudson, Representative LONG of Sherman, Representative PARKER of Veazie) Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
- (L.D. 1156) Bill "An Act To Exempt from Subdivision Requirements Land Sold by 65 Years of Age or Older Persons" (HP0854) (Presented by Representative KNIGHT of Livermore Falls) (Cosponsored by Senator KATZ of Kennebec, Senator LANGLEY of Hancock, Senator MASON of Androscoggin, Senator TRAHAN of Lincoln, Representative FOSSEL of Alna, Representative HARMON of Palermo, Representative PICCHIOTTI of Fairfield, Representative WINTLE of Garland)
- (L.D. 1328) Bill "Resolve, To Create a Working Group To Study the Subdivision Laws" (HP0974) (Presented by Representative MORISSETTE of Winslow) (Cosponsored by Senator WHITTEMORE of Somerset, Representative BENNETT of Kennebunk, Representative COTTA of China, Representative FITTS of Pittsfield, Representative HARVELL of Farmington, Representative KESCHL of Belgrade, Representative O'CONNOR of Berwick, Representative PARRY of Arundel, Representative SIROCKI of Scarborough)
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- (L.D. 515) Bill "An Act To Review State Water Quality Standards" (SP0148) (Presented by Senator SAVIELLO of Franklin)
- (L.D. 510) Bill "An Act To Exclude Shellfish Processing Facilities from Arsenic Wastewater Testing" (SP0143) (EMERGENCY) (Presented by Senator SNOWE-MELLO of Androscoggin)

CONTACT PERSON:

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WORK SESSION AGENDA

ENVIRONMENT AND NATURAL RESOURCES

5/11/2011

1:00 PM

Cross Building Room 216

- (L.D. 1398) Bill "An Act To Amend the Laws Administered by the Department of Environmental Protection" (HP1027) (Presented by Representative HAMPER of Oxford) (Cosponsored by Representative DUCHESNE of Hudson, Representative LONG of Sherman, Representative PARKER of Veazie) Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
- (L.D. 839) Bill "Resolve, To Study Motor Fuel and Fuel Additives and To Explore Alternatives to Ethanol Motor Fuel" (HP0636) (Presented by Representative O'CONNOR of Berwick) (Cosponsored by Senator THOMAS of Somerset, Representative DUNPHY of Embden, Representative GIFFORD of Lincoln, Representative HARVELL of Farmington, Representative LIBBY of Waterboro, Representative MACDONALD of Boothbay, Representative MALABY of Hancock, Representative MCCLELLAN of Raymond, Representative PARRY of Arundel, Representative STEVENS of Bangor)
- (L.D. 1434) Bill "An Act To Streamline the Waste Motor Oil Disposal Site Remediation Program" (HP1055) (EMERGENCY) (Presented by Representative MARTIN of Eagle Lake) (Cosponsored by Senator SAVIELLO of Franklin, Senator GOODALL of Sagadahoc, Representative DUCHESNE of Hudson)
- ~~(L.D. 1202) Bill "An Act To Equalize the Premiums Imposed on the Sale of Motor Vehicle Oil" (HP0893) (Presented by Representative HARVELL of Farmington)~~
- (L.D. 1250) Bill "An Act To Improve Oil Storage Facility Operator Training" (SP0371) (Presented by Senator DIAMOND of Cumberland) (Cosponsored by Senator MCCORMICK of Kennebec, Senator SAVIELLO of Franklin, Representative GOODE of Bangor, Representative PLUMMER of Windham, Representative RUSSELL of Portland)
- (L.D. 1320) Bill "An Act To Increase the Recycling Rate in Maine" (HP0966) (Presented by Representative WELSH of Rockport) (Cosponsored by Senator SAVIELLO of Franklin, Representative CAIN of Orono, Representative CHAPMAN of Brooksville, Representative DUCHESNE of Hudson, Representative GRAHAM of North Yarmouth, Representative KNAPP of Gorham)

- (L.D. 510) Bill "An Act To Exclude Shellfish Processing Facilities from Arsenic Wastewater Testing" (SP0143) (EMERGENCY) (Presented by Senator SNOWE-MELLO of Androscoggin)
- (L.D. 515) Bill "An Act To Review State Water Quality Standards" (SP0148) (Presented by Senator SAVIELLO of Franklin)
- (L.D. 981) Bill "An Act To Increase Recycling Jobs in Maine and Lower Costs for Maine Businesses Concerning Recycled Electronics" (HP0725) (Presented by Representative INNES of Yarmouth) (Cosponsored by Senator SNOWE-MELLO of Androscoggin, Senator GOODALL of Sagadahoc, Senator RECTOR of Knox, Senator WOODBURY of Cumberland, Representative BICKFORD of Auburn, Representative BOLDUC of Auburn, Representative CHIPMAN of Portland, Representative DUCHESNE of Hudson, Representative KESCHL of Belgrade)
- (L.D. 1387) Bill "An Act To Restore Exemptions in the Natural Resources Protection Act" (HP1020) (Presented by Representative CEBRA of Naples) (Cosponsored by Senator SAVIELLO of Franklin) Submitted by the Department of Transportation pursuant to Joint Rule 204.
- (L.D. 159) Bill "An Act To Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management" (SP0052) (Presented by Senator SAVIELLO of Franklin) (Cosponsored by Senator COLLINS of York, Senator RECTOR of Knox, Senator SNOWE-MELLO of Androscoggin, Senator THIBODEAU of Waldo, Senator THOMAS of Somerset, Senator TRAHAN of Lincoln, Representative CEBRA of Naples)

CONTACT PERSON:

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Krysta LillyBrown  
100 State House Station  
Augusta, ME 04333-0100  
287-4149



# **GENERAL DYNAMICS**

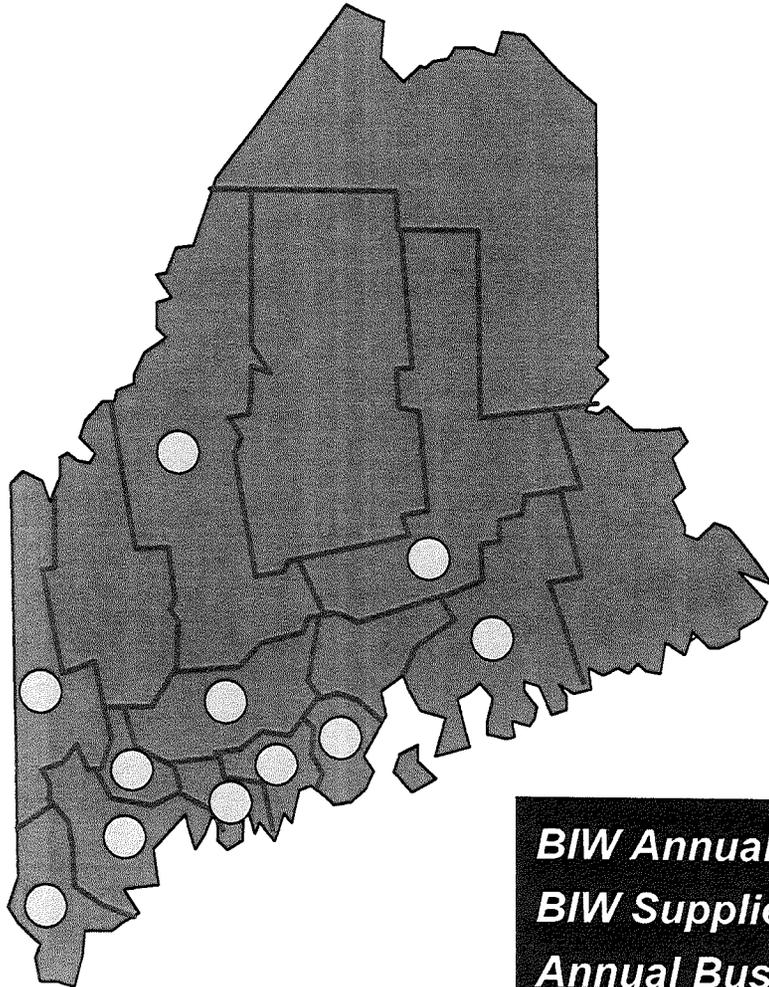
Bath Iron Works

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**An Act to Amend the Laws  
Administered by the Department of  
Environmental Protection  
HP 1027, LD 1398**

**Public Testimony of Jon A. Fitzgerald**  
April 26, 2011

# BIW Sales Impact on Maine Economy



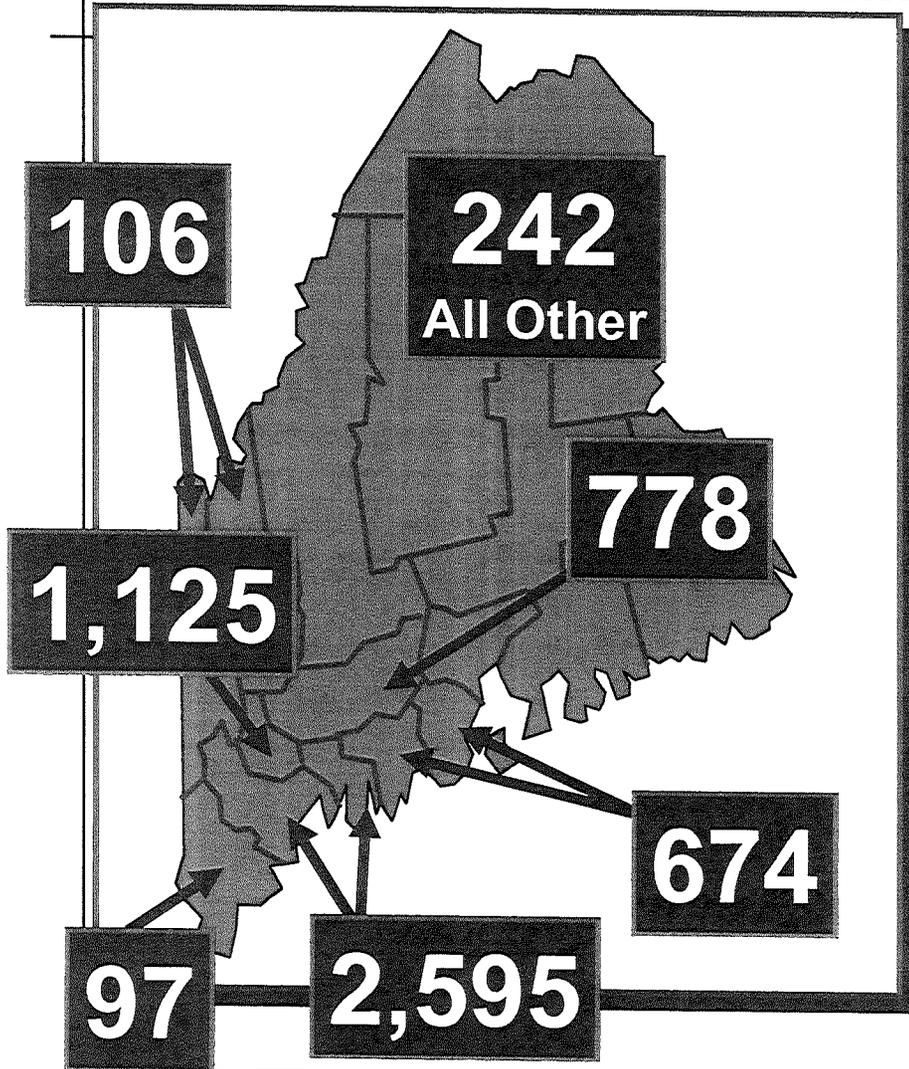
*In 2010, BIW did business in  
11 Maine counties*

- Cumberland
- Androscoggin
- Penobscot
- Sagadahoc
- Lincoln
- Somerset
- Kennebec
- Knox
- Hancock
- Oxford

<b>BIW Annual Payroll:</b>	<b>&gt;\$325M</b>
<b>BIW Suppliers in Maine:</b>	<b>425+</b>
<b>Annual Business w/ME Suppliers:</b>	<b>~\$52M</b>

# Current BIW Employee Distribution

## It's About Jobs in Maine



County	Total
ANDROSCOGGIN	1,125
AROOSTOOK	3
CUMBERLAND	989
FRANKLIN	37
HANCOCK	0
KENNEBEC	778
KNOX	99
LINCOLN	575
OXFORD	69
PENOBSCOT	17
PISCATAQUIS	4
SAGADAHOC	1,606
SOMERSET	70
WALDO	58
WASHINGTON	4
YORK	97
Out of State	86
<b>Grand Total</b>	<b>5,617</b>

Cities/Towns with > 25 employees			
Bath	511	Greene	75
Brunswick	470	Waldoboro	57
Lewiston	295	Freeport	55
Topsham	248	Pittston	55
Woolwich	194	Harpswell	54
Wiscasset	157	Georgetown	42
Auburn	148	Whitefield	42
Lisbon Falls	136	Monmouth	39
Bowdoin	133	South Portland	39
Lisbon	125	West Gardiner	37
Richmond	125	Jefferson	34
Phippsburg	112	Winslow	33
West Bath	106	Waterville	32
Bowdoinham	104	Nobleboro	30
Durham	102	Yarmouth	30
Augusta	101	Farmingdale	29
Sabattus	98	Sidney	29
Litchfield	90	Chelsea	28
Dresden	85	Randolph	28
Portland	83	Fairfield	27
Gardiner	82		

**GENERAL DYNAMICS**  
Bath Iron Works

# Clarification of SA Water Boundaries in Phippsburg

## CURRENT STATUTORY LANGUAGE

- Maine law (38 MRSA § 469(5)(B)(1)), defines the following as Class SA waters:
  - B. Phippsburg.
    - (1) Tidal waters east of longitude 69°-50'-05" W. and west of longitude 69°-47'-00" W. - Class SA.
    - The language refers to “tidal waters only.” Numerous other statutory references refer to “tidal waters of the [name] river,” which indicates that when the Legislature intended to include tidal waters of rivers it specifically stated so.
    - This section lacks a latitudinal reference which would have boxed in the SA area. However, these lines intersect at the coast, thereby creating a natural boundary and not requiring a latitudinal reference. (See DEP Maps of Coast and Section B).
- **Conclusion:** The exclusion of a reference to the Kennebec River suggests that the Legislature did *not* intend to include tidal waters of the Kennebec River in Phippsburg as Class SA waters.

# Clarification of SA Water Boundaries in Phippsburg

---

- The language of Section 469 breaks down its classifications by town, and the name of the town in the heading governs the locations of the classifications.
  - Thus, it is clear that the tidal waters of the Kennebec River in Georgetown, Arrowsic, and Bath are Class SB.
- **Conclusion:** It would make no sense to classify the tidal waters on the west side of the Kennebec River as Class SA and the waters on the east side as Class SB. (See BIW generated Map).

# Clarification of SA Water Boundaries in Phippsburg

---

- Legislative History – 1990 LD 2244
  - A comprehensive rewrite of the State’s classification statutes establishing the Phippsburg Class SA segment and including upgrades of many coastal waters to Class SA.
  - 02/13/1990- Dean Marriott (then DEP Commissioner) testified:
    - “Upgrades to Class SA are recommended for many coastal waters located adjacent to publicly-owned lands and lands managed by the Nature Conservancy and the Maine Coast Heritage Trust if there are no existing discharges.”
  - The Maine Audubon Society also testified on the 1990 reclassification proposal.
    - Karin Tilburg noted that there were numerous upgrades to SA including “areas near Scarborough Marsh and the Popham Beach vicinity.”
- **Conclusion:** This testimony indicates that the intent of the upgrade to SA was to protect areas such as Popham Beach and the waters immediately adjacent to publicly-owned lands, rather than extending miles inland up the Kennebec River.

# Clarification of SA Water Boundaries in Phippsburg

## MAINE DEP PRACTICE

- Since 1990, the DEP has consistently applied the interpretation that the Kennebec River in Phippsburg is Class SB rather than SA.
  - Maps prepared by the Maine DEP in 2005 and posted on their website.
    - Show the northerly boundary of the SA waters in Phippsburg ending at the coastline and not extending up the Kennebec River.
  - Maine DEP has authorized discharges in areas within the longitude lines inland of the coast.
  - Permitted dredging activity since 1997 by both the ACoE (Doubling Point) and BIW (Dry-dock Basin) has allowed in-river disposal.
- In the 21 years since the 1990 Legislative revision to the SA waters classifications there has been no claim that the Kennebec River is SA waters.
- The permit issued in April 2011, by DEP to ACoE addressed existing scenic, aesthetic, recreational and navigational issues, geological considerations, habitat considerations, water quality, wetlands and water bodies protection, and dredge spoils transportation.
  - The DEP allowed in-river disposal, subject to Maine Legislature correction of the classification of the intertidal portions of the Kennebec River from the mouth of the river to the Bath town line to be SB waters.

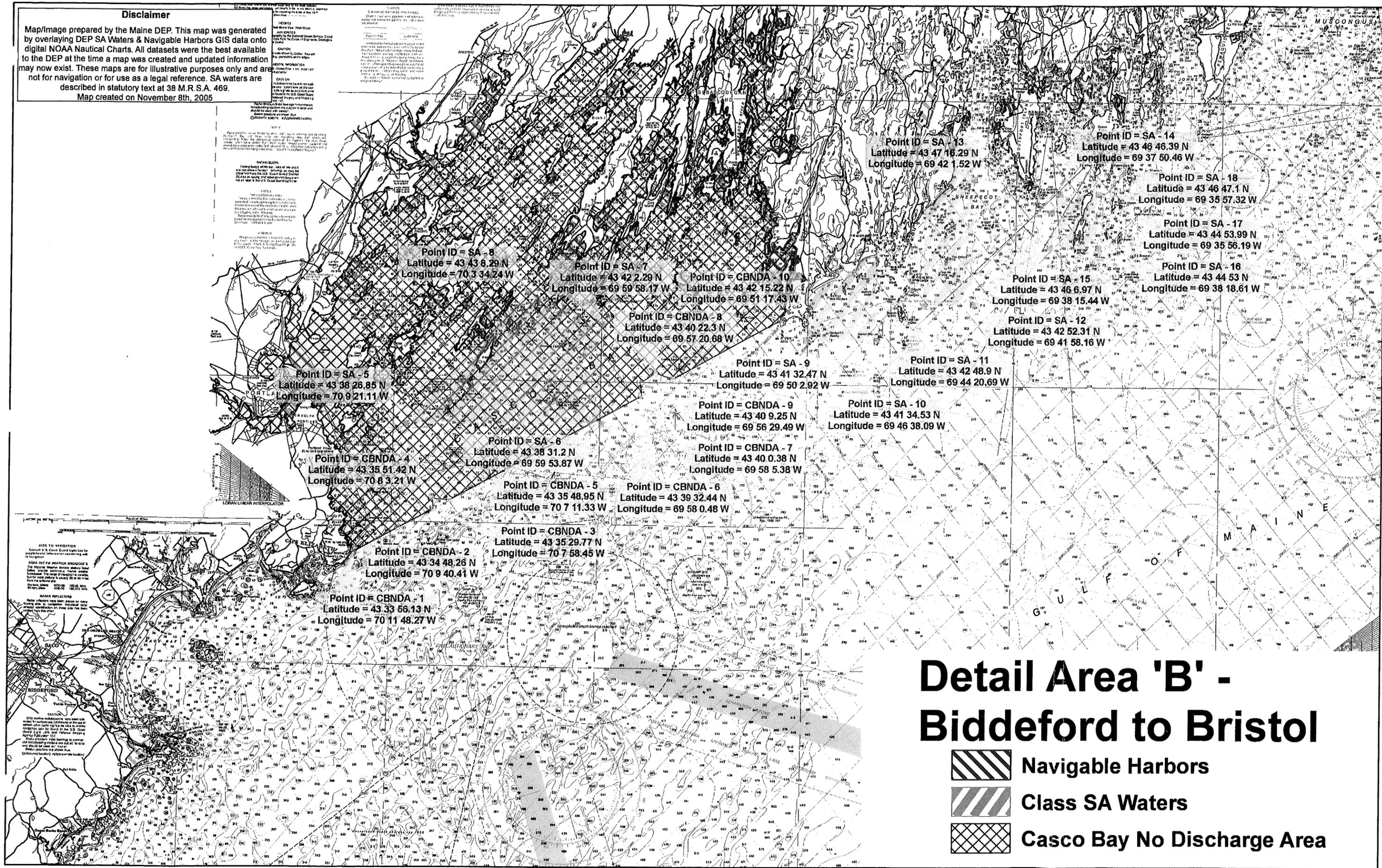
# Clarification of SA Water Boundaries in Phippsburg

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- Summary – Clarification of the Kennebec River as SB Waters is consistent with the statutory intent and long-standing interpretation and practice. In addition, it would be contrary to logic to interpret one-half of a river to be SA and one-half to be SB.

