

STATE ENVIRONMENTAL LAWS AFFECTING MAINE AGRICULTURE

*(See NASDA's website for
Federal Environmental Laws Affecting U.S. Agriculture)*

A Project of the

**National Association of State Departments
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The Project Participants

National Association of State Departments of Agriculture Research Foundation

The National Association of State Departments of Agriculture (NASDA) is a nonprofit association of public officials representing the Commissioners, Secretaries, and Directors of Agriculture in the fifty states and four territories. The NASDA Research Foundation is a 501(c)(3) nonprofit, tax-exempt corporation for education and scientific purposes.

National Center for Agricultural Law Research and Information

The National Center for Agricultural Law Research and Information (Center) was created in 1987 under Public Law 100-202, 101 Stat. 1329-30 to address the complex legal issues that affect American agriculture. The Center focuses its efforts on research, writing, publishing, development of library services, and the dissemination of information to the public. The Center is located at the University of Arkansas School of Law in Fayetteville, Arkansas.

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS), is a federal agency within the U.S. Department of Agriculture (USDA). NRCS conservationists work with private landowners and operators to help them protect their natural resources.

U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) is a federal agency with primary responsibility for implementation of most federal laws designed to protect, enhance, and conserve the nation's natural resources.

Disclaimer

This guide is designed for use by farmers, ranchers, landowners, and their consultants in understanding the effect environmental laws have on agricultural operations. It is not a substitute for individual legal advice. Producers should always confer with their own attorneys, consultants, or advisors, as well as federal, state, and local authorities responsible for the applicable environmental laws.

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The contents and views expressed in this guide are those of the authors and do not necessarily reflect the policies or positions of the United States Department of Agriculture (USDA) NRCS or EPA.

Although every effort has been made to ensure the accuracy of the information contained in this book, environmental statutes, regulations, and ordinances are constantly changing. In addition, the overwhelming complexity and extent of environmental law make it impossible for a single book to describe in complete detail and depth all of the environmental laws and regulations impacting agricultural operations. The following material is simply a basic primer on environmental law for agricultural producers. For these reasons, the utilization of these materials by any person constitutes an agreement to hold harmless the authors, the National Center for Agricultural Law Research and Information, the University of Arkansas, the United States Department of Agriculture, the National Association of State Departments of Agriculture Research Foundation, the Natural Resources Conservation Service, and the United States Environmental Protection Agency for any liability, claims, damages, or expenses that may be incurred by any person or organization as a result of reference to, or reliance on, the information contained in this book.

The background research and final documents were completed in October of 2000. Updates of the information contained in the guide will occur on an annual basis and be made available on the internet.

Anyone with comments concerning the guide should contact the NASDA Research Foundation at 1156 15th Street, N.W., Suite 1020, Washington, D.C. 20005, or phone (202) 296-9680.

Quick Reference Guide

Producer Note: The following chart is intended as a quick reference guide to permits which may be necessary for a particular operation. If a permit is necessary, refer to the page numbers listed referencing this document for further information and contact the agencies listed in the final column for information on applications and procedures for securing a permit for an operation. A list of agencies and contact information is also provided in Appendix A.

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-9</i>	Livestock and aquaculture operations, depending on size	NPDES and state general permit or land disposal permit; state livestock operations permit	EPA Regional Office and Maine Department of - Environmental Protection (DEP) or Department of Agriculture, Food & Rural Resources (DOA)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit and state conditional use determination	U.S. Army Corps of Engineers with EPA and Maine DEP approval
	Water well construction	License required	Maine DEP
Groundwater <i>pp. 9-10</i>	Groundwater protection	No specific permit but nondegradation standards apply	Maine DEP
Air Quality <i>pp. 10-12</i>	General agricultural operations including odor, dust, or flies	No permit but may be subject to nuisance suits	EPA Regional Office or Maine DEP

Regulatory Area	Type of Activity	Permit Required	Agency
	Burning	Permit required; may be prohibited.	Maine DEP; Local Fire Authorities
Solid Waste and Hazardous Waste <i>pp. 13-17</i>	Storage, treatment, disposal or transportation of hazardous or solid waste	Permit required for disposal, treatment, storage, or transportation activities; advance notification required to DEP for permit-by-rule for cull potato disposal when conforming to DEP standards	EPA Regional Office and Maine DEP
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and Maine DEP
Pesticides and Chemigation <i>pp. 17-21</i>	Application and use of pesticides	State permits required for certain applications; certification may be required	EPA, Maine DOA, and Maine DEP
	Record keeping	No permit but all requirements must be met	Maine DOA
Wildlife Protection <i>pp. 21-22</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service and Maine Department of Inland Fisheries & Wildlife

STATE ENVIRONMENTAL LAWS AFFECTING MAINE AGRICULTURE

Producer Note: Agricultural producers are faced with many challenges in today's rapidly changing world. Changes in industrialization, use of computer-based technology, governmental involvement in market dynamics, and environmental regulation are affecting producers in a number of ways. Environmental regulation is a complex area with both federal and state government involvement. Keeping informed is the producer's most useful instrument for meeting the challenges of today's agriculture. This information on environmental regulation is provided to inform producers of the breadth and scope of environmental laws which may impact daily production activities.

I. WATER QUALITY

A. Maine Water Quality Laws and Regulations

Most states have enacted clean water legislation. While these statutes usually contain provisions similar to those found in the parallel federal legislation, there may be significant differences. In fact, state statutes may impose requirements that are even more restrictive than the federal law. In all cases, CWA requirements must be followed, as they are enforced along with the state enacted statutes and regulations implemented by the state administrative agencies. Under the CWA, EPA has delegated the NPDES permit program to many states.

Caution: Because environmental laws and regulations change frequently, all producers must stay in contact with both state and federal officials in order to remain aware of and in compliance with changes in the law.

1. *Maine Water Pollution Control Program*

Maine's water quality program is managed by the Department of Environmental Protection (DEP), which is charged with the responsibility of protecting and managing the water resources within the state. To that end, it has assumed responsibility for administering the NPDES permit programs governing the discharge of pollutants into Maine waters.

A waste discharge license from the DEP is generally required for any person to discharge, directly or indirectly, any pollutant to any surface or subsurface waters within the state.¹ Pollutants include dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or byproducts,

¹ ME. REV. STAT. ANN. tit. 38 §§ 413 et seq. (West 1989, Supp. 1999); Maine Dep't of Env'tl Protection Rules 06-096 ch. 520 et seq.

heat, wrecked or discarded equipment, rock, sand, and dirt plus industrial, municipal, domestic, commercial or agricultural wastes of any kind.² In most cases, a license will only be issued when the proposed activity will not lower the actual or anticipated water quality classification of the affected water bodies and when the activity involves a pesticide. Additionally, there must be no significant adverse impact on nontarget species.³ The DEP may impose conditions on the permit including effluent limitations and best practicable treatment requirements in order to maintain the water quality associated with the affected waters' classification.

Several exceptions and substantive provisions in the statutes and regulations will be of particular interest to agricultural producers:

- Discharges of rock, sand, dirt, or other pollutants when resulting from erosion related to agricultural activities are exempt from the waste discharge license requirement provided the agricultural activities are in compliance with a certified erosion or sedimentation control or conservation plan;⁴
- Regardless of the calendar date, it is unlawful to spread manure on frozen ground within a great pond watershed unless it is consistent with a filed conservation plan;⁵
- It is unlawful to directly or indirectly discharge into or near waters or onto ice forest products, potatoes, or refuse from such;⁶
- In general, adequate erosion control measures must be in place prior to any activity involving filling, displacing, or exposing soil or other earthen materials; this requirement does not apply, however, to agricultural fields.⁷
- In general, projects disturbing five (5) or more acres require a special storm water management permit; however, disturbing areas for the purpose of normal farming activities such as clearing of vegetation, plowing, seeding, cultivating, minor drainage, and harvesting is exempt from the permit program;⁸ and

² ME. REV. STAT. ANN. tit. 38 § 361-A (West 1989, Supp. 1999).

