

**§420-B. Surface water ambient toxic monitoring program**

The discharge of pollutants from certain direct and indirect sources into the State's waters introduces toxic substances, as defined under section 420, into the environment. In order to determine the nature, scope and severity of toxic contamination in the surface waters and fisheries of the State, the commissioner shall conduct a scientifically valid monitoring program. [PL 1993, c. 720, §1 (NEW).]

The program must be designed to comprehensively monitor the lakes, rivers and streams and marine and estuarine waters of the State on an ongoing basis. The program must incorporate testing for suspected toxic contamination in biological tissue and sediment, may include testing of the water column and must include biomonitoring and the monitoring of the health of individual organisms that may serve as indicators of toxic contamination. This program must collect data sufficient to support assessment of the risks to human and ecological health posed by the direct and indirect discharge of toxic contaminants. [PL 1993, c. 720, §1 (NEW).]

**1. Development of monitoring plans and work programs.** The commissioner shall:

A. Prepare a plan every 5 years that outlines the monitoring objectives for the following 5 years, resources to be allocated to those objectives and a plan for conducting the monitoring, including methods, scheduling and quality assurance; and [PL 1993, c. 720, §1 (NEW).]

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 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 shall appoint as a nonvoting member one Senator who serves on the joint standing committee of the Legislature having jurisdiction over natural 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 Legislators serve for the duration of the Legislature to which the Legislators are elected.

The group shall advise the commissioner during the development of the 5-year monitoring plan and the annual work programs. [PL 2007, c. 445, §1 (AMD).]

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**1-A. Dioxin monitoring.** In order to determine the nature of dioxin contamination in the waters and fisheries of the State, the commissioner shall conduct a monitoring program as described in this subsection. This monitoring must be undertaken to determine the need for fish consumption advisories on affected waters.

A. As used in this subsection, the term "dioxin" means any polychlorinated dibenzo-para-dioxins, PCDDs, and any polychlorinated dibenzo-para-furans, PCDFs. [PL 2007, c. 565, §3 (NEW).]

B. The commissioner shall:

- (1) Select a representative sample of wastewater treatment plant sludges from municipal wastewater treatment plants, bleached pulp mills or other sources. These facilities must be selected on the basis of known or likely dioxin contamination of their discharged effluent;

(2) Sample and test the sludge of selected facilities for dioxin contamination at least once during each season of the year. The commissioner shall specify which congeners of dioxin will be analyzed;

(3) At appropriate intervals, sample and test for dioxin contamination in a selection of fish representative of those species present in the receiving waters or where there are consumption advisories for dioxin. Sufficient numbers of fish must be analyzed to provide a reasonable estimate of the level of contamination in the population of each water body affected; and

(4) Assess the selected facilities for the costs of sample collection and analysis except that, if the selected facility is a publicly owned treatment works, the commissioner may assess the primary industrial generator discharging effluent into the treatment facility if the generator is known or likely to be discharging dioxin into the treatment facility. Fees received under this subparagraph must be credited to the Maine Environmental Protection Fund. Payment of these fees is a condition of the discharge license issued pursuant to section 413 for continued operation of the selected facilities, except that, if the selected facility is a publicly owned treatment works and the commissioner assesses the fee on an industrial generator, payment of the fee is not a condition of the discharge license of the selected facility. The fees assessed under this subparagraph may not exceed a total of \$250,000 in any fiscal year. The fees assessed under this subparagraph to facilities subject to section 420, subsection 2, paragraph I may not exceed a total of \$10,000 in any fiscal year. [PL 2007, c. 565, §3 (NEW).]

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**2. Data management.** The commissioner shall maintain data collected under this section in a manner consistent with standards established under Title 5, chapter 163, subchapter 3 for the State's geographic information system. All data is available to the public.

[PL 2005, c. 12, Pt. SS, §22 (AMD).]

**3. Coordination and notice of monitoring.** The commissioner shall coordinate the monitoring program established under this section with other toxics monitoring programs conducted by the department, the Maine Center for Disease Control and Prevention, the United States Environmental Protection Agency and other federal agencies or dischargers of wastewater. At least 30 days prior to submitting the plan described under subsection 1, paragraph A to the technical advisory group, the commissioner shall notify the owners or operators of each selected facility proposed for dioxin monitoring of the facility's inclusion in the plan.

[PL 2007, c. 565, §4 (AMD).]

**4. Report.** No later than April 30th in the first regular legislative session, the commissioner shall prepare a report on the monitoring program and shall provide an executive summary of the report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and marine resources matters, shall publish the full report on the department's publicly accessible website and shall provide a copy or copies of the full report to the State Librarian as required under Title 1, section 501-A. This report must contain:

A. [PL 2015, c. 124, §5 (RP).]

B. The annual work program for the past year and the current year; [PL 1993, c. 720, §1 (NEW).]

C. The commissioner's conclusions as to the levels of toxic contamination in the State's waters and fisheries; [PL 1997, c. 179, §4 (AMD).]

D. Any trends of increasing or decreasing levels of contaminants found; and [PL 1997, c. 179, §4 (AMD).]

E. The results of the dioxin monitoring program required under subsection 1-A. [PL 2007, c. 565, §§3-5 (AMD); PL 2007, c. 565, §5 (AMD).]

[PL 2015, c. 124, §5 (AMD).]

## SECTION HISTORY

PL 1993, c. 720, §1 (NEW). PL 1995, c. 152, §6 (AMD). PL 1997, c. 179, §4 (AMD). PL 2005, c. 12, §SS22 (AMD). PL 2007, c. 445, §§1, 2 (AMD). PL 2007, c. 565, §§3-5 (AMD). PL 2015, c. 124, §5 (AMD).

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