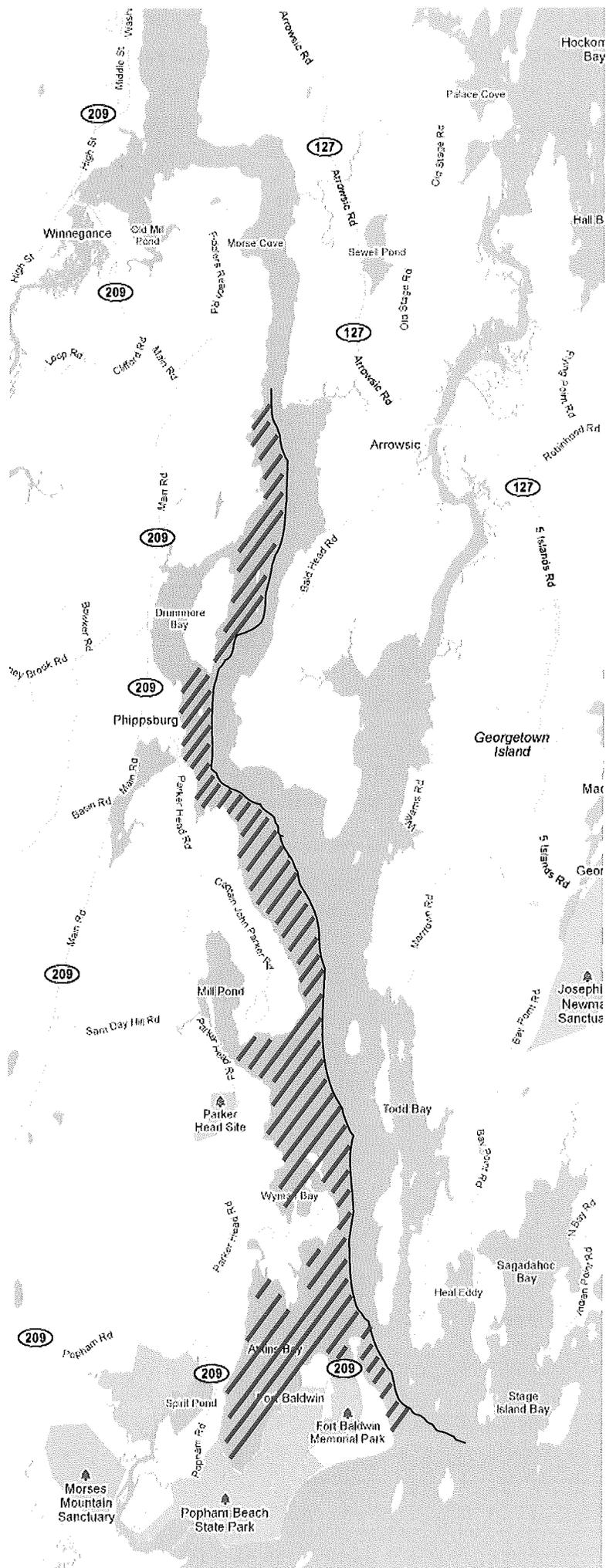
**Disclaimer**

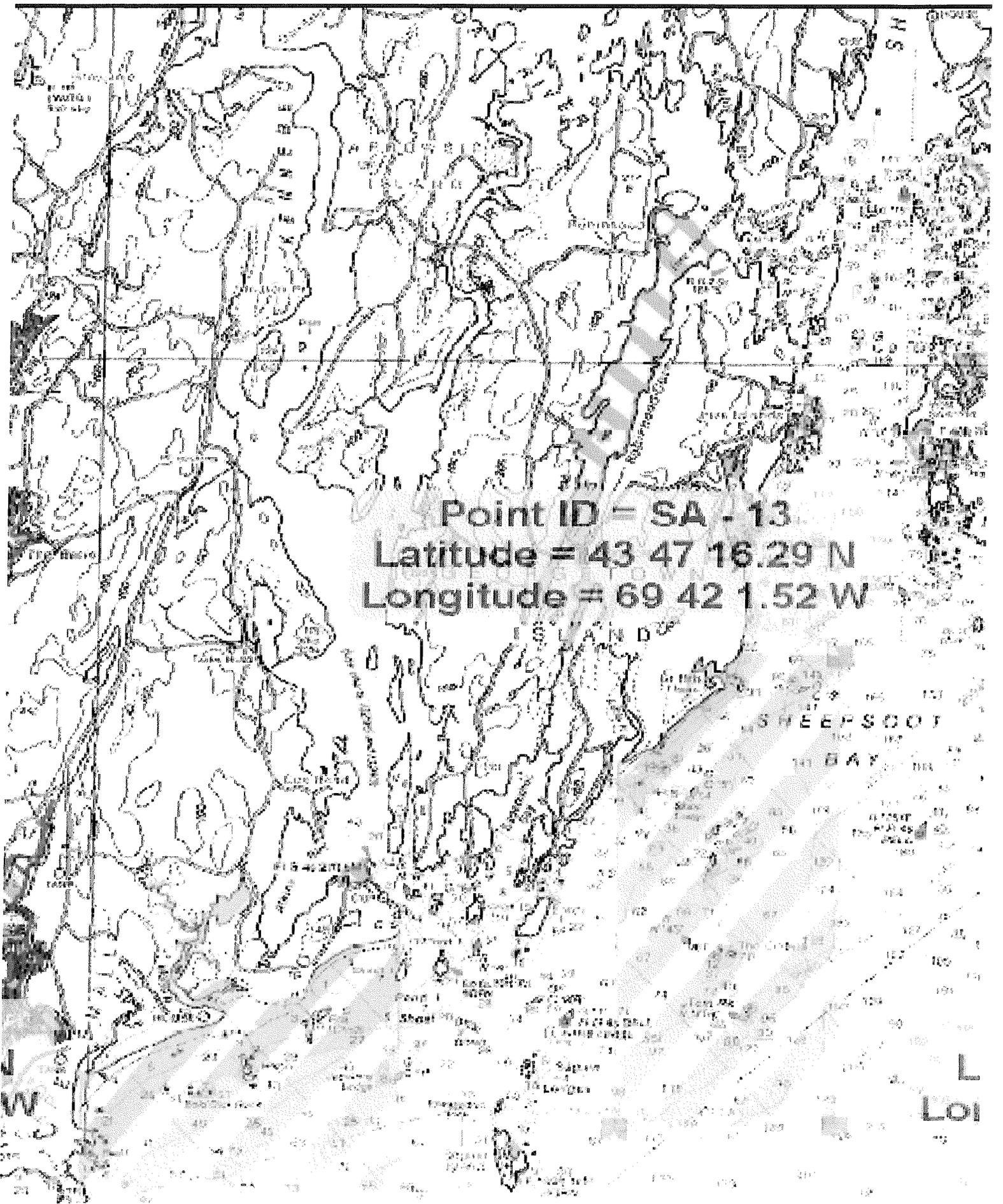
Map/Image prepared by the Maine DEP. This map was generated by overlaying DEP SA Waters & Navigable Harbors GIS data onto digital NOAA Nautical Charts. All datasets were the best available to the DEP at the time a map was created and updated information may now exist. These maps are for illustrative purposes only and are not for navigation or for use as a legal reference. SA waters are described in statutory text at 38 M.R.S.A. 469.  
Map created on November 8th, 2005



# Detail Area 'B' - Biddeford to Bristol

-  Navigable Harbors
-  Class SA Waters
-  Casco Bay No Discharge Area





Point ID = SA - 13

Latitude = 43 47 16.29 N

Longitude = 69 42 1.52 W

## **Statement on LD 1398**

Mr. Chairman and members of the committee: My name is Bob Cummings. I live in Phippsburg and have lived almost my entire life on or near the Kennebec River estuary. I am here to urge rejection of LD 1398, in part because it contains major changes in the regulatory regime dealing with water quality and land protection that are far too complex to be considered properly in a single omnibus bill.

But most importantly, because LD 1398 lowers the water quality classification of the Kennebec River along the shoreline of Phippsburg. I've been involved in seeking improvements to the quality of the waters of the Kennebec since paddling the river near my then home in Bath in a homemade skiff in the 1930s. Then untreated human wastes commonly floated by our little skiff. And we were warned not to eat striped bass we caught in the dirty waters.

As an adult I attended in 1958 the first meeting between the Department of Marine Resources and Phippsburg shellfish harvesters at which we were told that the Kennebec was too polluted for the harvesting of shellfish and would likely remain that way forever. Later still, I served a decade as a member of the Phippsburg Conservation Commission, 12 years as an elected Selectman, and for the last 20 years as a member of the Phippsburg Shellfish Conservation Commission.

During my four terms as a member, the Phippsburg Board of Selectmen successfully fought with DMR to reopen our clam flats to commercial harvesters for the first time since the 1950s. As a board 20 years ago, we also strongly supported the reclassification of the river to SA.

Now we are being told belatedly that the reclassification was just a mistake, a mistake so heinous that it doesn't even warrant having the DEP board follow the state law that requires public hearings in or near the communities affected by water classification changes. No one in town was notified of the proposed change in classification, not the Board of Selectmen, not the town administrator, not the Phippsburg Conservation Commission, and not even the Shellfish Conservation Commission. We learned of the proposed change from rumors about this allegedly routine omnibus bill. I was appalled when I downloaded the bill and discovered the rumors were true. I was even more disturbed when I was told that no hearing in Phippsburg was needed because our top clean water classification had been imposed by mistake.

Maybe. But it was a change that had been widely discussed, and strongly supported, by residents of Phippsburg, who have voted for clean waters time and time again at town meetings.

If a mistake was made, it was not that our waters are too dirty for an SA classification. It is more likely that the bill that changed the classification 20 years ago was amended to mistakenly exclude Georgetown waters located on the other side of the estuary.

Because of our half century of effort, 40 Phippsburg families now earn a significant part of their incomes from harvesting shellfish from the vast tidal flats at the mouth of the Kennebec River. The natural question these families ask is how this lower classification impacts the quality of our waters, and the incomes that clean waters allow. No one has yet told us. A DMR representative could only say the obvious: "A lower classification means that less protection."

This bill should be rejected in its entirety. Before further considering a reclassification of Phippsburg waters, this committee should advise the Board of Environmental Protection to carry out its Legislative mandate, which requires it to hold hearings in or near Phippsburg so that we who are most affected can express our concerns and ask questions about the potential impact on the quality of our waters, and the jobs that quality permits.

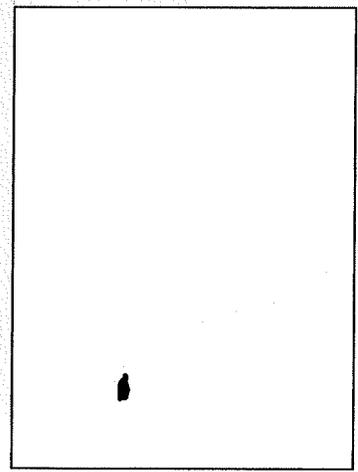
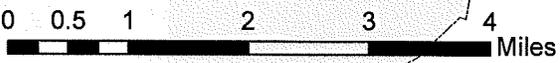
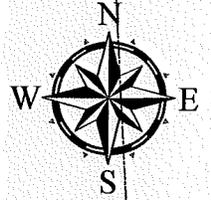
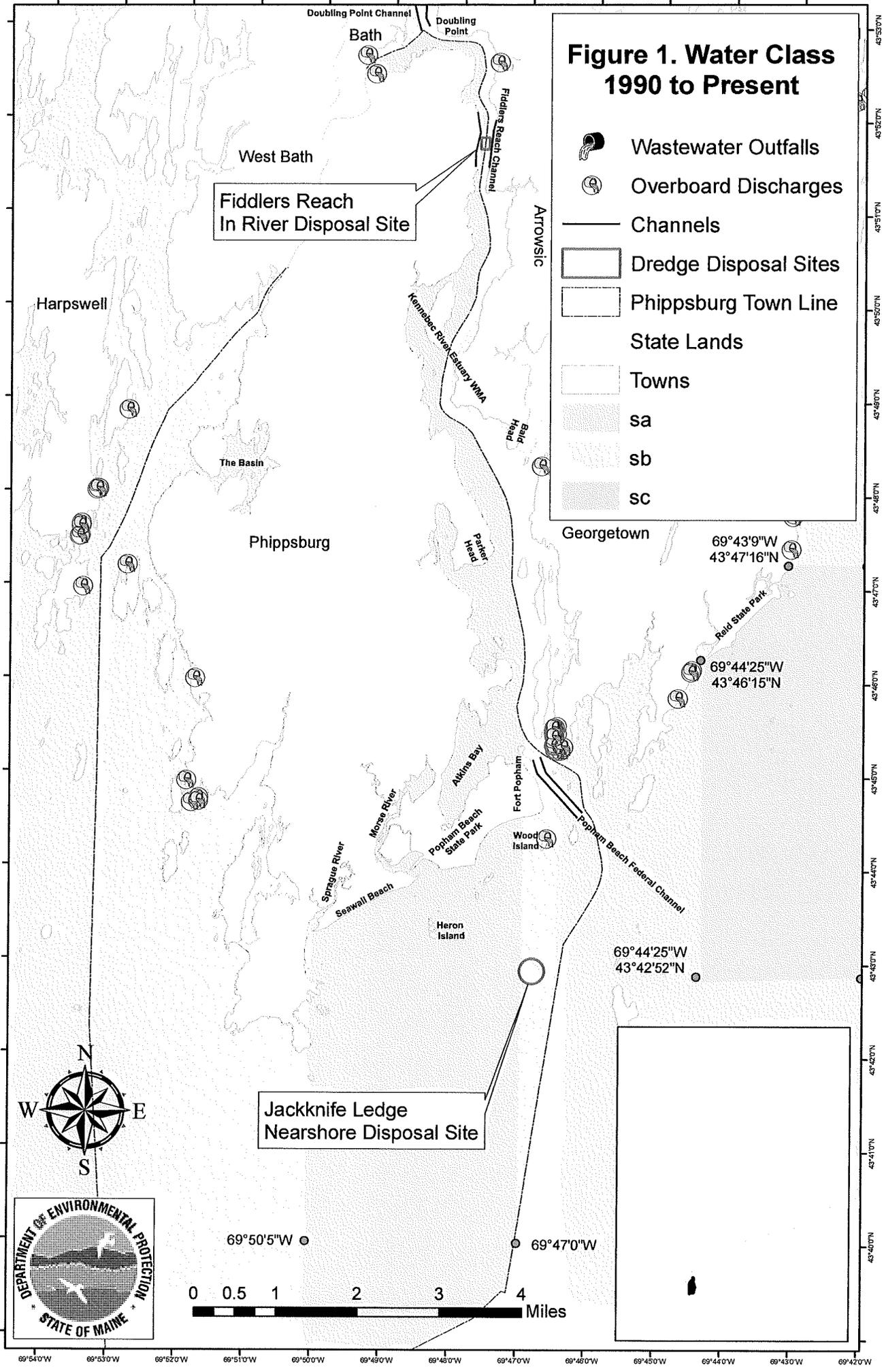
Let me just briefly mention the other sections of LD 1398 that impact how clean water and land use laws are to be enforced. These, I believe, are too important to be relegated to an omnibus bill. Such major changes, probably, can only be properly considered by separate hearings.

Sincerely,

Bob Cummings, 616 Main Road, Phippsburg, 04562

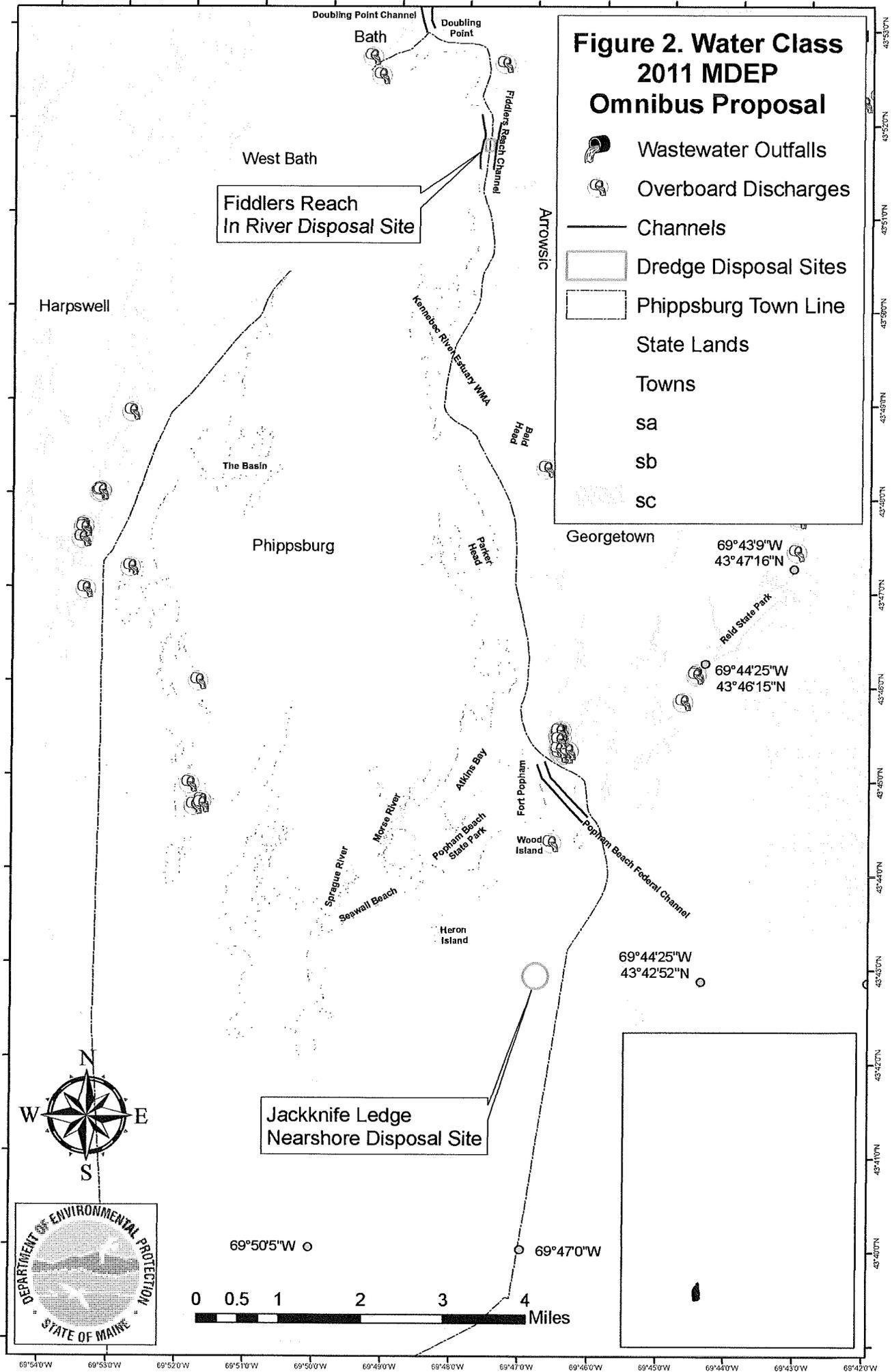
**Figure 1. Water Class 1990 to Present**

