
**SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT'S RESPONSE
& LIST OF CHANGES MADE TO THE FINAL RULE**

**Subsurface Wastewater Disposal Rule
(10-144 CMR Chapter 241)**

FIRST COMMENT PERIOD*

The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Maine CDC) published notice of its proposal to amend this rule on December 14, 2022. There was no public hearing, but a 30-day public comment period was held until January 13, 2023. ****A second comment period was also held by the Department. Those particular comments and responses begin on page 23.***

TABLE OF COMMENTERS

Written comments were received from the following people:

First Comment Period: December 14, 2022 – January 13, 2023				
ID #	First Name	Last Name	Date	Representing
1	Michele	DeFrance	12/15/2022	City of Portland Maine
2	Dan	Gilbert	12/20/2022	Licensed Plumbing Inspector
3	Geoff	Smith	12/21/2022	Boothbay Harbor
4	Dave	Rocque	12/23/2022	Maine Association of Site Evaluators
5	Nick	Fournelle	12/30/2022	Advanced Leachfields
6	Colin	Holme	1/3/2023	Lakes Environmental Association (LEA)
7	Andrew	Zalman	1/6/2023	
8	Ray Thomas	Mimms	1/6/2023	
9	Caroline	Harlow	1/7/2023	North Pond Association
10	Peter	Roland	1/7/2023	
11	Jillian	Hanson	1/7/2023	
12	Steve	Lewis	1/8/2023	Kezar Watershed Lake Association
13	James	Merrow	1/9/2023	
14	Susan	Adams	1/9/2023	
15	Tom	Larned	1/9/2023	Kennebunk Pond Association
16	Joseph	Egan	1/9/2023	Planning Board Member, Brownfield
17	Sue	Carrington	1/9/2023	
18	Sal & Ann	Gebbia	1/9/2023	
19	Mary Ann & John	Uzzi	1/9/2023	
20	Dwight	Aspinwall	1/10/2023	Long Pond Association
21	Samantha	Mortlock	1/10/2023	
22	Kennebunkpond		1/10/2023	
23	Barb	Ohland	1/10/2023	
24	Catherine	Merrow	1/10/2023	
25	Judy	McCormally	1/11/2023	
26	Loriel	Van Dusen	1/11/2023	
27	Tristan	Taber	1/11/2023	
28	Jean	McMullen	1/11/2023	Director, Alford Lake Camp
29	Rebecca	Jacobs	1/11/2023	
30	Nathan	Whalen	1/11/2023	Portland Water District
31	Brady	Frick	1/11/2023	Albert Frick Associates, Inc.
32	Wendy	Weiler	1/11/2023	
33	Karen	Putnam	1/11/2023	

First Comment Period: December 14, 2022 – January 13, 2023				
ID #	First Name	Last Name	Date	Representing
34	Rita	Arnold	1/11/2023	
35	Andree	Pride	1/11/2023	
36	Ellen	Smith	1/11/2023	
37	Robert	Estes	1/11/2023	
38	Adrienne	Rollo	1/11/2023	
39	Patrick	Coville	1/11/2023	
40	Robyn	Silberstein	1/11/2023	
41	Sarah	Nelson	1/11/2023	
42	Roberta	Hodson	1/11/2023	
43	Michael	Cloutier	1/11/2023	
44	Devin	Rutkowski	1/11/2023	
45	Thomas	Hamilton	1/11/2023	
46	Len & Mary	Winsky	1/11/2023	
47	Cheryl	Andre	1/11/2023	
48	Hugh	Mahon	1/11/2023	
49	Richard	Hargeaves	1/11/2023	
50	Steve	Bond	1/11/2023	
51	Wendy	Penley	1/11/2023	
52	Mark	Hedrich	1/11/2023	Maine Department of Agriculture, Conservation and Forestry
53	Heidi	Wierman	1/11/2023	
54	Eliza	Beghe	1/11/2023	
55	Bob	Searle	1/11/2023	
56	Jonnie	Maloney	1/11/2023	
57	Deborah	Cayer	1/11/2023	Parker Pond Association, 30 Mile River Association
58	Ron	Prevost	1/12/2023	
59	Deborah	Felmeth	1/12/2023	
60	Sam	Cady	1/12/2023	
61	James	O'Brien	1/12/2023	
62	Eleanor	Kubeck	1/12/2023	
63	Theresa	Foster	1/12/2023	
64	Richard	Rodgers	1/12/2023	
65	Fred	Garbo	1/12/2023	
66	Andrea	Nurse	1/12/2023	
67	Sarah	Otterson	1/12/2023	
68	Will	Chappell	1/12/2023	Air & Water Quality Inc
69	Martha	Hoddinott	1/12/2023	
70	Mike	Girifalco	1/12/2023	
71	Bruce	Pierce	1/12/2023	
72	Everett	Vandersnoek	1/12/2023	
73	Bill	Kelton	1/12/2023	
74	Carl & Sally	Stillwell	1/12/2023	
75	Kay	Johnson	1/12/2023	
76	Mary	DeLano	1/12/2023	
77	Yvon & Brenda	Goulet	1/12/2023	
78	Jeff	Stuhr	1/12/2023	

First Comment Period: December 14, 2022 – January 13, 2023				
ID #	First Name	Last Name	Date	Representing
79	Gary & Anne	Stuer	1/12/2023	
80	Ann	McGinley	1/12/2023	
81	Ann	Gooding	1/12/2023	
82	Myron	Gildesgame	1/12/2023	
83	Kim	Rubin	1/12/2023	
84	James	Gibson	1/12/2023	
85	Lisa & Terry	Applegate	1/12/2023	
86	Margaret	Innes	1/12/2023	
87	Paul	Shook	1/12/2023	
88	Diane	Esecson	1/12/2023	
89	Brad	Weller	1/12/2023	
90	Terri	Coolidge	1/12/2023	Green and Mirror (Mud) Ponds Association
91	Susan	Kamin	1/12/2023	
92	Rudy	Davis	1/12/2023	Sebec Lake Association
93	Mimi	White	1/12/2023	
94	Sandra	Lucore	1/12/2023	
95	Diane	Gotelli	1/12/2023	
96	Brian	Roth	1/12/2023	
97	Mark & Cindy	Fahey	1/12/2023	
98	Robert	Moody	1/12/2023	
99	Larry	LaBossiere	1/12/2023	
100	Nancy	Spanswick	1/12/2023	
101	Sal	Girifalco	1/12/2023	
102	Sophie	Maamouri	1/12/2023	
103	Judy	Ingram	1/12/2023	
104	Colette Dumas &	Frederick Hovey	1/12/2023	
105	William	Allanach	1/12/2023	
106	Stephen	Greene	1/12/2023	China Lake Association
107	Dawn	LaDuke	1/12/2023	
108	Landis	Hudson	1/12/2023	
109	Marty	Swiak	1/11/2023	
110	Deborah	Cayer	1/11/2023	
111	Carlene	Gavin	1/12/2023	
112	Kay	Johnson	1/12/2023	
113	Melissa	Gaspar	1/12/2023	
114	Thomas	Urquhart	1/12/2023	
115	Jane	Davis	1/12/2023	
116	Fred	Sutherland	1/12/2023	
117	Pat	Howard	1/12/2023	
118	Patricia	Nease	1/12/2023	Midcoast Conservancy
119	Anthony	Wilson	1/12/2023	7 Lakes Alliance
120	Mary	Connaughton	1/12/2023	
121	Susan	Gallo	1/12/2023	Maine Lakes Association, Lake Webb Association
122	Pamela	Albertsen	1/12/2023	
123	Charles	Rhodehamel	1/12/2023	

First Comment Period: December 14, 2022 – January 13, 2023				
ID #	First Name	Last Name	Date	Representing
124	Dorothy	Raymond	1/12/2023	
125	Ed	Glasheen	1/12/2023	
126	Frank	Simon	1/12/2023	
127	Jo	Speaker	1/12/2023	
128	Reggie	Hammond	1/13/2023	
129	Lucy	Leaf	1/13/2023	
130	Katherine & John	Greenman	1/13/2023	
131	Lidie	Robbins	1/13/2023	30 Mile River Watershed Association
132	Kathleen	Gross	1/13/2023	
133	Toni	Pied	1/13/2023	Friends of Cobbossee Watershed
134	Joseph	Benci	1/13/2023	
135	Gary	Brink	1/13/2023	Kezar Lake Watershed Association
136	Robert	MacMunn	1/13/2023	
137	Eliza	Donoghue	1/13/2023	Maine Audobon
138	Mark	Pokras	1/13/2023	
139	William	Young	1/13/2023	
140	Laurie	DeVito	1/13/2023	
141	Hope & Mark	Hampton	1/13/2023	Mark Hampton Associates
142	Andrew	Innes	1/13/2023	
143	Nicholas	Adams	1/13/2023	N.L. Adams and Associates
144	Mark	Stambach	1/13/2023	Maine Building Officials and Inspectors Association
145	Brian	Kavanah	1/13/2023	Maine Department of Environmental Protection
146	Karen	Smith	1/13/2023	
147	Anita J	Liou	1/13/2023	
148	Janet & Vic	Bernhards	1/13/2023	
149	Bill	Noble	12/29/2022	Maine Department of Environmental Protection

The Department’s response follows each comment and explains whether the suggestions (if any) were followed by the Department. If the Department made no change in response to the comment, then an explanation of the reasons why no changes were made also is provided below. The summary list of changes following these comments identify new changes resulting from either public comment or Assistant Attorney General review of the rule for form and legality.

Comment Summary: First Comment Period: December 14, 2022 – January 13, 2023

- Comment:** Commenter 141 referred to the definition of “coastal shoreland zone” (Section 1(B)(28)) and asked if the definitions that are referenced in statute, within the definition, can be added for clarification? The commenter also asked, for clarification regarding the highest annual tide in reference to coastal wetlands?

Response: The Department has determined that this definition is appropriate for this rule. “Highest annual tide” describes the single spring tide that exceeds all others in elevation and is caused by astronomical positions and gravitational pulls. This particular point is used in in coastal wetlands to determine the setback necessary for the components of the septic system. The definitions in this rule are meant to supplement the definitions in the applicable statutes that grant the Department regulatory authority. There were no changes to the rule based on this comment.

2. **Comment:** Commenter 149 states that the form HHE-220 was not in the definitions and asked if should be included in the rule.

Response: The Department agrees with the commenter that the form HHE-220 is an important application form in this rule. The Department has added a the definition of HHE-220, Section 1(B)(92).

3. **Comment:** Commenter 143 recommended that the definition of “in-law apartment” in the proposed rule (Section 1(B)(104)) be renamed “accessory dwelling unit”. The commenter stated that they are unsure how a Licensed Plumbing Inspector (LPI) could enforce the requirement that the in-law apartment can only be occupied by a relative. The commenter stated that they believe that this is not being enforced statewide. The commenter added that 30-A MRS § 4364-B uses the term accessory dwelling unit and its requirement for it to be connected to adequate wastewater disposal. The commenter stated that most municipal ordinances classify this use as an accessory dwelling unit as well. The commenter concluded that if the definition is amended there are several other sections of the rule that reference in-law apartment, that will need to be updated.

