CITIZENS' GUIDES TO OCEAN AND COASTAL LAW

Guide to Laws Regulating Coastal Water Pollution

Marine Law Institute
University of Maine School of Law
246 Deering Avenue
Portland, ME 04102
December, 1992

In greater numbers each year, citizens in Maine and throughout the United States are organizing volunteer groups and working with government officials to clean up beaches, monitor water quality, and preserve natural resources. Maine alone has at least 39 such programs, indicating a new willingness of citizens to become more directly involved as stewards and guardians of local waterbodies and natural resources.

This pamphlet is intended to help citizens, like those participating in water quality monitoring programs, who want to understand the complex nature of state, federal, and local laws that apply to the chief sources of coastal water pollution:

- point source pollution—pollution discharged from pipes which require state and federal permits; and
- nonpoint source pollution—generally unregulated runoff from agricultural operations and urban land uses, timber harvesting (silviculture), and construction activities.

This pamphlet explains the legal standards and penalties established by coastal water quality laws so that citizens can better participate in the implementation and enforcement of these laws. It is intended to inform and educate, but it is not a substitute for the sound legal advice of experienced practitioners who should be consulted to provide guidance on technical legal matters.

There are numerous water quality agencies and organizations that operate on many different levels in the coastal environment. To help citizens interact with these organizations, this pamphlet contains a list of addresses and telephone num-

SEA GRANT
Produced by the Sea Grant Marine Advisory Program, University of Maine, Orono

bers for state and federal agencies responsible for water quality enforcement and permitting in the State of Maine; environmental organizations which can provide further educational and enforcement assistance; and Soil and Water Conservation Districts and Cooperative Extension Offices to provide assistance in reducing nonpoint source pollution.

POINT SOURCE POLLUTION

The Clean Water Act NPDES Permit Program

Point source pollution results from discharges from "any discernable, confined and discrete conveyance" including pipes, ditches or channels. Federal permits for point source discharges are required from the EPA under the Clean Water Act's National Pollutant and Discharge Elimination System (NPDES).[1] Dischargers must also obtain a state waste discharge license from the Maine Department of Environmental Protection (DEP). These standards and procedures are described in further detail below.

Operators and owners of industrial plants or publicly-owned sewage treatment works (POTW) must obtain an NPDES permit from the EPA before they can discharge wastes into a surface water body (including navigable waters, wetlands, non-navigable tributaries, and intermittent streams). NPDES permits are also required for stormwater discharges associated with industrial activities and municipal separated storm sewer systems.

Citizens can play a key role in many aspects of the NPDES permit process by:

- participating in federal permitting decisions to ensure that effluent limitations imposed on specific dischargers are adequate;
- helping to enforce specific permit conditions and limitations through the citizen enforcement provisions of the Clean Water Act;
- reviewing and commenting on proposed rules on effluent limitations for specific industrial dischargers; and
- ensuring that proper water quality classification standards are established by the State.

These and other opportunities for participation are discussed more fully below.

The federal NPDES permit system establishes a two-pronged standard for controlling point source discharges: federal effluent limitations, and state water quality standards.

Federal Effluent Limitations

Effluent limitations (ELs) are federal, nationwide technology-based controls for discharges from industrial facilities and publicly-owned sewage treatment works (POTWs). They express the maximum allowable rate of discharge, concentration, or amount of a pollutant which may be released depending on the industry and nature of the discharge. ELs for certain industries are specified in EPA regulations.[2]

For industrial dischargers, ELs may limit the daily or monthly load of discharges expressed in pounds of pollutants permitted per pounds of product manufactured; they may also be described and limited in terms of frequency (e.g., not to occur more than once a week), total weight (e.g., not to exceed 300 pounds per batch discharged), minimum time for completion of discharge (e.g., not to be discharged over a period of more than six hours), or concentration (e.g., not to exceed more than 15 parts per million).

NPDES permitees must regularly monitor

their effluent and report the results to the EPA and state permitting authority (Maine DEP) in Discharge Monitoring Reports (DMRs). DMRs may be reviewed by government agencies or requested by the public under the Freedom of Information Act (FOIA) to assess compliance with effluent limits and permit conditions. The EPA also maintains Quarterly Non-Compliance Reports (QNCRs) that summarize the enforcement information from the DMRs. Citizens can use QNCRs to identify problem dischargers in their region, and they can follow up by reviewing the DMRs and daily records of the dischargers at DEP offices to determine the length of time the violations have persisted and their potential water quality impacts. However, the FOIA process should be used sparingly as it takes staff away from their other duties. If the report is extensive, the person initiating the request may be contacted and a fee negotiated.