-  Wastewater Outfalls
-  Overboard Discharges
-  Channels
-  Dredge Disposal Sites
-  Phippsburg Town Line
-  State Lands
-  Towns
-  sa
-  sb
-  sc



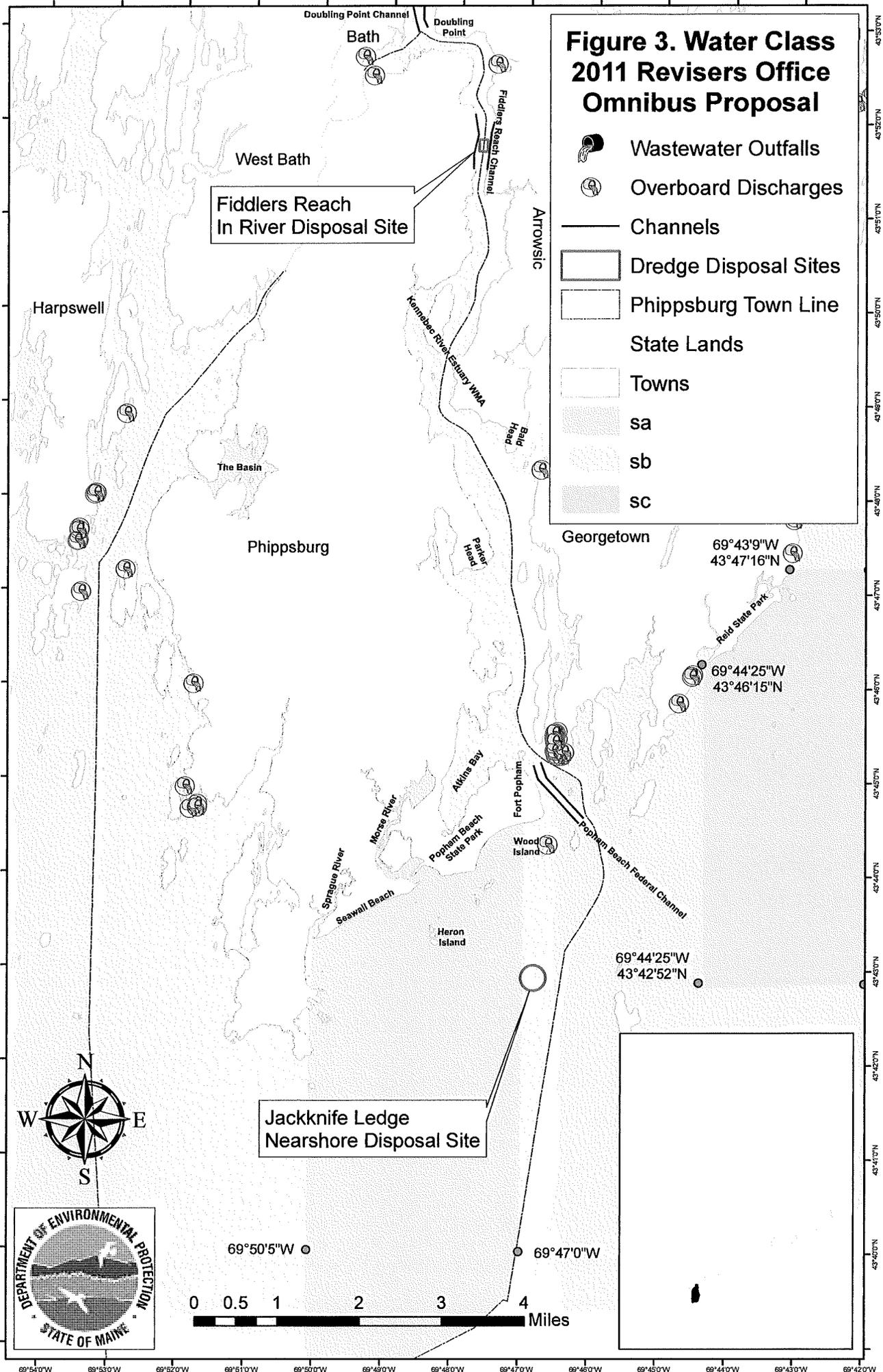
# Figure 2. Water Class 2011 MDEP Omnibus Proposal

-  Wastewater Outfalls
-  Overboard Discharges
-  Channels
-  Dredge Disposal Sites
-  Phippsburg Town Line
-  State Lands
-  Towns
- sa
- sb
- sc

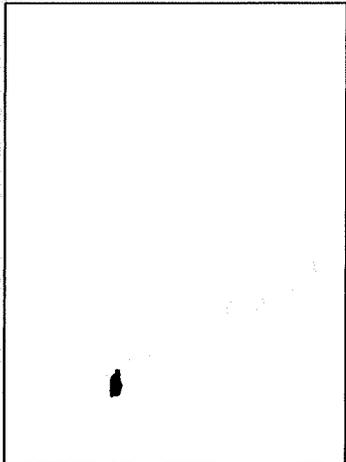


**Figure 3. Water Class 2011 Revisers Office Omnibus Proposal**

-  Wastewater Outfalls
-  Overboard Discharges
-  Channels
-  Dredge Disposal Sites
-  Phippsburg Town Line
-  State Lands
-  Towns
-  sa
-  sb
-  sc



0 0.5 1 2 3 4 Miles



Testimony in Opposition to LD 1398  
Specifically the revision to Sec. 11.38 MRSA §469.5B Phippsburg

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

Prepared by Brenda Cummings  
On the behalf of the Phippsburg Shellfish Committee and the Phippsburg Land Trust  
April 26, 2011

Members of the committee, my name is Brenda Cummings. Though I live in Bath now, I grew up in Phippsburg on the shores of Drummore Bay on the Kennebec River. I have been the recording secretary to the Phippsburg Shellfish Committee for the last 9 or 10 years, and I am the current President of the Phippsburg Land Trust.

In my capacity as the recording secretary of the Phippsburg Shellfish Committee, I am here to present a petition, signed by 242 people who live and work on the Kennebec River. I have a very short additional comment to add as my personal testimony and the comments of the Phippsburg Land Trust.

The petition reads as follows [See attached petitions]:

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The following are my comments, as an individual and as President of the Phippsburg Land Trust, a community land trust that preserves, protects and stewards the special wild and natural places in Phippsburg for the benefit and education of our children, grandchildren and future generation. We currently protect 800 acres of land in Phippsburg through easements and fee ownership; more than half of these acres abut or drain into or are viewsheds along the Kennebec River.

The people who signed this petition and those who are here today from Phippsburg and surrounding towns are all committed to keeping the Kennebec as clean and as healthy as possible.

We are here because we care about this River. The quality of its waters will in large part determine the quality of our lives on its shore... including whether we will be able to keep our fisheries alive, in the long run, and, more immediately, whether the 40 people who hold commercial shellfishing licenses are able to take care of their families this winter. We know we are not the only ones who rely on the River, and we no more want to end the long tradition of shipbuilding on the Kennebec River than we want to end the long traditions of travelling on and catching fish in its waters, shellfish harvesting on its flats, or fishing for lobsters at its mouth.

We believe all these uses can indeed coexist in Class SA waters. If they cannot, then the DEP has the responsibility, under state and federal law, to explain how and in what ways they cannot, and which sacrifices must be made.

LD 1398 proposes an end run around this process that is not necessary. There is no urgency to this matter - the Navy's proposed dredging project and the delivery of the Spruance can be managed in numerous ways within the SA classification, and all these options are already being discussed behind the scenes. The DEP has known for at least a year that their mapping of SA and SB was not in accordance with the law as written, but they haven't discussed this with anyone in Phippsburg or done the research into the matter that the law requires. The DEP's December 2010 biennial report to the EPA also did not correctly reflect the legal status of the Kennebec River. I urge you to vote no on LD1398 or to remove this provision from the bill and to insist that the DEP fill the requirements of state and federal law.

The Kennebec River's water quality is not only of the utmost concern to those of us in this room; it is also invaluable to future generations who live and work here. It should not be quickly bargained away in a shortsighted effort to, it appears, wash away many years of errors. Instead, we should use this as an opportunity to have an open and thorough conversation regarding the River's future, and to insist on the highest possible water quality standards in order to protect the Kennebec River's essential environmental and economic uses.

Thank you for providing an opportunity to address the Environment and Natural Resources Committee of the Legislature on this matter. I appreciate your consideration.

## **Phippsburg Kennebec Waters Reclassification to Class SB**

*LD 1398 Committee Hearing, Tuesday, April 26 at 1:00 pm, Cross Office Building, Room 216, Augusta*

We, the undersigned, urge the Legislature reject the changes proposed in the DEP Omnibus Bill, LD 1398, which would reclassify the Kennebec River in Phippsburg from SA to SB. Reclassification of the Kennebec River in Phippsburg has not been explained and the full impact of such a change has not been discussed and evaluated by the state agencies and water pollution control agencies and the residents in the town of Phippsburg. Such discussions, evaluations and explanations are required under State law and the Clean Water Act.

The proposed changes to the Phippsburg waters designated as Class SA in LD 1398 (Sec. 11. 38 MRSA §469 5B (Phippsburg)) are not "housekeeping" changes; the existing language has been in place for over 20 years. The only urgency to make this change is an effort to change the rules so that disposal of dredge spoils in the Kennebec River in August of 2011 will be more easily permitted.

### **The Changes Proposed for Phippsburg are Inconsistent, Unexplained, and Not Fully Studied**

The proposed changes to Phippsburg's water classification are incomplete and inconsistent. One version of the legislation continues to protect the south shore of Atkins Bay; the Revisor's Office version eliminates that protection. Phippsburg residents and others who depend on these waters for fishing and tourism deserve the right to comment on and learn the intent of these proposed changes, and the impact of all the alternatives.

### **Keeping the Kennebec River Class SA for Now Does Not Prevent Dredging.**

Allowing the legally-mandated process for reclassification to go forward does not prevent dredging in the river this summer. All the areas that are proposed to be dredged may be dredged. The Spruance has already travelled in and out of the Kennebec River (in February-March, 2011). If dredging is needed before her September 1 delivery date, options such as minimal dredging and upland and offshore disposal in a permitted site are practicable but have not yet been explored.

### **Whether the Kennebec River is Classed as SA or SB, the Proposal for August Dredging is Flawed**

- August is the peak period of a short summer tourism and fishery season. Lobstermen, shellfish harvesters, bed and breakfast inns, stores, tour boat operators, sports fishing guides, and others who serve these industries **risk losing their jobs or a significant portion of their income** through the impact of up to 30 days of round the clock dredging and disposal operations on the Kennebec River and at Popham Beach.
- August is when juvenile clams and lobster are most at risk from the side effects of dredging and disposal. Destruction of future year's harvests **risks the local fishing industry's long-term survival.**
- Silt and pollution from the dredging and disposal are **likely to shut down the Kennebec River shellfish flats**, not permitted under either the SA or the SB classification.

### **Support Maine Law and Support the Public Hearing Process**

Please support the public hearing process, which has not yet occurred, and transparency for reclassification of state waters as required in Maine law.

### ***Maine Revised Statutes: Title 38 Water and Navigation: Section 464 Classification of Maine waters.***

#### ***2. Procedures for reclassification. Reclassification of state waters shall be governed by the following provisions.***

*A. Upon petition by any person or on its own motion, the board may initiate, following public notice, and the commissioner shall conduct classification studies and investigations. Information collected during these studies and investigations must be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water classification. [1989]*

*B. The board shall hold public hearings in the affected area, or reasonably adjacent to the affected area, for the purposes of presenting to all interested persons the proposed classification for each particular water body and obtaining public input. [1989.]*

## Testimony in Opposition to LD 1398

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

Prepared by Laura Sewall. April 26, 2011

Senator Saviello, Representative Hamper, and Distinguished Members of the Joint Committee on Environment and Natural Resources:

My name is Laura Sewall. I am a resident of Phippsburg and the Director of the Bates-Morse Mountain Conservation Area, a coastal preserve in Phippsburg visited by some 20,000 people each year. I am also Assistant Director of the Harvard Center for Community Partnerships at Bates College and I serve on the Board of Directors of Maine Rivers, a non-profit organization dedicated to protecting the waterways of our state.

I have two primary concerns with respect to this bill.

First, under § 343-D, The Pollution Prevention Advisory Committee will become The Pollution Prevention and Small Business Assistance Advisory Panel. The panel will consist of 16 members, 12 of which will be appointed by the governor, including the only two representing public health and the only two representing environmental organizations. Six members are from the small business community. Currently, and without passage of this bill, the governor appoints only 6 members and public health and environmental representatives are appointed by the President of the Senate and the Speaker of the House of Representatives.

In this political climate, does the proposed law governing these appointments honestly reflect a representative democracy? I think not. And in an age when autism, learning disabilities and numerous other neurological disorders are now understood to be largely related to the growing toxicity of our environment, and consequently, of our bodies, why would we not rely on the expertise of public health officials, and others whose business it is to be knowledgeable of the effects of toxics, to steer our policy of pollution prevention? And what about the cancers, the auto-immune diseases and liver diseases also found to be causally related to toxicity? These health issues are costly to all of us, in more ways than one, and many are rapidly increasing in prevalence.

There is nothing in this bill that shows that the 6 members of the business community will be empowered to assist businesses in meeting regulatory standards for minimizing pollution. Rather, the operative duties and powers refer to reviewing the criteria for toxics use, and submitting recommendations for statutory changes. This sounds far too much like the fox guarding the henhouse, and the overweighting of appointments made by the governor changes the rules of the game. This is not mere "house-keeping" and does not belong in an omnibus bill.

Second, under §469(5)(B)(1), a one word change, from "tidal" to "offshore", proposes the reclassification of the lower Kennebec River from SA to SB. Neither is this mere "house-keeping." For those of us living in Phippsburg it represents the unraveling of years of very hard work to clean up the Kennebec and the death knoll for a local industry that supports at least forty families. It is a sustainable food industry and way of life that is well-supported by the values and spirit of the Phippsburg community as a whole, and that the state of Maine should be proud of. And for those of us in the conservation community, such facilitation of, and planning for, the degradation of a national treasure—one of very few large estuaries on the eastern seaboard that remains healthy and fairly productive—is entirely inconsistent with the federal policies of the Clean Water Act, potentially illegal, short-sighted and negligent.

**Friends of Merrymeeting Bay**  
**P.O. Box 233**  
**Richmond, ME 04357**

**Testimony of Ed Friedman, Chair, Friends of Merrymeeting Bay**  
*Before the Environment & Natural Resources Committee*

**In Opposition of L.D. 1398:**

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

*April 26, 2011*

Senator Saviello, Representative Hamper and members of the committee, as most of you know I'm Ed Friedman, Chairman of Friends of Merrymeeting Bay [FOMB]. Thank you for allowing me to speak today regarding this bill. For those of you who don't know, Merrymeeting Bay, draining nearly 40% of Maine's waters lies at the junction of the Kennebec, Androscoggin, and four smaller rivers. The Bay, a unique freshwater tidal riverine ecosystem is known for its rare and endangered or threatened plants, fish, mussels and birds including Atlantic salmon, shortnose and Atlantic sturgeon, yellow lampmussel, bald eagle and Parker's Pipewort. It is also the largest staging ground in the northeast for migratory waterfowl. FOMB works to preserve, protect and improve this area through research, advocacy, education and land conservation.

Buried in LD 1398 is language of extraordinary significance attempting to downgrade water quality in the lower Kennebec River from Class SA prohibiting discharges, to Class SB which would permit them. We request this reclassification language be removed. As you may know, state [§464 F] and federal [40CFR § 131.2] antidegradation laws require the level of water quality necessary to protect existing uses be maintained and protected. To summarize: any change in water classification must be approved by the EPA. Any proposed downgrade must undergo a Use Attainability Analysis or UAA, which must be reviewed and ruled on by EPA before going into effect. At the end of these comments I have provided a brief legal review of the process and governing federal statute (1).

DEP would have you believe the subject Class SA area, clearly defined in Maine statute as the Kennebec River lying within the town of Phippsburg, was classified SA ~~20~~ years ago in error and should be downgraded *without going through the required process*. The amendment language is meant to facilitate a proposed US Army Corps of Engineers major dredging project in the river, designed in part for the specific autumn departure of a destroyer from Bath.

Unfortunately for DEP, there is nothing to support this position. One could just as easily argue the Georgetown side of the river was classified SB in error, because overall efforts have indeed been to improve water quality in the river; boosting wildlife populations and providing many economic benefits, whether for residents, tourists, shell fishermen, lobstermen or local businesses. Virtually all interests benefit from a clean river, virtually

no one benefits from a backsliding in water quality and many are hurt [clam flats close, beaches are closed to swimming, quality of fish worsen, odors and algae blooms proliferate, etc.].

We are not here to argue against dredging, but to suggest all parties could have their objectives met through a series of project changes to be made outside of this legislation and without the proposed downgrade.

**Problem:** *Guarantee depths for Spruance destroyer departure in September.*

**Discussion:** Currently, “sand waves” in the channel supposedly do not allow adequate departure depth although the ship has in fact made repeated trips in and out of the river during sea trials using a local pilot and sometimes leaving the channel as it is now marked. There are two endangered fish species in this part of the river: short nose sturgeon [moving back and forth] and Atlantic salmon [moving upstream] both whom are quite active during the planned dredging period in August. Atlantic sturgeon, leaving the river about this time, are considered threatened. Harbor seals are quite active here and protected under the Marine Mammal Protection Act. “Take” [including harassment, harm or killing] of any of these species is illegal without a permit from federal fishery and wildlife services. Shortnose sturgeon have been killed in past dredging operations here even in October. Typically and historically, major dredging occurs during late fall and winter months when all adverse impacts [visual, aural, navigational, wildlife, fishery, shell fishing, lobstering, tourism] are minimized. In contrast, the current plan calls for major dredging at the height of summer when all of these activities are in full swing.

**Solution:** Major dredging is not needed. Minimal dredging taking off the “wave” tops will work. Picture a shovel, rake or grader versus an excavator or a rototiller versus a sub-soil chisel plow hooked up to an industrial suction unit. Ensure future maintenance dredging is well-planned by the Army Corps to take place off-season. The current proposal appears to reflect poor planning on the part of the Corps and perhaps a lack of coordination with the Navy.

**Problem:** *What to do with dredge spoils?*

**Discussion:** Dredge spoils can be composed of coarse to fine sediments sometimes containing hazardous and economically damaging concentrations of fecal coliform bacteria or toxic contaminants. Even if contaminant-free, large deposits of sediment can create anaerobic conditions suffocating organisms [from zooplankton to shellfish] on which they may be deposited. It is illegal to deposit spoils Class SA waters. Dredge spoils routinely close shellfish flats, can interfere with normal sand nourishment and erosion processes and transport of spoils can interfere with other river and inshore users like lobstermen. Spoils also effect critically important coastal wetlands when deposits as deep as 12” cover native organisms integral to the river’s ability to function in a healthy way. Under Clean Water Act sections 401 and 404 and under Maine’s Natural Resources Protection Act, alternatives analyses must be conducted to seek out the least environmentally damaging alternatives to dredging activities. This has not been done.