³ ME. REV. STAT. ANN. tit. 38 § 414-A (West 1989, Supp. 1999).

⁴ ME. REV. STAT. ANN. tit. 38 § 413 (West 1989, Supp. 1999).

⁵ ME. REV. STAT. ANN. tit. 38 § 417-A (West 1989, Supp. 1999).

⁶ ME. REV. STAT. ANN. tit. 38 § 417 (West 1989, Supp. 1999).

⁷ ME. REV. STAT. ANN. tit. 38 § 420-C (West 1989, Supp. 1999).

⁸ ME. REV. STAT. ANN. tit. 38 § 420-D (West 1989, Supp. 1999).

- Waste discharge licenses for concentrated animal feeding operations, aquatic animal production facilities, and aquaculture projects are subject to specialized standards and permit conditions.⁹

The DEP has the authority to inspect premises and records and take samples for analysis in order to measure compliance with conditions of any waste discharge license. Licenses may be modified, revoked, or suspended. Additionally, failure to comply with the terms and conditions of a license may result in civil and criminal penalties including imprisonment up to six (6) months and monetary penalties up to \$10,000 per violation per day.¹⁰

2. *Maine Nutrient Management Act*

Maine's Nutrient Management Act¹¹ established requirements for Nutrient Management Plans and Livestock Operations Permits for qualifying farms. Owners or operators of a qualifying farm are required to have and implement a Nutrient Management Plan pursuant to Maine Department of Agriculture, Food, and Rural Resource (DOA) guidelines. For purposes of the plan requirement, a qualifying farm meets one or more of the following criteria:

- Confines and feeds 50 or more animal units (any combination of animals totaling 50,000 lbs. live weight) at any one time;
- Utilizes more than 100 tons of manure per year which was not generated on that farm;
- Is the subject of a verified complaint of improper manure handling; or
- Stores or utilizes regulated residuals (materials generated as a byproduct of a nonagricultural production or treatment process that have value as a source of crop nutrients or soil amendments).

⁹ See Maine Dep't of Env'tl Protection Rules 06-096 chs. 521, 524.

¹⁰ ME. REV. STAT. ANN. tit. 38 §§ 349, 414 (West 1989, Supp. 1999); Maine Dep't of Env'tl Protection Rules 06-096 ch. 523.

¹¹ ME. REV. STAT. ANN. tit. 7 §§ 4201 et seq. (West 1989, Supp. 1999).

a. Nutrient Management Plans

Qualifying farms that were already operational as of December 1, 1998 have until January 1, 2001 to prepare a nutrient management plan and until October 1, 2007 to implement it unless the farm is subject to a verified complaint of improper manure handling.¹²

Nutrient management plans must be prepared or approved by a person certified by the DOA to develop nutrient management plans. The plans are required by regulation to address such issues as odor, insect control, soil erosion control, plus storage, management, and utilization of manure and off farm nutrients.¹³

b. Livestock Operations Permit

A livestock operations permit is required for any animal feeding operation that meets or exceeds one or more of the following criteria:

- Qualify as concentrated animal feeding operations (CAFOs);
- Feed and confine 300 or more animal units (any combination of animals totaling 300,000 lbs. live weight) unless doing so before April 15, 1998; or
- Proposes an expansion beyond the operation's manure storage capacity or land base capacity for manure spreading.

Issuance of a livestock operations permit requires compliance with a nutrient management plan prepared by certified personnel.¹⁴

c. Enforcement

Manure spreading or spraying on agricultural fields is prohibited between the dates of December 1 and March 15. Variances may be granted in cases of financial hardship or other

¹² ME. REV. STAT. ANN. tit. 7 § 4204 (West 1989, Supp. 1999).

¹³ Maine Dep't of Env't'l Protection Rules 06-096 ch. 565.

¹⁴ ME. REV. STAT. ANN. tit. 7 § 4205 (West 1989, Supp. 1999).

necessity.¹⁵ Improper winter spreading of manure is punishable by a civil forfeiture of up to \$1000 per day for every day that spreading occurs.¹⁶

Each of the following acts constitute an independent civil violation:

- Failure to develop a required nutrient management plan or to obtain a livestock operations permit;
- Failure to implement a required nutrient management plan; or
- Failure to comply with conditions of a livestock operations permit.

Each civil violation is punishable by a forfeiture up to \$1000 plus \$250 per day for each day the violation continues.

3. Maine Oil Discharge Prevention and Pollution Control

Because of the unique dangers associated with the release of oil and petroleum byproducts into the environment, Maine law imposes duties of reporting and remediation on those responsible for a discharge.¹⁷ It is unlawful to spill, leak, pump, pour, emit, empty, or dump oil into, on, or near water including groundwater unless the discharge is pursuant to a waste discharge license.¹⁸ In the event of an oil discharge, the responsible party must immediately undertake satisfactory removal or cleanup measures.¹⁹ The DEP administers the Maine Coastal and Inland Surface Oil Clean-up Fund to assist with expeditious remediation.²⁰ Responsible parties are strictly liable for any state disbursements and damages arising out of an unlicensed discharge.²¹ However, reporting a discharge within two (2) hours and prompt removal in accordance with DEP guidelines plus reimbursement to the state of any funds disbursed to aid in cleanup and satisfaction of third-party damage claims results in no liability for fines or

¹⁵ ME. REV. STAT. ANN. tit. 7 § 4207; see also ME. REV. STAT. ANN. tit. 38 § 417-A (West 1989, Supp. 1999).

¹⁶ ME. REV. STAT. ANN. tit. 7 § 4209 (West 1989, Supp. 1999).

¹⁷ ME. REV. STAT. ANN. tit. 38 §§ 541 et seq. (West 1989, Supp. 1999); Maine Dep't of Env't'l Protection Rules 06-096 ch. 600.

¹⁸ ME. REV. STAT. ANN. tit. 38 § 543; see also ME. REV. STAT. ANN. tit. 38 § 413(2-G) (West 1989, Supp. 1999).

¹⁹ ME. REV. STAT. ANN. tit. 38 § 548 (West 1989, Supp. 1999); Maine Dep't of Env't'l Protection Rules 06-096 ch. 600.

²⁰ ME. REV. STAT. ANN. tit. 38 § 551 (West 1989, Supp. 1999).

²¹ ME. REV. STAT. ANN. tit. 38 § 552 (West 1989, Supp. 1999).

civil penalties.²² As with enforcement of other environmental statutes, the DEP may pursue an injunction or seek criminal or civil remedies.²³ Criminal punishment may include imprisonment up to six (6) months and fines up to \$25,000 per day.

4. *Maine Wetlands Regulation*

Maine supplements its water quality regulation with specific programs designed to protect its significant wetland areas. The state's zoning laws²⁴ and its Natural Resources Protection Act,²⁵ both administered by the DEP, strictly regulate those activities that may be carried out in or near protected wetland areas without a permit.

For activities not expressly exempted under the Natural Resources Protection Act, there are three types of permits available: general permits, permits-by-rule, and individual permits.

- General permits, which involve reduced review procedures, may be issued by the DEP for a limited number of specified activities. Provided they comply with specialized statutory requirements, activities eligible for general permits are:
 - Alteration of freshwater wetlands to cultivate cranberries;²⁶ and
 - Alteration of a freshwater nontidal stream to construct an agricultural irrigation pond.²⁷
- Permits-by-rule (PBRs), which involve a streamlined permitting process, may be granted for specified activities designated by DEP as likely to involve lesser impacts on protected wetland areas.²⁸ Activities eligible for PBRs must comply with DEP standards. Activities for which PBRs are available include:

²² ME. REV. STAT. ANN. tit. 38 § 550 (West 1989, Supp. 1999).

