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Public Law
123rd Legislature
First Regular Session

Chapter 445
H.P. 1285 - L.D. 1845

**An Act To Strengthen the Laws Concerning
Surface Water Ambient Toxic Monitoring**

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

Sec. 1. 38 MRSA §420-B, sub-§1, ¶B, as enacted by PL 1993, c. 720, §1, is amended to read:

B. Prepare a work program each year that defines the work to be conducted that year toward the objectives of the 5-year plan. This work program must identify specific sites, the sampling media and the contaminants that will be tested.

(1) The commissioner shall consider the following factors when selecting monitoring sites for the annual work program:

- (a) The importance of the water body to fisheries, wildlife and humans;
- (b) Known or likely sources of contamination and their relative risk to human or ecological health;
- (c) The existence of pending waste discharge licenses affecting the water body;
- (d) The availability of reference sites that are relatively unaffected by human activity;
- (e) Anticipated improvement or degradation of the water body; and
- (f) The availability of current, valid data from other sources on the level of toxic contamination of the water body.

(2) The commissioner shall incorporate the following types of testing in the program:

(a) Monitoring of toxic contaminant levels in biological tissue and water body sediments, and monitoring of the water column may be included;

(b) Analysis of the resident biological community in the monitored water body; and

(c) Monitoring of the health of individual organisms that may serve as indicators of toxic contamination.

(3) When selecting the specific toxic substances to be monitored in the annual program, the commissioner shall consider:

(a) Toxic substances that have the potential to affect human or ecological health at expected concentrations;

(b) Toxic substances from both natural and human sources;

(c) Toxic substances that serve as tracers for human sources of pollution;

(d) Toxic substances or measures of contamination that may be more cost-effective indicators of other toxic substances; and

(e) Toxic substances for which there are analytical test methods approved by the United States Environmental Protection Agency or, where such methods have not been approved, for which the commissioner determines, with the assistance of the technical advisory group established under this section, that proven, reliable methods have been established.

The commissioner shall include in the annual work program a written statement providing the factual basis for the selection of the specific toxic substances to be monitored. Prior to implementation of the annual work program, the toxic substances to be monitored and, if not approved by the United States Environmental Protection Agency, the analytical test methods to be used must be approved by the technical advisory group by a 2/3 vote.

(4) When determining the intensity of the monitoring effort in the annual program, the commissioner shall consider:

(a) The potential for annual variation in toxic contamination at a monitoring site;

(b) The degree of homogeneity in the materials to be sampled; and

(c) The uncertainty in observations due to possible systematic and analytic error.

(5) A technical advisory group composed of ~~11~~12 individuals is established. The commissioner shall appoint 2 members with scientific backgrounds in toxic contamination or monitoring, ecological assessment or public health from each of the following interests: business, municipal, conservation, public health and academic interests. The President of the Senate ~~and the Speaker of the House of Representatives~~ shall jointly appoint as a nonvoting member one ~~Legislator~~Senator who serves on the joint standing committee of the Legislature having jurisdiction over natural ~~resource~~resources matters. ~~The Speaker of the House shall appoint as a nonvoting member one member of the House of Representatives who serves on the joint standing committee of the Legislature having jurisdiction over marine resources matters.~~ The commissioner shall appoint the chair from among the voting members. A quorum of 6 voting members must be present for the conduct of business. Members do not receive compensation or reimbursement for expenses.

The members appointed by the commissioner serve for terms of 3 years except that, for the initial appointments, 2 members serve terms of one year, 4 members serve terms of 2 years and 4 members serve terms of 3 years. ~~The Legislator serves~~Legislators serve for the duration of the Legislature to which the ~~Legislator is~~Legislators are elected.

The group shall advise the commissioner during the development of the 5-year monitoring plan and the annual work programs.

Sec. 2. 38 MRSA §420-B, sub-§4, as amended by PL 1997, c. 179, §4, is further amended to read:

4. Report. No later than March 31st of each year, the commissioner shall report on the monitoring program to the joint standing ~~committee~~committees of the Legislature having jurisdiction over natural ~~resource~~resources matters and marine resources matters. This report must contain:

- A. At the start of each 5-year period, the 5-year monitoring plan;
- B. The annual work program for the past year and the current year;
- C. The commissioner's conclusions as to the levels of toxic contamination in the State's waters and fisheries;
- D. Any trends of increasing or decreasing levels of contaminants found; and
- E. The report on the results of the dioxin monitoring program required under section 420-A, subsection 4.

Sec. 3. Continuance of program. The Commissioner of Marine Resources and the Commissioner of Environmental Protection shall jointly prepare a report for submission to the Joint Standing Committee on Marine Resources and the Joint Standing Committee on Natural Resources no later than January 4, 2008. The report, which may include implementing legislation, must provide a detailed plan that ensures a reliable and consistent source of funding for the surface water ambient toxic monitoring program required under the Maine Revised Statutes, Title 38, section 420-B.

Effective September 20, 2007