Response: The definition of Accessory dwelling unit, as defined in 30-A MRS § 4364-B, is broader than necessary for the purposes of this rule. The Department agrees with the commenter that enforcing the requirement that an in-law apartment can only be occupied by a parent or relative can be difficult. The Department has clarified the definition of in-law apartment in the rule and has removed from the definition “by a parent or other relative.”

4. **Comment:** Commenter 31 stated that the definition of “legal means of disposal,” in the proposed rule (Section 1(B)(109)) is false and is in conflict with the rule. The commenter stated that the definition leaves out grandfathered septic systems (pre-1974), which the commenter added is a legal means of disposal. The commenter recommended removing the definition as the definition of “System, legally existing” is correct.

Response: The Department has removed the definition of “legal means of disposal” as it did not appear anywhere else in the rule.

5. **Comment:** Commenter 141 asked if the definitions of “normal high water line – riverine stream lake and pond” in the proposed rule (Section 1(B)(117)) and “normal high-water line - non-tidal waters” in the proposed rule (Section 1(B)(118)) are the same?

Response: The Department agrees with the commenter that the definition of normal high water line – riverine stream lake and pond, and the definition of normal high-water line - non-tidal waters are both similar. Retaining both definitions in the rule does not improve to the clarity of the rule. The Department has removed the definition of normal high water line – riverine stream lake and pond from the rule.

6. **Comment:** Commenter 149 recommended that the last sentence in the definition of “Probe” Section 1(B)(136) in the proposed rule should not be removed, “A probe by itself is insufficient to classify soil pursuant to Section 4.”

Response: The Department disagrees with the commenter and believes that the last sentence does not belong in the definition. The manner in which soil must be classified is sufficiently set forth in Section 5 (previously Section 4).

7. **Comment:** Commenter 141 asked how the definition of “short term rental” (Section 1(B)(164)) in the proposed rule applies, as it is not located elsewhere in the rule.

Response: The Department agrees with the commenter. To clarify the definition and the intent of the rule, the Department has added the following sentence to Section 5(E)(3): “The design flow for short-term rentals must be higher than flows listed in this section.”

8. **Comment:** Commenter 141 referred to the definition of “water body, minor” (Section 1(B)(219)) and asked if it should read as “not depicted on a map”?

Response: The Department agrees with the commenter and has added, “not depicted on a USGS map” to the definition.

9. **Comment:** Commenter 31 stated that the definition of “Water body/course, minor” (Section 1(B)(219)) needs additional clarification. The commenter stated that the reference to USGS should be removed as in most cases the major difference between a major and minor water body is the USGS map. The commenter added that farm ponds shown on the USGS with no blueline stream inlet or outlet should not be considered a major watercourse. The commenter also recommended removing the language “but is not limited to” under the definition of “Water body/course, major” (Section 1(B)(218)).

Response: The Department has added clarification to the definition of “Water body/course, minor” (Section 1(B)(219)). See the Department’s response to Comment #9. Also see the Department’s response to Comment #5. The Department disagrees that “farm ponds shown on the USGS with no blueline stream inlet or outlet should not be considered a major watercourse.” The standard interpretation of the USGS map is that if there is no blueline stream on the USGS inlet or outlet, then the watercourse is an isolated feature and is considered a minor watercourse. In the definition of “Water body/course, major” set forth in Section 1(B)(218), the Department finds that the phrase “but is not limited to” is necessary for the definition as there may be other major water body/courses that are not identified in the rule, such as a canal.

10. **Comment:** Commenter 52 provided comments on behalf of Maine’s Department of Agriculture, Conservation and Forestry (DACF). The commenter stated that DACF assists farmers and producers with environmentally sound disposal best management practices for wastewater generated by a number of agricultural activities. The commenter added that this includes wastewater generated from the washing of soil from vegetable and fruit crops, dairy farm milk room cleaning, and waste material disposal from small and moderate-size farm slaughterhouses. The commenter stated that this rule, as proposed, would prohibit the use of longstanding waste disposal practices and impede the beneficial reuse of waste materials by agricultural practices. The commenter stated that DACF is requesting that the wastewater generated by these processes, that is responsibly disposed of under the purview of the DACF, be exempt from the Subsurface Wastewater Disposal Rules.

The commenter recommended the definition of domestic wastewater (Section 1(B)(56)) should have the following addition at the end of the definition, “but excluding wastewater produced by farming operations for washing fruits and vegetables, dairy milk room wastewater, and farm slaughterhouse wastewater, which is under the direct supervision of the Department of Agriculture, Conservation and Forestry.”

The commenter recommended the definition for wastewater (Section 1(B)(213)) should have the following addition at the end of the definition, “but excluding wastewater produced by farming operations for washing fruits and vegetables, dairy milk room wastewater, and farm slaughterhouse wastewater, which is under the direct supervision of the Department of Agriculture, Conservation and Forestry. This term specifically excludes hazardous or toxic wastes and materials.”

The commenter stated that agricultural wastewater, which is a primary source of nutrients beneficial for crop growth, lacks the typical human pathogens found in domestic wastewater. The commenter added that all domestic wastewater generated by agricultural operations that might contain human pathogens (e.g., toilets, handwashing sinks, and showers) is disposed of in accordance with the Subsurface Wastewater Disposal Rules. The commenter stated that DACF designs systems to treat wastewater from fruit and vegetable washing operations and small and moderate-size slaughterhouses and that fruit and vegetable wash water contains only small amounts of sediment, some fruit or vegetable matter, and minor amounts of detergent used to wash down the area where the fruits and

vegetables are washed. The commenter stated that these systems utilize sediment traps for fruit and vegetable wash water and a stone level spreader that outlets onto a filter strip that has suitable soils for infiltration.

The commenter states that for small to medium-size slaughterhouses, DACF utilizes a multifaceted process. First, the highest BOD5/TSS components (blood) are separated to be collected and used for several purposes. Then the first flush of wash water that is relatively high in BOD5/TSS is collected and used primarily as a source of agricultural nutrients. The commenter added that the effluent then passes through several septic tanks and grease traps before being discharged to a system that is a combination subsurface wastewater disposal field/level spreader/filter strip. The commenter stated that this final step is implemented on suitable soils with setbacks similar to those found in the Subsurface Wastewater Disposal Rules. The commenter stated that large slaughterhouse wastewater is regulated by the Department of Environmental Protection.

The commenter stated that most dairy milk room wastewater is piped into the farm's liquid manure pit and that milk room wastewater not piped into a manure pit is discarded through systems designed by the Natural Resources Conservation Service's soil engineers, utilizing a combination of septic tanks and subsurface wastewater disposal fields modeled on designs in the Subsurface Wastewater Disposal Rules.

The commenter stated that DACF is authorized to require the implementation of wastewater disposal best practices under the Maine Agriculture Protection Act (7 MRS § 151 et seq) and can enforce such requirements through civil violation actions imposing injunctive relief and/or civil penalties. The commenter stated that these wastewater disposal systems are designed with best practices to ensure appropriate setbacks from sensitive natural resources, particularly for the protection of ground and surface water, under the direct supervision of the DACF. The commenter added that the above mentioned agricultural activities are well managed, environmentally sound, and practical for farmers and producers to implement with the DACF's guidance and oversight. The commenter stated that formally codifying the DACF's role and authority in this rule specifically to farm wastewater disposal should minimize complications for the design and implementation of these particular systems.

Commenter 52 also added the following attachments as reference:

- Department of Agriculture, Conservation and Forestry Best Management Practices: Disposal of Wastewater from On-Farm Processing of Large (Over 25 lbs.) Animals, Disposal Of Wastewater From On Farm Processing Of Large (Over 25 Lbs.) Animals, March 2, 2017;
- Department of Agriculture, Conservation and Forestry Best Management Practices: Disposal of Wastewater from On-Farm Processing of Up to 1000 Small Animals (25 lbs. or less) Per Year, Disposal Of Wastewater From On Farm Processing Of Up To 1000 Small Animals (25 Lbs. Or Less) Per Year, March 2, 2017; and
- Department of Agriculture, Conservation and Forestry Best Management Practices: Disposal of Used Water From Hydroponic Growing Operations, Disposal Of Used Water From Hydroponic Growing Operations, March 7, 2017.

Response: The Department finds that these comments are beyond the scope of this rule, as the Department has no authority over the Internal Plumbing Code. The Plumber's Examining Board administers the Internal Plumbing Code, which includes Installation Standards at 02-395 CMR Ch 4. The Department has updated the definition of domestic wastewater to include the term "household." The definition of domestic wastewater has been updated to include the term "household" to clarify what is meant by animal or vegetable matter within that definition. The Department has not changed the definition of wastewater based on this comment, as this comment is beyond the scope of this rulemaking. The commenter is referring to businesses, agricultural and commercial endeavors.

The Department agrees that DACF has the authority to regulate disposal of agricultural wastewater pursuant to 7 M.R.S. §§ 151, *et seq.* Pursuant to the Subsurface Wastewater Rule, including the adopted amendments,

“wastewater” means any *domestic* wastewater, or other wastewater from commercial, industrial, or residential sources which has constituents similar to that of domestic wastewater. This rule is intended to apply only to domestic wastewater, or to wastewater that is similar to domestic wastewater. The Department has never considered agricultural wastewater regulated by DACF to meet the definition of wastewater regulated by the Subsurface Wastewater Disposal Rule.

To clarify the Department’s interpretation, the Department has revised the definition of “wastewater” in Section 1(B)(213) to read: “any domestic wastewater, or other wastewater from commercial, industrial, or residential sources which has constituents similar to that of domestic wastewater. This term specifically excludes hazardous or toxic wastes and materials *and agricultural wastewater disposed of under the direct supervision of the Department of Agriculture, Conservation, and Forestry (DACF).*”

The Department has additionally revised the definition of “domestic wastewater” in Section 1(B)(56) to add the word “household” and to remove the reference to animal and/or vegetable matter in order to avoid confusion.

- 11. Comment:** Commenter 1 noted a grammatical error exists in Section 2(A)(1) of the proposed rule. The commenter recommended adding the letter “s” after the word “govern”.

Response: The Department agrees with the commenter and has added the letter “s” to the term “govern” in Section 2(A)(1) of this rule.

- 12. Comment:** Commenter 149 recommends that the Department replace “shall” with “must in Section 2(B)(2).

Response: The Department agrees with the commenter and has replaced “shall” with “must in Section 2(B)(2).

- 13. Comment:** Commenter 143 stated that the proposed rule amends Section 2(D)(4) to include the entire “disposal system” instead of the just the “disposal area”. The commenter added that this would now prohibit a structure to be built on a septic tank and other components. The commenter recommended wording that may be more specific, “No portion of a structure shall be located on or over any part of a subsurface wastewater disposal system.”

Response: The Department agrees with the commenter and has added, “No portion of a structure is allowed to be located on or over any part of a disposal system.” to this section of the rule.

- 14. Comment:** Commenter 52 recommended that Floor Drains (Section 2(E)(1)(a)(iii)) should have the following addition at the end of the section, “excluding wastewater produced by farming operations for washing fruits or vegetables, dairy milk room wastewater, and slaughterhouse wastewater, which is under the direct supervision of the Department of Agriculture, Conservation and Forestry; and”

Response: The Department believes that these suggested changes are unnecessary. This rule regulates the disposal of domestic waste water rather than that of businesses, agricultural and commercial endeavors. The Department has no authority over internal plumbing codes and refers the commenter to the Plumbers’ Examining Board, 02-395 CMR Chapter 4, Installation Standards.