²³ ME. REV. STAT. ANN. tit. 38 §§ 348, 349 (West 1989, Supp. 1999).

²⁴ ME. REV. STAT. ANN. tit. 12 §§ 4751 et seq. (West 1989, Supp. 1999).

²⁵ ME. REV. STAT. ANN. tit. 38 §§ 480-A et seq. (West 1989, Supp. 1999).

²⁶ ME. REV. STAT. ANN. tit. 38 § 480-U (West 1989, Supp. 1999).

²⁷ ME. REV. STAT. ANN. tit. 38 § 480-Y (West 1989, Supp. 1999).

²⁸ Maine Dep't of Env'tl Protection Rules 06-096 ch. 305.

- Activities involving soil disturbance or fill placement within 100 feet of a protected wetland but not in a protected wetland area;
 - Installation and maintenance of certain wells or permanent intake water pipes;
 - Replacement of existing permanent structures;
 - Installation and maintenance of permanent outfall pipes or outlets from ditches or drain tiles for certain discharges;
 - Establishment of vegetation and installation of riprap in certain areas for shoreline stabilization; and
 - Construction of a bridge span or culvert crossing of certain rivers, streams, or brooks, including establishment of a permanent stream ford for livestock or other agricultural purposes.
- Individual permits are required for any regulated activity not specified as eligible for a general permit or PBR.²⁹ The regulations outline criteria and documentation required in order to secure permit approval. In general, when the proposed activity will cause a loss to wetland area functions and values, permits will not be granted if:
 - There is a practicable alternative that would be less damaging to the environment;
 - Alteration of the wetland would exceed the necessary minimum;
 - Sufficient compensation for loss of wetland functions cannot be provided; or
 - The project will have an unreasonable impact on the wetland.

Certain activities are generally regulated by permit programs or other guidelines when they are conducted within a great pond, river, stream, brook, coastal wetland, certain freshwater wetland, or significant wildlife habitat contained within a freshwater wetland or when they are conducted adjacent to such areas if the activity may result in material or soil being washed into them. Regulated activities include:

²⁹ Maine Dep't of Env'tl Protection Rules 06-096 ch. 310.

- Dredging, bulldozing, removing or displacing soil, sand, vegetation, or other materials; draining or otherwise dewatering; filling; construction, repair or alteration of any permanent structure,³⁰ or
- Subsurface waste disposal.³¹

Many, but not all, agricultural activities are expressly exempted from these permit programs or other requirements. Wastes generated from agricultural activities are exempt from the minimum lot sizes, volume limits, and permit requirements for subsurface waste disposal affecting coastal wetlands imposed by state zoning controls.³² Activities exempted from the individual permit requirements of the Natural Resources Protection Act³³ include:

- Altering a freshwater wetland for purposes of normal farming activities such as the clearing of vegetation for agricultural purposes (if there is no alteration of land topography) including plowing, seeding, cultivating, minor drainage, and harvesting;
- Construction or maintenance of farm or livestock ponds or irrigation ditches;
- Maintenance of drainage ditches; and
- Construction or maintenance of farm roads.

Special requirements apply when the activity will affect an area designated by the Department of Inland Fisheries and Wildlife as significant wildlife habitat.³⁴

Failure to comply with permit requirements, permit conditions, or orders issued by the DEP may result in civil penalties up to \$10,000 per violation per day and conviction of a Class E crime which may result in imprisonment up to six (6) months and fines up to \$25,000 per violation per day for a first offense.³⁵

³⁰ ME. REV. STAT. ANN. tit. 38 § 480-A (West 1989, Supp. 1999).

³¹ ME. REV. STAT. ANN. tit. 12 §§ 4807A-4807D (West 1989, Supp. 1999).

³² ME. REV. STAT. ANN. tit. 12 § 4807 (West 1989, Supp. 1999).

³³ ME. REV. STAT. ANN. tit. 38 § 480-Q (West 1989, Supp. 1999).

³⁴ Maine Dep't of Env't'l Protection Rules 06-096 ch. 335.

³⁵ ME. REV. STAT. ANN. tit. 38 § 349; ME. REV. STAT. ANN. tit. 17A §§ 4-A, 1252 (West 1989, Supp. 1999).

5. *Maine Criminal Liability for Corrupting Waters*

It is a serious criminal offense to:

- Intentionally or knowingly poison, defile, or in any way corrupt the waters of any well, spring, brook, lake, pond, river, or reservoir used for domestic purposes for man or beast whether the water be frozen or not;
- Put the carcass of any dead animal or other offensive material in such waters or upon the ice of such waters; or
- Knowingly corrupt the sources of any public water supply or the tributaries of those sources of supply in a manner which affects the purity of the water supplied.

The penalties for conviction of any of these acts include imprisonment up to 40 years and a fine up to \$50,000.

II. GROUNDWATER

A. Maine Groundwater Laws and Regulations

1. *Maine Groundwater Protection Program*

The protection of groundwater quality in Maine is achieved primarily through the Department of Environmental Protection (DEP) general water quality programs (see pages ME-10 to ME-17). The legislature has authorized studies and ordered annual reports on the impact of agricultural practices and chemicals on ground water quality in selected agricultural areas and selected aquifers.³⁶

2. *Maine Underwater Injection Control (UIC) Program*

The DEP administers regulations designed to control the subsurface discharge of pollutants by well injection.³⁷ Under the Maine Underwater Injection Control (UIC) Program, wells are classified into four types. Federal standards govern the regulation of Class I (deep well injection) and Class II and III wells (injection of fluids associated with mining of oil, gas, and minerals). Class IV wells which

³⁶ ME. REV. STAT. ANN. tit. 38 § 402 (West 1989, Supp. 1999).

³⁷ Maine Dep't of Env'tl Protection Rules 06-096 ch. 543.

inject hazardous or radioactive waste into or above water-bearing formations are prohibited. All other well injections are designated Class V and require a waste discharge license from the Department.³⁸

The regulations prohibit all subsurface discharges into or through a Class V well that would cause or allow the movement of fluid into an underground source of drinking water that may result in a violation of any Maine Primary Drinking Water Standard or which may otherwise adversely affect human health.³⁹ Violations of this provision or of the licensing requirements, terms, or conditions may result in injunctions and criminal and civil penalties.⁴⁰

3. *Maine Registration Requirements for Well Construction*

In the interest of protecting the state's groundwater quality, those engaged in the business of drilling water wells must be registered with the Maine Water Well Drilling Commission. Violations of the registration requirement may subject a well driller to a civil penalty up to \$1,000 per violation.⁴¹

III. AIR QUALITY

A. Maine Air Quality Laws and Regulations

Maine has vested its Department of Environmental Protection (DEP) with the authority to enforce ambient air quality standards within the state. Under Maine law, air pollution is defined to include dust, fumes, gas, mist, particulate matter, smoke, or vapor in quantities and duration significant enough to injure human, plant, or animal life or to interfere unreasonably with enjoyment of life or property.⁴² It is unlawful to:

- Discharge air contaminants that exceed Maine's statutory ambient air quality standards or emission standards;⁴³

³⁸ ME. REV. STAT. ANN. tit. 38 § 413(1-B) (West 1989, Supp. 1999).

³⁹ Maine Dep't of Env'tl Protection Rules 06-096 ch. 543; see also Maine Dep't of Human Services Rules, 10-144A CMR 231 (Maine Primary Drinking Water Standards).

⁴⁰ ME. REV. STAT. ANN. tit. 38 §§ 348, 349 (West 1989, Supp. 1999).

⁴¹ ME. REV. STAT. ANN. tit. 32 §§ 4700-E et seq. (West 1989, Supp. 1999).