State Water Quality Standards

The Clean Water Act (CWA) also requires each state to adopt water quality standards (WQSs) which establish permissible levels of pollutants and total pollutant loads into surface waters. WQSs are ambient criteria that specify permissible levels of pollution in the water body itself (as opposed to limits on a particular discharge). They work in concert with effluent limitations to ensure adequate protection of individual bodies of water; the applicant for an NPDES permit will only be granted a permit if it complies with the ELs and the discharge will not cause the receiving waters to violate state WQSs.

Maine's water quality standards for estuarine and marine waters are divided into three classifications[3]:

> Class SA Waters (the highest classification—applied to waters which are outstanding natural resources). Waters must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, the propagation and harvesting of shellfish, and habitat for marine life; water quality must be as "naturally occurs"; all direct discharges of pollutants are prohibited.
>
> Class SB Waters. Waters must be of such quality to be suitable for all of the SA designated uses plus industrial process and cooling water supply, and hydroelectric power generation; habitat shall be "unimpaired"; and limits are placed on dissolved oxygen (DO), bacteria and total coliform bacteria; discharges must not cause adverse impact to estuarine and marine life; receiving waters must be of sufficient quality to support all indigenous estuarine and marine species without detrimental changes in the resident biological community; and new discharges that would cause closure of open shellfish beds are prohibited.
>
> Class SC Waters. Waters must be of such quality to be suitable for all of the SA and SB uses, except that shellfish harvesting may be restricted. DO, bacteria, and total coliform bacteria limits are less restrictive than in SB waters; and discharges may cause some changes to estuarine and marine life provided that CWA fishable/swimmable standards are maintained.

When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected.

Public Participation in the NPDES Permit Process

After an application for a new or renewed NPDES permit has been filed and a draft permit prepared, the EPA provides a public notice in local newspapers and allows a 30-day public comment period. Those interested in receiving

personal notices may contact the EPA and the DEP and be placed on a mailing list. A copy of the proposed permit and a fact sheet explaining the basis for the proposed pollutant limits may be requested from the EPA's NPDES Program Operation Office in Boston. Any interested person may submit written comments or request a public hearing. Public hearings are usually held if there is a "significant degree of public interest," or if a hearing "might clarify one or more issues involved in the permit decision."[4] Persons commenting should raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the comment period. Failure to do so may bar them from raising the issue later if there is judicial review of EPA's decision.

The public should consider the following items when reviewing an NPDES permit:

- Are limits assigned to all pollutants listed in the application?
- What are the grounds for the proposed pollutant limits listed in the fact sheet?
- Would pollutants impair uses designated in the state water quality classification for the receiving waters?
- Would the discharge result in pollutant loadings greater than old permit limits in violation of the CWA "antibacksliding" provisions?
- Have special limitations been required under an Administrative Order or Consent Decree?
- Do QNCRs and DMRs indicate a history of violations?
- Are POTWs required to develop industrial pretreatment or sludge management programs?
- Are other dischargers contributing adverse cumulative effects that degrade receiving waters?
- What do the most recent DEP water quality monitoring reports indicate about the overall health of the receiving waters?[5]

At the end of the comment period, EPA will prepare a response to all reasonable comments received and will make appropriate amendments to the draft permit. If a commenter is still not satisfied after the response to comments is issued, that individual or group may appeal the permit.

Enforcement of the Clean Water Act

The Clean Water Act contains a number of significant enforcement provisions. These are summarized below[6]:

Section 308: monitoring and reporting requirements and inspections by authorities;

Section 309: civil enforcement actions for injunctive relief;

Section 309(c): criminal penalties for negligent violations (up to $25,000 per day/one year imprisonment), knowing violations ($50,000 per day/three years), knowing endangerment ($250,000/15 years, and false statements ($10,000/two years);

Section 309(d): civil penalties up to $25,000 per day;

Section 309(e) and (f): requires EPA to join states in suits against municipalities and authorizes suits against POTWs and dischargers for violations of pretreatment standards;

Section 309(g): authorizes administrative penalties by the EPA and states of up

to $10,000 per day and gives citizens the right to comment on them;
Section 402(h): authorizes ban on new sewer hookups to POTWs that violate their discharge permits;

Section 504: authorizes EPA to sue to restrain any source contributing to pollution "presenting an imminent or substantial endangerment" to public health or welfare; and

Section 505: authorizes "citizen suits" to enforce the CWA for violation of effluent standards or EPA orders by compelling the installation of pollution equipment, ensuring that operating procedures prevent further violations, and securing civil penalties, attorney's fees and court costs. Citizens must be sure that they have (1) proper standing, i.e. that they have been "adversely affected" or suffered some "injury in fact"; (2) that they file a 60-day notice with the EPA, the state in which the violation occurs, and the alleged violator; (3) that the EPA is not already "diligently" prosecuting a civil or criminal action to require compliance; and (4) that the suit is not based exclusively upon past violations.