- 15. Comment:** Commenter 52 recommended an addition to Floor Drains after Section 2(E)(1)(b): “Floor drains necessary for the discharge of water resulting from the washing of fresh fruits and vegetables on a farm with the purpose of removing soil associated with growing the crop, or dairy milk room wastewater, are not required to be piped to a subsurface wastewater disposal system, provided that best management practices, approved by the Maine Department of Agriculture, Conservation & Forestry, are implemented. Floor drains necessary for the discharge of water resulting from farm slaughterhouse waste, are not required to be piped to a subsurface

wastewater disposal system, provided that best management practices, approved by the Maine Department of Agriculture, Conservation and Forestry, are implemented.”

Response: The Department believes that the commenter is referring to Section 2(E)(1)(b). Please see the Department’s response to Comment #16. No change has been made to the rule based on this comment.

- 16. Comment:** Commenter 143 recommended that Section 4(C) Fees, include the DEP surcharge fee required under 30-A § 4211.5.D for complete systems. The commenter added that it would be helpful to cross reference the law into the rule to inform owners, contractors, and other interested parties.

Response: The Department does not regulate or set fees for other regulatory agencies such as the DEP and therefore does not include in the rule fees by these agencies. No change has been made to the rule based on this comment.

- 17. Comment:** Commenter 30 states that the proposed revision in Section 5(B)(5)(a), is an incentive to fill land which is unsuitable for a leach field or development. The commenter added that such areas usually consist of forested wetlands that are part of the natural hydrology which should not be altered. The commenter stated that federal and State rules regarding low lying wet areas are clear, that the intent is to protect these lands and not to fill them. The commenter stated that this change has potential to adversely impact water supply and all the lakes of Maine.

Response: The Department refers the commenter to the Department’s response to Comment #20.

- 18. Comment:** Commenter 145 offered comments on behalf of the Maine Department of Environmental Protection (DEP) and stated they are concerned with proposed Sections 5(B)(5)(a) and 5(B)(6)(a) in the Soil Profile Description section. The commenter stated that DEP Water and Land Bureau staff reviewed these sections and are concerned that the revisions may cause unintended consequences, impacting water quality and wetlands. The commenter stated that since 1974, the rules have not allowed placement of new systems in the shoreland area on fill material that was placed on a site after 1974. The commenter added that outside the shoreland area, new systems have not been allowed on fill material placed on a site after 1995. The commenter stated that these provisions limited construction of new septic systems and associated development on marginal soils and wetland sites. The commenter stated that DEP encourages the Department to keep the original language intact.

Commenter 145 stated that they are in support of the newly proposed Sections 15 through 17 relating to subsurface system inspections. The commenter added that the rule will support the requirement under 30-A MRS §4216 to inspect septic systems located in all shoreland zones with the goal of better protecting groundwater and surface waters from contamination. The commenter stated that in recognition of its importance, the adoption of 30-A MRS §4216 was included in the Maine NPS Management Program Plan (2020-2024) as a priority action item and it is a milestone for the DHHS Subsurface Program. The commenter stated that the U.S. Environmental Protection Agency (EPA) requires States to have an updated NPS Management Plan and to make satisfactory progress in carrying out this plan to qualify for federal Section 319 grant awards under the Clean Water Act. The commenter stated that the DEP will be pleased to report progress on this item in their annual report to EPA.

Response: The Department refers the commenter to the Department’s response to Comment #19.

- 19. Comment:** Commenters 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 45, 46, 47, 50, 51, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 108, 109, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 142, 144, 146, 147 and 148.

Some of the commenters who responded to this section of the rule represented local lake associations. The commenters reported that their associations were either in the process of, or just completing costly and time consuming lake treatments as a result of invasive plant species or algae blooms and the resultant high phosphates in the lake water.

The commenters expressed concern about the current proposed rule change, specifically in Section 5(B)(6)(a) which would change from fill that has been in place since July 1, 1974, to a minimum requirement of any fill 20 years old or older in the shoreland zone. The commenters stated that in the current rule, fill soil can only be used to site a septic system within the shoreland zone if it has been in place before July 1, 1974, and that this requirement has effectively protected human health, wildlife, and water quality. The commenters stated that this standard prevents landowners from intentionally circumventing the rules in order to create a buildable lot where one does not exist naturally.

The commenters stated that compacted and smoothed ground, reduced vegetation, new driveways and paths, and other changes associated with development can be managed on a lot where suitable soils along with best management practices can do much of the job of absorbing rainwater. The commenters added that buildings (and septic systems) are suitable for these properties. The commenters stated that the current rule determines suitability of a property for a septic system, including the minimum soil conditions and that for a property to have suitable soil conditions, it must be either the original soil or fill material of a certain texture, depth and extent that has been in place since 1995, outside the shoreland zone (Section 5(B)(5)(a)), or since July 1, 1974, inside the shoreland zone, (Section 5(B)(6)(a)). The commenters stated that the proposed changes would allow septic systems to be placed on unsuitable soils if the landowner brings in fill and waits for 20 years, adding that this will encourage the placement of fill in new areas of the shoreland zone in an effort to ‘bank’ new building sites in another 20 years. The commenters added that lots with substandard soils do not perform as well for development and that foundations may not function as well and that runoff from the development can be cause difficulties.

The commenters are concerned about soil stability and erosion within the shoreland zone, as new fill material will lack the structure of natural soils and would render the soil less able to absorb stormwater. The commenters added that this is a critical function of the soils and landscape around a waterway and will lead to increased erosion and pollution. The commenters stated that this increases the risk for algae blooms which are fed by phosphorus that often moves in stormwater. Many of the commenters stated that their lakes have suffered from algal blooms from high phosphorous, adding that phosphorous can be caused by external loading, with septic systems being a potentially significant factor. The commenters stated that many Maine lakes have experienced unanticipated declines in water quality and that weakening the rules will further endanger a valuable natural resources that contributes so much to Maine’s economy.

The commenters stated that if a lot does not have a small area of soil with 15” to the limiting factor, it is unlikely to have soil suitable for building a house, lawn, driveway and other residential amenities. The commenters continue, that a small amount of fill, big enough to install a septic system, will not make a lot poorly suited for development more suitable and the development that comes with it, on sites with unsuitable soils will pose an unacceptable risk to lake water quality and wildlife habitat. The commenters caution that where soils are not suitable, development will lead to excess phosphorus, erosion, and sedimentation into the lakes and that trucking in fill for a future septic system will do nothing to mitigate these large associated impacts.

The commenters would like assurance from the Department that this new rule is scientifically sound. The commenters stated that failing septic systems can be major sources of water pollution, leaking pollutants like bacteria and excess nitrogen and phosphorus into groundwater, which then make their way into lakes and other bodies of water. The commenters continue that the excess phosphorous leads to algae blooms by robbing the water of oxygen and fueling blooms of toxic algae. The commenters added that these blooms are harmful to humans, pets, and wildlife and can close beaches and swimming areas and hurt Maine’s economy. The commenters stated that the incidence of eutrophic conditions exacerbated by climate change and development,

invasive species, the density of human homes and recreation the ecological and economic expense are intolerable. The commenters urge the Department to delete the revision (Section 5(B)(6)(a)) and to keep existing soil suitability standards within the shoreland zone, that fill material for first time septic systems must have been placed before 1974, to protect Maine's lakes and ponds.

Response: The primary purpose of the Subsurface Waster Water Disposal Rule is to govern the siting, design, construction and inspection requirements for subsurface wastewater disposal systems in Maine, in order to protect the health, safety and welfare of residents and visitors within the State. The rule does not govern land use generally, nor does it regulate where buildings may be placed in relation to the shoreland zone. Compliance with this rule does not excuse or exempt a property owner or developer from compliance with other local, state, and federal regulations. For that reason, compliance with this rule, alone, is likely to be insufficient in determining whether a proposed development may proceed.

Many commenters expressed concern that a lot requiring fill to be suitable for a septic system is likely to be unsuitable for development in other respects. The purpose of this rule, however, is limited to evaluating suitable conditions for *subsurface wastewater disposal systems*. The environmental impacts of other kinds of development, such as buildings, driveways, and roads, fall outside of the scope of this rule and are entrusted to other agencies with the knowledge and expertise to appropriately manage them.

In proposing the amendments to Section 5(B)(5)(a) and Section 5(B)(6)(a), the Department considered the challenges currently facing Maine's major water bodies, including; the introduction of phosphates and the introduction of other pollutants, algae blooms, invasive plants and species and potential impacts to water quality based on extraneous environmental pressures. The Department recognizes that the cost to maintain or rectify problems in Maine's water bodies is great, both in terms of hours and dollars.

When considering to amend the rule in these two sections, the Department reviewed the length of time fill needs to be in place before it can treat wastewater effectively. Fresh fill does not have the properties necessary to provide the treatment of the wastewater as original soil does and is not suitable for an on-site wastewater system. The current rule allows for fill that has aged and settled enough to act similarly to original soil.

The Department also considered the dates that fill needed to be in place, October 31, 1995 (Section 5(B)(5)(a)) outside the shoreland area and July 1, 1974 (Section 5(B)(6)(a)) inside a shoreland area. The placement of fill in those areas were based on fixed dates. Every year that passes the requirements for fill placement becomes longer. Currently the length of time out from both dates is approximately 27 and 48 years respectively from 1995 and 1974. In the consideration of the age of the fill as well as the current wastewater treatment technology, the Department determined that it was appropriate to move from a set of fixed dates to a set length of time. This rule complements municipal planning, zoning, and land use control regulations. The rule also does not prevent municipalities from creating their own ordinances with requirements more stringent than the regulations within this rule.

In Section 5(B)(5)(a) the proposed rule changed the requirement that fill was to be placed on a site outside of a shoreland area from "no later than October 31, 1995" to "a minimum of 20 years." Based on the comments received, the Department has not changed this section of the rule.

In Section 5(B)(6)(a), based on comments received, the Department initiated a second comment period to propose an additional change. The Department originally proposed in Section 5(B)(6)(b) the requirement for fill to be placed on a site inside of a shoreland area change from "July 1, 1974" to "a minimum of 20 years." Based on the comments received, the Department finds that a minimum of 40 years is a reasonable balance. Therefore, this proposed section of the rule was changed to a minimum of 40 years in the shoreland zone for the second comment period.

Comments received and Department responses for the second comment period begin on page 23.

- 20. Comment:** Commenter 143 stated that Section 5(B)(5) and (6) amends the year of fill that can be used for first time systems from July 1, 1974, to 20 years. Commenters 143 and 144 asked how would the 20 years be documented? The commenter asked if the Licensed Site Evaluator (LSE) or the LPI can take the owners word of when the fill was installed? The commenter stated that in the shoreland zone most towns require a permit for fill over 10 yards and that this may be one way to track it. The commenter added that new fill cannot be deposited onsite within a shoreland setback/buffer, i.e., 100 feet from Ponds and 75' from wetlands/streams.

Response: The Department refers the commenter to the Department's response to Comment #19. Documentation for the age of the fill would be located in the records maintained by the governing municipality.