**Solutions:** There are many ways of minimizing environmental, social and economic harm. Minimize dredging. Smaller amounts of dredged material, will mean less material to move, less cost and time to move it, less disturbance of the dredging area, less damage to the area spoils are dumped and that may be more easily reabsorbed into the environment. Dump dredge spoils further off shore or at upland sites. Currently, spoils from Doubling Point and BIW are dumped just a short ways down river in the high flow

narrows of Fiddler's Reach where they either flow directly back to Doubling Point on an incoming tide or flow downstream into the clam flats and coastal wetlands of the lower Kennebec. Spoils from the Popham dredge site are dumped at Jackknife Ledge just offshore west of Popham Beach State Park. Easily able to block the mouth of the Morse River here, they can cause the river mouth to exacerbating major erosion at the Park.

Most of you have heard me testify at length over years on the improved water quality of the Androscoggin River and heard my frustration at the continued reluctance of the DEP and this Committee to recognize that improvement. The towns along the river are crying out for continued economic benefits from this and you continue to refuse them. About 8 years ago FOMB was also here producing water quality data supporting an upgrade of the Kennebec between Augusta and Merrymeeting Bay. This upgrade was approved and the lower Kennebec is now considered a recovering treasure.

Those of us who live and work along and on these rivers have done so far too long to accept any downgrade, especially when abundant alternatives exist to potential threats. We hope you will recognize this and vote Ought Not to Pass on LD 1398 as written. We request you strike the proposed language from the LD under §469 Sagadahoc County B (3) limiting Class SA water to a 500' strip around the south end of Atkins Bay and allow the 10 year old existing language, classifying all Kennebec water in Phippsburg as SA, to stand. I should note it appears disingenuous to not have the existing language shown in 1398 as a strike out.

Another problem we have with this bill is §343-D dealing with composition and selection of the relatively successful Pollution Prevention and Small Business Advisory or Assistance Committee or Panel. Existing statute dictates a 16 member panel. Of the 16 members, 6 are appointed by the Governor, 3 by the Senate President, 3 by the Speaker, 1 each by the 2 Minority leaders and 2 by the DEP. Members can serve 2 four year terms. Under the proposed amendment, of the 16 members, 12 are now appointed by the Governor and 1 each by the 4 leaders of the legislature. Term limits for members are removed. This is no longer an adequate system of checks and balances and every left, right and centrist member of the Committee should recognize this as an unhealthy situation. We urge you to also strike these changes from the bill.

Thank you for your consideration.

#### (1) Revising Water Quality Standards

The Clean Water Act [CWA] and EPA regulations under the CWA set forth mandatory procedural and substantive requirements for revising a state water quality standard. First, state water quality standards and any amendments to them must be approved by EPA before they become effective. 33 U.S.C. § 1313; 40 C.F.R. § 131.21. Any state law or regulatory action that amends or has the effect of amending water quality standards but that fails to receive EPA approval, is not legally effective.

Second, once a designated use is established in state water quality standards and approved by EPA, a less protective "sub-category" of that use for a specific waterbody may not be created, unless and until a Use Attainability Analysis ("UAA") is performed

and its conclusion approved by EPA. 40 C.F.R. § 131.10(g). A UAA is the federally required process through which water quality standards may be relaxed for a specific waterbody if attainment of the standards is not feasible. Id. 40 C.F.R. § 131.10(g). For instance, if “habitat for fish and other aquatic life” is a designated use of a particular waterbody in federally approved state water quality standards, that designated use cannot lawfully be removed from the standards, or weakened through the creation of a less protective sub-category of that use or classification, without complying with the UAA process and receiving EPA approval. A UAA considers a variety of factors, such as whether there are physical conditions or naturally occurring pollutant concentrations that preclude attainment of water quality standards. 40 C.F.R. § 131.10(g).

Third, under 33 U.S.C. 1313(d)(4)(B) and 40 CFR § 131.12, where waters are meeting their designated uses, water quality standards can be revised only in compliance with the anti-degradation policy. The CWA anti-degradation policy provides, in relevant part: (1) existing instream water uses and levels of water quality necessary to protect the existing uses shall be maintained and protected; and (2) where the quality of waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless a state finds, through a process that involves public participation, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. 40 C.F.R. § 131.12(a)(1) & (2).

**Testimony in Opposition to LD 1398:  
Specifically the revision to Sec 11.38 MRSA §469.5B Phippsburg**

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

Prepared by Dot Kelly  
April 26, 2011

Thank you for providing me with this opportunity to address the Environment and Natural Resources Committee regarding the proposed revision to the Water Classification for the Kennebec River in Phippsburg from Class SA to Class SB, through a bill that is typically used for housekeeping items.

Maine Law states, "Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance."

I think many of us in Phippsburg agree that the Kennebec River is an outstanding natural resource which should be preserved.

A number of speakers in opposition to this reclassification are providing compelling reasons for why it is inappropriate to include a downgrading of the classification of the Kennebec River in LD 1398. I am hopeful that you will be swayed by the testimony and remove the Phippsburg water classification revision from LD 1398.

My name is Dot Kelly, and my house overlooks the Kennebec Narrows, a fast portion of the Kennebec River, in Phippsburg. In addition, I'm on the Phippsburg Conservation Commission and participate in the Maine Tidal Power Initiative.

Although it seems sensible to believe that Maine DEP, the Army Corps of Engineers and BIW have long been aware that the Kennebec River in Phippsburg was classified as Class SA 20 years ago, my comments show that these entities were aware over a year ago, that the Kennebec River in Phippsburg was classified as Class SA.

Maine DEP, the Army Corps of Engineers and BIW were informed in writing that the Kennebec River in Phippsburg was classified as Class SA on November 24, 2009 and February 27, 2010. Additional written submissions in April 2010, and July 2010 to Maine DEP also highlighted the Class SA designation of the Kennebec River in Phippsburg.

Over a year ago, on April 9, 2010 the DEP confirmed that they agreed that the Class SA designation covered the Kennebec River in Phippsburg to the Bath – Phippsburg line.

On April 2<sup>nd</sup> at a meeting at Maine DEP with Bob Green, MaryBeth Richardson and Mike Mullen of DEP, the Class SA designation of the Kennebec River in Phippsburg was again discussed. It

appeared that Susan Davies of Environmental Assessment in Watershed Management was the appropriate person to contact. As a follow-up to the meeting, I contacted Susan Davies on April 6<sup>th</sup>. On April 9, 2010 she responded that they had taken a closer look and “that our mapped layer (which is someone’s interpretation of the law – but not the “official” class) DOES NOT appear to agree with a re-run of the actual coordinates in the law. I will contact you as soon as I have a better understanding of the actual situation and your concerns about the activity. Thank you for bringing this to our attention!”

That same day she also wrote an email to Robert Green, Mike Mullen, Dave Courtemanch, and Douglas Sutor of Maine DEP, stating:

*Doug Sutor re-ran the coordinates in the WQ Classification law and it looks like Dot Kelly is correct about how the law reads.*

Thus, DEP was aware of the Class SA status of the Kennebec River in Phippsburg over a year ago.

The Shellfish Committee petition highlights the important points:

**The changes proposed for Phippsburg are unexplained and not fully studied.**

**Keeping the Kennebec River Class SA does not prevent dredging.**

**Whether the Kennebec River is Classed as SA or SB, the proposal for August dredging is flawed.**

Here’s my request: please don’t vote for a reclassification of this important estuary as if it was a typo

--

Please support the public hearing process, which has not yet occurred, and base the reclassification decision on a review of the scientific data.

In closing I thank you for your dedication to Maine and for your consideration.

Respectfully submitted,

Dot Kelly

98 Pleasant Cove Road

Phippsburg, Maine 04562

**Green, Robert**

---

**From:** Davies, Susan P  
**Sent:** Friday, April 09, 2010 10:37 AM  
**To:** Green, Robert; Mullen, Mike  
**Cc:** Courtemanch, Dave L; Suitor, Douglas  
**Subject:** Tidal section of Kennebec in Phippsburg  
**Importance:** High  
**Attachments:** Suitor-re-draw coordinates from S469-5BClassSA.pdf

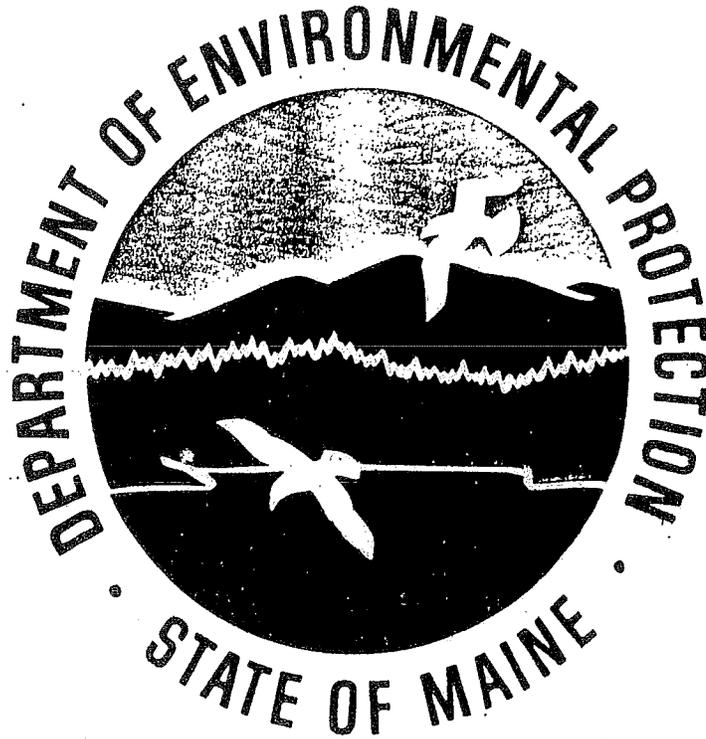
I have left phone messages for both of you RE; the dredge-spoil disposal permit for BIW—I received a telephone call and email from Dot Kelly, expressing her concerns.

Doug Suitor re-ran the coordinates in the WQ Classification law and it looks like Dot Kelly is correct about how the law reads (Doug's map attached). We've asked him to also map the coordinates for Georgetown and the freshwater descriptions of the lower Kennebec because Dave C thinks the coordinates were incorrectly presented to the Legislature long ago, resulting in the westerly tidal sections of the River being Class SA and the easterly sections being Class SB, thus, clearly an error. The WQ Classification layer on GIS shows only the marine waters off Popham and Small Point as SA, which is most likely what was intended. We need to discuss the current status of the permit application with your office and to work with you guys about next steps. Dave said the most straight-forward thing in terms of the error in the law is to include a correction of the wrong coordinates in the next omnibus bill.

Susan P. Davies  
Water Quality Standards Coordinator  
Maine DEP SHS 17  
Augusta, ME 04333  
207-441-9271  
207-287-7846 (FAX)

3/1/2011

Staff Proposal  
for  
Reclassification of Surface Waters  
to the  
Board of Environmental Protection



Bureau of Water Quality  
Department of Environmental Protection

November 1, 1989

## TABLE OF CONTENTS

	PAGE
Introduction	1
Response to Comments Section	
Dennys River	2
East Machias River	2
Machias River	2
Mousam River	3
Narraguagus	3
Penobscot Basin	
Mainstem	4
East Branch	6
West Branch	6
Mattawamkeag River	8
Piscataquis River	8
Pleasant River	9
Presumpscot River	9
Royal River	10
Saco River	10
St. Croix River	11
St. George River	11
St. John Basin	
Mainstem	12
Allagash River	12
Aroostook River	12
Fish River	13
Meduxnekeag River	13
Minor Tributaries	14
Salmon Falls River	14
Sheepscot River	14
Union River	15
Minor freshwater drainages	
Minor southern coastal drainages	15
Minor mid coastal drainages	16
Minor eastern coastal drainages	16
Marine/estuarine waters	
Southern coastal waters	16
Mid coastal waters	18
Eastern coastal waters	18
Miscellaneous comments	22
Proposed Legislation	24

## INTRODUCTION

This document contains the Department of Environmental Protection's recommendations to the Board of Environmental Protection for reclassification of all surface waters of the state except the Androscoggin and Kennebec basins which have previously been completed. According to 38 MRSA, Section 464-2, the Board may make classification recommendations to the Legislature. Final adoption of any classification changes is the Legislature's authority. The Board's final recommendations will be presented as a bill to the 114th Legislature.

The Board conducted six public hearings state wide and also solicited comments from a variety of groups including town planning boards, conservation commissions, local Chambers of Commerce, trade organizations, wastewater discharge license holders, environmental interest groups, sportsmans clubs, state legislators, state and federal agencies, regional planning commissions and other identified interest groups. Response to the initial reclassification suggestions was considerable. There were 91 individuals who spoke at the public hearings and 634 pieces of correspondence were received (580 letters directed to the upgrade of one particular waterbody). Additionally, the staff has spent many hours in follow-up investigation of the information provided.

This document is presented in two parts. The first provides information and comments from the hearings record. For each basin, there is a presentation of known water quality. Following that is a comment section which presents a summary of comments for that basin and a staff recommendation where some controversy or question may exist. The second portion of the document includes a draft copy of legislation which would be presented to the Legislature including all changes the Board recommends.

### Mid-Coastal waters

The majority of estuarine and marine waters are classified SB. Data from 62 monitoring sites in the mid coast area indicate uniformly good water quality. Several upgrades are suggested as follows:

#### Popham Beach area (Phippsburg)

Popham Beach is owned by the State of Maine and the beach to the south (Seawall Beach) is owned by Bates College and managed by the Nature Conservancy. Seawall Beach provides nesting for the endangered least tern. The nearby Heron Islands also provide seabird nesting sites. No discharges are known to exist. The Kennebec River may influence the quality of the water in this area. Class SA is recommended.

Comments: The Maine Chapter of the Nature Conservancy and Maine Audubon Society support the staff proposal. No other comments were made.

#### Damariscove Island (Boothbay)

This is a National Historic Landmark managed by the Nature Conservancy. No discharges exist. Class SA is recommended.

Comments: The Maine Audubon Society supports the staff proposal. The only other comments received noted a typographical error (i.e. "east" should have been "west") in the staff proposal. The staff has corrected the error.

#### Reid State Park area (Georgetown)

A change is suggested in the language of the law to clarify the boundary of the Class SA waters. Water quality in the tidal pool portion of the park probably does not attain Class SA standards due to the density of swimmers. Also, the tidal gate at the mouth of the pool precludes a free-flowing habitat.

Comments: The Maine Audubon Society sent a letter supporting an upgrade; however, this area is already Class SA. The staff recommends the clarification of the boundary of the Class SA waters as proposed.

#### Sears Island (Searsport)

Monitoring indicates that areas around Sears Island presently attain Class SB on the east side therefore an upgrade is recommended. Other areas around the port facilities and Long Cove attain, at best, Class SC.

Comments: The Maine Audubon Society and the Maine Department of Transportation support the staff proposal. The only other comment was made at the hearing about the possible nonattainment of Class SC near Sears Island (in the Long Cove area).

### Eastern coastal waters

The majority of marine waters of Hancock and Washington Counties are classified SB and probably should remain that way. Limited water quality sampling has not detected any problems suggesting that downgrades are needed. Several areas listed below are suggested for upgrade to Class SA due to the high quality of the water, unique ecological resources and proximity to publicly held lands.

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.

4. Lincoln County

A. Boothbay.

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

4/5. Penobscot County

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.

5/6. Sagadahoc County

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 northly along the shore to point of beginning - Class SA.

B. Phippsburg.

(1) Tidal waters east of longitude 69°-50'-05" W. and west of longitude 69°-47'-00" W.- Class SA.

6/7. Waldo County.

A. Frankfort.

(1) All tidal waters - Class SC.

B. Prospect.

(1) All tidal waters - Class SC.

C. Searsport.

TESTIMONY OF DEAN C. MARRIOTT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D. 2244

AN ACT TO RECLASSIFY SURFACE WATERS  
OF THE STATE

BEFORE THE JOINT STANDING COMMITTEE  
ON ENERGY AND NATURAL RESOURCES

SPONSORED BY: REPRESENTATIVE LORD  
CO-SPONSORED BY: REPRESENTATIVE GOULD, REPRESENTATIVE DEXTER  
AND REPRESENTATIVE JACQUES

DATE OF HEARING: FEBRUARY 13, 1990

SENATOR KANY, MEMBERS OF THE ENERGY AND NATURAL RESOURCES COMMITTEE, I AM DEAN  
C. MARRIOTT, COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
SPEAKING IN SUPPORT OF L.D. 2244

I AM DEAN C. MARRIOTT, COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION SPEAKING IN FAVOR OF LD 2244. THIS BILL CONTAINS THE RECOMMENDATIONS OF THE BOARD OF ENVIRONMENTAL PROTECTION AS VOTED AT ITS DECEMBER 16 BOARD MEETING. THE PROCESS LEADING UP TO THIS RECOMMENDATION HAS BEEN LONG, REQUIRING THOUSANDS OF HOURS OF STAFF TIME TO INVESTIGATE THE STATUS OF MAINE'S WATERS. THIS BEGAN IN 1983 IN PREPARATION FOR THE REVISION OF CLASSES AND STANDARDS WHICH THE LEGISLATURE PASSED IN 1986. THAT REVISION OF STANDARDS REQUIRED THAT THE STATE ALSO REVISE THE CLASSIFICATIONS OF MANY WATERBODIES TO BE CONSISTENT WITH THE NEW STANDARDS. MORE IMPORTANTLY THOUGH, THE WATER QUALITY OF MANY WATERS HAS IMPROVED DRAMATICALLY IN THE LAST 15 YEARS AND THE RECLASSIFICATION IS A REFLECTION OF THAT INVESTMENT AND ACHIEVEMENT. LAST YEAR, THE LEGISLATURE RECLASSIFIED THE ANDROSCOGGIN AND KENNEBEC RIVER BASINS. THIS BILL COMPLETES THE RECLASSIFICATION PROCESS INCLUDING ALL OTHER FRESHWATER BASINS AND OUR COASTAL WATERS.

IN PREPARING ITS RECOMMENDATION TO THE LEGISLATURE THE BOARD CONDUCTED SIX HEARINGS THROUGHOUT THE STATE AND COLLECTED COMMENTS OVER A THREE MONTH PERIOD. THE STAFF CONDUCTED A NUMBER OF MEETINGS WITH ENVIRONMENTAL, INDUSTRIAL, DEVELOPMENT AND MUNICIPAL INTERESTS. WE HAVE TRIED TO BE SENSITIVE TO ALL THESE INTERESTS, ALWAYS BEARING IN MIND OUR MISSION TO RESTORE AND MAINTAIN THE QUALITY OF THE STATE'S WATERS. TO THIS END I BELIEVE WE HAVE BEEN HIGHLY SUCCESSFUL. AT THE TIME OF THE FINAL BOARD MEETING TO VOTE ON THIS PROPOSAL THERE REMAINED ONLY A FEW OUTSTANDING QUESTIONS WHICH I WILL NOTE TO YOU AS I SPEAK.

FIRST, I WOULD LIKE TO EXPLAIN THE BASIC DESIGN THAT HAS GONE INTO THIS PROPOSAL. AS YOU REALIZE THERE HAS NOT BEEN A COMPREHENSIVE RECLASSIFICATION OF WATERS SINCE THE 1960'S. OBVIOUSLY WATER QUALITY HAS CHANGED DRAMATICALLY SINCE THAT TIME AS HAVE THE USES THAT WE MAKE OF THOSE WATERS.