Section 508: authorizes EPA to blacklist violators, barring them from federal contracts and loans.

State Discharge Licenses

The Maine Protection and Improvement of Waters Law establishes a separate licensing program for the discharge of pollutants, administered by the Maine Board of Environmental Protection, and the Bureau of Water Quality Control in the DEP.[7] Maine has chosen not to apply for EPA approval of its program, so point source dischargers must obtain a state waste discharge license in addition to an EPA NPDES permit. Although state and federal reviews are somewhat duplicative, they give individuals additional opportunities for public input, may require additional permit conditions, and are issued for a wider variety of discharges than NPDES permits.

A complete guide to the DEP permitting process can be obtained from the Department entitled, *The DEP Process: A Guide to the Organization and Application Process of the Maine Department of Environmental Protection.* Persons interested in participating in state waste discharge license reviews should contact the DEP Water Bureau and ask to be placed on the mailing list for their community, and they should review the public notice sections of their local newspaper for public hearing notices. A more complete description of the DEP hearing and appeal process is also contained in the Marine Law Institute's publication, *Maine Citizens' Handbook on Coastal Water Quality Enforcement.*

State Discharge Standards

The Board or DEP may only approve discharges that, alone or in combination with other discharges, will not lower the quality of any classified body of water below its classification. Discharges may not lower the water quality of any body of water unless, following opportunity for public participation, the Board finds that the discharge is necessary to achieve important economic or social benefits to the State and will not have a significant adverse impact on existing uses of the water body for recreation, fishing, habitat, wildlife, or marine life.[8] The discharge must also meet Clean Water Act effluent standards taking into account the existing state of technology, the effectiveness of available alternatives, and the economic feasibility of such alternatives.

State Enforcement Opportunities

Unlike the Clean Water Act, Maine law does not provide for "citizen suits" to enforce waste

discharge licenses. Although the State Legislature has considered authorizing citizen suits to enforce the provisions of state environmental laws, to date the legislation has lacked sufficient political support.[9] It is therefore the responsibility of the DEP and the State Attorney General to "prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State."[10] Citizens must seek enforcement through these agencies.

Participating in Review of Maine's Water Quality Standards

The Clean Water Act requires that the Maine DEP review state water quality standards at least once every three years. These reviews must provide for public hearings and any new or revised standards must be submitted to the EPA for approval. Any person may petition the state for a reclassification of water quality standards, or request notification from the DEP of proposed rulemaking.[11] The DEP must conduct classification studies and investigations and make the information gathered available to the public. The Board of Environmental Protection holds a public hearing in the affected area to obtain public input and may propose changes to the Legislature. The Legislature has the final authority to make any changes in the classification of the waters of the State, subject to judicial challenges by aggrieved persons.[12]

The public may also participate when the EPA reviews state water quality standards. The Regional Administrator of the EPA is authorized to reject state water quality standards that are inconsistent with the CWA's so-called national "fishable/swimmable" goal that requires WQSs to provide for the "protection and propagation of fish, shellfish, and wildlife and . . . recreation in and on the water."[13] Water quality standards must also comply with the federal "antidegradation policy" to protect and maintain "existing in-stream water uses and the level of water quality necessary to protect the existing uses."[14]

Sewage Treatment and Combined Sewer Overflows

Two major point sources of pollution are sewage treatment works and stormwater overflows from combined storm and sanitary sewer systems. The Clean Water Act requires publicly owned treatment works (POTWs) to provide for "secondary" sewage treatment. Secondary treatment must remove organic material through biological treatment of bacteria and other microbes, or physical/chemical treatment, and meet EPA requirements for biological oxygen demand, suspended solids, and pH.[15] "Primary treatment" only provides for the physical removal of suspended solids through screening and settling.

Waivers of secondary sewage treatment (thereby allowing discharge after only the primary treatment of sewage) are permitted under the CWA for POTWs that discharge into the "deep" ocean waters or "saline estuarine waters" with strong tidal movement. In these locations, primary treatment is permitted so long as toxics are removed, monitoring is provided, and number of other requirements are met.[16] A number of POTWs in Maine are permitted to provide for only primary treatment (Squirrel Island, Boothbay Harbor, Bayville, North Haven, Northport, Searsport, Winterport, Bucksport, Stonington, Quoddy Village, Eastport, Jonesport, and Lubec).[17]

Storm water poses special water quality problems. Untreated stormwater discharges sediments, oxygen depleting nutrients, and heavy metals into coastal and freshwater bodies. Some communities have combined storm and sanitary sewer systems. During periods of heavy rains, stormwater runoff channeled into sewage systems can overwhelm treatment facilities, discharging raw untreated sewage along with stormwater from combined sewer overflows (CSOs). Although

CSOs are point source discharges and subject to NPDES permit requirements, they are not subject to EPA's secondary treatment regulations.[18] For this reason, and the tremendous cost factors involved in CSO abatement, the EPA has been slow in requiring their removal. Consequently, many older wastewater treatment facilities (such as Portland, South Portland, and Westbrook) continue to discharge raw sewage along with stormwater runoff from CSOs during heavy rain events in violation of Clean Water Act requirements.