- 21. Comment:** Commenter 12 represents a lake association which monitors water quality checks of their lake and the surrounding areas. The commenter stated that poor septic systems threaten the health of the waters. The commenter adds that there may be a problem with Phosphorus and E. Coli infiltration in some of their monitored locations and stated that their association is working to educate land owners and to monitor shorelines to encourage best practices. The commenter stated that if there is a problem, it is most likely related to improper sewage treatment. The commenter stated that the association is determining if there is a consistent problem and if so, to find its source. The commenter added that this issue will become more problematic as time goes by and more development occurs.

The commenter stated that towns are the first line of defense with their Code Enforcement Officers and Plumbing Inspectors. The commenter added that towns are not good at rule monitoring or enforcement and cited the "recent egregious and flagrant disregard for shoreland ordinances on Sebago Lake." The commenter stated that violations at Sebago were only dealt with after a vacationing DEP person saw the violations and that this demonstrated the poor monitoring and enforcement practices of some towns and municipalities. The commenter stated that the proposed rule amendments would allow more development of the shoreline and concludes that there is a threat of this not being done properly and causing more long term monitoring and enforcement problems for already stretched Town officers.

Response: The Department refers the commenter to the Department's response to Comment #19.

- 22. Comment:** Commenter 31 stated that since 1974 seasonal conversions have been allowed as long as the site evaluator demonstrated substantial compliance. The commenter stated that the term "substantial compliance" is vague and has allowed less than full compliance or meeting first-time system septic criteria. The commenter stated that to require meeting first time system criteria will take away people's property rights and that meeting this standard in the shoreland zone, which typically are smaller lots, is extremely rare. The commenter stated that the proposed rule change will "kill" seasonal conversions for property owners and that preventing people from living in their home for the extra 3 months is against the purpose of the rule. The commenter recommends that the seasonal conversion law should be repealed and that having town code enforcement officials enforce it is extremely difficult. The commenter stated that the law was enacted prior to the stringent regulations of today which protects the environment. The commenter stated that if the rule is not terminated entirely, then they would propose changing the standards to replacement system criteria. The commenter reasoned that this would keep the purpose of the rule and protect the environment. The commenter stated that permits could be handled at the local level.

Response: The Department refers the commenter to the Department's response to Comment #39

- 23. Comment:** Commenter 44 stated that they believe the proposed rule change will negatively affect Maine's pristine lakes and waterways. The commenter requested that the Department withdraw the proposed rule

amendment and verify with data that allowing septic tanks and drain fields on “these proposed soils” do not negatively impact Maine’s lakes and rivers.

Response: The Department refers the commenter to the Department’s response to Comment #19.

- 24. Comment:** Commenter 48 stated that as water quality, conservation and availability becomes “a more contentious issue” easing wastewater disposal rules is shortsighted and environmentally reckless. The commenter recommends more oversight rather than allowing more opportunity for pollutants to enter the ecosystem.

Response: The Department refers the commenter to the Department’s response to Comment #19.

- 25. Comment:** Commenter 49 advocated to keep lakes clean and added that many properties where they live would have unapproved soils to warrant a septic system. The commenters stated that there are no ordinances that require specific septic pumping or system inspections. The commenters stated that septic rules need to be hard and fast for strong protection of water quality as many other threats loom.

Response: The Department refers the commenter to the Department’s response to Comment #19.

- 26. Comment:** Commenters 37, 57, 110, 111 requested the Department not to adopt the proposed rulemaking as it would not be good for Maine’s lakes. Commenter 102 asked the Department to protect Maine’s precious resources, and added that water is sacred and that clean water is essential.

Response: The Department refers the commenter to the Department’s response to Comment #19.

- 27. Comment:** Commenter 107 stated that the proposed rule changes are dangerous and are a threat to Maine’s pristine lakes and other waterways. The commenter added that to choose irresponsible development which threatens the health of Maine's lakes and rivers is criminal.

Response: The Department refers the commenter to the Department’s response to Comment #19.

- 28. Comment:** Commenter 1 stated that Section 5(I)(6) is redundant and that the 3rd and 4th sentences are basically the same. The commenter added that they would like more guidance for this section. The commenter asked, if a temporary toilet is in use for more than seven days and is not associated with the Health Inspection Program, would approval be needed from a Licensed Plumbing Inspector (LPI)? The commenter requested clarification on the length of time an LPI can approve the temporary toilet to remain in use and under what conditions? The commenter asked if there is a limit for how many temporary toilets an LPI can approve for one site? The commenter also asked if there were fines for not removing the temporary toilets after the seven days and asked how this part of the rule would be enforced? The commenter wanted to know if the temporary toilets require lighting. The commenter asked if there were any distance requirements from vegetation, buildings, wetlands, highwater lines, lot lines, or potable water?

Response: The Department agrees with the Commenter and has amended this section for clarity including changing the final sentence in this section from, “If the placement for use of a temporary portable toilet is associated with the Health Inspection Programs licensed operation, written approval is required from the appointed LPI along with the Department’s Health Inspection Program.” to “If use of the temporary portable toilet is for use for longer than seven days and associated with the Department’s Health Inspection Program operation, then it must be approved by the Department’s Health Inspection Program.”

- 29. Comment:** Commenter 143 stated that the proposed language in Section 5(I)(6), is a good start, however the commenter added that they can think of a few other places where they may want portable toilets to be exempt from LPI approval as well. The commenter stated that school sporting events often have temporary portable

toilets placed near the field during the season, as well as municipal/state boat launches or park facilities. The commenter asked if this is going to be a permit or written approval from the Municipality? The commenter asked that if a permit is to be required, should there be a fee associated with the temporary toilets in the fee schedule? The commenter also asked about existing temporary toilets used at these events and added that if they are not exempted will it be required to obtain a permit or approval from the Municipality, even they could have been located onsite for years?

Response: Schools, boat launches and parks are usually either town or state property and do not require LPI approval for the use of temporary portable toilets. The Department is not requiring a permit; the only requirement is for approval from an LPI. No changes were made to the rule based on this comment, however the Department did clarify this section of the rule. The Department refers the commenter to Section 5(I)(6) of the rule and to the Department's response to Comment #28.

- 30. Comment:** Commenter 2 stated that they disagree with limited systems having no more than a 1,000 gallon water storage capacity, (Section 5(K)) adding that this would make the primitive field susceptible to a 1,000 gallon per day (gpd) load if any water faucet/fixture were left on or had a leak. The commenter agrees with a 50 gallon container even though the 50 gallon container is larger than the 25gpd load for which it was designed. The commenter recommended the following language, "the capacity of the stored water shall not be higher than the capacity of the system." The commenter stated that if a facility wants more than a 50 gallon water storage facility then the system must be sized for the possible flow. The commenter stated that gravity systems from a water source must be regulated and require a full septic system with sufficient capacity to cover the flow. The commenter stated that a one inch hose/pipe exceeds 1,000 gpd when left open and that in the woods they are left open throughout the winter to keep from freezing or they are sometimes left open year round to ensure there is flow when needed. The commenter stated that they are aware of a place where water is running, year round, where its flowing onto the ground at termination and offered to show the Department where it is located. The commenter concluded that limited systems must be regulated to 25gpd, hand carried and if something other than that is necessary and if it has any type of running water, then it should have a full septic with a 1,000 gallon tank and field sized for the flow.

Response: The design flow requirement for limited systems is 100 gallons per day of grey wastewater and for primitive systems, 25 gallons per day. Any improper use – including leaving a faucet open – can create a malfunctioning septic system; therefore, the Department places great value on education, not necessary just rules, to resolve this particular problem. No changes have been made to the rule based on this comment. The Department does not view this issue to be significant enough to warrant a rule change, mainly because the Department has not received any reports of a tank failing.

- 31. Comment:** Commenter 149 states that Section 6(A)(3) has two subsections labeled vii. The commenter also recommended adding another subsection stating that on page 2, a site plan is to have a graphic scale similar to what as is described at page 3 in Section 6(A)(4)(viii).

Response: The Department agrees with the commenter and has renumbered this section of the rule. The Department has also added "Graphic Scale: Each design on this page must include a graphic scale" to Section 6(A)(3)(a)(x).

- 32. Comment:** Commenter 141 referred to Section 6(A)(4)(a)(iii) and (iv) "or in specific notes as 'no alteration or termination without site evaluator's approval", and asked if it assumed inherent to the design that an elevation reference point or tie point should not be altered without approval from a Licensed Site Evaluator? The commenter asked why is an additional note on the design suggested?

Response: The Department notes that this has been an issue in the past and the additional note is meant to clarify that no alteration can occur without the approval of the site evaluator. No changes were made to the rule based on this comment.

- 33. Comment:** Commenter 141 referred to Section 6(A)(4)(a)(iii) and (iv) and asked about the statement, “setting a nail in a tree”, and commented that this should read as a “flagged tree” so there aren’t two nails. The commenter added that nails in two trees could cause confusion during construction of the leach field.

Response: The Department agrees with the commenter and has clarified sections 6(A)(4)(a)(iii) and (iv) of the rule to read, “using a grade stake with rebar or setting a nail in a flagged tree.”

- 34. Comment:** Commenters 31 and 143 stated that in Section 7(F), there is no reason to change the existing requirements for risers on septic tanks. The commenter stated that the previous rule allowed for a tank not to have a riser if the tank was within 6” of the ground surface, the commenter added that this requirement is reasonable. The commenter stated that a tank that is less than 6” from the ground surface typically makes an imprint underground and that it is easy to find and access. The commenter stated that pretreatment units should have risers regardless of depth as they are maintained annually and the tank may have to be accessed every two to five years, which if close to the ground surface is not a big issue. The commenter stated that homeowners and landscape architects will not “embrace” this proposed change as most value the appearance of their yard. The commenter concluded that keeping the existing rule will have no adverse effect on function or maintenance. The commenters added that if the rules are to be amended for a single-family, they would appear to mirror all other facilities and therefore, it would be clearer to state all septic tank access covers, pumps, and filters have to have a riser to grade and other risers may terminate to within 6 inches of finished grade.

Response: The Department proposed these changes to this section of the rule to include risers to finish grade, as this requirement is an industry standard in many New England states, including in Massachusetts. It is also an accepted practice for all septic tank access covers/pumps/filters. No changes were made to this rule based on this comment.

- 35. Comment:** Commenter 5 stated that their comments are based on experience in the field, as they have inspected about 2000 systems a year for more than 10 years. The commenter added that they work closely with site evaluators and code enforcement officers. The commenter stated that the language for Section 7(J)(4) has been confusingly worded since the rule was amended in 2015. The commenter added that the first sentence requires risers to within 6” of grade, while the next sentence states risers are required to grade. The commenter stated that in the past the language was revised to address combination/compartments tanks, however the commenter adds that this is covered in Section 7(F)(2)(a), Access Openings for Septic Tanks. The commenter stated that dosing tanks only have one cover and do not require pumping and that this is confusing. The Commenter recommended the following language in its place, “Access openings for dosing tanks are required to have watertight risers to finish grade, in order to simplify location and maintenance. The riser opening must be at least 18 inches in diameter and sized to accommodate removal and installation of any component(s) within the tank.”

Response: The Department agrees with the commenter and clarified Section 7J(4) to include the following language, per the commenter’s suggestion: “Access openings for dosing tanks are required to have watertight risers to finish grade, in order to simplify location and maintenance. The riser opening must be at least 18 inches in diameter and sized to accommodate removal and installation of any component(s) within the tank.”

