MAINE
Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Maine’s water pollution control law includes several provisions that may be used to take enforcement action against nonpoint source discharges.

- "No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department."\(^1\) "Discharge" means "any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State." "Pollutant" is broadly defined and includes "rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind." This prohibition includes nonpoint source discharges. It further provides, however, that "No person may be deemed in violation of this section for the discharge of rock, sand, dirt, or other pollutants resulting from erosion related to agricultural activities [if]... A. The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates. B. The commissioner has certified that the plan meets the objectives of this chapter. [and] C. The commissioner determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan."\(^2\)

- Maine law also prohibits violations of water quality "notwithstanding any exemptions or licenses," but requires establishment of a mixing zone "prior to the commencement of any enforcement action to abate a classification violation."\(^3\)

- A narrower prohibition on discharges or placement of certain materials may apply to some forms of nonpoint source pollution: "No person, firm, corporation or other legal entity may place, deposit or discharge, directly or indirectly into the inland waters or tidal waters of this State, or on the ice thereof, or on the banks thereof in such a manner that it may fall or be washed into these waters, or in such manner that the drainage from any of the following may flow or leach into these waters, except as otherwise provided by law: 1. Forest products refuse. Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse; 2. Potatoes. Any potatoes or any part or parts of potatoes; or 3. Refuse. Any scrap metal, junk, paper, garbage, septic tank sludge, rubbish, old automobiles or similar refuse..."\(^4\)

- The law also provides a general injunctive remedy for water pollution without regard to violations: "If the department finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property the department shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge. The injunction
proceedings may be instituted without recourse to the issuance of an [administrative] order.

Enforcement mechanisms under the water pollution law include administrative consent orders and civil injunctive remedies, and civil penalties of up to $10,000 per day. Criminal violations are Class E crimes with a fine of not less than $100 nor more than $25,000 per day of violation.

Other Discharge Limitations

• The Attorney General has broad authority to bring actions in court to abate nuisances. This authority is not limited either by the existence of licenses or by provisions of the water pollution control law.

• Statutory nuisances specifically include "causing or suffering any offal, filth or noisome substance to collect or to remain in any place to the prejudice of others;....corrupting or rendering unwholesome or impure the water of a river, stream, pond, or aquifer."

• "A farm or farm operation may not be considered a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to best management practices, as determined by the Commissioner of Agriculture, Food and Rural Resources..." However, "The commissioner shall investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of waste products, ground and surface water pollution.....If the commissioner identifies the source or sources of the problem, has reason to believe that the source is a nuisance and finds that the nuisance is caused by the use of other than best management practices, the commissioner shall...determine the changes needed in the farm or farm operation to comply with best management practices and prescribe site specific best management practices for that farm operation,"[determine whether the changes are implemented, and make written findings]...If the person responsible for the farm or farm operation does not adopt best management practices, the commissioner shall send a written report to an appropriate agency if a federal or state law has been violated and to the Attorney General. The Attorney General may institute an action to abate a nuisance and the court may order the abatement with costs..."

• A "nuisance caused by the use of other than best practices for manure handling" is also abatable upon suit by the Attorney General, upon referral from the Commissioner of Agriculture, Food, and Rural Resources.

Fish/Fisheries Laws

State laws relating to fish and fisheries do not appear to contain enforceable provisions relating to nonpoint source discharges independent of those identified above.
OPERATIONAL REQUIREMENTS

Forestry Requirements

- The commissioner of forestry is authorized to promulgate rules establishing forest practices for clearcuts and forest harvests adequate to assure regeneration, and setting performance standards for clearcuts including standards to protect water quality and minimize erosion. Management plans are required for clearcuts in excess of 50 acres. Landowners are required to notify the Bureau of Forestry prior to harvesting timber, and to file reports on timber sales. The law prescribes civil forfeitures of $1,000 per violation of the performance standards in the law and regulations. Violation of notice requirements results in a civil forfeiture of $50 for harvests of 50 cords or less and $1,000 for larger harvests or for failure to submit other reports. The commissioner of forestry has been directed by the state legislature to recommend a set of statewide forestry standards in 1999. If adopted, such standards may affect future nonpoint source-related enforcement for forest practices.

- The Land Use Regulation Commission (LURC) provides land use regulation for portions of Maine that are unorganized (see discussion below under "Development and Other Earth-Disturbing Activities"). LURC regulations include timber harvesting standards; these include provisions for slash disposal, clearcut size/location, retention of buffer strips, and a general requirement to "reasonably avoid sedimentation of surface waters.