The DEP is presently planning a rehabilitation program funded by state and local sources to identify and treat the most objectionable CSOs throughout the state that may impair recreation, create public health concerns, or discharge into redeemable shellfish areas. Each facility/community will be required to submit a comprehensive Facilities Plan to monitor, sample, and evaluate CSO discharges and establish a timetable for CSO abatement. The State Combined Sewer Sources Overflow Coordinator, in the DEP's Bureau of Water Quality Control, should be contacted for further information regarding the State's funding program for planning and construction grants.

Citizens can work with the State and local communities on CSO Master Plans to ensure that their community is considered for the CSO priority list and to assist in the implementation of CSO control measures such as: (1) the identification, evaluation, monitoring, and sampling of CSO discharge points; (2) ambient water quality monitoring to determine impacts on receiving waters; (3) sewer system evaluations for infiltration; and (4) implementation of local stormwater management best management practices to reduce flows into POTWs.

NONPOINT SOURCE POLLUTION

Nonpoint source (NPS) pollution "is caused by diffuse sources that are not regulated as point sources and . . . does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation."[19]

Critical sources of NPS pollution are sediment and soil erosion from agriculture, timber harvesting, and construction activities; fertilizers, pesticides, and animal wastes from farming and agricultural activities; insecticides, herbicides, and fungicides from golf courses, residential lawns, and parks; improperly disposed household chemicals; and motor oil, solvents, fuels, nutrients, and heavy metals from stormwater runoff.

The EPA estimates that approximately 60 percent of all water pollution nationwide is nonpoint source related. Although it poses less of a threat to coastal and marine waters than fresh water bodies, NPS pollution from urban runoff and construction has impaired Casco Bay, the Scarborough River Estuary, and portions of the Androscoggin, Kennebec, and Presumpscot Rivers.[20]

Unlike point source discharges, there are few regulatory programs in place to address the impacts of NPS pollution, and government responsibilities are fragmented among a variety of state, federal, and local agencies:

- The U.S. Environmental Protection Agency, Region I, supports the Maine Nonpoint Source Management Program, implementation of Best Management Practices (BMPs), and the development of State Coastal NPS Pollution Control Programs;

- Soil and Water Conservation Districts, located throughout the state, review soil erosion and sedimentation plans when requested by state and local governments and review the implementation of BMPs;

- Towns or municipal governments are responsible for reviewing subdivisions and local development projects that may be major sources of NPS pollution, and they can implement NPS pollution control measures through zoning, permit reviews, and local ordinances;

- The Maine Department of Agriculture, Bureau of Production, implements the Rights to Farm and Nuisance Complaints Law, encourages conservation practices and controls pesticides;

- The Maine Department of Human Services administers the implementation of the State Plumbing Code through local plumbing inspectors;

- The Bureau of Water Quality Control in the Maine DEP is responsible for developing and implementing the Maine Nonpoint Source Pollution Management Plan and BMPs. The Bureau has a NPS Coordinator to oversee and coordinate agency activities; and

- The Bureau of Land Quality Control in the Maine DEP is responsible for implementing stormwater runoff and erosion control requirements under Maine's Shoreland Zoning and Site Law.

The functions of these agencies and opportunities for citizen participation are described in greater detail below.

The Maine Nonpoint Source Management Program

The Clean Water Act requires all states to prepare Nonpoint Source Assessment Reports and Management Programs to identify waters impacted by and significant sources of NPS pollution, establish Best Management Practices (BMPs) to reduce NPS pollution to the maximum extent practicable, and prepare plans and strategies for controlling NPS pollution.[21] State NPS Assessment Reports, Management Plans and clean water strategies are prepared with EPA oversight, but are not themselves enforceable unless implemented by specific legislation or regulations.

Maine's NPS Assessment Report and Management Plan were approved by the EPA in 1989, and they are available from the Maine DEP, Bureau of Water Quality Control. The Maine NPS Management Plan identifies four "interim" priority marine waterbodies: (1) Casco Bay, (2) Boothbay Harbor, (3) Cobscook Bay, and (4) Piscataqua River Estuary. The Plan also lists 16 priority streams and 26 lakes. Within these areas, land use inventories will be conducted and plans will be prepared to specify best management practices needed to meet or exceed standards established by the DEP.