- 36. Comment:** Commenter 3 recommended that the Department replace “connected fixtures” with “connected components” in Section 7(M)(4)(a) of the proposed rule.

Response: The Department agrees with the commenter and has amended this section of the rule by replacing “connected fixtures” with “connected components.”

37. Comment: Commenter 5 referred to Section 7(O)(6)(b) as it pertains to risers and extensions for distribution boxes. The commenter stated that his company locates, opens and inspects distribution boxes daily, as well as performing pipe cleaning. The commenter added that access to distribution boxes are required as close to grade as possible. The commenter stated they would like to see a maximum depth of 12" as distribution boxes often can't be located or accessed due to the depth. As a result, the commenter adds, it requires damaging excavation to the field which is unnecessary and could be solved with both easier access and a permanent marking of the location. The commenter stated that concrete distribution boxes no longer contain rebar so the use of metal detecting does not work in these instances.

Response: The Department agrees with the commenter and has amended this section of the rule by removing "18 inches". The section has been amended to read, "All access openings must be extended to within 12 inches of the finished grade surface."

38. Comment: Commenter 149 recommended removing "GeoFlow" from Table 7C, stating that it is no longer manufactured.

Response: The Department believes that it is necessary to retain "GeoFlow" in this Table, while the product may no longer be manufactured, it may still be available. No changes were made as a result of this comment.

39. Comment: Commenter 3, 31 and 143 recommended a revision to Section 8(B)(2)(d)(i). The commenters stated that the first sentence states, showing that the dwelling's system "substantially complies" with this rule, however the commenters recommended the language is showing that the dwelling's system "meets first time criteria of this rule". Commenter 143 also had a similar recommendation for Section 8(B)(2)(d)(ii). Commenters 3 and 143 stated that Section 8(B)(3)(C) should be replaced with meets "first time criteria or a department approved variance".

Response: The Department revised portions of section 8(B) to address concerns raised by the commenters. The Department agrees with the commenters that the term "substantially complies" is too vague but disagrees with substituting that term with "meets first time criteria". Instead, in Section 8(B)(1) and 8(B)(2)(d)(i), "first-time criteria" is replaced with "replacement criteria". The Department has also corrected the internal reference in Section 8(B)(1) from "Section 8" to "Section 9" In Section 8(B)(2)(d)(i), the Department has replaced the term "substantially complies with this rule in effect" to "replacement system criteria". The requirements of a replacement system are of an adequate level in this instance for the protection of the environment, as well as for the protection of health and safety. The Department has also clarified this section of the rule by removing the phrase "dated after 1974" as all new applications will be dated after that date. Lastly, the Department in Section 8(B)(2)(d), replaced "The LPI must issue a permit..." to "The LPI is authorized to issue a permit..."

40. Comment: Commenters 3, 4, and 141 stated that Section 8(B)(2)(d)(ii) has an internal reference to 8(B)(3)(c), which no longer exists.

Response: The Department agrees with the commenters and has removed the internal reference to 8(B)(3)(c) and updated this section of the rule to reference Section 9.

41. Comment: Commenter 149 referred to Table 9A and recommended that the Department adjust the column headings to read 1,000 gpd to less than 2,000 gpd, and 2,000 gpd or more.

Response: The Department agrees with the Commenter and for clarity, has adjusted the column headings in Table 9A to read, "1000 to 1,999 gpd", "2,000 gpd or over".

42. Comment: Commenter 31 stated that the plumbing code has several expansion criteria based on antiquated land use regulations, which do not protect the health of people or the environment. The commenter stated that these

criteria are left over provisions from the enactment of the modern-day plumbing code established in 1974 which was prior to shoreland zoning and town zoning. The commenter stated that at that time there were no tools to regulate responsible development. The commenter added that almost 50 years later, zoning regulations have been developed to determine where an individual can build a home, the percentage of tree clearing that can occur, how far a building can be from a resource, “and so on.” The commenter stated that the language in Section 10(A)(3)(a) could be detrimental to public health and the environment, providing an example, that prohibiting the replacement of an old pit privy (which is discharging solid waste on the ground), with a flush toilet, because a Site Evaluator cannot meet expansion criteria would be absurd. The commenter asked, why promote the use of pit privies in 2023 when we can dispose of waste in a sanitary manner? The commenter also asked, why would the Department impede a property owner from drilling a well (introducing pressured water), to gain access to clean water? The commenter asked for further clarification and asked, “because a SE can’t meet the expansion criteria?” The commenter concluded that forcing Mainers to live like they are in the 1800’s is a disservice and recommended removing what the commenter described as outdated land use controls which are a liability to health and public safety.

Response: The Department disagrees with the commenter. The expansion of a single family home through the addition of one or more bedrooms would allow for more occupants within that dwelling, and more occupants mean more waste produced for the subsurface wastewater disposal system to manage. In many instances, upon installation, a privy was the first time system based on non-pressurized water. The privy would have been installed without the benefit of a municipal code or site evaluation and for this reason, the expansion is considered a first time system. The requirement for a first time system is necessary to ensure that an appropriate system is in place, due to the fact that upgrading from a privy to a flush toilet introduces a significant amount of water into a system. Improvements in technology make it possible for first time criteria to be more easily met. No changes were made to the rule based on this comment

- 43. Comment:** Commenter 149 recommended that Section 11 should indicate that the design engineer must complete and sign the HHE-220 form.

Response: The Department agrees with the commenter and has updated Section 11(A)(1)(c) by adding the following sentence, “The design engineer is responsible for completing the HHE-220 to document and define the system design prior to construction, as well as the report results of a site investigation. The design engineer must then send the completed HHE-220 to the Department.”

- 44. Comment:** Commenter 149 recommend that in Section 11(A)(2)(a), “shall” should be replaced with “will”.

Response: The Department agrees with the commenter and has made the recommended change to this section of the rule.

- 45. Comment:** Commenter 31 stated that Section 11(E) is positive and has been long overdue. The commenter stated that they witness too many septic systems fail within the first 3 years of installation due to water softeners which adversely affect septic systems. The commenter adds that the current rule requires the softener discharge to be connected to a septic system, which is costly.

Response: The Department thanks the commenter for their comment. No change has been made to the rule based on this comment.

- 46. Comment:** Commenter 68 in referring to Section 11(E)(1), asked “why does this section only cover water softeners and iron systems? The commenter asked, what would be classified as an iron system? The commenter also asked, “Can other water treatment systems that create discharge such as arsenic/uranium treatment systems, point of use reverse osmosis systems, acid neutralization systems and more use the septic system?”

Response: The rule addresses two most common treatment systems for single family and duplex residential dwellings. The classification of an iron system is based on iron in the water and there is a need for an iron removal treatment system. The rule only pertains residential water softeners and iron treatment systems as it would be environmentally irresponsible to allow for discharge of arsenic and uranium. Other regulatory agencies, such as the Department of Environmental Protection govern the use and disposal of these elements. No changes were made to the rule based on this comment.

- 47. Comment:** Commenter 68 referred to Section 11(E)(2) and asked what is the basis for this section and is there any scientific data to support “this conjecture.” The commenter added that iron treatment systems do not alter the quantity of iron that reaches the septic system and that systems will “short circuit” the iron around the internal house plumbing, improving water quality and usability. The commenter stated if a treatment system is not in place, the same quantity of iron from the well still ends up in the septic system.

Response: The Department disagrees with the commenter that Section 11(E)(2) is based on conjecture. Disposal systems are affected by the density of the brine from water softener discharges. The brine can sink to bottom of the septic tank, displacing the sludge of a system, resulting in damage and clogging of the disposal field. No changes were made to the rule based on this comment.

- 48. Comment:** Commenter 68 referred to the EPA and Water Quality Research Foundation review on softener discharge to septic systems and stated that they concluded that the discharge was not harmful and in some cases it was helpful. The commenter attached the following for reference:

- Softeners and Septic Performance, Water Treatment Industry Toolkit, Water Quality Association; and
- Onsite Wastewater Treatment Systems, Special Issues Fact Sheet 3, Water Softeners, Environmental Protection Agency.

Response: The Department refers the commenter to the response to Comment #49. No changes were made to the rule based on this comment.

- 49. Comment:** Commenter 68 requested clarification. The commenter referred to Section 11(E)(2)(a), which states "is not designed to accommodate the backwash water". The commenter asked is this related to the volume or is it volume and the type of waste? The commenter also asked, does "may" in this case mean the homeowner can still chose to discharge to their septic system?

Response: This section of the rule addresses the volume of discharge from a water softener or iron removal system. In this section of the rule the term “may” refers to the owner who can choose to discharge backwash water to the septic system if the septic system is large enough to handle the extra gallons per day, this requires the approval from an LPI. No changes were made to the rule based on this comment.

- 50. Comment:** Commenter 68 referenced Section 11(E)(3), “The Municipality reserves the authority under local ordinance to require the treatment unit discharge to empty into a septic system or grey water disposal system.” The commenter asked whether the Maine Drinking Water Program had been consulted, as the current Drinking Water Program guidelines require the use of septic systems for treatment discharge.

Response: The Maine Drinking Water Program was consulted in the development of this rule and section. This discharge meets the first time criteria for potable private and public water supplies. The LPI can authorize, under local ordinance, the requirement that the treatment unit discharge into an empty septic or grey water disposal system. No changes were made to the rule based on this comment.

- 51. Comment:** Commenter 141 referred to Section 11(E)(2)(a), which states, “then the backwash discharge may be incorporated into the design”, and requested design criteria as to how it should be incorporated.

Response: The Site Evaluator designs the septic system according to the backwash that the treatment system discharges and incorporates that volume into the daily flow of the septic system. No changes were made to the rule based on this comment.

- 52. Comment:** Commenter 141 referred to Section 11(E)(3)(a-h), and asked if this alternative disposal area has to be designed by an LSE and requires an HHE-200, or if is this something a homeowner or excavator can do themselves.

Response: A homeowner may design an alternative disposal area themselves, however it requires inspection and approval by an LPI. Residential water softeners and iron systems are considered plumbing fixtures requiring internal plumbing. The LPI is authorized to sign off on the permit if the requirements outlined in this section are met. No changes were made to the rule based on this comment.

- 53. Comment:** Commenter 149 asked if the intent of Section 11(E)(3)(e) is to require a groundwater impact analysis, and if so, then by whom? The commenter added that a site evaluator is not qualified to conduct a groundwater impact analysis.

Response: This section of the rule does not require a ground impact analysis, and alerts the risk of drinking water well contamination when installing water softeners that create discharges. No changes were made to the rule based on this comment.

- 54. Comment:** Commenter 3 recommended removing “or 2 inches of hay” from Section 12(F)(3).

Response: The Department agrees with the commenter and has removed “or 2 inches of hay from this section of the rule, as well as the term “hay” from Section 12(E)(2)(c).

- 55. Comment:** Commenter 31 stated that they disagree with replacing “strongly recommended” with “must” in Section 13(A)(1) under “Special Note”. The commenter stated that the rule does not govern where a house or clearing can take place, it only governs septic systems. The commenter stated that often zoning dictates site development or building location. The commenter stated that the responsibility of the Site Evaluator is to provide a septic design that complies with rules (both local and state) and they would know if the location is in a shoreland zone. The commenter added that this is where a Site Evaluator’s requirement regarding zoning ends. The commenter stated that changing the language to “must” will open the site evaluator up to potential litigation and that following zoning requirements is up to the homeowner and his/her development team not the site evaluator.