THEREFORE THERE IS NO TRUE HISTORICAL PRECEDENT VALID FOR TODAY'S MANAGEMENT. AS A MATTER OF CONVENTION, WE EVALUATED ALL WATERS TO SEE, FIRST, IF THEY ACHIEVED THE STANDARDS OF THEIR PRESENT CLASS AND THEN TO DETERMINE IF A HIGHER CLASS WAS APPROPRIATE. WE CONSIDERED DOWNGRADES ONLY IN SITUATIONS WHERE WATERS WERE NOT ATTAINING THEIR CURRENTLY ASSIGNED STANDARDS AND WHERE THERE WAS LITTLE EXPECTATION THAT IMPROVEMENT COULD BE EXPECTED BY APPLYING ANY REASONABLE TREATMENTS. GEOGRAPHY PLAYED A ROLE IN OUR FOCUS. FOR EXAMPLE, WE LOOKED SHARPLY FOR WATERS IN SOUTHERN MAINE FOR UPGRADE TO CLASS A AND CLASS AA BECAUSE SO FEW WATERS OF THESE HIGHER DESIGNATIONS OCCUR IN THIS AREA.

CHANGES IN CLASSIFICATION CAN BE CATEGORIZED AS FOLLOWS:

1. UPGRADES TO CLASS AA ARE RECOMMENDED FOR CERTAIN RIVER SEGMENTS RECOGNIZED FOR THEIR OUTSTANDING ECONOMIC, RECREATIONAL, OR ECOLOGICAL VALUE IN THEIR NATURAL STATE. THESE INCLUDE SEGMENTS LISTED IN THE MAINE RIVERS ACT WHICH DO NOT HAVE SIGNIFICANT UPSTREAM DISCHARGES AND OTHER SEGMENTS WHICH THE PUBLIC NOTED IN THEIR TESTIMONY AS WORTHY OF THIS HIGH LEVEL OF PROTECTION.
2. UPGRADES TO CLASS SA ARE RECOMMENDED FOR MANY COASTAL WATERS LOCATED ADJACENT TO PUBLICLY-OWNED LANDS AND LANDS MANAGED BY THE NATURE CONSERVANCY AND THE MAINE COAST HERITAGE TRUST IF THERE ARE NO EXISTING DISCHARGES.

3. UPGRADES ARE SUGGESTED WHERE ACTUAL QUALITY IS KNOWN TO EXCEED THE WATER QUALITY STANDARDS OF THE NEXT HIGHEST CLASS AS REQUIRED IN SECTION 464 OF THE WATER CLASSIFICATION LAW.
4. UPGRADES ARE ALSO RECOMMENDED FOR WATERS WHICH DO NOT MEET THE NEXT HIGHEST CLASS BUT WHERE THERE IS AN EXPECTATION THAT PLANNED TREATMENT FACILITIES AND THE IMPLEMENTATION OF NONPOINT SOURCE CONTROLS WILL RESULT IN ACHIEVING THOSE HIGHER STANDARDS IN THE NEAR FUTURE.
5. DOWNGRADES ARE ONLY SUGGESTED FOR TWO WATERS. ALEWIFE BROOK IN CAPE ELIZABETH IS A SMALL CLASS A WATER IN A RESIDENTIAL AREA WHICH DOES NOT ATTAIN STANDARDS. AN UNNAMED STREAM IN BRUNSWICK WOULD ALSO BE DOWNGRADED FROM CLASS A BECAUSE IT IS UNCLEAR IN THE PRESENT LAW JUST WHICH STREAM IT IS.

I WILL NOW BRIEFLY HIGHLIGHT SOME OF THE MORE SIGNIFICANT CHANGES WHICH WE ARE RECOMMENDING:

SOME OF THE MOST SIGNIFICANT UPGRADES WHICH WE ARE RECOMMENDING ARE FOUND IN THE PENOBSCOT BASIN. MAJOR SEGMENTS OF THE EAST AND WEST BRANCHES OF THE RIVER ARE RECOMMENDED FOR UPGRADE TO CLASS AA. THE PROPOSED UPGRADE TO CLASS AA FOR THE SEGMENT INVOLVING THE FORMER BIG A DAM PROPOSAL HAS GENERATED CONTINUED DEBATE, NOT BECAUSE OF ITS EFFECT ON A NEW DAM PROPOSAL BUT RATHER ON THE PREMISE THAT THE UPGRADE MIGHT JEOPARDIZE THE CONTINUED OPERATION OF EXISTING FACILITIES ON THE RIVER. IT HAS BEEN SUGGESTED THAT

BECAUSE OF EXISTING FLOW REGULATION ON THE RIVER THAT THIS SEGMENT WOULD NOT ATTAIN THE FREE-FLOWING DESIGNATION OF THIS CLASS. THE DEPARTMENT FEELS THAT THERE IS NO CONFLICT AND THAT THE FREE-FLOWING DESIGNATION ONLY APPLIES TO THE SPECIFIED SEGMENT. WE SUGGEST THAT THE LEGISLATURE LISTEN CAREFULLY TO THE COMMENTS WHICH I AM SURE YOU WILL HEAR, AND IF YOU FIND IT APPROPRIATE, CHANGE THE LAW TO MAKE IT CLEAR THAT CLASS AA SEGMENTS ARE FITTING IN RIVERS WHERE FLOW REGULATION IS PRACTICED UPSTREAM OF THOSE SEGMENTS. THIS TROUBLING AMBIGUITY IN THE LAW APPLIES TO A NUMBER OF WATERBODIES IN ADDITION TO THE WEST BRANCH.

MOVING DOWNRIVER, WE ARE RECOMMENDING THAT SEGMENTS OF THE MAINSTEM BETWEEN MATTAWAMKEAG AND LINCOLN, AND ENFIELD AND BANGOR BE UPGRADED TO CLASS B. THIS UPGRADE IS A DRAMATIC EXPRESSION OF THE ACHIEVEMENTS THAT HAVE BEEN MADE IN WATER QUALITY. THIS PROPOSAL, HOWEVER, HAS CREATED ANOTHER QUESTION WHICH SHOULD BE CONSIDERED. IF THIS SEGMENT IS RAISED TO CLASS B, IT IS POSSIBLE THAT IT WILL NOT ACHIEVE THE BACTERIA STANDARD FOR CLASS B IN PORTIONS OF THE LOWER RIVER BECAUSE OF COMBINED SEWER OVERFLOWS. THESE OVERFLOWS WILL BE REMOVED IN THE FUTURE. A QUESTION HAS BEEN RAISED AS TO WHETHER THE DEPARTMENT CAN ISSUE WASTEWATER DISCHARGE LICENSES OR WATER QUALITY CERTIFICATIONS FOR FACILITIES IN A NONATTAINMENT SEGMENT EVEN IF DISCHARGES FROM THESE FACILITIES DO NOT AFFECT THE PARAMETER CAUSING NONATTAINMENT, IN THIS CASE BACTERIA LEVELS. THE DEPARTMENT FEELS THAT IT IS APPROPRIATE TO ISSUE LICENSES WHICH DO NOT RELATE TO THE PARAMETER OF CONCERN AND THEREFORE THAT AN UPGRADE OF THIS SEGMENT SHOULD NOT EFFECT FACILITIES WHOSE DISCHARGES ARE UNRELATED TO BACTERIA LEVELS. LANGUAGE TO CLARIFY THIS AREA OF THE LAW MAY BE APPROPRIATE.

IN THE ST. JOHN BASIN WE ARE PROPOSING AN UPGRADE TO CLASS AA FOR MUCH OF THE UPPER RIVER, CONSISTENT WITH THE MAINE RIVERS ACT, AND TO CLASS A FOR THE SEGMENT FROM ALLAGASH TO FORT KENT. I WOULD LIKE TO NOTE ALSO, THE PROPOSED UPGRADE OF MOST OF PRESTILE STREAM TO CLASS A. I AM SURE SOME OF YOU CAN RECALL WHEN THIS STREAM GAINED INTERNATIONAL NOTORIETY FOR ITS DEPLORABLE WATER QUALITY.

WE ARE PROPOSING THAT THE ST. CROIX RIVER, AN IMPORTANT INTERNATIONAL BOUNDARY, BE UPGRADED TO CLASS A ABOVE WOODLAND.

WE ARE PROPOSING THAT THE PLEASANT RIVER IN WASHINGTON COUNTY BE UPGRADED TO CLASS AA.

WE ARE RECOMMENDING THAT THE MAIN BRANCHES OF THE UNION RIVER BE UPGRADED TO CLASS A AND THAT THE LOWER MAINSTEM BE UPGRADED TO CLASS B.

IN THE MIDCOASTAL AREA WE ARE RECOMMENDING THE UPGRADE OF THE ST. GEORGE RIVER TO CLASS AA IN THE UPPER REACHES AND CLASS A IN THE LOWER REACH, AND THE UPGRADE OF THE SHEEPSCOT RIVER TO CLASS AA ON THE LOWER MAINSTEM AND WEST BRANCH.

IN SOUTHERN MAINE WE ARE RECOMMENDING THE UPPER REACHES OF THE SACO RIVER BE UPGRADED TO CLASS AA AND MUCH OF THE LOWER REACHES UPGRADED TO CLASS A. WE ARE ALSO RECOMMENDING THE UPGRADE OF MANY SMALL COASTAL WATERSHEDS TO CLASS B FROM CLASS C.

IN OUR COASTAL WATERS WE ARE RECOMMENDING MANY UPGRADES TO CLASS SA FOR WATERS ASSOCIATED WITH STATE PARKS, THE RACHEL CARSON REFUGE, THE PETIT MANAN REFUGE, AND ACADIA PARK. ADDITIONALLY, WE ARE RECOMMENDING THE UPGRADE OF EXTENSIVE AREAS OF WATER AROUND THE ISLES OF SHOALS, OFF THE WASHINGTON COUNTY COAST BETWEEN CUTLER AND QUODDY, AND WATERS OF INNER COBSCOOK BAY WHICH ARE ECOLOGICALLY SIGNIFICANT FOR THE DIVERSITY OF MARINE LIFE THEY POSSESS.

I WOULD LIKE TO CLOSE BY SAYING THAT THIS RECLASSIFICATION PROPOSAL, WHILE IMPRESSIVE, DOES NOT REPRESENT A FINAL PLAN FOR THE STATE. WE STILL SEE POTENTIAL FOR IMPROVEMENT IN THE FUTURE AND WE WILL PRESENT OTHER RECOMMENDATIONS FOR UPGRADE AS THEY OCCUR. MY STAFF AND I WILL BE AVAILABLE TO DISCUSS ANY OF THE NUMEROUS RECOMMENDATIONS IN THIS PROPOSAL; TO PRESENT THE DATA, EXPLAIN THE WATER QUALITY MODELS USED, PRESENT THE PUBLIC TESTIMONY RECEIVED, AND MAKE ANY OTHER EXPLANATION OF WHAT WE KNOW ABOUT THESE WATERS.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

TO: BOARD OF ENVIRONMENTAL PROTECTION

FROM: *Steve Groves*  
Water Bureau Director

SUBJ: Reclassification

\*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*

The Board and staff have been mutually involved in water reclassification studies and hearings conducted during the summer. Enclosed is the staff's recommendation on water classification for your review. This proposal has been provided to the public and on November 29, the staff will make a formal presentation of this proposal to you. We hope to have the board consider this proposal at the December 13th Board meeting so that legislation can be submitted for this session.

Highlights: You will find that the proposal contains many recommendations for upgrades. Only 2 minor downgrades are proposed. Recommended waterbody upgrades include:

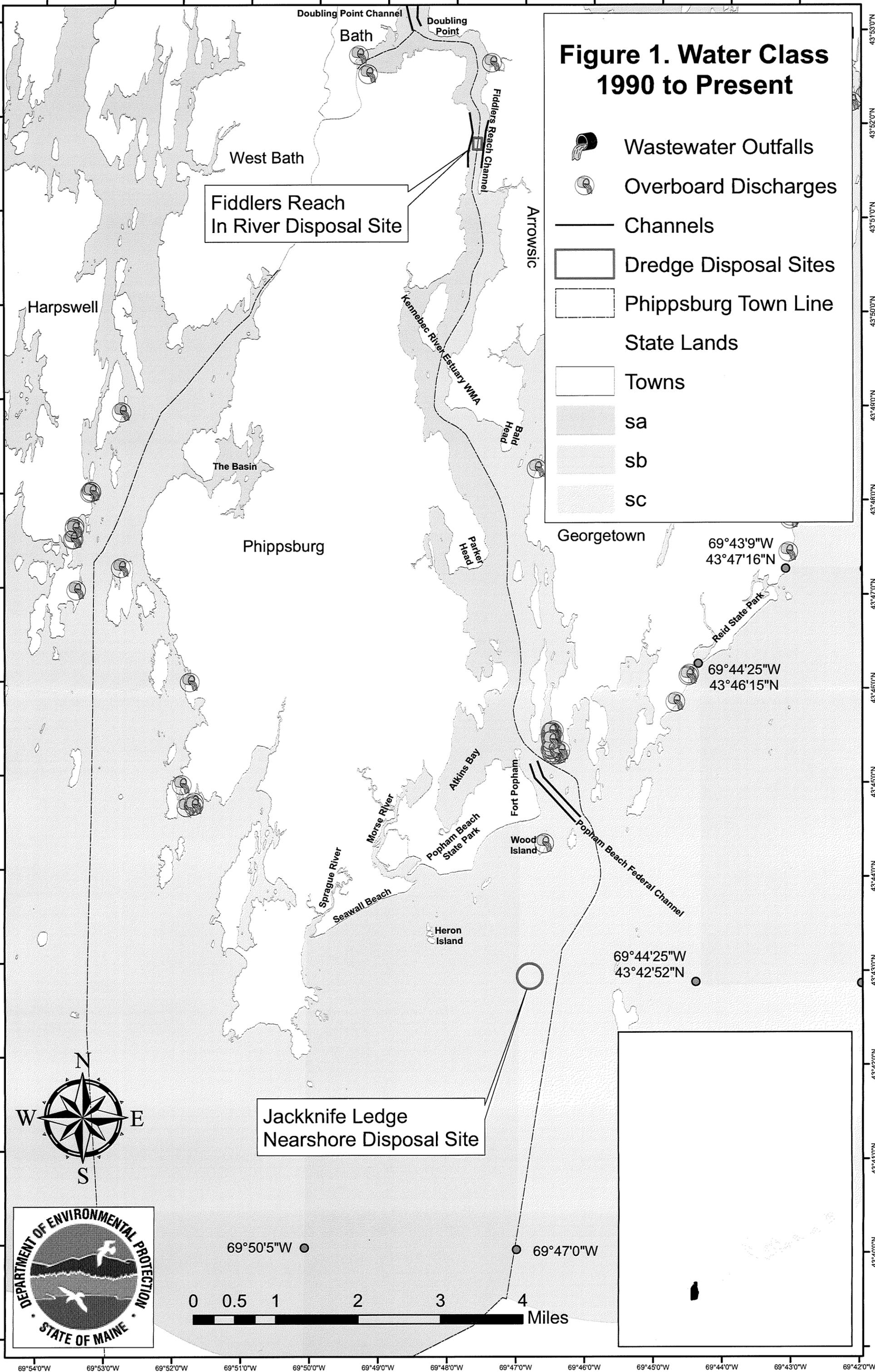
- RIVERS AA -      Upper St. John  
                         East Branch Penobscot  
                         West Branch Penobscot (above Debsconeag Deadwater)  
                         Pleasant River  
                         West Branch of Narraguagus  
                         St. George (above Union)  
                         Sheepscot  
                         Crooked  
                         Saco (above L. Ossippee R.)  
                         East and West Branches of Piscataquis
  
- A -                    St. John (Allagash to Ft. Kent)  
                         Piscataquis (above Guilford)  
                         Passadumkeag  
                         Prestile (above Mars Hill)  
                         St. George (Union to Warren)  
                         St. Croix (above Woodland)  
                         Saco (below L. Ossippee R.)  
                         Union (all branches above Graham Lake)
  
- B -                    Penobscot (Mattawamkeag to Lincoln, Enfield to Bangor)  
                         Piscataquis (below Dover-Foxcroft)  
                         Union (below Graham Lake)
  
- COASTAL SA -      Inner Cobscook Bay  
                         Cutler to Quoddy Head  
                         Kittery to Isle of Shoals  
                         Many waters abutting publicly held lands.

Please give me or Dave Courtermann a call at 289-3901 if there are any questions you would like us to answer before the 29th.

SWG/d

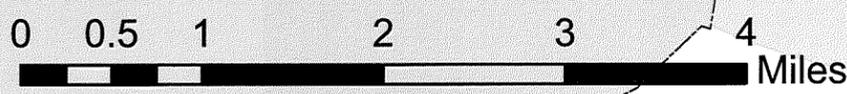
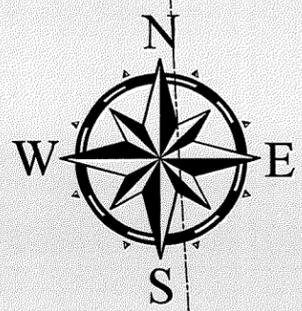
**Figure 1. Water Class 1990 to Present**

-  Wastewater Outfalls
-  Overboard Discharges
-  Channels
-  Dredge Disposal Sites
-  Phippsburg Town Line
-  State Lands
-  Towns
-  sa
-  sb
-  sc



Fiddlers Reach  
In River Disposal Site

Jackknife Ledge  
Nearshore Disposal Site



69°43'9"W  
43°47'16"N

69°44'25"W  
43°46'15"N

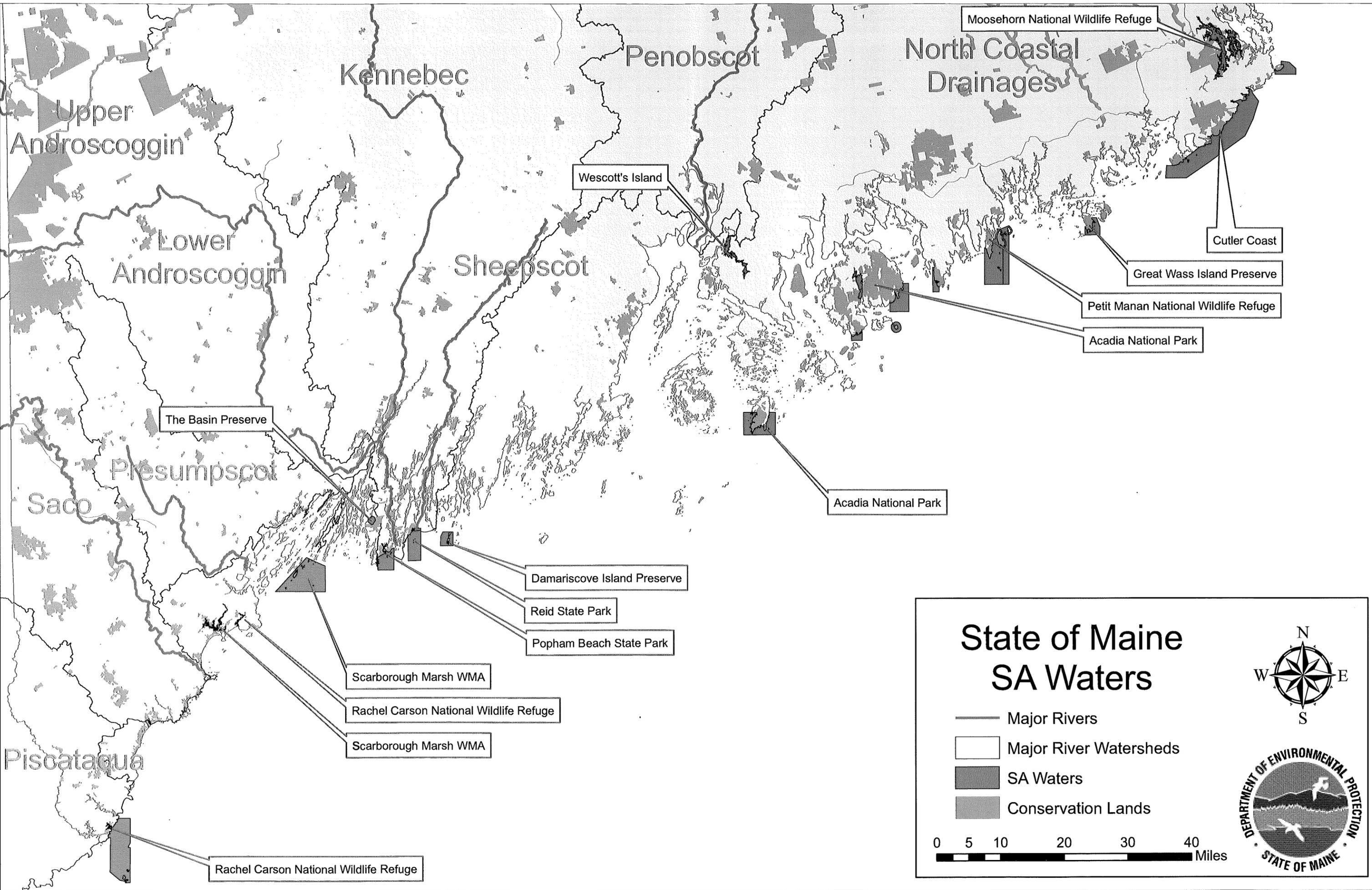
69°44'25"W  
43°42'52"N

69°50'5"W

69°47'0"W

69°54'0"W 69°53'0"W 69°52'0"W 69°51'0"W 69°50'0"W 69°49'0"W 69°48'0"W 69°47'0"W 69°46'0"W 69°45'0"W 69°44'0"W 69°43'0"W 69°42'0"W