- The mandatory shoreland zoning law protects areas within 250 feet of the normal highwater line of any great pond, river or saltwater body, within 250 feet of a coastal wetland or the upland edge of a freshwater wetland, and within 75 feet of the highwater line of a stream. The Board of Environmental Protection adopts minimum guidelines for municipal zoning and land use controls; municipalities must adopt ordinances and have them approved by the commissioner as consistent with and no less stringent than the guidelines. If a municipality does not adopt an approvable ordinance, the board may do so. The statute limits timber harvesting in the protected areas to selective cutting of no more than 40 percent of the trees 4 inches or more in diameter in any ten-year period, prohibits timber harvests within 75 foot areas abutting great pond shoreland zoned for resource protection, and requires reforestation within 2 growing seasons of any harvest beyond the 75 foot buffer.

Agriculture Requirements

Apart from the nuisance-related provisions and water pollution discharge provisions noted above -- where use of best management practices and conservation plans, respectively, constitute exemptions -- other provisions of state law relate to agricultural practices that may result in nonpoint source discharges.

- "When the ground is frozen, a person may not spread manure on agricultural fields within a great pond watershed unless this activity is in accordance with a conservation plan for that land on file with a state soil and water conservation district."
• The Maine Land Use Review Commission rules require all spreading or disposal of manure, in the unorganized areas of the state subject to the commission, to be accomplished in accordance with published guidelines; these rules are enforceable.  

• In 1998 the legislature enacted a Nutrient Management Act, which requires farms with more than 50 animal units or that receive 100 or more tons of manure per year to hold and implement a certified nutrient management plan. New farms with more than 300 animal units, or existing farms that expand to more than 300 animal units must hold a livestock operations permit issued by the Maine Department of Agriculture. In addition, beginning December 1, 1999, manure spreading is prohibited between December 1 and March 15 (although the commissioner may issue hardship variances). Failure to develop a nutrient management plan, to implement a nutrient management plan, or to obtain or comply with a permit are offenses punishable by civil forfeiture of up to $1,000 plus $250 per day; winter spreading of manure is punishable by civil forfeiture of up to $1,000 for every day that spreading occurs.

The law also placed a moratorium on new swine feeding operations that confine and feed 500 or more swine, pending a 1998 legislative study on a proposed permit process for large CAFOs. The law also provided for a study by the Maine Department of Agriculture and DEP to evaluate the impact of agriculture on nonpoint source pollution. The study, due January 15, 2001, must evaluate progress in implementing BMPs to exclude livestock from access to streams and lakes for drinking water, evaluation of practices to reduce soil erosion from cropland, and evaluation of BMPs to reduce runoff of nutrients from farmland. The law contemplates, and authorizes the reporting out of legislation to address the findings of the report.

• State law concerning pesticide applications provides for regulation of the places in which pesticides may be used. It provides for certification of commercial applicators and spray contracting firms by the Board of Pesticides Control, and certification of private applicators who intend to use limited or restricted use pesticides; it also provides for establishment of critical areas where pesticide use would "jeopardize endangered species or critical wildlife habitat, present an unreasonable threat to quality of the water supply, be contrary to a master plan for the area where such area is held or managed by an agency of the State or Federal Government, or would otherwise result in unreasonable adverse effects on the public health, welfare or the environment of the area. The designation of a critical area may prohibit pesticide use or may include such limitations on such use as the board deems appropriate." Civil injunctions, orders, license actions, and criminal prosecutions are available for enforcement. Violations are subject to a civil forfeiture of up to $1500 for a first violation and $4000 for subsequent violations; $500 and $1000 respectively for private applicators.

Development and Other Earth-Disturbing Activities

A number of laws provide enforceable land use mechanisms that may address some nonpoint sources of water pollution. Some of these provide direct authority to regulate nonpoint activities while others cross-reference erosion and sediment control requirements.
Maine’s Site Location of Development Law addresses "development of state or regional significance that may substantially affect the environment." It includes developments in excess of 20 acres, subdivisions for single family homes of 15 or more lots aggregating more than 30 acres, buildings and parking lots and other paved areas that occupy a ground area in excess of 3 acres, or development that generates 100 or more passenger car equivalents at peak hour. Prior approval for construction, operation, sale, or lease is required from department of environmental protection. The proposed development must stormwater and erosion and sediment control standards in laws discussed below. The law exempts certain subdivisions of low density with conservation easements, preservation of certain areas, avoidance of slopes, habitats, and adherence to locally approved erosion control plans. It also exempts development within unorganized areas of the state subject to the jurisdiction of the Maine Land Use Regulation Commission, and exempts from certain requirements developments within designated growth areas under a growth management program.