Response: The Department agrees with the commenter that this proposed amendment to the rule exceeds the capacity of the LPI. The Department has removed the final sentence from this section. In addition, the Department has added the following clarifying language (underlined): “Questions/issues must be directed to, and resolved by, DEP, LUPC or municipal officials prior to installation, and the approval must be demonstrated to the site evaluator that the site location is correct.” Because the site evaluator is hired by the property owner, it is ultimately the responsibility of the property owner to ensure that this approval occurs.

- 56. Comment:** Commenter 31 stated that the proposed Section 14(I) conflicts with the "point score system" in Sections 14 (Tables A through K) for the evaluation and approval of first time system variances. The commenter added that the point score system should be removed entirely as it is an antiquated system with little value. The commenter added that the proposed Section 14(I) takes into consideration newer technology such as tertiary treatment, which when used has little to no effect on the environment and added that the effluent discharge quality is essentially the equivalent to rain water. The commenter recommended removing the "point score system" and replacing it with the proposed Section 14(I) for the purpose of reviewing and assessing first time system variance requests.

Response: The Department disagrees with the commenter. The Department utilizes the “point system” within Section 14 (Tables A through K) for assessing the potential for a first-time system that does not meet minimum soil conditions inside the shoreland zone and to help determine the type of pre-treatment system to be used. No changes were made to the rule based on this comment. The point system is meant to ensure that there is enough protection for the placement of a septic system. Section 14(I) provides the criteria necessary to implement the point system. If the criteria of 14(I) is not met, then the point system is used to further support the decision for the variance criteria in Section 14(I).

- 57. Comment:** Commenter 4 referred to Section 14(I)(3)(c)(iv) and (v) of the proposed rule. The commenter disagreed with not granting a variance for any component located in the buffer area or if any soil or vegetation in the buffer area will be disturbed, as this subsection is for systems located within that buffer. The commenter also disagreed with Section 14(I)(7) which states that no variance will be granted if it will require disturbing the buffer. The commenter points out that the Department is not proposing separate sections on new versus replacement variances. The commenter added that they hope variances will be granted for replacement systems that require disturbing the buffer, if that is the only place a replacement system can be installed.

Response: The Department believes that the commenter is referring to 14(I)(3)(c)(iv) and (v). In certain instances, the Department would consider granting a variance for a replacement system that require disturbing the buffer of the shoreland zone if that is the only place a replacement system could be installed. Section 14(I)(3)(c) does not state that the Department would not issue a variance, but rather that a variance could be issued if it were determined that there is no risk.

- 58. Comment:** Commenter 149 states that they are not clear what the proposed addition of Section 14(I)(9) means, which states: “The site must not be a lot approved during subdivision review by either a municipality or the Maine Department of Environmental Protection.” The commenter asked if this wording is for replacement systems and/or first-time systems. The commenter stated that unless a system can be located and designed in accordance with the Subsurface Wastewater Disposal Rule, the DEP will not approve a lot under the Site Law, so this wording is not necessary.

Response: The Department agrees with the commenter that this proposed wording does not add value and has removed it from the rule.

- 59. Comment:** Commenter 4 referred to Section 17(E)(1), stating that backwash water must be disposed of by either a disposal system or gray water disposal system designed by a site evaluator. The commenter added that this requirement conflicts with Section 11(E), which allows for backwash water to be “day lighted” or disposed of in a trench or hole.

Response: The Department agrees with the commenter and has added, “except in cases where Section 11(E) applies” to clarify this section of the rule.

- 60. Comment:** Commenter 5 stated that filing inspection reports with the local municipality pursuant to Section 17(F) is an excessive requirement. The commenter stated that outside of the shoreland zone, an inspector does not have the right to share the report with anyone except for the individual who requested and paid for the inspection report, unless permission has been given by that individual. The commenter added that they were not able to find anything in the Transfers of Shoreland Property Statute, 30-A MRS § 4216, about required filing. The commenter stated that they could see how filing a report with the municipality would be beneficial. The commenter also stated that the current State of Maine form is inadequate and does not cover what would be included in the new inspection process.

Response: The Department disagrees with the commenter and believes that filing an inspection report with the local municipality is a necessary requirement. The report for properties in the shoreland zone informs the municipality if the system needs to be replaced due to a malfunction. The reports provides the municipality with the information necessary to assess the risk that the system may pose to public safety and the environment. The Department appreciates this comment regarding the form and will consider updating it in response to this suggestion. Because the form is not a part of the rule, no changes were made to the rule as a result of this comment.

61. Comment: Commenter 139 stated that Maine’s Well Water is typically low in pH, which causes deterioration of cement components. The commenter adds if cement is breaking down, then stop using cement tanks and encourages plastic tanks.

Response: The Department believes this comment to be beyond the scope of this rulemaking. No changes were made to the rule based on this comment.

62. Comment: Commenter 139 stated that “a softener regeneration is flow based and can process 2,000-4,000 gallons of treated water per 15# of salt produces a TDS of ????? The dilution factor seems rather significant don’t you think? So there is nothing to do with “Salt” causing corrosion.”

Response: The Department believes this comment to be beyond the scope of this rulemaking. No changes were made to the rule based on this comment.

63. Comment: Commenter 139 stated that whether you treat for iron, or it stays in the water, it will still end up in the septic. The commenter asked if the Department has data showing septic systems are affected by mineral laden water by treatment systems or is this only “Hear say”?

Response: The commenter is referred to the Department’s response to Comment #49. No changes were made to the rule based on this comment.

64. Comment: Commenter 139 stated that flushing “a turd” also impacts subsurface wastewater discharge, and added that this is why a septic exists.

Response: No changes were made to the rule based on this comment.

65. Comment: Commenter 139 stated that clean drinking water should not be considered a luxury.

Response: The Department agrees with the commenter that all people should have access to clean drinking water. No changes were made to the rule based on this comment.

66. Comment: Commenter 139 stated that 35 to 60 years ago septic systems were not nearly as efficient, and added, “You would think towns like Phippsburg & Harpswell where it would be a rarity to not require a treatment system. Therefore, it still has never been included in the Minimum Sizing of a Septic Design, not an exception.”

Response: The Department believes this comment to be beyond the scope of this rulemaking. No changes were made to the rule based on this comment.

67. Comment: Commenter 139 stated “hydraulically overloading...Highly Efficient Treatment Systems have Flow Meter Based Regeneration and the commenter stated that they find in 15% of the homes, they have leaky toilets, and that this is how they find leaking toilets.”

Response: The Department believes this comment to be beyond the scope of this rulemaking. No changes were made to the rule based on this comment.

68. Comment: Commenter 139 asked what happens with an extra load of laundry?

Response: The Department believes this comment to be beyond the scope of this rulemaking. No changes were made to the rule based on this comment.

SECOND COMMENT PERIOD**April 19, 2023 – May 19, 2023**

The Department reviewed and considered all comments received during the first comment period and, as a result, planned to make additional changes to the rule. Two of the Department's planned rule changes were substantially different from the changes originally proposed. In accordance with the Maine Administrative Procedures Act (5 MRS § 8052(5)(B)), the Department held a second comment period.

The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Maine CDC) published notice for the second comment period on April 19, 2023. There was no public hearing, but a 30-day public comment period was held until May 19, 2023.

Written comments were received from the following people:

ID #	First Name	Last Name	Date	Representing
150	David	Rocque	04/19/2023	Maine Association of Site Evaluators
151	Nathan	Whalen	04/26/2023	Portland Water District
152	William	Noble	05/04/2023	Maine Department of Environmental Protection
153	Cynthia	Westlund	05/15/2023	
154	Andrea	Lasman	05/15/2023	
155	Lisa	Kaminer	05/15/2023	
156	Roy	Lambert	05/15/2023	
157	Ellen	Smith	05/15/2023	
158	Tracey	Dacko	05/15/2023	
159	Carleen	Carlson	05/15/2023	
160	Barbara	Durking	05/15/2023	
161	David	Woods	05/15/2023	
162	Janet	Westlund	05/15/2023	
163	Samuel	Parker	05/15/2023	
164	Edith	Netter	05/15/2023	
165	Susan	Lyons	05/15/2023	Harvard University
166	Shawn	Hagerty	05/15/2023	
167	Judy	Howie	05/15/2023	
168	Nancy	Corkum	05/15/2023	TLEA
169	Michael	Williams	05/15/2023	
170	Deb		05/15/2023	
171	Tom	Schaefer	05/15/2023	
172	Lisa	Willey	05/15/2023	
173	Kareena	Poonen	05/15/2023	
174	Heather	Knapp	05/16/2023	
175	Deborah	Cayer	05/16/2023	Parker Pond Assoc., David Pond Assoc.
176	Sandra	Larned	05/16/2023	
177	Pamela	McKennney	05/16/2023	Sheepscot Lake Association
178	Bill	Murphy	05/16/2023	
179	Caroline	Harlow	05/16/2023	
180	Joseph	Ramrath	05/16/2023	

181	Dale	McKenney	05/16/2023	McKenney Construction
182	Sue	Carrington	05/16/2023	
183	Katharine	Blaney	05/16/2023	
184	Anne	Madden	05/16/2023	
185	Mary	Maxwell	05/16/2023	
186	Robert	Spiwak	05/16/2023	
187	William	Monroe	05/16/2023	Moose Pond Association
188	David	Fuller	05/16/2023	
189	Moira	Yip	05/16/2023	
190	Chris	Jones	05/16/2023	
191	Deborah & Jack	Heffernan	05/16/2023	Former Board Member, LEA
192	Mike	Blaney	05/16/2023	
193	Leyla	Steele	05/16/2023	
194	Kenneth	Lexier	05/16/2023	
195	Stuart	Bradstreet	05/16/2023	Bradstreet Farm
196	Lawrence	Conti	05/16/2023	
197	David	Howell	05/16/2023	The New School
198	Joe	Shaffner	05/16/2023	
199	William & Michelle	Powell	05/16/2023	
200	Courtney	Burke	05/16/2023	
201	Carrie	Gervais	05/16/2023	Stepping Stones Montessori School
202	Eric	Miller	05/16/2023	
203	Melanie	May	05/16/2023	
204	Sandra	Maxim	05/16/2023	
205	Eileen	Kirby	05/16/2023	
206	Judy	McCormally	05/16/2023	
207	Anna	Miller	05/16/2023	
208	Joe & Ursula	Burke	05/16/2023	
209	William	Preis	05/16/2023	
210	David	Gagnon	05/16/2023	
211	Carolyn	Veins	05/16/2023	Sheepscott Lake Association
212	Christine	Doherty	05/16/2023	
213	Cynthia	Ripley	05/16/2023	
214	Gail	Rice	05/16/2023	Maine Lakes
215	Gary	Pelletier	05/16/2023	
216	Terri	Callahan	05/16/2023	
217	Greg	Dufour	05/16/2023	
218	Mark	Tinkham	05/16/2023	
219	Lynda	Pound	05/16/2023	
220	Ian	Kimball	05/17/2023	
221	Ambie	Flood	05/17/2023	
222	Andrew	Cook	05/17/2023	
223	Sam	Bucksbaum	05/17/2023	
224	Holly	Bryant	05/17/2023	
225	Susan	Cook	05/17/2023	President, Pritcher Pond Association
226	David	Hay	05/17/2023	
227	Roger	Blomquist	05/17/2023	
228	Robert & Jean	Aranson	05/17/2023	
229	Chris	Brink	05/17/2023	

230	Carlton	Mills	05/17/2023	
231	Scott	Williams	05/17/2023	
232	Jennifer	Hart	05/17/2023	
233	Robert	Lively, Jr.	05/18/2023	
234	Eileen	Kirby	05/18/2023	
235	Elise	Roux	05/18/2023	
236	Carrie	Porcelli	05/19/2023	
237	Christopher	May	05/19/2023	
238	Maria	O'Rourke	05/19/2023	
239	Lynn	Geiger	05/19/2023	7 Lakes Alliance
240	Susan	Gallo	05/19/2023	Maine Lakes
241	Lidie	Robbins	05/19/2023	30 Mile River Watershed Association

The Department's response follows each comment and explains whether the suggestions (if any) were followed by the Department. If the Department made no change in response to the comment, then an explanation of the reasons why no changes were made also is provided below. The summary list of changes following these comments identify new changes resulting from either public comment or Assistant Attorney General review of the rule for form and legality.