⁴² ME. REV. STAT. ANN. tit. 38 § 582 (West 1989, Supp. 1999).

⁴³ ME. REV. STAT. ANN. tit. 38 § 591 (West 1989, Supp. 1999); see also Maine Dep't of Env'tl Protection Regulations ch. 101.

- Emit air contaminants without a license when a license is required;⁴⁴ or
- Discharge particulate matter to the ambient air in a concentration that soils property or creates a nuisance.⁴⁵

Open burning of combustible materials is generally prohibited.⁴⁶ Burning for agricultural purposes including open burning of blueberry fields, potato tops, and hayfields or burning for the disposal of materials generated from the clearing of land is permissible provided it is conducted pursuant to a permit issued by fire prevention authorities and it does not create a nuisance.⁴⁷

An air emission license is required to operate or maintain any air contamination source within the state⁴⁸ unless the source is designated an insignificant activity by DEP regulations. Specified activities are categorically exempt including agricultural activities not subject to registration or new source review by DEP.⁴⁹ Other specified types of activities and equipment may be exempt or insignificant depending on size or rate of production of air pollutants.⁵⁰ DEP determines on a case-by-case basis whether an unlisted activity is insignificant.⁵¹

Maine has a two-tiered licensing program.⁵² Air contamination sources, both major and minor, must apply for air emission licenses. For example, crematories, vet incinerators, rock crushers, asphalt batch plants, concrete batch plants, boat manufacturing, wood products manufacturing, pulp and paper mills, sawmills, tanneries, gas terminals, and metal or wood coating facilities are such sources required to apply for air emission licenses. In general, the licensing program includes:

⁴⁴ ME. REV. STAT. ANN. tit. 38 § 591 (West 1989, Supp. 1999).

⁴⁵ ME. REV. STAT. ANN. tit. 38 § 592-A (West 1989, Supp. 1999).

⁴⁶ Maine Dep't of Env'tl Protection Regulations ch. 102.

⁴⁷ Maine Dep't of Env'tl Protection Regulations ch. 102.

⁴⁸ ME. REV. STAT. ANN. tit. 38 § 590 et seq. (West 1989, Supp. 1999).

⁴⁹ Maine Dep't of Env'tl Protection Regulations ch. 115 § 1(c).

⁵⁰ Maine Dep't of Env'tl Protection Regulations ch. 115, § 1(C) & Appendix B.

⁵¹ Maine Dep't of Env'tl Protection Regulations ch. 115, § 1(B).

⁵² In the Clean Air Act Amendments of 1990, licensing was mandated for major sources. Maine was given the responsibility by EPA to have authority over this program. ME. REV. STAT. ANN. tit. 38 §§ 344, 590 (West 1989, Supp. 1999); Maine Dep't of Env'tl Protection Regulations chs. 115 and 140.

- Major source licenses, also called Part 70 or Title V or chapter 140 licenses, which are required for those operations qualifying as major sources⁵³ of air pollutants as defined in the federal Clean Air Act;⁵⁴ and
- Minor source licenses, also called chapter 115 or all other source licenses, which are required for those operations qualifying as minor sources⁵⁵ of air contaminants, including facilities that have the potential to be subject to a major source license but that voluntarily take a facility limit to avoid the regulation as a major source.⁵⁶

Licenses are issued to operations that meet the following state statutory requirements:

- Emissions receive Best Practical Treatment (BPT);⁵⁷
- Emissions will not violate applicable emission standards; and
- Emissions will not violate ambient air quality standards in conjunction with emissions from other sources.

Violators of Maine's air pollution laws and regulations are subject to injunction and civil and criminal penalties which may include imprisonment up to six (6) months and fines up to \$25,000 per violation per day.⁵⁸

⁵³ Major sources are facilities with the potential to emit one or more of the following pollutants per year: 50 tons of volatile organic compounds, 10 tons of a single hazardous air pollutant, 25 tons of all hazardous air pollutants combined, 100 tons of any other regulated pollutant under the federal Clean Air Act.

⁵⁴ Maine Dep't of Env't'l Protection Regulations ch. 140; see also Maine Dep't of Env't'l Protection Regulations ch. 100 (Definitions).

⁵⁵ Minor sources of air contaminants are facilities with the potential to emit less than the following per year: 50 tons of volatile organic compounds, 10 tons of a single hazardous air pollutant, 25 tons of all hazardous air pollutants combined, and 100 tons of any other regulated pollutant under the federal Clean Air Act.

⁵⁶ Maine Dep't of Env't'l Protection Regulations ch. 115.

⁵⁷ Best Practical Treatment (BPT) means that method which controls or reduces emissions of regulated pollutants to the lowest possible level considering: then existing state of technology, effectiveness of available alternatives for reducing emissions from the source being considered, and economic feasibility for the type establishment involved.

⁵⁸ ME. REV. STAT. ANN. tit. 38 §§ 348, 349; ME. REV. STAT. ANN. tit. 17A §§ 4-A and 1252 (West 1989, Supp. 1999).

IV. SOLID WASTE AND HAZARDOUS WASTE

Producer Note: There are several laws which control the use and disposal, as well as the cleanup, of hazardous wastes. Producers who use hazardous chemicals or use petroleum or other products stored in storage tanks must be aware of the requirements governing their actions.

A. Maine Solid Waste and Hazardous Waste Laws and Regulations

Producer Note: While most farmers and ranchers are not generators, transporters, or disposers of solid waste, it is important to check with state officials concerning the definitions of solid waste to determine whether an operation's activities could be regulated under state solid and hazardous waste statutes.

Maine's Department of Environmental Protection (DEP) administers a comprehensive waste management program to reduce pollution and reduce the volume of solid and hazardous wastes generated in the state.⁵⁹ Any land plus structures and equipment used on the land for handling solid waste, sludge, or septage are subject to the state's Solid Waste Management Laws.⁶⁰ When the waste qualifies as hazardous waste, it is subject to further regulation by the Hazardous Waste Management Rules.⁶¹

1. *Maine Solid Waste Management Rules*

Maine's Solid Waste Management Rules apply to anyone handling solid waste or locating, establishing, constructing, altering, expanding, or operating any solid waste facility. A solid waste facility is defined to include any land plus structures and equipment used on the land for handling solid waste. Handling means to store, transfer, collect, separate, salvage, process, recycle, reduce, recover, incinerate, dispose, treat, or beneficially use. Disposal includes, among other things, discharge, depositing, dumping, spilling, leaking, placing, or incineration of any solid waste into or on land, air, or water.

⁵⁹ ME. REV. STAT. ANN. tit. 38 §§ 1301 et seq. (West 1989, Supp. 1999).

⁶⁰ Maine Dep't of Env't'l Protection Rules 06-096 ch. 400 et seq.

⁶¹ Maine Dep't of Env't'l Protection Rules 06-096 ch. 800 et seq.

Solid waste includes:

- Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing including, but not limited to, rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material, and landscape refuse.

Solid waste does not include:

- Wastes that are returned to the soil as fertilizer that result from agricultural activities (the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay, and farmlot wood products including Christmas trees);
- Waste pesticides when generated by a farmer from their own use on their own farms provided that containers are rinsed and disposed of consistent with Maine's Department of Agriculture (DOA) pesticide rules;
- Hazardous or biomedical waste; or
- Septic tank sludge.