43°53'0"N  
43°52'0"N  
43°51'0"N  
43°50'0"N  
43°49'0"N  
43°48'0"N  
43°47'0"N  
43°46'0"N  
43°45'0"N  
43°44'0"N  
43°43'0"N  
43°42'0"N  
43°41'0"N  
43°40'0"N



Upper Androscoggin

Lower Androscoggin

Kennebec

Penobscot

North Coastal Drainages

Sheepscot

Presumpscot

Saco

Piscataqua

Wescott's Island

The Basin Preserve

Damariscove Island Preserve

Reid State Park

Popham Beach State Park

Scarborough Marsh WMA

Rachel Carson National Wildlife Refuge

Scarborough Marsh WMA

Rachel Carson National Wildlife Refuge

Moosehorn National Wildlife Refuge

Cutler Coast

Great Wass Island Preserve

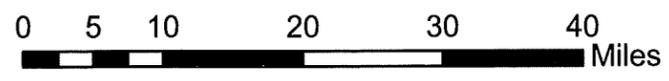
Petit Manan National Wildlife Refuge

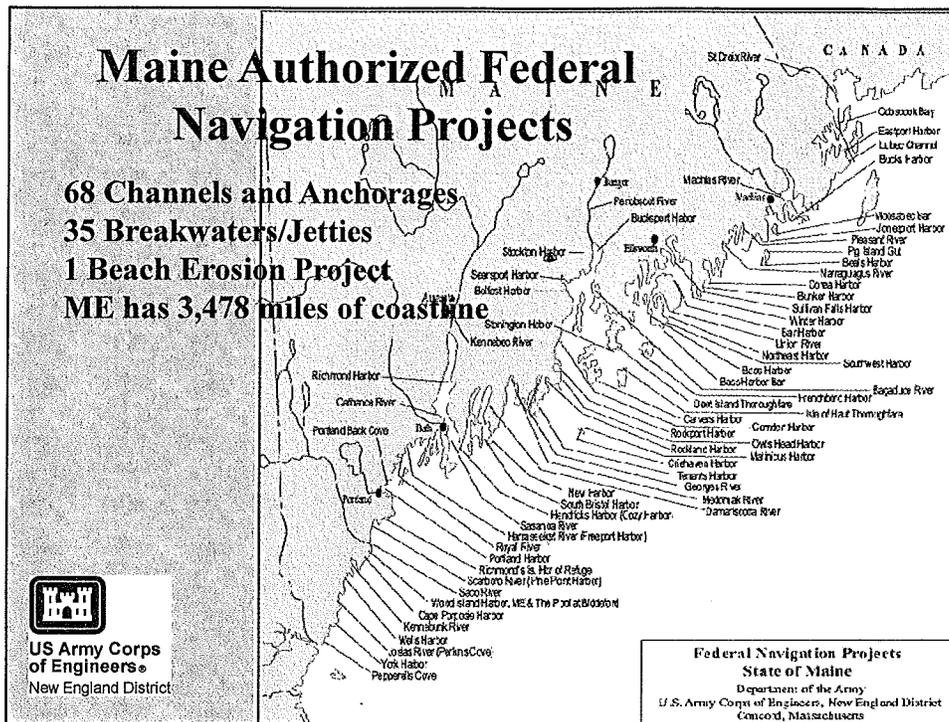
Acadia National Park

Acadia National Park

# State of Maine SA Waters

- Major Rivers
- Major River Watersheds
- SA Waters
- Conservation Lands





## 2011 Kennebec River Maintenance Dredging\*

**Ed O'Donnell**  
 Chief, Navigation Section

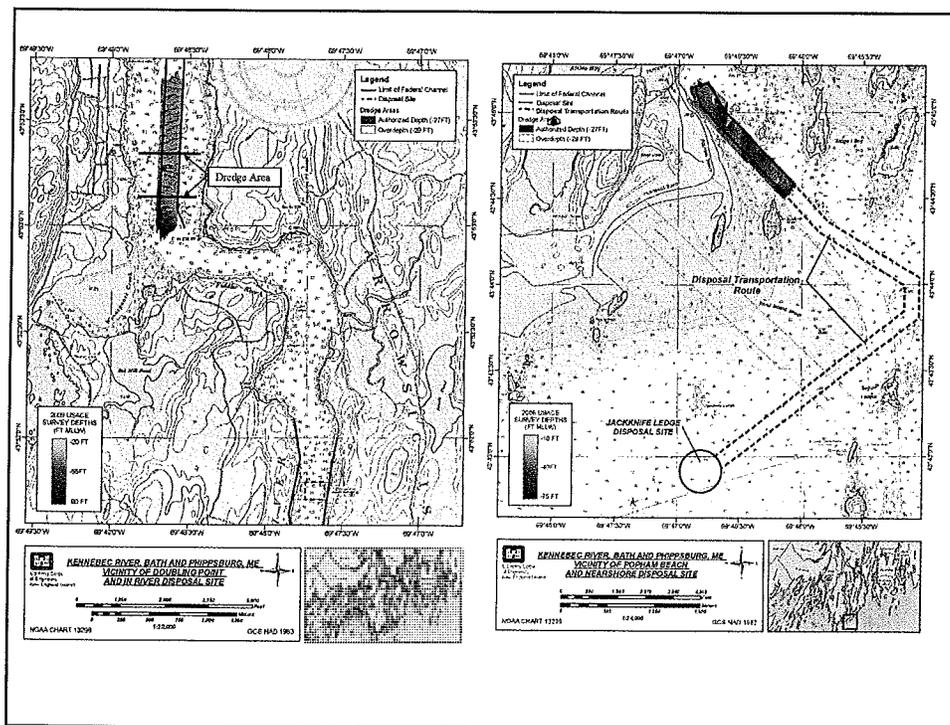
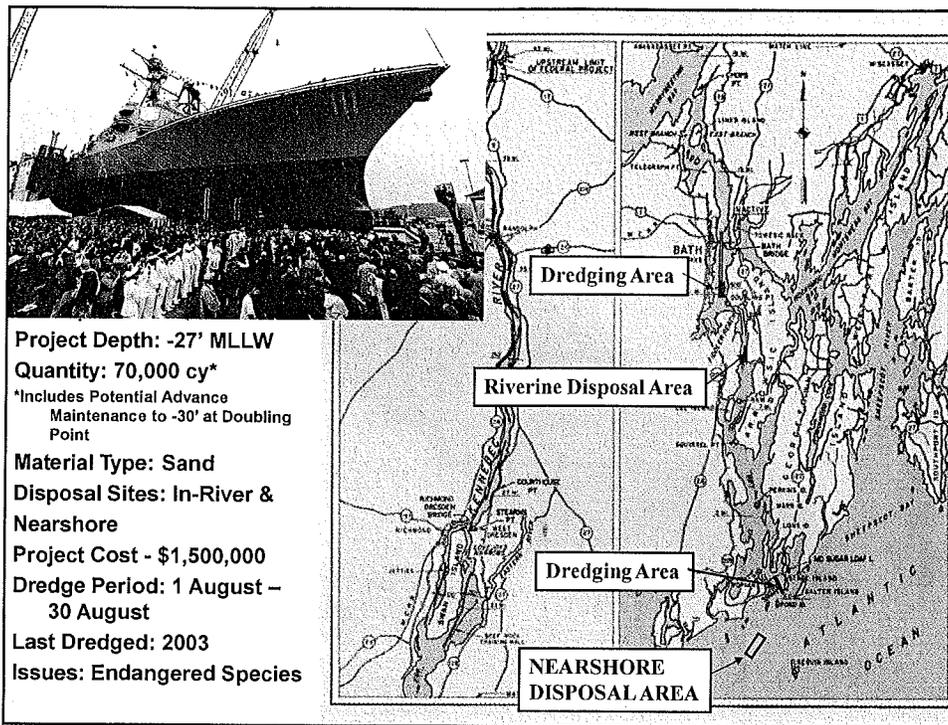
**Bill Kavanaugh**  
 Project Manager

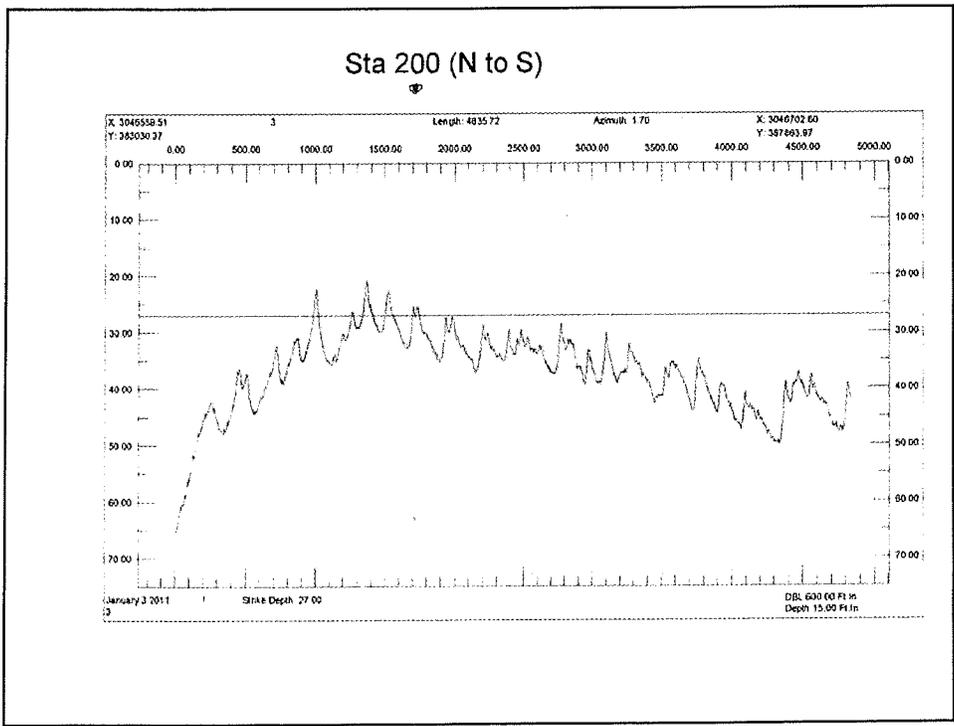
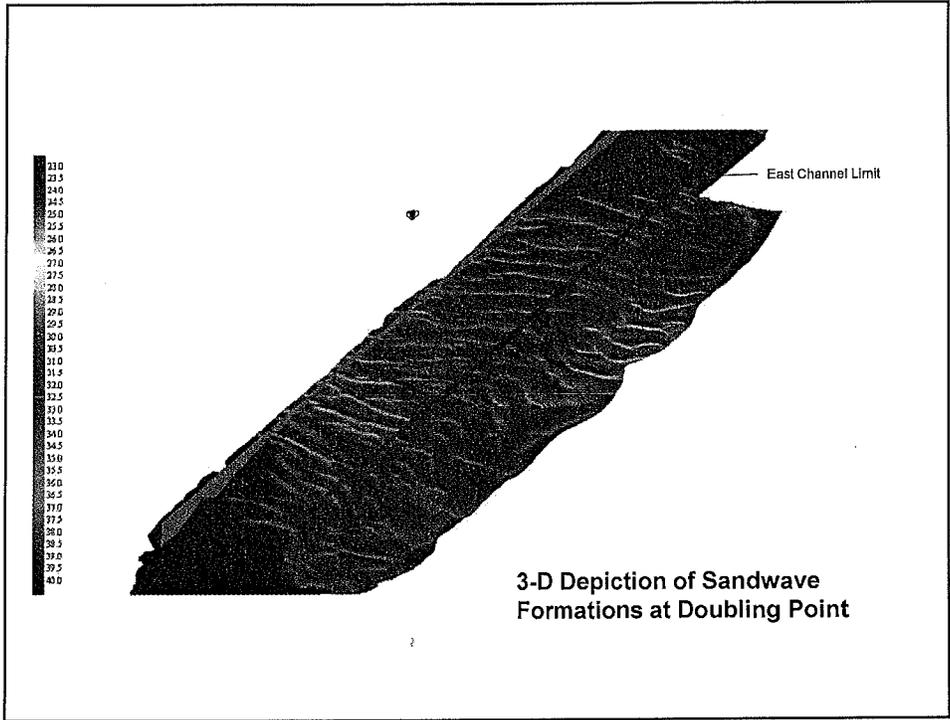
**Dr. Valerie Cappola**  
 Biologist

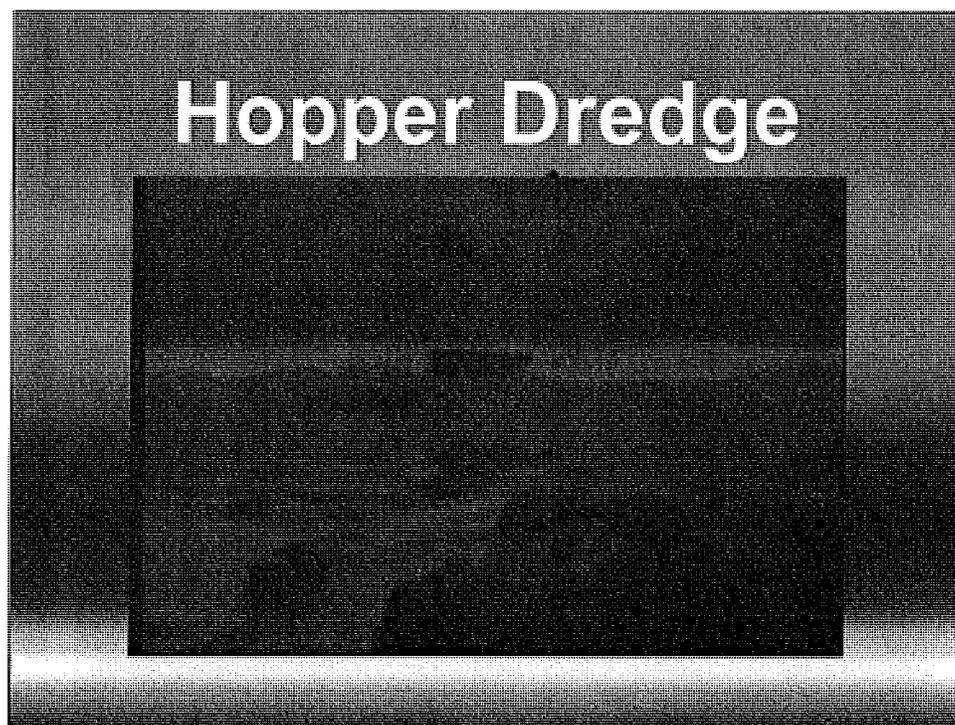
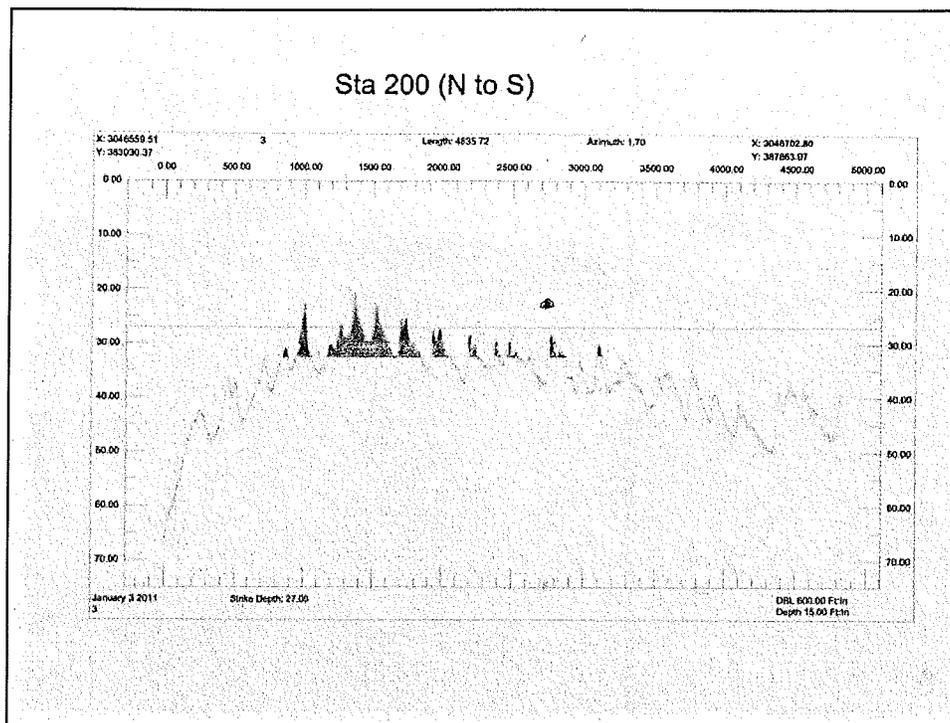