Best Management Practices

BMPs may be used as tools by landowners and state and local governmental agencies to meet DEP water quality goals or performance standards. BMPs are not necessarily regulations or laws, but measures and/or practices that, when installed or performed, will prevent, reduce, or correct water pollution.[22] The DEP is developing BMPs for each major NPS category: agriculture, silviculture, development, resource extraction, transportation facilities and support, chemical use and storage, solid waste disposal, and marine industries.

Opportunities for Citizen Participation

Ongoing DEP plans with respect to NPS pollution include: (1) publishing a state manual for BMPs in each NPS category; (2) establishing water quality performance standards; (3) implementing planning processes for the major NPS categories to specify how BMPs will be applied; and (4) monitoring the effectiveness of and modi-

fying BMPs as needed. The public may participate in this process through the DEP's information and education program, which is designed to educate Maine citizens to recognize NPS problems, take precautionary steps to avoid NPS pollution, and contact persons to correct NPS problems. Citizens can also take an active role to ensure that BMPs are implemented at the local level and can participate in the development, implementation, and monitoring of BMPs by the DEP. Citizens can also encourage municipalities to address NPS problems through participation in their comprehensive planning process. The NPS Coordinator in Bureau of Water Quality Control in the Maine DEP can provide more specific information with respect to public participation in the Maine NPS Management Program.

State Coastal Nonpoint Source Pollution Control Programs

The 1990 amendments to the federal Coastal Zone Management Act require the adoption of State Coastal NPS Control Programs. The Maine Coastal Program in the State Planning Office is coordinating the preparation of a Coastal NPS Pollution Control Program for inclusion into the State's Coastal Management Program, which will update and expand the State NPS Management Program.

Coastal NPS Pollution Control Programs must: (1) identify land uses that may cause degradation of coastal waters; (2) identify critical coastal areas within which new or changing land uses are subject to management measures; (3) implement management measures to achieve and maintain applicable water quality standards; (4) provide technical and other assistance to local governments and the public to protect water quality; (5) provide opportunities for public participation; (6) improve coordination among state agencies and state and local officials responsible for land use, water quality, public health and safety, habitat protection and enforcement programs; and (7) modify boundaries of the state coastal zone if necessary to implement recommendations.[23]

In December 1992, the EPA will publish guidance on "management measures" for coastal NPS pollution from agricultural runoff, forestry practices, marinas and recreational boating, urban runoff, hydromodification, vegetated filter strips, and wetlands.[24] Each state, including Maine, must submit their Coastal NPS pollution control program to the EPA for review by January 1, 1995. The Maine DEP NPS Pollution Coordinator and the Maine Coastal Program should be contacted for further information on participating in the development of Maine's Coastal NPS Pollution Control Program.

NPS Pollution from Land Development and Use

Land development activities and use patterns can cause NPS pollution in many ways including erosion from construction sites, septic system failure, and storm water runoff from impervious surfaces. The threat of NPS pollution from these activities can be reduced through proper management of land use activities. Maine is fortunate to have a number of laws that require various land use mechanisms to mitigate the effects of NPS pollution from development activities. However each of these laws, to be effective, requires active citizen involvement.

Mandatory Shoreland Zoning

Under Maine's Mandatory Shoreland Zoning Act, all municipalities must implement and enforce zoning restrictions for shoreland areas that are consistent with state setback and minimum lot size requirements for all new development within "shoreland areas."[25] Shoreland areas are areas within 250 feet of all coastal waters, coastal wetlands, rivers, great ponds, and freshwater wetlands exceeding 10 acres, and 75 feet from streams as those terms are described in the Act. Within

these areas, municipalities must adopt zoning laws that provide for the establishment of Resource Protection (RP) districts; development setbacks; minimum lot size, shore frontage, and lot coverage standards; and soil erosion and sedimentation control plans.

Persons seeking more information about local shoreland zoning ordinances within their towns, or who believe that development is being conducted in violation of shoreland zoning standards, should contact their local code enforcement officer or town planner. The Shoreland Zoning Coordinator within the DEP's Bureau of Land Quality Control oversees the implementation of the Act and ensures that municipal ordinances meet minimum state standards. The DEP may draft and adopt ordinances on behalf of municipalities that fail to adopt local zoning ordinances that meet minimum state standards. Interested persons may also participate in the adoption and modification of local shoreland zoning ordinances to ensure that they contain measures that exceed the minimum standards where necessary to protect coastal water quality.