It is unlawful to establish, construct, alter, or operate any waste facility without a permit from DEP. DEP rules provide that all solid waste facilities, unless expressly exempted, must be licensed. Exempted facilities include those for disposal of livestock, poultry, and pet carcasses provided that the carcasses are handled in a manner approved by DOA. Licensed facilities must conform to siting standards, design standards, and approved treatment methods plus operational, closure, recordkeeping, monitoring, reporting, and financial responsibility requirements. DEP must also determine whether the facility will provide a substantial public benefit, not contaminate water or air, not constitute a hazard to public health or welfare, not create a nuisance, nor unreasonably and adversely affect the environment, its existing uses, or its scenic character.⁶²

Land application of septage requires a special license pursuant to DEP Septage Management Rules.⁶³ Land application of municipal, commercial, or industrial wastes for purposes of soil improvement similarly requires a special license in accordance with DEP Rules for Agronomic

⁶² Maine Dep't of Env'tl Protection Rules 06-096 chs. 400 et seq.

⁶³ Maine Dep't of Env'tl Protection Rules 06-096 ch. 420.

Utilization of Residuals.⁶⁴ The use of manure and other agricultural wastes as fertilizers are governed by DOA's Nutrient Management Rules.⁶⁵ (See pages ME-12 to ME-13.)

2. *Maine Hazardous Waste Management Rules*

Where regulated wastes constitute hazardous waste, they are subject to the additional restrictions and regulations of the state's Hazardous Waste Management Rules.⁶⁶ Under the law and regulations, DEP may designate any substance as hazardous waste that presents a present or potential danger to the people of the State or to its natural environment when deposited on land or discharged on or into waters of the State or ambient air.⁶⁷ Among the express exemptions from the hazardous waste regulations are:

- Irrigation return flows;
- Wastes that are returned to the soil as fertilizer⁶⁸ that result from agricultural activities (the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay, and farmlot wood products including Christmas trees); and
- Farmers disposing of waste pesticides from their own use on their own farms provided the handling and disposal of such pesticides conform to DOA rules.⁶⁹

Licenses from the Maine DEP are required for treatment, storage, disposal, or transportation of hazardous waste.⁷⁰ Anyone generating or transporting hazardous waste or who owns or operates a facility for the treatment, storage, use, or disposal of hazardous waste is subject to notification, management, recordkeeping, and reporting requirements.⁷¹ DEP has the authority to enter and inspect any premises and any records on the premises in order to monitor compliance with permit conditions and regulations.

⁶⁴ Maine Dep't of Env'tl Protection Rules 06-096 ch. 419.

⁶⁵ Maine Dep't of Agricultural, Food & Rural Resources Rules 01-001 ch. 565; see Maine Water Quality Laws and Regulations pp. ME-10 to ME-17.

⁶⁶ Maine Dep't of Env'tl Protection Rules 06-096 ch. 800 *et seq.*

⁶⁷ Maine Dep't of Env'tl Protection Rules 06-096 chs. 800 & 850.

⁶⁸ Maine Dep't of Env'tl Protection Rules 06-096 ch. 850.

⁶⁹ Maine Dep't of Env'tl Protection Rules 06-096 ch. 851.

⁷⁰ Maine Dep't of Env'tl Protection Rules 06-096 chs. 853, 856.

⁷¹ Maine Dep't of Env'tl Protection Rules 06-096 chs. 851, 852.

Discharges of hazardous wastes and releases of hazardous material must be immediately reported and contained.⁷² The unlicensed discharge of hazardous matter into or on any surface or groundwater, land, or ambient air of the state is prohibited.⁷³ The statute is enforceable by means of license modifications, suspensions, or revocations plus administrative orders, injunctions, and substantial administrative, civil, and criminal penalties.⁷⁴ An additional criminal penalty for reckless transportation or handling of hazardous waste or knowledge of such activity may result in up to \$5,000 per violation per day and imprisonment up to five (5) years.⁷⁵

Any discharge or threatened discharge of hazardous waste can result in civil liability to the responsible parties for the cost of abatement and the necessary costs of government investigation, removal, and remediation.⁷⁶ As an incentive for cleanup and recovery, liability may be avoided by successful completion of the approved cleanup plan.⁷⁷

3. Maine Underground (and Aboveground) Oil Storage Facility Regulation

Maine has established state standards and criteria for the design, installation, operation, maintenance, and monitoring of underground and aboveground liquid storage facilities⁷⁸ including tanks used to store fuel for farm equipment. Owners and operators of underground storage tanks (USTs) are subject to minimum operating standards, registration, notification, and financial responsibility requirements plus structural and design standards. They must promptly report and respond to known and suspected discharges of regulated substances according to specified procedures.⁷⁹

Owners and operators of aboveground oil storage tanks (ASTs) and facilities are subject to structural, design, and installation standards.⁸⁰ Maine has a Ground Water Oil Cleanup Fund

⁷² ME. REV. STAT. ANN. tit. 38 § 1318-B (West 1989, Supp. 1999); Maine Dep't of Env'tl Protection Rules 06-096 ch. 801.

⁷³ ME. REV. STAT. ANN. tit. 38 §§ 1306, 1317-A (West 1989, Supp. 1999).

⁷⁴ ME. REV. STAT. ANN. tit. 38 §§ 349, 1319-T, 1319-U (West 1989, Supp. 1999).

⁷⁵ ME. REV. STAT. ANN. tit. 38 §§ 1319-T; ME. REV. STAT. ANN. tit. 17A § 1252 (West 1989, Supp. 1999).

⁷⁶ ME. REV. STAT. ANN. tit. 38 §§ 1318-A, 1319-J (West 1989, Supp. 1999).

⁷⁷ ME. REV. STAT. ANN. tit. 38 § 1318 (West 1989, Supp. 1999).

⁷⁸ ME. REV. STAT. ANN. tit. 38 §§ 561 et seq.; Maine Dep't of Env'tl Protection Rules 06-096 ch. 691.

⁷⁹ Maine Dep't of Env'tl Protection Rules 06-096 ch. 691.

⁸⁰ ME. REV. STAT. ANN. tit. 38 § 570-K (West 1989, Supp. 1999).

supported by fees assessed on owners and operators of such tanks and facilities to assist owners or operators of such tanks and facilities with the cost of environmental cleanup and compensation of third parties injured by accidental release of petroleum from an AST or UST.⁸¹

V. PESTICIDES AND CHEMIGATION

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes. Most states have some form of licensing or certification requirements controlling those who use pesticides. In addition, if a producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by or around those workers.

A. Maine Pesticide and Chemigation Laws and Regulations

Producer Note: Maine, like most states, has laws designed to control the use of pesticides. The laws are designed to closely monitor the distribution and ultimate use of these substances within the state.

1. *Maine Pesticide Control Laws and Regulations*

Maine's pesticide control laws⁸² and their accompanying regulations⁸³ contain provisions that both implement and supplement the requirements of FIFRA with respect to labeling, distribution, sale, storage, transportation, use, application, and disposal of pesticides. The laws are administered by the Board of Pesticides Control (Board) within the Department of Agriculture, Food, and Rural Resources (DOA). In the statutes and regulations, the word "pesticide" is defined to include both pest control products and plant regulators, defoliants, and dessicants. The laws provide that:

All pesticides distributed within the state must be registered annually unless they are being distributed for an approved experimental use.⁸⁴ All pesticides must be maintained, stored, and

⁸¹ ME. REV. STAT. ANN. tit. 38 §§ 569-A, 569-B (West 1989, Supp. 1999).

⁸² ME. REV. STAT. ANN. tit. 7 §§ 601 et seq.; ME. REV. STAT. ANN. tit. 22 §§ 1471-A et seq. (West 1989, Supp. 1999).

⁸³ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 chs. 10 to 90.

⁸⁴ ME. REV. STAT. ANN. tit. 7 § 607 (West 1989, Supp. 1999).

disposed of in a safe manner that conforms to regulatory requirements.⁸⁵ Use of unregistered pesticides or use of registered pesticides in a manner inconsistent with their registration is prohibited.⁸⁶

It is unlawful to distribute any registered pesticide with respect to which the registration application contained misstatements regarding claims, composition or directions for use; any pesticide not conforming to the statute's container, labeling, or coloration requirements; any pesticide which is adulterated or misbranded; or any unregistered pesticide.