Another law provides for land use regulation in the unorganized portions of Maine. The Land Use Regulation Commission (LURC) establishes regulations for protection districts, management districts, and development districts, and reviews structures and subdivisions. A LURC permit is needed to commence construction or operation of a development. Rules require land clearing activities to maintain vegetative buffer zones of 75 feet around any standing body of water <10 acres and 100 feet for any >10 acres, and removal of no more than 40% of the volume of trees 4 inches or more in diameter in any 10 year period in the zone between 100 and 250 feet. Regulations also prescribe standards for drainage ditches and stream crossings, timber harvests, and filling and grading. Within 250 feet of water bodies and wetlands, the maximum size of a filled or graded area on a single parcel is 5,000 square feet, and beyond 250 feet it is 20,000 square feet; these limits also require compliance with the vegetative clearing limits described above. Minimum lot sizes and frontages are prescribed. LURC land use standards for "management districts...may not limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes..."

Maine’s Growth Management Law applies to municipalities not within the jurisdiction of the LURC. Each municipality may adopt a local growth management program; the implementation strategy must be developed in accordance with guidelines including to "Protect, maintain and, when warranted, improve the water quality of each water body...and ensure that the water quality will be protected from long-term and cumulative increases in phosphorous from development in great pond watersheds." Under the River Commission law, enforcement by the commission may be by injunction and penalties, as provided in Title 38.
Maine law authorizes the organization of local watershed districts.\textsuperscript{45} Such districts may adopt rules as necessary to carry out the purposes of the district, but have no regulatory powers over land use except by agreement with municipalities.\textsuperscript{46}

Mandatory shoreland zoning provides another enforceable mechanism.\textsuperscript{47} It protects areas within 250 feet of the normal highwater line of any great pond, river or saltwater body, within 250 feet of a coastal wetland or the upland edge of a freshwater wetland, and within 75 feet of the highwater line of a stream. The Board of Environmental Protection adopts minimum guidelines for municipal zoning and land use controls; municipalities must adopt ordinances and have them approved by the commissioner as consistent with and no less stringent than the guidelines. If a municipality does not adopt an approvable ordinance, the board may do so. The statute requires setback requirements, limits on timber harvesting, and vegetation buffers between buildings and shoreland.\textsuperscript{48} Another section of the law provides further protections for "significant river segments" including minimum setbacks of 125 feet and limitations on roads and gravel pits.\textsuperscript{49} Municipalities may zone even more restrictively to protect public health, safety and welfare and to avoid problems associated with floodplain development; zoning ordinances must designate as a resource protection zone all areas within the floodway of the 100 year floodplain along rivers.\textsuperscript{50} Local enforcement is by municipal code enforcement officers, with enforcement by the state under the water pollution laws where local zoning is not adopted or enforced.\textsuperscript{51} Water utilities may bring civil suits for injunctive relief as well against any violator affecting the water supply.\textsuperscript{52}

The Natural Resource Protection Act prohibits any "dredging, bulldozing, removing, or displacing soil, sand, vegetation or other materials", any "draining or otherwise dewatering", any "filling", or "any construction, repair or alteration of any permanent structure without a permit if the activity is located "in, on or over any protected natural resource or is located adjacent to and operated in such a manner that material or soil may be washed into...a coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland[,...]freshwater wetlands consisting of or containing [at least 20,000 square feet... or peatlands dominated by shrubs, sedges and sphagnum moss]."\textsuperscript{53} Permit standards require that "the activity will not cause unreasonable erosion of soil or sediment...[that it] not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life...[that it] will not violate any state water quality law...[and] not unreasonably cause or increase the flooding of the alteration area or adjacent properties."\textsuperscript{54} The permit program may be delegated by the board of environmental protection to municipalities.\textsuperscript{55} The law exempts from permitting requirements various activities including normal farming activities, and forest management provided that other requirements are met.\textsuperscript{56} A permit by rule for activities under the Natural Resource Protection Act covers soil disturbances adjacent to wetlands, great ponds, rivers, streams, brooks "if operated in such manner that material or soil may be washed into them." It requires a setback of 25 feet between the normal high water line or upland edge of the protected natural resource and the activity; and erosion into the buffer and the resource "must be prevented" and sediment control measures must be in place before the project begins and must function as intended until the project area is permanently stabilized.\textsuperscript{57} Enforcement may be by the
municipal government or the department of environmental protection, and both may collect penalties.\textsuperscript{58}

Erosion and sediment control requirements are established in several laws identified below. They include some nonpoint source as well as stormwater requirements.