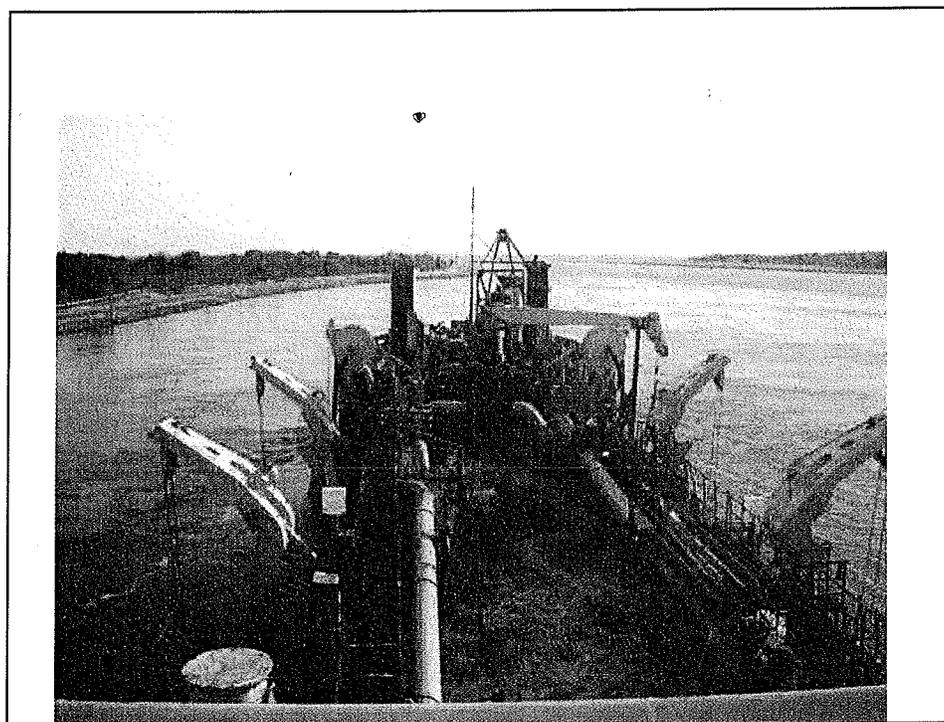
**US Army Corps of Engineers**  
**BUILDING STRONG**



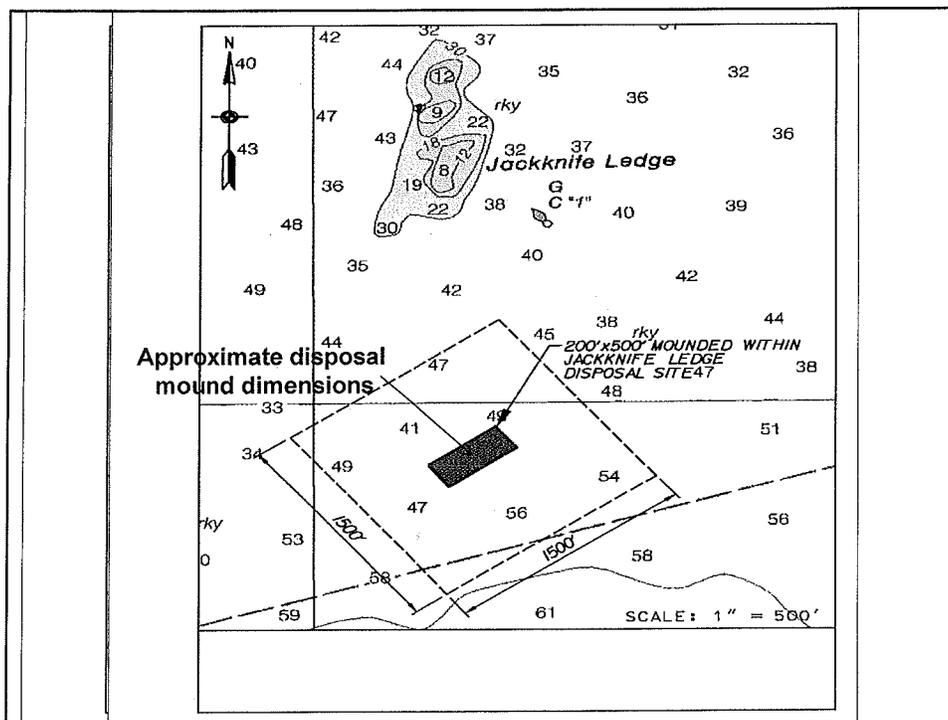
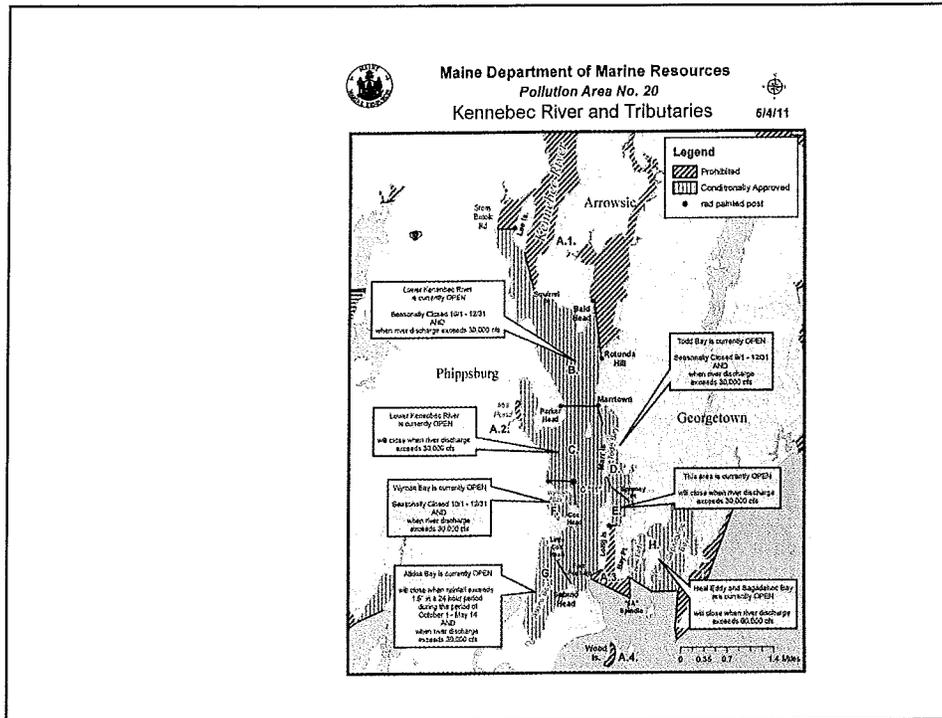


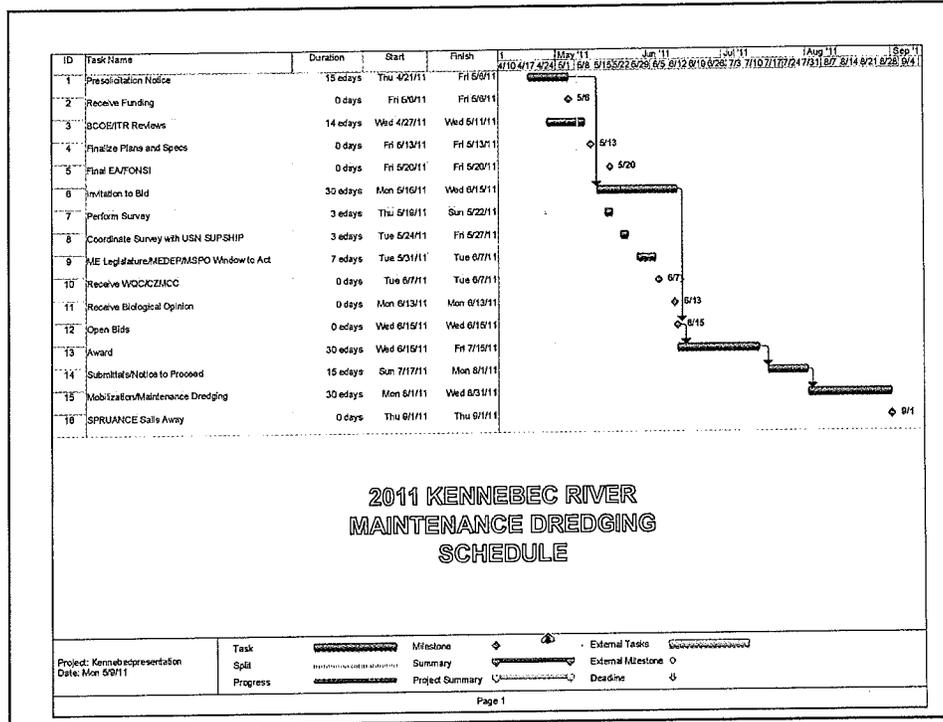












# **An Act to Delay the Effective Date of Maine's Ban on the Sale of Mercury-Added Button Cell Batteries**

Drafted by the Department of Environmental Protection  
May 11, 2011

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

**Sec. 1. 38 MRSA §1661, sub-§9**, as amended by PL 2009, c. 86, §1, is further amended to read:

**9. Button cell batteries.** This subsection governs the sale of mercury-added button cell batteries.

**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

**B.** After January 1, 2015, a person may not sell or offer to sell or distribute for promotional purposes a silver oxide mercury-added button cell battery or a product that contains a silver oxide mercury-added button cell battery.

## **SUMMARY**

The bill would delay by 6 months the effective date of Maine's ban on the sale of mercury-added button cell batteries.

**OFFICE OF POLICY AND LEGAL ANALYSIS**

Date: April 4, 2011  
To: Environment and Natural Resources Committee  
From: Susan Johannesman, Legislative Analyst  
**LD 1398 An Act to Amend the Laws Administered by the DEP**

**Summary:**

This bill makes the following changes to the laws governing environmental protection.

1. It authorizes the Department of Environmental Protection to allow an operator to review a completed operator certification test with department staff in order to identify subject areas for which questions were answered incorrectly and further study is advisable. (Section 2)
2. It repeals an obsolete provision of law governing certification of underground oil storage tank removers. (Section 3)
3. It clarifies the laws governing liability of fiduciaries and lenders who undertake investigations of contaminated property. (Section 4)
4. It changes the name of the Pollution Prevention Advisory Committee to the Pollution Prevention and Small Business Assistance Advisory Panel and amends the laws governing the appointment of members to the panel and terms & compensation of members. (Sections 1, 5 & 6)
5. It adds the category of degraded regions or watersheds to the list of regions or watersheds that the department is required to establish in rule. (Section 7)
6. It amends the Maine Revised Statutes, Title 38, section 420-D, subsection 5 to provide 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. (Section 8)
7. It repeals Title 38, section 420-D, subsection 7, paragraph F, which is an exemption from the laws governing storm water management for waste facilities regulated under Title 38, section 1310-N, 1319-R or 1319-X. (Section 9)
8. It amends Title 38, section 420D, subsection 11, a provision that authorizes the Department of Environmental Protection 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 the department to allow an applicant to meet a municipally required mitigation option in certain circumstances as an alternative to paying a compensation fee. (Section 10)
9. It amends Title 38, section 469 to add text consistent with the first paragraph of section 469, to correct the structure of section 469 and to aid the ease of use of the section. (Section 11)
10. It amends the laws governing the classification of estuarine and marine waters in Phippsburg to specify missing coordinates. (Section 11)

**NOTE:** Re: The part of Section 11 that addresses the classification of waters in Phippsburg - The committee decided to not include those provisions in this bill and instead submitted a request for a Joint Order to report out a bill related to that issue. The joint order authorizing the committee to report out a bill should be on the Senate calendar shortly. (Section 11, page 11, lines 33 - 38 and page 12, lines 1 - 5).

11. It amends the oil spill prevention laws to make it clear that liquid natural gas is not oil. (Section 12 & 13)
  12. It amends the laws on registration of underground oil storage tanks to require that such tanks be registered within the year preceding installation. (Section 14)
  13. It amends the laws governing abandonment and removal of oil storage facilities to allow flexibility in providing notice to the department in advance of removal work. (Section 15)
  14. It 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 Cleanup 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. (Section 16)
  15. It 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 Cleanup Fund if the applicant for coverage such as the tank owner or operator pays the applicable statutory deductibles. (Section 17)
  16. It limits the liability of the state and municipalities that acquire oil storage facilities through tax delinquency proceedings. (Section 18)
  17. It repeals and replaces Title 38, section 584-A to provide that references to ambient air quality standards refer to national ambient air quality standards. (Section 19)
- NOTE:** The DEP proposed an amendment to Section 19. Proposed amendment language is on page 5 of the department's written testimony.
18. It amends the wellhead protection laws to extend the siting restrictions on automobile maintenance shops to public works garages and other noncommercial facilities where motor vehicles are serviced. (Section 20)
  19. It 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. (Section 21)
  20. It amends the mercury products laws to consolidate restrictions on the sale of mercury-added batteries. (Sections 22, 23, 32 & 33)
  21. It 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. (Section 24)
  22. It amends the laws governing recycling of mercury thermostats to clarify the requirements for distribution of collection bins to recycling locations. It also amends the provisions 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 with the exterior cover intact. (Sections 25, 26, 27 & 28)

**NOTE:** DEP proposed to delete these sections from the bill (Sections 25, 26, 27 & 28). DEP testimony indicated that it needs additional time to undertake a thorough review of the current thermostat collection program prior to proposing any changes which may alter how the program is run.

23. It consolidates reporting requirements under the thermostat recycling and product stewardship laws. (Section 29)

**NOTE:** DEP proposed to delete this section from the bill (Section 29)

24. It amends the product stewardship laws to make explicit that product manufacturers may create a stewardship organization to implement their responsibilities for managing the environmental impacts of their products. (Sections 30 & 31)

**Issues and other information:**

1. DEP proposed an amendment to the wellhead protection law to address the removal and replacement of grandfathered facilities in wellhead protection zones. (See last page of DEP written testimony.)

2. Other than the Phippsburg issues, the only testimony in opposition to the bill related to the changes to the Pollution Prevention Advisory Committee in 38 MRSA §343-D (Sections 1, 5 & 6).

- Change in who makes the appointments.

Currently:

- 6 are appointed by the Governor
- 3 are appointed by the President of the Senate
- 3 are appointed by the Speaker of the House
- 2 are appointed by DEP
- 1 is appointed by the Senate Minority Leader
- 1 is appointed by the House Minority Leader

Under the bill:

- 12 are appointed by the Governor (2 are representatives from DEP)
- 1 is appointed by the President of the Senate
- 1 is appointed by the Speaker of the House
- 1 is appointed by the Senate Minority Leader
- 1 is appointed by the House Minority Leader

- Change to terms:

Currently: Members may not serve more than 2, 4 year terms

Under the bill: There is no limit on the number of terms an individual may serve.

**Fiscal impact:** Not yet determined by OFPR.

**PROPOSED AMENDMENT to LD 1398, 125<sup>th</sup> Maine Legislature**

*An Act to Amend the Laws Administered by the Department of Environmental Protection*

Presented by Department of Environmental Protection

May 3, 2011

Amend the bill in section 14 on page 15, line 13, by replacing “one year” with “two years”.

Amend the bill by inserting the following new section after section 21 bill amending 38 MRSA §1393(2)(B):

**Sec. 22. 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 provided 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 does the following:

(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;

Amend the bill by renumbering the remaining sections accordingly.

Amend the bill in the Summary by replacing paragraph 12 with the following:

12. It amends the law on registration of underground oil storage tanks to require that the tanks be registered within two years preceding installation.

Amend the bill in the Summary to include the following new paragraph:

25. It amends the wellhead protection law to address the removal and replacement of grandfathered facilities in wellhead protection zones. The current law allows grandfathered facilities to be replaced as long as the replacement occurs on the same property and meets all applicable requirements of law. The bill adds a proviso requiring the owner of the grandfathered facility to provide notice of the intent to replace the facility within 30 days of its removal and to commence construction of the replacement facility within 2 years. The purpose of the proviso is to ensure that the exemption applies only in those situations where the decision to replace a grandfathered facility is contemporaneous with the decision to remove it.

**PROPOSED AMENDMENT to LD 1398, 125<sup>th</sup> Maine Legislature**

*An Act to Amend the Laws Administered by the Department of Environmental Protection*

Presented by Department of Environmental Protection

May 3, 2011

Amend the bill by inserting the following new section after section 19 of the bill:

**Sec. 19.** 38 MRSA §1303-C, sub-§6 as amended by PL 2005 c. 612, §2, is further amended to read:

**6. Commercial solid waste disposal facility.** “Commercial solid waste disposal facility” means a solid waste disposal facility except as follows:

**A-2.** A solid waste facility that is owned by a public waste disposal corporation under section 1304-B, subsection 5:

(1) As long as the public waste disposal corporation controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless the commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A;

**B-2.** A solid waste facility that is owned by a municipality under section 1305:

(1) As long as the municipality controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless:

(a) The commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; and

(b) Acceptance of waste that is not generated within the State is approved by a majority of the voters of the municipality by referendum election;

**C-2.** A solid waste facility that is owned by a refuse disposal district under chapter 17:

(1) As long as the refuse disposal district controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless the commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A;

D. Beginning January 1, 2007, a solid waste facility owned and controlled by the office under chapter 24;

~~E. A solid waste facility owned and controlled by a single entity that 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. 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 or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph; or~~

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 prior to January 1, 2006, generated at least 85% of the solid waste disposed at the solid waste facility, except that certain integrated industrial processes of the manufacturing facility are no longer in common ownership, and those integrated industrial processes will continue to generate waste which will continue to be disposed of at the solid waste facility. This exemption only applies if the source and type of waste disposed at the solid waste facility remains the same as that previously disposed 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

F. A private corporation that accepts materials-separated, refuse-derived fuel as a supplemental fuel and does not burn waste other than its own.

Amend the bill by renumbering the remaining sections accordingly.

R. DEFS

LD 1398 - Majority Report

L.D. 1398

1

2

Date:

(Filing No. H- )

3

**ENVIRONMENT AND NATURAL RESOURCES**

4

Reproduced and distributed under the direction of the Clerk of the House.

5

**STATE OF MAINE**

6

**HOUSE OF REPRESENTATIVES**

7

**125TH LEGISLATURE**

8

**FIRST REGULAR SESSION**

9

COMMITTEE AMENDMENT " " to H.P. 1027, L.D. 1398, Bill, "An Act To Amend the Laws Administered by the Department of Environmental Protection"

10

11

Amend the bill by inserting after the title and before the enacting clause the following:

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

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**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

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**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,'

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Amend the bill in section 5 in §343-D in subsection 1 by striking out all of paragraphs A to C (page 1, lines 35 and 36 and page 2, lines 1 to 11 in L.D) and inserting the following:

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26

'A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, ~~and~~ 2 representatives of organized labor and 2 representatives from the department.

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B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

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C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one

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**COMMITTEE AMENDMENT**

R.O.F.S.

1 public member who is an owner or represents an owner of a small business stationary  
2 source.'

3 Amend the bill in section 6 in §343-D in subsection 1 by striking out all of  
4 paragraphs A to C (page 4, lines 10 to 22 in L.D.) and inserting the following:

5 'A. The Governor shall appoint 2 representatives from the business community, 2  
6 elected or appointed municipal officials who are not owners or representatives of  
7 owners of small business stationary sources, and 2 representatives of organized labor  
8 and 2 representatives from the department.

9 B. The President of the Senate shall appoint one member from a public health  
10 organization, one member from an environmental organization and one public  
11 member who is an owner or represents an owner of a small business stationary  
12 source.

13 C. The Speaker of the House of Representatives shall appoint one member from a  
14 public health organization, one member from an environmental organization and one  
15 public member who is an owner or represents an owner of a small business stationary  
16 source.'

17 Amend the bill in section 14 in paragraph A in the 5th line (page 15, line 13 in L.D.)  
18 by striking out the following: "one year" and inserting the following: '2 years'

19 Amend the bill in section 19 in §584-A in the last line (page 17, line 13 in L.D.) by  
20 inserting after the following: "amended." the following: 'The department shall  
21 implement ambient air quality standards as required by the federal Clean Air Act, 42  
22 United States Code, Section 7409 and regulations promulgated under that section by the  
23 United States Environmental Protection Agency. Nothing in this section may be  
24 construed to limit the authority of the department to adopt emission standards designed to  
25 achieve and maintain ambient air quality standards.'

26 Amend the bill by inserting after section 19 the following:

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

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

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

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

# COMMITTEE AMENDMENT

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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'

Amend the bill by inserting after section 21 the following:

'**Sec. 22. 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. 23. 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'

Amend the bill by inserting at the end before the summary the following:

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

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
2 section number to read consecutively.