Subdivision Controls

Maine has two laws that address the NPS pollution impacts of subdivisions: the Site Location of Development Act and the State Subdivision Law.

Under the Site Law, the Maine DEP regulates large-scale subdivisions (20 or more acres divided into five or more lots), development projects exceeding 60,000 square feet ground area, 10 residential units fully or partially located in shoreland areas, and mining and hazardous activities.[26] The Site Law requires that such development: (1) prepare comprehensive erosion and sedimentation plans to adequately protect adjacent waterbodies from sedimentation and surface runoff; (2) limit exposed areas during construction; (3) complete permanent soil erosion control measures within 15 days of final grading; and (4) properly engineer and maintain stormwater management systems.

Site Law permits are issued by the DEP in Augusta and citizens may participate in hearings by contacting the DEP Bureau of Land Quality Control and reviewing copies of staff reports and proposed erosion and sedimentation control plans. Citizens may also assist in permit monitoring to ensure proposed sediment control measures and stormwater management systems are properly implemented and maintained.

Any development which involves the division of a parcel of land into three or more lots within any five-year period must be reviewed by municipalities under the State Subdivision Law.[27] Municipalities are required to notify abutting property owners of applications for subdivisions and most municipal planning boards hold public hearings on subdivision proposals. The State Subdivision Law requires that municipalities make findings that subdivisions will not cause, among other things, unreasonable water pollution, soil erosion, or adverse effects on water quality or the shoreline of adjacent waterbodies or wetlands. Subdivision proposals must also accurately map freshwater wetlands and rivers, streams, and brooks; provide for adequate stormwater management; and be consistent with local land use ordinances and comprehensive plans.

As with the Site Law, citizens may participate in local subdivision reviews and monitor erosion control devices and stormwater systems required by local governments to alleviate impacts of NPS pollution. Local code enforcement officers (CEOs) and town planners should be contacted for questions regarding the review of subdivision proposals and BMPs, revegetation, and other NPS requirements. Citizen participation can substantially strengthen the enforcement and compliance monitoring capabilities of local CEOs, the DEP, and soil and water conservation districts.

Local Ordinances and Comprehensive Plans

In addition to implementing the laws noted above, municipalities may also adopt special local ordinances to address the impacts of nonpoint source pollution and establish NPS pollution control policies in local comprehensive plans.

An outstanding example of a local ordinance that addresses the impacts of NPS pollution is the Coastal Protection Zone Ordinance adopted by the Town of Brunswick to "protect coastal embayments from the potential impacts of nutrient loading and other nonpoint source pollution."[28] The Ordinance establishes a coastal watershed protection zone (CWPZ) within which stormwater management plans are required to control stormwater runoff; setbacks are required from adjacent waterbodies for septic systems and manure and/or commercial fertilizer storage and spreading; town inspections of septic systems are required once every three years; and minimum lot sizes and lot coverages are required.

Persons interested in evaluating similar provisions for adoption in their municipality should contact their Town Planner, the local Regional Planning Council, and the Town of Brunswick for more information and copies of the Brunswick ordinance.

Active citizen participation is critical in developing, implementing, or revising comprehensive plans to address regional water quality issues and develop implementation strategies. These strategies may include ordinances enforcing BMPs, improved septic system controls, creation of buffer zones around wetlands, construction or improvement of sewage treatment facilities, improved stormwater management, and provisions to control phosphorous loading.

The Maine Department of Economic and Community Development and the Regional Planning Councils are available to provide technical assistance to local communities. Citizens can assist with this effort by participating on local comprehensive planning committees and reviewing plan revisions. Interested persons should contact their town planner, CEO, or clerk to determine the status of their local comprehensive plan.

Local Enforcement Procedures

Where citizens believe that violations of local shoreland zoning, subdivision, or other local land use ordinances are adversely impacting water quality, their first step should be to contact the local town CEO or plumbing inspector (PI). Some towns have one person serving in both capacities. In most cases these local officials will be state certified under Rule 80K of the Maine Rules of Civil Procedure to represent the municipality in civil actions in District Court for violations of land use ordinances.

Local officials may enter any property at reasonable hours with the consent of the owner or occupant to conduct inspections for compliance with local or state laws and ordinances, issue a summons to any person in violation of such laws, and represent the municipality in court when specifically authorized by the municipal officers.[29] Maximum civil penalties for construction without a permit or a specific violation is $2,500, or twice the economic benefit resulting from the violation. Penalties may be levied up to $25,000 if there has been a previous conviction of the same party within the past two years. Violators may also be ordered to correct or abate the violation and the municipality may be awarded reasonable attorney fees, expert witness fees, and costs.