- "A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource [viz. "coastal sand dune system, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds or rivers, streams or brooks"]\textsuperscript{59}

This law applies only within organized areas of the state, and "does not apply to agricultural fields. Forest management activities, including associated road construction or maintenance, conducted in accordance with applicable standards of the Maine Land Use Regulatory Commission, are "deemed" to comply. The law "may not be construed to limit a municipality’s authority under home rule to adopt ordinances containing stricter standards than those contained in this section." Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken."

- Maine’s stormwater law covers some nonpoint sources as well. "A person may not construct, or cause to be constructed, a project that includes 20,000 square feet or more of impervious area or 5 acres or more of disturbed area in the direct watershed of a body of water most at risk from new development or one acre or more of impervious area or 5 acres or more of disturbed area in any other area without prior approval from the department [of environmental protection]....The department shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorous, nitrates and suspended solids but may not directly address other dissolved or hazardous materials unless infiltration is proposed. Storm water quality standards apply only in the direct watersheds of waterbodies most at risk from development and in sensitive or threatened geographic regions or watersheds defined by the department...." The department is to define both of these categories by rule...based on susceptibility to degradation, sensitivity, cumulative effects.\textsuperscript{60}

The law applies only within organized areas of the state; a permit required by this law is not required if a permit is required under another similar law, "but the project may be required to meet standards for management of storm water adopted pursuant to this section." Specific exemptions include "forest management activities, including associated road construction or maintenance", disturbing areas "for the purpose of normal farming activities", projects within municipalities where the commissioner has certified the ordinance as meeting or exceeding the state law provisions, industrial facilities that have a federal stormwater permit, construction or expansion of a single-family detached residence, and "projects involving roads, railroads, and associated facilities conducted by or under the supervision of the Department of Transportation or the Maine Turnpike Authority...so long as the projects are constructed pursuant to storm water quality and quantity standards set forth in a memorandum of agreement..."
between the department and the conducting or supervision agency and the project does not require review under [the site location of development program]."

- Another law regulates excavations for borrow, clay, topsoil or silt for areas of 5 or more acres, requiring a notice of intent to comply, and imposing performance standards to protect groundwater, protected natural resources (including surface waters), and buffer strips. Excavations of less than 5 acres have fewer requirements, but sediment may not leave the parcel or enter a protected area, erosion control measures must be in place, and vegetated cover must be established after final grading. This law applies only within organized areas of the state and does not apply to excavations within the jurisdiction of the LURC or to excavations regulated under the Natural Resource Protection Act.

All of these laws are enforceable under the environmental enforcement provisions summarized above under the water pollution control law section of this summary. In addition, those delegated to local land use authorities are enforceable by those authorities.

Endnotes
11. Me. Rev. Stat. tit. 17, § 2805. The same section also provides that “a method of operation used by a farm or farm operation” may not be considered “a violation of a municipal ordinance if the method of operation constitutes a best management practice as determined by the Department of Agriculture, Food and Rural Resources.”
18. 04-061 MRC 010.17, A, 5.
22. 04-061 MRC 010.17.
25 Nutrient Management Act, §§ 9, 10.
29 Me. Rev. Stat. Ann. § 7, § 616-A. Intentional or knowing violations are punishable by a fine not to exceed $7500 and/or imprisonment not to exceed 30 days.
38 04-061 MRC 010.17.
44 Me. Rev. Stat. Ann. tit. 30-A, § 4452 also provides for civil penalties of $100 to $2,500 per day, and abatement. If the economic benefit resulting from the violation exceeds the applicable maximum, the maximum may be increased; the maximum may not exceed twice the economic benefit.
51 Me. Rev. Stat. Ann. tit. 38, § 441, § 443-A(3) "Any municipality which fails to adopt, administer or enforce zoning and land use ordinances as required under this article shall be subject to the enforcement procedures, equitable remedies and civil penalties set forth in sections 347 to 349." In addition, "Any person who orders or conducts any activity in violation of a municipal ordinance adopted under this chapter is penalized in accordance with Title 30-A, section 4452. The Attorney General, the district attorney or municipal officers or their designee may enforce ordinances adopted under this chapter." Me. Rev. Stat. Ann. tit. 38, § 444.
57 06-096 MRC 305.2.
58 Me. Rev. Stat. Ann. tit. 38, § 480-F(4). Enforcement may also be by Department of Marine Resources officers and all other law enforcement officers. § 480-R.
59 Me. Rev. Stat. Ann. tit. 38, § 420-C; bracketed language is from cross-reference to § 480-B.
62 06-096 MRC 378.