3 **SUMMARY**

4 This amendment, which is the majority report of the committee, makes the following  
5 changes to the bill.

6 1. It adds an emergency preamble and clause.

7 2. It retains the current authority of the President of the Senate and Speaker of the  
8 House to appoint members to the Pollution Prevention and Small Business Assistance  
9 Advisory Panel. The bill proposes to move the authority to appoint 4 members to the  
10 Governor.

11 3. It amends the law on registration of underground oil storage tanks to require that  
12 the tanks be registered within 2 years preceding installation, instead of within one year as  
13 proposed in the bill.

14 4. It clarifies that the authority of the Department of Environmental Protection to  
15 adopt emission standards designed to achieve ambient air quality standards is not limited  
16 by language in the bill that references the federal Clean Air Act.

17 5. It adds a provision that amends the single entity ownership exception contained in  
18 the definition of "commercial solid waste disposal facility."

19 6. It adds a provision that amends the laws governing wellhead protection to address  
20 the removal and replacement of grandfathered facilities in wellhead protection zones.

21 7. It adds a provision that delays the effective date of Maine's ban on the sale of  
22 mercury-added button cell batteries.

23 **FISCAL NOTE REQUIRED**

24 (See attached)



# 125th MAINE LEGISLATURE

LD 1398

LR 235(02)

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

Fiscal Note for Bill as Amended by Committee Amendment " " "  
Committee: Environment and Natural Resources  
Fiscal Note Required: Yes

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## Fiscal Note

Minor savings - General Fund  
Minor revenue decrease - General Fund  
Minor cost increase - Other Special Revenue Funds

### Correctional and Judicial Impact Statements

Decreases the number of civil violations.  
A reduction in fines will decrease General Fund revenue by minor amounts.

### Fiscal Detail and Notes

Any additional costs associated with the various provisions and administrative changes in this bill can be absorbed by the Department of Environmental Protection within existing budgeted resources.

LD 1398 - Minority Report

L.D. 1398

Date:

(Filing No. H- )

**ENVIRONMENT AND NATURAL RESOURCES**

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " " to H.P. 1027, L.D. 1398, Bill, "An Act To Amend the Laws Administered by the Department of Environmental Protection"

Amend the bill in section 5 in §343-D in subsection 1 by striking out all of paragraphs A to C (page 1, lines 35 and 36 and page 2, lines 1 to 11 in L.D) and inserting the following:

'A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, ~~and~~ 2 representatives of organized labor and 2 representatives from the department.

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.'

Amend the bill in section 6 in §343-D in subsection 1 by striking out all of paragraphs A to C (page 4, lines 10 to 22 in L.D) and inserting the following:

'A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, ~~and~~ 2 representatives of organized labor and 2 representatives from the department.

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

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1 C. The Speaker of the House of Representatives shall appoint one member from a  
2 public health organization, one member from an environmental organization and one  
3 public member who is an owner or represents an owner of a small business stationary  
4 source.'

5 Amend the bill in section 11 in §469 in subsection 5 by striking out all of paragraph  
6 B (page 11, lines 33 to 38 and page 12, lines 1 to 5) and inserting the following:

7 'B. Phippsburg.

8 (1) Tidal waters east of longitude 69°-50'-05" W. and west of longitude 69°-47'-  
9 00" W. - Class SA.

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

12 Amend the bill in section 14 in paragraph A in the 5th line (page 15, line 13 in L.D.)  
13 by striking out the following: "one year" and inserting the following: '2 years'

14 Amend the bill in section 19 in §584-A in the last line (page 17, line 13 in L.D.) by  
15 inserting after the following: "amended." the following: 'The department shall  
16 implement ambient air quality standards as required by the federal Clean Air Act, 42  
17 United States Code, Section 7409 and regulations promulgated under that section by the  
18 United States Environmental Protection Agency. Nothing in this section may be  
19 construed to limit the authority of the department to adopt emission standards designed to  
20 achieve and maintain ambient air quality standards.'

21 Amend the bill by inserting after section 19 the following:

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

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

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

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

37 For the purposes of this paragraph, "single entity" means an individual, partnership,  
38 corporation or limited liability corporation that is not engaged primarily in the  
39 business of treating or disposing of solid waste or special waste. This paragraph does  
40 not apply if an individual partner, shareholder, member or other ownership interest in  
41 the single entity disposes of waste in the solid waste facility. A waste facility

P. O'F'S

1 receiving ash resulting from the combustion of municipal solid waste or refuse-  
2 derived fuel is not exempt from this subsection solely by operation of this paragraph.

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

7 Amend the bill by inserting after section 21 the following:

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

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

15 (1) Within 30 days after removal of the existing facility, notifies the  
16 commissioner and municipal code enforcement officer in writing of the owner's  
17 intent to replace the facility; and

18 (2) Commences construction of the replacement facility within 2 years after  
19 removal of the existing facility;

20 Sec. 23. 38 MRSA §1661-C, sub-§9, ¶A, as amended by PL 2009, c. 501, §22,  
21 is further amended to read:

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

26 (1) A zinc-air button cell battery;

27 (2) An alkaline manganese button cell battery; or

28 (3) A silver oxide button cell battery stamped with the designation 357, 364,  
29 371, 377, 395, SR44W, SR621SW, SR626SW, SR920SW or SR927SW or a  
30 silver oxide button cell battery that is interchangeable with a battery that is  
31 stamped with one of those designations; and'

32 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
33 section number to read consecutively.

### 34 SUMMARY

35 This amendment, which is the minority report of the committee, makes the following  
36 changes to the bill.

37 1. It retains the current authority of the President of the Senate and Speaker of the  
38 House to appoint members to the Pollution Prevention and Small Business Assistance

# COMMITTEE AMENDMENT

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Advisory Panel. The bill proposes to move the authority to appoint 4 members to the Governor.

2. It removes the provisions in the bill that amend the laws governing the classification of estuarine and marine waters in Phippsburg.

3. It amends the law on registration of underground oil storage tanks to require that the tanks be registered within 2 years preceding installation, instead of within one year as proposed in the bill.

4. It clarifies that the authority of the Department of Environmental Protection to adopt emission standards designed to achieve ambient air quality standards is not limited by language in the bill that references the federal Clean Air Act.

5. It adds a provision that amends the single entity ownership exception contained in the definition of "commercial solid waste disposal facility."

6. It adds a provision that amends the laws governing wellhead protection to address the removal and replacement of grandfathered facilities in wellhead protection zones.

7. It adds a provision that delays the effective date of Maine's ban on the sale of mercury-added button cell batteries.

This amendment differs from the majority report of the committee by removing the emergency preamble and the provisions in the bill that amend the laws governing the classification of estuarine and marine waters in Phippsburg.

**FISCAL NOTE REQUIRED**

(See attached)

**COMMITTEE AMENDMENT**



# 125th MAINE LEGISLATURE

LD 1398

LR 235(03)

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

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

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## Fiscal Note

Minor savings - General Fund  
Minor revenue decrease - General Fund  
Minor cost increase - Other Special Revenue Funds

### Correctional and Judicial Impact Statements

Decreases the number of civil violations.  
A reduction in fines will decrease General Fund revenue by minor amounts.

### Fiscal Detail and Notes

Any additional costs associated with the various provisions and administrative changes in this bill can be absorbed by the Department of Environmental Protection within existing budgeted resources.

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Date: (Filing No. H- )

**ENVIRONMENT AND NATURAL RESOURCES**

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " " to H.P. 1027, L.D. 1398, Bill, "An Act To Amend the Laws Administered by the Department of Environmental Protection"

Amend the bill by inserting after the title and before the enacting clause the following:

**'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,'

Amend the bill in section 5 in §343-D in subsection 1 by striking out all of paragraphs A to C (page 1, lines 35 and 36 and page 2, lines 1 to 11 in L.D) and inserting the following:

A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, ~~and~~ 2 representatives of organized labor and 2 representatives from the department.

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one

**COMMITTEE AMENDMENT**

R.O.F.S.

1 public member who is an owner or represents an owner of a small business stationary  
2 source.'

3 Amend the bill in section 6 in §343-D in subsection 1 by striking out all of  
4 paragraphs A to C (page 4, lines 10 to 22 in L.D) and inserting the following:

5 'A. The Governor shall appoint 2 representatives from the business community, 2  
6 elected or appointed municipal officials who are not owners or representatives of  
7 owners of small business stationary sources, ~~and~~ 2 representatives of organized labor  
8 and 2 representatives from the department.

9 B. The President of the Senate shall appoint one member from a public health  
10 organization, one member from an environmental organization and one public  
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13 C. The Speaker of the House of Representatives shall appoint one member from a  
14 public health organization, one member from an environmental organization and one  
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17 Amend the bill in section 14 in paragraph A in the 5th line (page 15, line 13 in L.D.)  
18 by striking out the following: "one year" and inserting the following: '2 years'

19 Amend the bill in section 19 in §584-A in the last line (page 17, line 13 in L.D.) by  
20 inserting after the following: "amended." the following: 'The department shall  
21 implement ambient air quality standards as required by the federal Clean Air Act, 42  
22 United States Code, Section 7409 and regulations promulgated under that section by the  
23 United States Environmental Protection Agency. Nothing in this section may be  
24 construed to limit the authority of the department to adopt emission standards designed to  
25 achieve and maintain ambient air quality standards.'

26 Amend the bill by inserting after section 19 the following:

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

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

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

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

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

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

12 Amend the bill by inserting after section 21 the following:

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

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

20 (1) Within 30 days after removal of the existing facility, notifies the  
21 commissioner and municipal code enforcement officer in writing of the owner's  
22 intent to replace the facility; and

23 (2) Commences construction of the replacement facility within 2 years after  
24 removal of the existing facility;

25 **Sec. 23. 38 MRSA §1661-C, sub-§9, ¶A,** as amended by PL 2009, c. 501, §22,  
26 is further amended to read:

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

- 31 (1) A zinc-air button cell battery;
- 32 (2) An alkaline manganese button cell battery; or
- 33 (3) A silver oxide button cell battery stamped with the designation 357, 364,  
34 371, 377, 395, SR44W, SR621SW, SR626SW, SR920SW or SR927SW or a  
35 silver oxide button cell battery that is interchangeable with a battery that is  
36 stamped with one of those designations; and'

37 Amend the bill by inserting at the end before the summary the following:

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

# COMMITTEE AMENDMENT

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Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment, which is the majority report of the committee, makes the following changes to the bill.

- 1. It adds an emergency preamble and clause.
- 2. It retains the current authority of the President of the Senate and Speaker of the House to appoint members to the Pollution Prevention and Small Business Assistance Advisory Panel. The bill proposes to move the authority to appoint 4 members to the Governor.
- 3. It amends the law on registration of underground oil storage tanks to require that the tanks be registered within 2 years preceding installation, instead of within one year as proposed in the bill.
- 4. It clarifies that the authority of the Department of Environmental Protection to adopt emission standards designed to achieve ambient air quality standards is not limited by language in the bill that references the federal Clean Air Act.
- 5. It adds a provision that amends the single entity ownership exception contained in the definition of "commercial solid waste disposal facility."
- 6. It adds a provision that amends the laws governing wellhead protection to address the removal and replacement of grandfathered facilities in wellhead protection zones.
- 7. It adds a provision that delays the effective date of Maine's ban on the sale of mercury-added button cell batteries.

**FISCAL NOTE REQUIRED**

**(See attached)**



# 125th MAINE LEGISLATURE

LD 1398

LR 235(02)

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

Fiscal Note for Bill as Amended by Committee Amendment " " "  
Committee: Environment and Natural Resources  
Fiscal Note Required: Yes

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## Fiscal Note

Minor savings - General Fund  
Minor revenue decrease - General Fund  
Minor cost increase - Other Special Revenue Funds

### Correctional and Judicial Impact Statements

Decreases the number of civil violations.  
A reduction in fines will decrease General Fund revenue by minor amounts.

### Fiscal Detail and Notes

Any additional costs associated with the various provisions and administrative changes in this bill can be absorbed by the Department of Environmental Protection within existing budgeted resources.

5/11/03  
R. L. D.

Date:

(Filing No. H- )

**ENVIRONMENT AND NATURAL RESOURCES**

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " " to H.P. 1027, L.D. 1398, Bill, "An Act To Amend the Laws Administered by the Department of Environmental Protection"

Amend the bill in section 5 in §343-D in subsection 1 by striking out all of paragraphs A to C (page 1, lines 35 and 36 and page 2, lines 1 to 11 in L.D) and inserting the following:

'A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, and 2 representatives of organized labor and 2 representatives from the department.

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.'

Amend the bill in section 6 in §343-D in subsection 1 by striking out all of paragraphs A to C (page 4, lines 10 to 22 in L.D) and inserting the following:

'A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, and 2 representatives of organized labor and 2 representatives from the department.

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

**COMMITTEE AMENDMENT**

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C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.'

Amend the bill in section 11 in §469 in subsection 5 by striking out all of paragraph B (page 11, lines 33 to 38 and page 12, lines 1 to 5) and inserting the following:

'B. Phippsburg.

(1) Tidal waters east of longitude 69°-50'-05" W. and west of longitude 69°-47'-00" W. - 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.'

Amend the bill in section 14 in paragraph A in the 5th line (page 15, line 13 in L.D.) by striking out the following: "one year" and inserting the following: '2 years'

Amend the bill in section 19 in §584-A in the last line (page 17, line 13 in L.D.) by inserting after the following: "amended." the following: '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.'

Amend the bill by inserting after section 19 the following:

'**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

R. OF S.

1 receiving ash resulting from the combustion of municipal solid waste or refuse-  
2 derived fuel is not exempt from this subsection solely by operation of this paragraph.

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

7 Amend the bill by inserting after section 21 the following:

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

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

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

20 **Sec. 23. 38 MRSA §1661-C, sub-§9, ¶A**, as amended by PL 2009, c. 501, §22,  
21 is further amended to read:

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

- 26 (1) A zinc-air button cell battery;
- 27 (2) An alkaline manganese button cell battery; or
- 28 (3) A silver oxide button cell battery stamped with the designation 357, 364,  
29 371, 377, 395, SR44W, SR621SW, SR626SW, SR920SW or SR927SW or a  
30 silver oxide button cell battery that is interchangeable with a battery that is  
31 stamped with one of those designations; and'

32 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
33 section number to read consecutively.

34 **SUMMARY**

35 This amendment, which is the minority report of the committee, makes the following  
36 changes to the bill.

- 37 1. It retains the current authority of the President of the Senate and Speaker of the  
38 House to appoint members to the Pollution Prevention and Small Business Assistance

**COMMITTEE AMENDMENT**

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Advisory Panel. The bill proposes to move the authority to appoint 4 members to the Governor.

2. It removes the provisions in the bill that amend the laws governing the classification of estuarine and marine waters in Phippsburg.

3. It amends the law on registration of underground oil storage tanks to require that the tanks be registered within 2 years preceding installation, instead of within one year as proposed in the bill.

4. It clarifies that the authority of the Department of Environmental Protection to adopt emission standards designed to achieve ambient air quality standards is not limited by language in the bill that references the federal Clean Air Act.

5. It adds a provision that amends the single entity ownership exception contained in the definition of "commercial solid waste disposal facility."

6. It adds a provision that amends the laws governing wellhead protection to address the removal and replacement of grandfathered facilities in wellhead protection zones.

7. It adds a provision that delays the effective date of Maine's ban on the sale of mercury-added button cell batteries.

This amendment differs from the majority report of the committee by removing the emergency preamble and the provisions in the bill that amend the laws governing the classification of estuarine and marine waters in Phippsburg.

**FISCAL NOTE REQUIRED**

**(See attached)**



# 125th MAINE LEGISLATURE

LD 1398

LR 235(03)

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

**Fiscal Note for Bill as Amended by Committee Amendment " "**  
**Committee: Environment and Natural Resources**  
**Fiscal Note Required: Yes**

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## Fiscal Note

Minor savings - General Fund  
Minor revenue decrease - General Fund  
Minor cost increase - Other Special Revenue Funds

### Correctional and Judicial Impact Statements

Decreases the number of civil violations.  
A reduction in fines will decrease General Fund revenue by minor amounts.

### Fiscal Detail and Notes

Any additional costs associated with the various provisions and administrative changes in this bill can be absorbed by the Department of Environmental Protection within existing budgeted resources.

# COMMITTEE VOTING TALLY SHEET

LD 1398

Committee: Environment and Natural Resources

Date: 5/3/11

Motion: Table

Motion by: Hamper

Seconded by: Goodall

	Those Voting in Favor of the Motion	Recommendation of those opposed to the Motion					Absent	Abstain
		ONTP	OP	OP-AM	New draft	Re-Refer		
Rep. Nass	✓							
Rep. Welsh	✓							
Rep. Ayotte								
Sen. Goodall	✓							
Sen. Sherman								
Sen. Saviello	✓							
Rep. Hamper	✓							
Rep. Duchesne	✓							
Rep. Knapp	✓							
Rep. Harlow	✓							
Rep. Parker	✓							
Rep. Welsh Innes	✓							
Rep. Long	✓							

## COMMITTEE VOTING TALLY SHEET

LD # or Confirmation: LD 1398

Committee: Environment and Natural Resources

Date: 05/11/2011

Motion: Ought To Pass As Amended

Motion by: Rep. Parker

Seconded by: Rep. Long

Those Voting in Favor of the Motion	Recommendation of those opposed to the Motion					Absent	Abstain
	ONTP						

### Senators

Sen. Saviello	X						
Sen. Goodall	X						
Sen. Sherman	X						

### Representatives

Rep. Hamper	X						
Rep. Ayotte	X						
Rep. Duchesne	X						
Rep. Harlow		X					
Rep. Innes	X						
Rep. Knapp	X						
Rep. Long	X						
Rep. Nass	X						
Rep. Parker	X						
Rep. Welsh	X						

# COMMITTEE VOTING TALLY SHEET

LD 1398

Committee: Environment and Natural Resources

Date: 5/11/11

Motion: OP-AM

Motion by: Parker

Seconded by: ~~Long~~ Long

	Those Voting in Favor of the Motion	Recommendation of those opposed to the Motion					Absent	Abstain
		ONTP	OP	OP-AM	New draft	Re-Refer		
Rep. Nass	✓							
Rep. Welsh	✓							
Rep. Ayotte	✓							
Sen. Goodall	✓							
Sen. Sherman	✓							
Sen. Saviello	✓							
Rep. Hamper	✓							
Rep. Duchesne	✓							
Rep. Knapp	✓							
Rep. Harlow		✓		✓				
Rep. Parker	✓							
Rep. Welsh Innes	✓							
Rep. Long	✓							

# HOUSE REPORT

## THE COMMITTEE ON Environment and Natural Resources

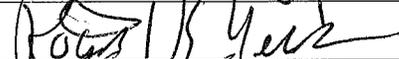
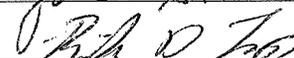
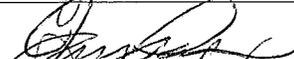
to which was referred the following:

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

H.P. 1027

L.D. 1398

has had the same under consideration, and asks leave to report that the same  
OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT " "

(Signature)	of For the Committee
SEN. SAVIELLO of Franklin	
SEN. GOODALL of Sagadahoc	
SEN. SHERMAN of Aroostook	
REP. HAMPER of Oxford	
REP. AYOTTE of Caswell	
REP. DUCHESNE of Hudson	
REP. INNES of Yarmouth	Melissa Innes
REP. KNAPP of Gorham	Jane S. Knapp
REP. LONG of Sherman	
REP. NASS of Acton	Jan Nass
REP. PARKER of Veazie	
REP. WELSH of Rockport	
(Type)	(Signatures)
Rep. of (Town) and/or Sen. of (County)	

# HOUSE REPORT