Comment Summary: Second Comment Period: April 19, 2023 – May 19, 2023

69. Comment: Commenter 150 stated that they are opposed to replacing the current language with a set time period of any length (Section 5(B)(6)(a)), adding that this change would allow the placement of fill on lots that are poorly suited for development with the knowledge that those lots would definitely become suitable for development at the end of the time period. The commenter added that it would also allow for the immediate development of lots on which suitable fill was placed before 1983. The commenter added that a few "sharp" developers and real estate brokers would grab up many lots that are unbuildable now, knowing they could place fill on them to make them buildable at a very great profit. The commenter stated that the date of July 1, 1974 was purposely chosen to prevent anyone from trying to make unsuitable lots buildable, after the site evaluation program began.

Response: The Department considered the comment and disagrees with the commenter. If the soil on a lot is deemed to be unsuitable, then any system on that lot would be prohibited, regardless of the length of time soil fill is in place on the lot. This rule only complements existing municipal planning, zoning, and land use control regulations and does not prevent municipalities from creating their own ordinances with requirements more stringent than the regulations within this rule, through Title 30-A MRS. Additionally, municipalities are authorized to require property owners to sign a pre-treatment agreement which would be filed with the deed. See response to Comment 19.

70. Comment: Commenter 150 recommended that the new standard for seasonal conversion stipulates that the replacement criteria be only up to the limit of the LPI's authority (Section 8(B)(1)). The commenter adds that just stating replacement criteria would allow any septic system, regardless of the reductions, to qualify for seasonal conversion. The commenter states that converting a seasonal property to year round should meet a reasonable standard, because it will generate waste water year round, including the fall and winter when septic systems have their greatest impact on water quality.

Response: If a property owner did not receive approval from the municipality's LPI, then the Department may review a variance application for a seasonal conversion and would consider other standards to improve the disposal system. The Department, as a condition of issuing a variance, may stipulate requirements such as a pre-treatment system, a new well, moving the disposal field or a maintenance requirement. Variance applications are considered on a case-by-case basis.

- 71. Comment:** Commenter 151 states that as a Licensed Site Evaluator and Water Resources Specialist for the Portland Water District, they are opposing the amendment in Section 8(B)(1) of the rule, which states: “fill being considered equivalent to original soil inside the shore-land zone for design purposes when the site evaluator demonstrates that the fill has been in place a minimum of 40 years.”

The commenter states that such a change would incentivize owners or developers to fill land unsuitable for a leach field and/or development. The commenter stated that typically, such areas consist of forested wetlands that are part of the natural hydrology which should not be altered. The commenter further states that federal and State rules regarding low lying wet areas make it clear that the intent is to protect these lands, not fill them. The commenter states that their organization, the Portland Water District, uses Sebago Lake as a drinking water source/supply for approximately 15% of the State’s population. The commenter adds that Portland Water District staff have observed wastewater drainage on the shores of Sebago Lake since 1914, and this change could potentially adversely impact this water supply and all other lakes in Maine.

Response: The Department refers the commenter to the Department’s response to Comment #19, #69 and #73.

- 72. Comment:** Commenter 152 recommends that the Department revise Section 11(F)(4)(b) to specify “ASTM D-5261” instead of “ASTM D-3776.” The commenter states that ASTM D-3776 is for weight testing of woven fabrics/textiles that are worn as clothing, such as gingham, denim, etc., and ASTM D-5261 is the appropriate test method for geotextiles, the intended material referred to in Section 11(F)(4)(b) of the rule.

Response: The Department agrees with the commenter and has made these recommended changes.

- 73. Comment:** Commenters 153, 154, 155, 156, 157, 158, 159, 160, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 174, 177, 178, 179, 180, 182, 183, 184, 186, 187, 188, 189, 190, 191, 192, 193, 196, 201, 202, 203, 204, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240 oppose the revision to Section 5(B)(6)(a) and urge the Department to keep existing soil suitability standards within the shoreland zone for first time septic systems in place, in order to protect Maine’s valuable and vulnerable lakes and ponds, and to protect human health and safety. These commenters stated that a small amount of fill, big enough to install a septic system, will not make a lot poorly suited for development suddenly become more suitable, no matter if it is there for 20, 40 or more than 100 years.

The commenters added that the system and the associated development (such as roads, driveways, and roofs) will result in increased stormwater runoff. The commenters stated that stormwater runoff is the primary means for excess phosphorus, a nutrient that feeds unhealthy algae blooms and degrades water quality. The commenters added that soils around developments in the shoreland zone must be able to absorb rainwater to keep lakes healthy. The commenters stated that the repealing of existing septic standards in the shoreland zone will create many more new, and larger sources of phosphorus into lakes.

The commenters stated that compacted and smoothed ground, reduced vegetation, new driveways and paths, and other changes associated with development can be managed on a lot where suitable soils along with best management practices can do much of the job of absorbing rainwater. The commenters added that buildings (and septic systems) are suitable for these properties. The commenters stated that where soils are not suitable, development will lead to excess phosphorus, erosion, and sedimentation and that trucking in fill for a future septic system will do nothing to mitigate these large associated impacts.

The commenters stated that it is difficult to document when fill is placed, causing the commenters to have grave concerns that developers will “unscrupulously” build systems on fill that has been in place much less than 40 years. The commenters urge the Department to keep the existing soil suitability standards within the shoreland zone for first-time systems in place to protect the lakes and ponds, which are also sources of millions of dollars of

revenue for the Maine economy and local lake communities. The commenters added that the development that will come with this rule change poses an unacceptable risk that lakes will turn green, smell terrible, turn away tourist dollars, and become a danger to human health. The commenters asked the Department to delete the revision to the fill requirement from the proposed rule changes and keep the requirement that fill material in the shoreland zone must have been placed before July 1, 1974 to be considered for a first-time septic system.

Response: Please see the Department’s response to Comment #21 and #72. In Section 5(B)(6)(b), the proposed rule changed the requirement that fill was to be placed on a site inside of a shoreland area from “since July 1, 1974” to “a minimum of 40 years.” Based on the comments received, the Department has considered the comments and determined that a minimum of 40 years is a reasonable balance between protecting water and shoreland resources and administering safe subsurface wastewater rules. Therefore, the Department determined that increasing the amount of time 100% longer than the originally proposed requirement (a minimum of 40 years in the shoreland zone) struck this reasonable balance.

74. Comment: Commenters 161, 172, 197, 198, 199, 200, 205, 227, 234 stated that the Department’s proposed changes were unwise, and they oppose them. The commenters stated that stronger regulations, not weaker ones, are needed to protect Maine’s lakes. The commenters stated that they do not understand the rationale behind the proposed rule, unless it is a financial one for the State, towns or companies trying to make a profit. Commenter 168 asked what the Department is thinking to “even consider this rule/amendment?” The commenter states that Thompson Lake residents are doing everything possible to maintain the cleanliness of the lake. The commenter states that they are doing all they can to avoid contamination from natural resources and from septic contamination.

Response: Please see the Department’s response to Comment #19, #69 and #73.

75. Comment: Commenter 173 asked the Department to “not relax zoning laws for shorelines that would harm the environment and make our lakes less clean!” The commenter added that population pressure should not result in declining protections and that there are better ways than “caving in to please developers and others who care more about convenience than about saving our lakes, not only for ourselves, but for future generations.” The commenter concluded that several lakes are already on the “high concern” list of the LEA and that we should not add more to that list. Commenter 175 states that as a volunteer, they view any legislation that weakens the shoreline zone requirement is, “a digression, and a slap in the face of the work that myself and others do to protect our water quality.”

Response: Please see the Department’s response to Comment #19, #69 and #73.

76. Comment: Commenters 176 and 181 states they are “absolutely” opposed to proposed rule changes that allow the relaxing of first time criteria to allow more conversions of camps in the shore land zone to convert to year round. The commenter stated that this change will further stress lake and water environments. The commenter asks, why would filling in unsuitable lands /soils become more suitable in 40 years? The commenter also asked, “what science supports the notion that a bog should ever be filled with loam, gravel, whatever?” The commenter stated that it is their opinion that the motivation behind the rule change is greed and that they are “very disappointed that our state departments would allow this.”

Response: Please see the Department’s response to Comment #19, #71 and #73. The soils in a septic disposal field provide for more than just the physical filtration inherent in the various sizes of soil particles. A soil that has been in place 40 years, even if its particles were created by crushing rocks, will have coatings of organics and iron oxides that also have a function in a disposal field. These organic coatings retard the movement of organic compounds, bacteria and viruses, providing time needed for them to biodegrade, and inactivate. The iron oxides on the soil surfaces are sorption sites for many chemicals and are the principal agents in removing phosphorus. A review of the available pedogenesis literature gives us a range for soil formation of between 10 and 40 years. The

Department determined that by using the outer edge of this timeframe (40 years), the soils would could be appropriate for a disposal field, while the chance that a developer would intentionally place the soil there for development at the end of his or her career would be minimal.

77. Comment: Commenter 185 stated, “If it ain’t broke, don’t fix it.” The commenter stated that the PFAS “debacle” should make the “legislators take notice that sludge has no end. 20 or 40 years.” The commenter added that they have had a camp on a small lake in Maine for 50 years and that all of the lakeside residents are extra careful of their septic systems, as their lake is beautiful and clear. The commenter adds, “don’t spoil it,” and “we have plenty of warning, let’s take it.”

Response: Please see the Department’s response to Comment #19, #69 and #73.

78. Comment: Commenter 234 in general terms state that they are opposed to the proposed rulemaking

Response: No changes were made to the rule based on this comment.

79. Comment: Commenter 194 opposes the proposed rule changes for the installation of septic systems in the shoreland zone. The commenter stated that all of Maine’s lakes are at risk as a result of climate change, run off, invasive plants and increased boat activity. The commenter states that at minimum, the leaching fields should be much further away from the water’s edge by use of a pumping station if necessary, as opposed to the present setback condition.

Response: Please see the Department’s response to Comment #19, #69, #73, and #76.