NPS Pollution from Agricultural Activities

Agricultural activities that cause NPS pollution include animal wastes, fertilizers, pesticides, sand, dirt, and other pollutants. Such activities must have erosion and sedimentation control plans prepared by Soil and Water Conservation Districts. These plans must contain measures to reduce soil losses, prevent surface and ground water

contamination from animal wastes, and outline procedures for the proper use of fertilizers as prescribed by the University of Maine Cooperative Extension Service.

Questions about specific agricultural activities should be directed to the code enforcement officer and nearest SWCD office. The Maine Department of Agriculture Food and Rural Resources, Bureau of Production, conducts on-site inspections when complaints are received from homeowners, farmers, municipalities, or other state agencies. The agricultural compliance officer will determine if appropriate BMPs are being used on the farm, in which case the farm is protected under Maine's Right to Farm Law.[30] If appropriate BMPs are not being used, the officer or a Department response team will make recommendations to the farmer. If these recommendations are not adopted, formal enforcement actions may be initiated by: (1) the Attorney General's Office through a nuisance action for failure to adopt appropriate BMPs; (2) by the DEP for violation of state waste discharge laws and standards; or (3) by Maine's Board of Pesticide Control for pesticide use and label violations.

Creating Watershed Districts

It is advisable to have a unified NPS abatement strategy for the entire watershed. Lake and coastal watershed districts may be established as regional, quasi-municipal, government agencies by municipalities, residents of unorganized territories, or by local referendum, to protect, improve, conserve, and manage water quality and land and water resources.[31] Applications to form watershed districts must be filed with and approved by the Board of Environmental Protection after a public hearing, and they must demonstrate the need for a coordinated approach to watershed management within the proposed district area. BEP approval must be ratified by a vote within the municipalities forming the District. Although only one watershed district has thus far been established in Maine—the Cobbossee Watershed District—districts may perform a number of valuable functions to address problems from NPS pollution including: assisting municipalities with the preparation of comprehensive plans; drafting and reviewing stormwater management plans; monitoring water quality and erosion control devices; reviewing development proposals, subdivision plans and shoreland permits; assisting local water quality enforcement efforts; providing technical assistance to property owners and farming operations; and encouraging the use of BMPs.

For more information on watershed districts, contact the Cobbossee Water District and the DEP Bureau of Water Quality Control.

Enforcing the State Plumbing Code

Substandard and malfunctioning septic systems along densely developed shorefronts pose a threat to public health and ground, surface, and marine water quality. Maine's Department of Human Services (DHS) is responsible for adopting and revising the State Plumbing Code which regulates the operation and installation of "subsurface waste water disposal systems" (commonly known as septic systems).[32] Municipalities and local plumbing inspectors, certified by the DHS, are responsible for enforcing the Plumbing Code and issuing licenses for the installation of septic systems.

Malfunctioning septic tanks, cesspools, sewers or drainage beds are considered to be a nuisance under State law.[33] Upon receiving a complaint and verifying the existence of a malfunctioning septic system, municipalities must serve an order upon the owner to remedy the problem. If the nuisance is not abated within 10 days, the plumbing inspector may enter the premises and have the malfunction remedied. The municipality may recover any expenses, including attorney fees, upon filing a civil action against the owner. Persons should report failing septic systems or

cesspools to their PIs. Where local governments fail to take appropriate action, DHS is authorized, on its own initiative or pursuant to a complaint, to instruct the municipality to comply with and enforce minimum state standards.

Removing Overboard Discharges

Overboard discharges (OBDs) are defined as direct discharges of domestic pollutants to the surface waters of the state, without prior treatment in municipal or quasi-municipal sewage treatment facilities. Typically these discharges are partially treated in a system which consists of a septic tank, sand filter, chlorinator, and discharge pipe which releases the "treated" effluent into surface waters. They are frequently used because soils in the area don't meet the requirements of the state plumbing code. The State of Maine has over 3,000 licensed, and an unknown number of unlicensed, overboard discharges (OBDs). Overboard discharges are directly responsible for many shellfish and beach closures.

Although the State prohibits the licensing of new overboard discharges, existing OBDs are conditionally licensed until six months after the DEP makes funds available to the applicant for their removal.[34] Licensed overboard discharges must be inspected at least twice a year by the DEP or a private contractor. The DEP will provide up to 90 percent of the costs to remove year-round residential OBDs, 50 percent to remove commercial OBDs, and 25 percent to remove seasonal residential OBDs. The State Legislature has appropriated about $1 million for the Overboard Discharge Assistance Fund to assist homeowners in removing overboard discharges in 1990. The DEP recently began establishing priorities for the distribution of funds based upon a DMR study of redeemable shellfish areas. These funds are currently (as of August 1992) being offered to 26 coastal towns. Some towns have indicated that they will assist the DEP in examining OBD systems, selecting design and construction options, and distributing the funds to homeowners; others have declined to participate or respond to DEP inquiries.