The following activities regarding pesticide use in Maine are also prohibited:

- To detach, alter, deface, or destroy any pesticide labeling or to tamper with the contents;
- To use any pesticide in a manner inconsistent with its label or the regulations governing its use;
- To handle, transport, store, display, or distribute pesticides in such a manner as to endanger man, his environment, or food, feed or other products that may be handled, transported, stored, displayed, or distributed with pesticides;
- To dispose, discard, or store pesticide containers in a manner that may cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or pollute any water supply or waterway; or
- To apply pesticides in any manner inconsistent with the law or regulations.⁸⁷

All registered pesticides sold, distributed or manufactured within the state are classified as restricted use, limited use, or general use pesticides;⁸⁸ Anyone using or supervising the use of restricted use or limited use pesticide must periodically obtain certification from the Board. Specialized certifications and licenses are required for commercial applicators and pesticide dealers.⁸⁹ Restricted

⁸⁵ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 20(3).

⁸⁶ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 20.

⁸⁷ ME. REV. STAT. ANN. tit. 7 § 606 (West 1989, Supp. 1999); see also Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 chs. 20(3) (Special Provisions), 21 (Container Disposal and Storage), 41 (Special Restrictions on Pesticide Use).

⁸⁸ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 40.

⁸⁹ ME. REV. STAT. ANN. tit. 22 § 1471-A (West 1989, Supp. 1999); Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 chs. 31, 32.

use and limited use pesticides⁹⁰ must carry a sticker approved by the Board and may be sold only to certified applicators.⁹¹

Although agricultural pesticide applications are exempt from public notification requirements,⁹² other important aspects of Maine's pesticide control laws and regulations that may be relevant to farmers and ranchers include the following:

- All pesticide applicators must instruct any employees or other workers on pesticide safety and provide necessary safety equipment.⁹³
- Application of pesticides in waters of the state requires a waste discharge license from the DEP and special permission of the Board,⁹⁴
- It is unlawful to mix or load pesticides within 50 feet of any surface waters, and spills within the setback zone must be cleaned up immediately;⁹⁵
- It is unlawful to transport pesticides unless they are secured to prevent shifting or release during transport;⁹⁶
- It is unlawful to apply pesticides to areas designated by the Board as "critical pesticide control areas," unless pursuant to an approved pesticide management plan and permission of the Board,⁹⁷

⁹⁰ Purchasers of limited use pesticides must additionally have a special permit.

⁹¹ ME. REV. STAT. ANN. tit. 22 § 1471-Q (West 1989, Supp. 1999).

⁹² Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 28.

⁹³ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 20(5).

⁹⁴ ME. REV. STAT. ANN. tit. 22 § 1471-E (West 1989, Supp. 1999); Maine Dep't of Env't'l Protection Rules 06-096 ch. 514; Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 chs. 20, 70.

⁹⁵ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 29.

⁹⁶ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 29.

⁹⁷ ME. REV. STAT. ANN. tit. 22 § 1471-F (West 1989, Supp. 1999); Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 chs. 60, 70.

- It is unlawful for non-government applicators to use poisons for purposes of animal control except for use of approved products targeting rats, mice, or indoor control of English sparrows, pigeons, or starlings;⁹⁸
- Commercial agricultural producers, commercial pesticide applicators, dealers, and spray contracting firms must comply with recordkeeping and reporting requirements;⁹⁹
- Special restrictions to minimize drift apply to outdoor applications of pesticides by powered equipment;¹⁰⁰ and
- Municipal ordinances regulating pesticide storage, distribution, or use have no effect unless they are listed with the Board.¹⁰¹

Violations of any terms or conditions of a license, certification, permit, or registration may result in its modification, suspension, revocation, or cancellation.¹⁰² The Board may conduct inspections and order production of samples or records¹⁰³ plus issue orders to stop sale, use, or removal.¹⁰⁴ Violations of the Act or its regulations or orders issued by DEP or the Board can be punished by criminal fines up to \$ 7,500 and imprisonment up to 30 days and by civil forfeitures up to \$500 (for private applicators) per violation per day for a first offense.¹⁰⁵ In a civil action, violations may be enjoined and other relief may be granted.¹⁰⁶

In addition to its general pesticide control program, DEP has implemented special regulations to manage the control of house flies in poultry houses.¹⁰⁷

⁹⁸ ME. REV. STAT. ANN. tit. 22 § 1471-N (West 1989, Supp. 1999).

⁹⁹ ME. REV. STAT. ANN. tit. 22 § 1471-G (West 1989, Supp. 1999); Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 50.

¹⁰⁰ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-026 ch. 22.

¹⁰¹ ME. REV. STAT. ANN. tit. 22 § 1471-U (West 1989, Supp. 1999).

¹⁰² ME. REV. STAT. ANN. tit. 7 § 614; ME. REV. STAT. ANN. tit. 22 §§ 1471-A, 1471-D (West 1989, Supp. 1999).

¹⁰³ ME. REV. STAT. ANN. tit. 7 § 611; ME. REV. STAT. ANN. tit. 22 § 1471-H (West 1989, Supp. 1999).

¹⁰⁴ ME. REV. STAT. ANN. tit. 7 § 612 (West 1989, Supp. 1999).

¹⁰⁵ ME. REV. STAT. ANN. tit. 7 § 618-A; ME. REV. STAT. ANN. tit. 22 § 1471-J (West 1989, Supp. 1999).

¹⁰⁶ ME. REV. STAT. ANN. tit. 7 § 613 (West 1989, Supp. 1999).

¹⁰⁷ Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-001 ch. 562.

2. *Maine Laws Regulating Fertilizers, Agricultural Liming Materials, and Plant and Soil Amendments*

Maine has enacted similar statutes regulating the distribution of commercial fertilizers,¹⁰⁸ agricultural liming materials,¹⁰⁹ and plant and soil amendments¹¹⁰ within the state. Administered by DOA, the statutes impose registration, labeling, and reporting requirements. Premises, records, and substances are subject to inspection, sampling, and analysis. Adulterated and misbranded products plus materials otherwise out of compliance with the statute or rules are subject to seizure, and their distribution is prohibited. A violation of any provision of the statute, regulations, or any order issued these provisions is subject to a civil fine up to \$100 for a first offense or in the case of plant and soil amendments, a civil fine minimum of \$200 and injunctive relief.

VI. PROTECTION OF WILDLIFE

Producer Note: Agricultural producers also have responsibilities concerning wildlife and migratory birds which may have habitat on the producer's property. Federal and state laws contain measures designed to protect or enhance wildlife or wildlife habitat.

A. Maine Wildlife Protection Laws and Regulations

Producer Note: Many states have additional measures which either enhance protections under federal laws or address issues peculiar to wildlife found within the state. These states also may address common problems caused by wildlife. Maine has laws protecting wildlife.

Maine has a program in place to protect species listed as endangered or threatened within the state. Under the statute¹¹¹ and its accompanying regulations,¹¹² it is unlawful to export, hunt, trap, possess, process, sell, offer for sale, deliver, carry, transport, ship, feed, bait, or harass any state listed species except as authorized by permit under limited circumstances consistent with the federal ESA.¹¹³

¹⁰⁸ ME. REV. STAT. ANN. tit. 7 §§ 741 et seq. (West 1989, Supp. 1999).

¹⁰⁹ ME. REV. STAT. ANN. tit. 7 §§ 761 et seq. (West 1989, Supp. 1999); Maine Dep't of Agriculture, Food & Rural Resources Regulations 01-001 ch. 315.

¹¹⁰ ME. REV. STAT. ANN. tit. 7 §§ 775 et seq. (West 1989, Supp. 1999).