80. Comment: Commenter 195 urges the Department not to change the rules regarding allowing a septic system within the shoreland zone. The commenter states as a small business, their livelihood is based on the health of the lake. The commenter adds that strict rules have protected their lake and the proposed rule change would threaten the lake. The commenter recommends amending the proposed rule to allow towns to opt out of these rule changes with a public referendum.

Response: Response: Please see the Department’s response to Comment #19, #69, #73, and #76.

81. Comment: Commenter 206 stated that The Maine Department of Environmental Protection has calculated the value of clean lakes for property owners, Maine residents who do not own property, and communities surrounding a lake. The commenters stated that if water clarity decreases by just one meter, use declines and property values decrease between 3.1% and 8.5%. The commenters added that DEP estimates that an increase in water quality could add \$107 million in economic activity. The commenter provided the following link:

<https://www.maine.gov/dep/water/lakes/research.html#:~:text=Maine%20resident%20access%20users%20spend,million%20income%20for%20Maine%20residents>

Response: Please see the Department’s response to Comment #19, #69, #73, and #76.

82. Comment: Commenter 239 states that if a lot in the shoreland zone is unable to meet first-time requirements for a septic system, then it should not be allowed to use the replacement system variances for seasonal conversions, (8(B)(1)). The commenter adds that replacement systems variances include utilizing less desirable soil conditions, which could be harmful to lake water quality if the soil present is not able to fully treat the increased discharge. The commenter states that expanding septic systems, and the associated development and increased human activity, on unsuitable sites will pose an unacceptable risk to lake water quality, human health, and wildlife habitat. The commenter implores the Department to delete this proposed rule change and keep the requirements as they are written.

Response: The Department has determined that when expanding a septic system, it must meet first-time criteria. The Department refers the commenter to Comment #70.

83. Comment: Commenter 241 states that existing substandard and failing systems are the major contribution to the degradation of Maine lakes. The commenter states that no new septic fields should be permitted within a 100' of the shoreline. The commenter adds that the State should be developing a program to encourage and help owners of existing camps and homes on lakes to install new, environmentally cleaner septic systems on their existing properties.

Response: Updating a residence from seasonal to full time is not considered an expansion if it maintains the same number of bedrooms. Setbacks that are less than 100 feet are Prohibited as per Section 14, Table 14 of this rule. The comments regarding development of new homeowner assistance programs are beyond the scope of this rule. No changes were made to the rule based on this comment.

**SUMMARY OF CHANGES RESULTING FROM COMMENTS
AND THE OFFICE OF THE ATTORNEY GENERAL:**

Changes made per recommendation from the Assistant Attorney General are italicized. Additional changes were made to keep consistency with current law (statutes and other rules), address limitations on authority, and achieve clarity based on AAG review.

1. Section 1(B)(56): Added the term “household” to the definition of domestic wastewater. (Comments #10).
2. *Section 1(B)(56): Added reference to wastewater to the definition of domestic wastewater.*
3. Section 1(B)(92): Added definition of “HHE-220” (Comment #2).
4. Section 1(B)(105): Revised the definition of in-law apartment so that it now reads, “a small one-bedroom dwelling unit with a kitchen, which is attached to or carved out of a single-family dwelling unit and intended for occupancy.” (Comment #3).
5. Section 1(B)(108): Remove the definition of “legal means of disposal”. (Comment #4).
6. *Section 1(B)(109): Removed the definition of “Legal means of disposal”.*
7. Section 1(B)(117): Removed the definition of “Normal high-water line - riverine, stream, lake, and pond” (Comment #5).
8. *Section 1(B)(117): Added the following from the definition of “Normal high-water line – coastal, estuary, and tidal”, “The “NOTE” under this definition seems to be referring to measurements re: tidal waters, not non-tidal (i.e., coastal wetlands).”*
9. *Section 1(B)(118): Removed the following from the definition of “Normal high-water line – non-tidal waters”, “The “NOTE” under this definition seems to be referring to measurements re: tidal waters, not non-tidal (i.e., coastal wetlands).”*
10. *Section 1(B)(136): Removed “a probe by itself is insufficient to classify soil pursuant to Section 5.”*
11. *Section 1(B)(183): Added “or system” to the definition of “subsurface wastewater disposal system”.*
12. *Section 1(B)(185): Removed the definition of “system”.*
13. *Section 1(B)(213): Added to the definition of “wastewater” “or wastewater from agricultural operations.” and an internal reference to “domestic wastewater”.*
14. Section 1(B)(219): Added to the definition of Water body/course minor, “not depicted on a USGS map” (Comment #8).
15. Section 2(A)(1): Added an “s” to the word “govern” (Comment #11).

16. Section 2(B)(1): Replaced “shall” with “must” (Comment #12).
17. Section 2(D)(4): Added “is allowed to” and “or over” so that it now reads, “ No portion of a structure is allowed to be located on or over any part of a subsurface wastewater disposal system.” (Comment #13).
18. *Section 3(D)(6): Removed “malfunctioning system:” system from the rule, it’s inclusion was a typo.*
19. *Table 4B: Removed “Microfilm Record Search” field and its fee of “\$15.00” from the table. The Department no longer conducts microfilm record searches.*
20. *Section 5(B)(5)(a): Updated language from “a minimum of 20 years” to a minimum of 20 years ago”.*
21. Section 5(B)(6)(a) the proposed rule changed the requirement that fill was to be placed on a site inside of a shoreland area from “since July 1, 1974” to “a minimum of 20 years ago” The 20 year minimum requirement was changed to “a minimum of 40 years” (Comments #19-27).
22. Section 5(E)(3): Added “...The design flow for short-term rentals must be higher than flows listed in this section.” (Comment #7).
23. Section 5(I)(6): Clarified the final sentence in this section to: “If placement for use of the temporary portable toilet is intended for longer than seven days and associated with the Department’s Health Inspection Program operation, then it must be approved by the Department’s Health Inspection Program” (Comment #28).
24. *Section 5(K)(1): Added internal reference to limited systems at Section 1(B)(190).*
25. Section 6(A)(3)(a)(viii): Renumbered this section to correct the duplication of vii (Comment #31).
26. Section 6(A)(3)(a)(x) Added “Graphic Scale: Each design on this page must include a graphic scale” (Comment #31).
27. Section 6(A)(4)(a)(iii) and (iv): Updated these sections to replace “...with rebar or setting a nail in a tree” to “using a grade stake with rebar or setting a nail in a flagged tree” (Comment #33).
28. *Section 7(G), Table 7A: Corrected a typo in the title of Table 7A which was in the proposed rule. The title was changed from “LIAN DWELLING UNITS” to “SEPTIC TANK CAPACITY FOR DWELLING UNITS”.*
29. Section 7(J)(4): Amended this section. The proposed rule originally stated, “Access openings for dosing tanks are required to have watertight risers to within 6 inches of finish grade, in order to simplify location and maintenance. The riser located at the appropriate opening to facilitate pumping must extend to finished grade. The riser opening must be at least 18 inches in diameter over the tank cover. The riser must be sized to accommodate removal and installation of any component(s) within the tank and shall extend to finished grade over the pump compartment.” This section has been updated to read, “Access openings for dosing tanks are required to have watertight risers to finish grade, in order to simplify location and maintenance. The riser must be at least 18 inches in diameter and must be sized to accommodate removal and installation of any component(s) within the tank.” This change was made in response Comment #38 about dosing tanks section being confusing. Dosing tanks do not require pumping for cleaning, but a riser to finish grade is necessary due to a pump inside the tank. (Comment#35).
30. Section 7(M)(4)(a): Replaced “connected fixtures” with “connected components” (Comment #36).
31. Section 7(O)(6)(b): Amended this section of the rule by removing “to 18 inches” (Comment #37).
32. Section 8(B)(1): Replaced the term “first-time criteria” with “replacement system criteria” and corrected an internal reference from “Section 8” to “Section 9” (Replacement System) (Comment #39).
33. Section 8(B)(2)(d)(i): Replaced “The LPI must issue a permit...” to “The LPI is authorized to issue a permit...” (Comment #39).
34. Section 8(B)(2)(d)(i): Replaced the term “substantially complies with this rule in effect” to “replacement system criteria” (Comment #39).

35. Section 8(B)(2)(d)(i): Clarified this section of the rule by removing the phrase “dated after 1974” because any new application will be dated after 1974 (Comment #39).
36. Section 8(B)(2)(d)(ii): Updated internal reference of “Section 8(B)(3)(c)” to “Section 9” (Comment #40).
37. *Section 8(C)(4)(a): Added clarifying grammatical changes.*
38. *Section 9(A)(5)(c): Removed paragraph entirely because it is duplicative to Section 9(A)(6) and should not be part of 9(A)(5), which lists criteria for a replacement system structure. Section 9(A)(6) describes those structures which are not replacement structures.*
39. Table 9A: Clarified column headings (Comment #41).
40. Section 11(A)(1)(c): Clarified the role of the design engineer and the use of the HHE-220 by adding, “The design engineer is responsible for completing the HHE-220 to document and define the system design prior to construction, as well as the report results of a site investigation. The design engineer must then send the completed HHE-220 to the Department.” (Comment #43).
41. *Section 11(A)(1)(d): Removed, “In accordance with the Memorandum of Agreement dated June 1998,” because references to MOAs are not necessary in rule.*
42. Section 11(A)(2)(a): Replaced “shall” with “will” (Comment #44).
43. *Section 11(A)(2)(r): Corrected the unit of measurement from unit of measurement from “foot” to “minute”.*
44. *Section 11(E)(2)(b): Removed for clarity, “small leaching pits or trenches with perforated piping” as this description is too similar to a disposal field.*
45. Section 12(E)(2)(c) and 12(I)(5)(b): Removed the term “hay” due to both the Department’s intent to remove the term from rule in the proposed changes, as well as Comment #58 noticing the term in Section 12(F)(3). The Department had proposed removal of 12(F)(5) (the use of 2 inches of hay as a means to prevent fine particle movement into the stone) because hay is not an acceptable means of keeping the small particles in place (Comment 54).
46. Section 12(F)(3): Deleted “or 2 inches of hay” to remove any reference to hay as an acceptable practice for keeping small particles in place in response to Comment and to align with the Department’s proposed removal of Section 12(F)(5) (Comment 54).
47. Section 11(F)(4)(b): replaced “ASTM D-3776” with “ASTM D-5261”. ASTM D-3776 is used for weight testing of woven fabrics/textiles that are worn and ASTM D-5261 is a test method for geotextiles, the subject of Section 11(F)(4)(b). (Comment #72).
48. Section 13(A)(1): Removed, “Site evaluators must verify local Shoreland Zoning requirements by contacting the LPI or Code Enforcement Officer for the municipality in which a project is located.” and added “and the approval must be demonstrated to the site evaluator that the site location is correct.” (Comment #55).
49. Section 14(I)(9): Removed proposed language of this paragraph from the rule (Comment #58).
50. *Section 14(I)(11-Proposed; now Section 14(I)(10): Replaced “public water suppliers” with “public water systems” for consistency with the Drinking Water Rule (10-144 CMR Ch. 231).*
51. Section 17(E): added “except in cases where Section 11(E) applies” (Comment #59).
52. *Statutory Authority: Updated the Statutory Authority of the rule to include the parts of 10-144 CMR Ch. 242, Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone that were incorporated into the rule. The statutory authority added includes 22 MRS §42(1) and (3-A); 30-A MRS §§4212 and 4215(2) and (5).*