Questions regarding OBDs should be directed to the Overboard Discharge Coordinator in the DEP's Bureau of Water Quality Control. Local CEOs and/or plumbing inspectors should also be able to provide information about the town's participation in DEP's OBD removal program. Towns should be encouraged to participate in the removal of OBDs through the OBD Assistance Fund or through Small Community Systems Grants, which may provide small grants to fund the construction of community septic systems.

For Further Information

Key Agencies and Organizations

Federal

U.S. Environmental Protection Agency
Region I, JFK Building
Boston, MA 02203
(617) 565-3420
(617) 565-3531 (Water Quality)
(617) 565-4421 (Marine Protection)

U.S. Attorney's Office
Department of Justice
100 Middle Street
Portland, ME 04101
(207) 780-3257

99 Franklin Street
Bangor, ME 04401
(207) 945-0373

Casco Bay Estuary Program
312 Canco Road
Portland, ME 04103
(207) 828-1043

U.S. Coast Guard
Marine Safety Office
312 Fore Street
Portland, ME 04112-0108
(207) 780-3251
1-800-424-8802 (Spills)
Group Southwest Harbor
PO Box 5000
Southwest Harbor, ME 04679
(207) 244-4236

State

Department of Environmental
Protection (DEP)
State House Station 17
Augusta, ME 04333-0017

Bureau of Water Quality Control
Augusta: (207) 289-3901
Portland: (207) 879-6300
Bangor: (207) 941-4570
Presque Isle: (207) 764-0477

Bureau of Land Quality Control
Augusta: (207) 289-2111
Bangor : (207) 941-4570
Portland: (207) 879-6300
Presque Isle: (207) 764-0477

Emergency Spills
1-800-482-0777

Maine Office of the Attorney General
Natural Resources Division
State House Station 6
Augusta, ME 04333
(207) 626-8800

Maine Coastal Program
State Planning Office
State House Station 38
Augusta, ME 04333-0038
(207) 289-3261

Shore Stewards Program
(207) 287-3144

Department of Marine Resources (DMR)
State House Station 21
Augusta, ME 04330-0021
(207) 624-6550

Marine Patrol
South Portland: (207) 799-3380
Portland: (207) 596-2262
Ellsworth: (207) 667-3373

Department of Economic and Community
Development
State House Station 130
Augusta, ME 04333
(207) 287-6800

Department of Human Services
Division of Health Engineering
State House Station 10
Augusta, ME 04333
(207) 287-5690

Environmental Organizations

Casco BayKeeper
Box 7758
Portland, ME 04122
(207) 799-8574

Maine Audubon Society
Gilsland Farm
188 U.S. Route One
Falmouth, ME 04105
(207) 781-2330

Natural Resources Council of Maine
271 State Street
Augusta, ME 04330
(207) 622-3101

Island Institute
60 Ocean Street
Rockland, ME 04841
(207) 594-9209

Regional/Education

Soil and Water Conservation Districts

Cumberland County	(207) 871-9247 or 871-8651
Hancock County	(207) 667-8663
Kennebec County	(207) 622-8250
Knox-Lincoln County	(207) 273-2005
Penobscot County	(207) 947-6622
Gray, Maine	(207) 657-3131
Waldo County	(207) 338-2320
Washington County	(207) 255-3995
York County	(207) 324-7015

University of Maine Cooperative Extension Offices

University of Maine, Orono	(207) 581-3181
Androscoggin/ Sagadahoc County	(207) 786-0376
Cumberland County	(207) 780-1471
Hancock County	(207) 667-8212
Kennebec County	(207) 622-7546
Knox/Lincoln County	(207) 594-2104
Penobscot County	(207) 942-7396
Waldo County	(207) 342-5971
Washington County	(207) 255-3345

Prepared by the University of Maine School of Law, Marine Law Institute.

Produced by the Sea Grant Marine Advisory Program through a grant from the National Oceanic and Atmospheric Administration/Sea Grant College Program #NA 16RG0157-01.

SEA GRANT
University of Maine
University of New Hampshire
Sea Grant College Program

Additional copies are available from Sea Grant Communications, 30 Coburn Hall, University of Maine, Orono, ME 04469, (207) 581-1440 or the University of Maine School of Law, Marine Law Institute, 246 Deering Avenue, Portland, ME 04102, (207) 780-4474.

$1.00

E-MSG-93-9 PAMPHLET #12/13-CITIZENS' GUIDES TO OCEAN & COASTAL LAW 200