¹¹¹ ME. REV. STAT. ANN. tit. 12 §§ 7751 et seq. (West 1989, Supp. 1999).

¹¹² Maine Dep't of Inland Fisheries & Wildlife Regulations 09-137 ch. 8.

¹¹³ ME. REV. STAT. ANN. tit. 12 § 7756 (West 1989, Supp. 1999).

Special guidelines apply to activities within geographic areas designated by the Department of Inland Fisheries and Wildlife as essential habitat for endangered and threatened species.¹¹⁴ Activities or projects within these areas that involve state or municipal licensing, approval, or funding may only proceed with approval of the Department of Inland Fisheries and Wildlife upon a determination that the project will not significantly alter the essential habitat.

Violations of state endangered species law, regulations, or orders issued under these laws and regulations may result in injunctions, civil, and criminal penalties. A first offense results in a warning; a second offense may be punishable as a Class E crime which may include imprisonment up to six (6) months and a fine up to \$1000.¹¹⁵

VII. OTHER MAINE ENVIRONMENTAL LAWS AFFECTING AGRICULTURE

Producer Note: Because laws and regulations change frequently, all farmers and ranchers must stay in contact with state and federal officials in order to remain aware and in compliance with changes in the law. Farmers and ranchers should contact their state DEP and DOA to determine the current status of the DEP and DOA regulations before beginning activities that may affect the state's environment or natural resources.

A. Maine Uniform Environmental Law Enforcement

By statute, Maine has established a uniform system under which the Maine Department of Environmental Protection (DEP) may enforce most of the state's environmental laws and regulations as well as any permits or orders issued under these laws and regulations.¹¹⁶ The statutes gives the DEP broad authority to conduct inspections and investigations to determine compliance and to issue administrative orders when a violation is detected. The orders may direct that action be taken, and they may initiate formal administrative, civil, or criminal enforcement proceedings. Such proceedings may result in injunctions, other remedial orders, and civil or criminal penalties up to \$25,000 per violation per day. The amount of a civil penalty may be increased to \$50,000 per violation per day if economic benefit resulted from the violation. The DEP has further authority to modify, revoke, or suspend any license, permit, order, approval, or certification.

¹¹⁴ Maine Dep't of Inland Fisheries & Wildlife Regulations 09-137 ch. 8.

¹¹⁵ ME. REV. STAT. ANN. tit. 12 §§ 7756-7758; ME. REV. STAT. ANN. tit. 17A §§ 4-A, 1252 (West 1989, Supp. 1999).

¹¹⁶ ME. REV. STAT. ANN. tit. 38 §§ 341A et seq. (West 1989, Supp. 1999).

B. Maine Site Location Development Act

Maine's Site Location of Development Law¹¹⁷ recognizes that some developments because of their size and nature are capable of causing irreparable damage to the natural environment of the state. The intent of the law is to address the adverse environmental effects of development and to minimize these effects. This law also recognizes that certain geological formations contain large amounts of high quality ground water which are particularly susceptible to injury from pollutants. The intent is to prevent activities on these formations which discharge or may discharge pollutants to the ground water.

The Board of Environmental Protection (BEP) has authority to regulate such developments, however, local municipal governments have the authority to regulate any noise generated at such development sites.

BEP reviews each development on a case by case basis. Some developments require permits. In order to obtain a permit, a storm water management plan designed to control a 25 year, 24-hour storm is required. Exemptions may be made, but accordingly some adjacent developments may be combined on a common scheme theory. Permits are required for certain activities including:

- Developments that exceed 20 acres;
- Structure constructions or conversions (includes buildings, parking lots, roads, paved areas, wharves, and man-made ponds) on greater than 3 acres;
- Drilling or excavations of natural resources affecting 60,000 square feet or more;
- Mining activities;
- Hazardous activities;
- Subdivisions involving five or more lots and 20 acres or more; and
- Multi-housing developments within the shoreland zone.

¹¹⁷ ME. REV. STAT. ANN. tit. 38 §§ 481 to 490 (West 1989, Supp. 1999).

C. Maine Mandatory Shoreland Zoning Act

Maine's Mandatory Shoreland Zoning Act¹¹⁸ establishes the state of Maine as trustee of its waters. The law subjects the following land areas to zoning and land use controls:

- Land areas within 250 feet of the normal high-water line of any great pond, river, or saltwater body;
- Land areas within 250 feet of the upland edge of a coastal wetland; and
- Land areas within 75 feet of the high-water line of a stream.

The purposes of the law include:

- The maintenance of safe and healthful conditions;
- The prevention and control of water pollution;
- The protection of fish spawning grounds, aquatic life, bird and wildlife habitat, archaeological sites, historic resources, fishing and maritime industries, wetlands, and natural and recreational features;
- The protection against flooding and accelerated erosion;
- The control of building sites, placement of structures, and land uses;
- The conservation of shore cover, points of access to inland and coastal waters, natural beauty, and open space; and
- The anticipation and response to impacts of development in shoreland areas.

Municipalities are required to protect shoreland areas through the adoption, administration, and enforcement of the municipality's own shoreland zoning maps and ordinances. Zoning ordinances must specify what types of activities can occur in certain areas. Local ordinances may be more restrictive but not less restrictive than the state law. When local ordinances do not exist or are less restrictive, state guidelines must be used. Shoreland areas are divided into six land use districts designated as:

¹¹⁸ ME. REV. STAT. ANN. tit. 38 §§ 435 to 449 (West 1989, Supp. 1999); Maine Department of Environmental Protection Rules 06-096 ch. 1000.

- Resource protection;
- Limited residential;
- Limited commercial;
- General development;
- Commercial fisheries/maritime activities; and
- Stream protection.

The district type determines the land-use activities allowed. Some activities are prohibited, some activities are allowed with a permit, and some activities are allowed without a formal permit. The state guidelines set forth standards for district development activities and include:

- Minimum lot areas and frontage;
- Structure setbacks;
- Clearing limitations;
- Timber harvesting limitations;
- Erosion and sedimentation control;
- Sewage disposal; and
- Provisions for nonconforming uses.

The DEP role is to provide technical assistance in the adoption, administration, and enforcement of these local ordinances. To report a suspected violation, contact the Code Enforcement Officer of the area where the alleged violation has occurred or phone (207) 287-2111. Suspected violations may also be sent to the Shoreland Zoning Coordinator, Department of Environmental Protection, State House Station 17, Augusta, ME 04333-0017.

D. Maine Animal Carcass Disposal

The proper disposition of carcasses of domestic animals that have died of, been condemned for, or been present near certain contagious or infectious diseases falls under the authority of the Commissioner of Agriculture. Proper disposition includes burning, burying, rendering, or any other

method prescribed by the Commissioner.¹¹⁹ No permit is needed for burying or otherwise disposing of animal carcasses,¹²⁰ but the activity must be undertaken in accordance with the rules of the Department of Agriculture, Food, and Rural Resources (DOA).¹²¹ Domestic animals means cattle, horses, mules, asses, goats, sheep, swine, or other domesticated animals, and poultry.¹²² Farmers and ranchers should check with the DOA to determine the most current rules and regulations governing animal disposal.¹²³ DOA rules and regulations address various methods of disposal including burial, incineration, composting, disposal pits, rendering and processing as well as other aspects of disposal including site evaluation, design, transportation, emergency and routine situations, setbacks and separation distances, DOA notification, recordkeeping, permits, and maps. Public and private dumps are not considered proper disposal areas.¹²⁴

E. Maine Cull Potato Disposal

The primary concern of cull potato disposal is the spread of potato disease to the potato industry and the state.¹²⁵ Cull potato piles are prohibited between the dates of June 10 and October 1. Any cull potatoes generated during that time must be properly disposed immediately. Improper cull potato is considered a public nuisance as well as a civil violation carrying a penalty of \$1000 per violation plus \$200 per succeeding day. The rules and regulations for proper cull potato disposal are established by the DOA.¹²⁶ The DOA has determined that proper cull potato disposal must utilize one or more of the Best Management Practices (BMPs) which includes burial, winter spreading, temporary storage, long term storage, usage as a farm animal feed, composting, ensiling, and transporting. Other aspects of disposal addressed in BMPs include spreading rates, soil type, soil drainage capacity, water tables, set backs from water sources, land slopes, prohibited areas, cover materials, site stabilization practices, design, mixing procedures, recordkeeping, DEP permits,¹²⁷ and maps. DOA has the authority to make any variations or exceptions to the rules and regulations, enter any property to inspect

¹¹⁹ ME. REV. STAT. ANN. tit. 7 § 1817 (West 1989, Supp. 1999); Maine Department of Agriculture Rules 01-001 ch. 211.

¹²⁰ DEP permits are required if carcasses are mixed with potentially hazardous or toxic substances or are from non-farming activities such as rendering plants, slaughterhouses, processing facilities, etc.

¹²¹ Maine Department of Agriculture, Food, and Rural Resources Rules 01-001 ch. 211.

¹²² ME. REV. STAT. ANN. tit. 7 § 1751 *et seq.* (West 1989, Supp. 1999).

¹²³ Maine Department of Agriculture, Food, and Rural Resources Rules 01-001 ch. 211.

¹²⁴ ME. REV. STAT. ANN. tit. 4 § 1151 *et seq.* and 5 ME. REV. STAT. ANN. tit. § 8001 *et seq.* (West 1989, Supp. 1999).

¹²⁵ ME. REV. STAT. ANN. tit. 7 § 1007-A (West 1989, Supp. 1999).

¹²⁶ Maine Department of Agriculture Rules 01-001 ch. 600.

¹²⁷ Maine Department of Environmental Protection 06-096 ch. 401.

cull potato piles, take any actions necessary for proper cull potato disposal, and seek reimbursement for any costs incurred in removing or properly disposing of the potatoes.

A burial of cull potatoes requires written notification to all abutting property owners, the town clerk or other municipal official, and DEP within 15 days prior to initiating the burial. Public notice is not required. A burial that conforms to DEP standards (see below) requires a 5 working day prior notification to DEP. A burial that does not conform to DEP standards requires a formal application to DEP for a license to develop and operate a solid waste disposal facility. The 5 working day notification is a permit-by-rule provision and must be submitted on a DEP form. Between June 10 and October 1, a hand delivered (permit-by-rule) notification to DEP may waive the 5 day time requirement. In emergency situations, weekends, and holidays, DEP can be contacted through the spill response hotline (800) 482-0777.

To qualify for a permit-by-rule, DEP standards must be met. Solid waste landfill standards include requirements pertaining to the location, design, operation, closure, and post-closure care to minimize pollution of the state's air, land, surface and ground water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies, and protect public health and safety.¹²⁸ In particular, cull potato burial standards include:

- Avoiding prohibited areas;
- Avoiding waste other than cull potatoes and inert fill;
- Avoiding burial in previous areas unless previous potato decomposition is complete;
- Determinations of water table depth, bedrock depth, and burial plans by qualified soil scientists;
- Specified burial trench widths, trench spacings, potato thickness, and potato depth relative to the water table and bedrock depths;
- Cover soil depth, finished grade, and stabilization measures;
- Setbacks from surface waters and wells;
- Separation distances from neighboring residences;
- Inspection; and

¹²⁸ ME. REV. STAT. ANN. tit. 38 § 1304 (West 1989, Supp. 1999).

- Recordkeeping.

Farmers and ranchers should contact DOA and DEP regarding each agency's most current rules and regulations addressing cull potato disposal before attempting to feed, dispose, store, or spread cull potatoes.

Appendix - Agencies

Producer Note: State agencies are available to answer questions regarding environmental matters and a producer's compliance with environmental laws and regulations. The following is a list of organizations which should be able to answer questions or provide materials for a producer.

State Agencies:

Maine Department of Agriculture, Food & Rural Resources

Deering Building (AMHI)

28 State House Station

Augusta, ME 04333-0028

(207) 287-3871

(207) 287-7548 fax

<http://www.state.me.us/agriculture/>

Offices and Divisions:

Office of Agriculture, Natural and Rural Resources

(207) 287-1132

(207) 287-5576 fax

Board of Pesticides Control

(207) 287-2731 (Augusta)

(207) 764-2039 (Presque Isle)

(207) 287-7548 fax

Division of Animal Health Industry

(207) 287-3701

(207) 287-7548 fax

Milk Commission

(888) 694-0647

(207) 287-7548 fax

Division of Plant Industry

(207) 287-3891

(207) 287-7548 fax

Seed Potato Board

(207) 287-3891

(207) 287-7548 fax

Division of Marketing and Product Development

(207) 287-9072

(207) 287-5576 fax

Division of Quality Assurance and Regulations

(207) 287-2161

(207) 287-7548 fax

Cooperative Extension Service

University of Maine

5741 Libby Hall

Orono, ME 04469-5741

(207) 581-3186 or 581-3195

(800) 287-0274

(207) 581-1387 fax

<http://www.umext.maine.edu/>

Maine Department of Environmental Protection (Central Office)

17 State House Station

Augusta, ME 04333-0017

(207) 287-7688

(800) 452-1942

(207) 287-7191 fax

<http://janus.state.me.us/dep/home.htm>

Bureaus (3):

Air Quality

(207) 287-2437

(207) 287-7641 fax

<http://janus.state.me.us/dep/air/>

Land & Water Quality

(207) 287-3901 (Central)

(207) 941-4570 (Eastern)

(207) 764-0477 (Northern)

(207) 822-6300 (Southern)

<http://janus.state.me.us/dep/blwq/>

Remediation and Waste Management

(207) 287-7688 or (800) 452-1942 (Central)

(207) 941-4570 or (888) 769-1137 (Eastern)

(207) 822-6300 or (888) 769-1036 (Northern)

(207) 764-0488 or (888) 769-1053 (Southern)

<http://janus.state.me.us/dep/rwm/>

Regional Offices:

Maine Department of Environmental Protection (**Eastern Office**)

106 Hogan Road

Bangor, ME 04401

(207) 941-4570

(888) 769-1137

(207) 941-4584 fax

Maine Department of Environmental
Protection (**Northern Office**)
1235 Central Drive, Skyway Park
Presque Isle, ME 0476-2094
(207) 764-0477

Maine Department of Environmental
Protection (**Southern Office**)
312 Canco Road
Portland, ME 0410
(207) 822-6300
(888) 769-1036
(207) 822-6303 fax

Maine Department of Inland Fisheries & Wildlife

284 State Street
41 State House Station
Augusta, ME 04333-0041
(207) 287-8000
(800) ALERT-US toll free (To report violations)
<http://janus.state.me.us/ifw/index.htm>

Maine Department of Conservation

22 State House Station
Augusta, ME 04333
(207) 287-2211
(207) 287-2400 fax
<http://www.state.me.us/doc/parks.htm>

Divisions:

Parks and Lands

(207) 287-3821 (Central)
(207) 624-6080 (Parks Southern)
(207) 941-4014 (Parks Northern)
(207) 435-7966 (Lands Northern)
(207) 778-8231 (Lands Western)
(207) 827-5936 (Lands Eastern)

Land Use Regulation

(207) 287-2631 or (800) 452-8711
(207) 287-7439 fax

Forest Service

(207) 287-2791 or (800) 367-0223
(207) 287-2218 fax

Geology and Natural Areas

(207) 287-2801

**Natural Resources and Information and
Mapping Center**

(207) 287-8044