

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1297

H.P. 966

House of Representatives, April 19, 1993

An Act to Amend Certain Laws Governing Solid Waste Management.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative GOULD of Greenville.
Cosponsored by Representatives: ANDERSON of Woodland, DEXTER of Kingfield, LORD of
Waterboro, Senator: CIANCHETTE of Somerset.

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

2
4 Sec. 1. 38 MRSA §421, as amended by PL 1991, c. 499, §15, is repealed.

6 Sec. 2. 38 MRSA §1310-E, sub-§2 is enacted to read:

8 2. Closure and remediation. A recommendation for closure
10 or remediation made by the commissioner or the department must be
12 based on a realistic assessment of the potential exposure points
14 and adverse effects on public health and safety, as well as
16 consideration of economic reasonableness and engineering
18 feasibility. In formulating these recommendations, the
20 commissioner or department shall strive to ensure a level or
22 standard of control of pollutants in surface waters at least as
24 stringent as the water quality criteria established under chapter
26 3, subchapter I, article 4-A. In formulating these
 recommendations, the commissioner or department shall also strive
 to achieve a level or standard of control of pollutants in ground
 water at least as stringent as the water quality criteria
 established under sections 465-C and 470, unless the commissioner
 or department finds that meeting those criteria is technically or
 economically infeasible and that other measures can be
 implemented to ensure adequate protection of public health and
 safety.

28 Sec. 3. 38 MRSA §1310-N, sub-§6, as amended by PL 1991, c.
30 644, §1, is further amended to read:

32 6. Terms and compliance schedules. Licenses are issued
34 under the terms and conditions as the department may prescribe,
36 and--for--a--term--not--to--exceed--5--years. The--department--may
38 establish--reasonable--time--schedules--for--compliance--with--this
40 article--and--rules--adopted--by--the--board. After a solid waste
42 facility has been licensed or relicensed once, pursuant to the
44 department's solid waste management rules that are dated May 24,
46 1989, that facility is not required to obtain additional license
48 renewals. Notwithstanding any rules adopted pursuant to this
50 section, licensed or unlicensed municipal solid waste landfills
 operating on December 31, 1991 may continue to operate until
 December 31, 1992, unless the commissioner finds that continued
 operation of a landfill poses an immediate hazard to the public
 health or the environment, including, without limitation, a
 threat to a public or private water supply.

52 Sec. 4. 38 MRSA §1310-N, sub-§6-A, as enacted by PL 1991, c.
54 169, is amended to read:

56 6-A. Relicensing. Notwithstanding subsection 6, a transfer
58 station or a recycling facility licensed under this chapter is

2 not subject to relicensing unless the standards in effect at the
4 time the previous license was issued are changed or if the
6 facility significantly changes its operation. For the purposes
8 of this subsection, a transfer station includes any associated
area or use that is permitted by the license, such as areas used
to burn or chip wood or brush and areas used to store or handle
white goods or tires, but does not include any associated wood
waste or demolition debris landfills.

10 Except as provided in section 1310-R, the department shall issue
12 a renewal license for an existing solid waste disposal facility
14 if it finds that the facility satisfies the operational
16 requirements of the department's solid waste rules as well as the
18 requirements of subsection 1,. The department may not issue a
20 renewal license for an existing solid waste disposal facility if
22 it finds that the facility has contaminated ground or surface
24 water beyond the solid waste boundary, unless the applicant
26 agrees to a schedule of compliance imposed as a condition of the
28 license. Otherwise, a facility may only continue to operate
under the provisions of a schedule of compliance agreed to by the
department, an executed administrative consent agreement and
enforcement order or a court order. Unless an order contains
provisions for closure of a facility, the applicant is free to
reapply for a license beyond the dates contained in the order.
This subsection applies to all solid waste disposal facility
license or relicense applications pending before the department
on or after January 1, 1990.

30 **Sec. 5. 38 MRSA §1310-N, sub-§9** is enacted to read:

32 9. Daily cover. At secure landfills and attenuation
34 landfills serving more than 5,000 people, daily cover is required
36 in order to minimize the problems of fire, vectors, litter and
38 odors. Except as provided in this subsection, a coarse-graded
40 soil material for a secure landfill and a soil material for an
42 attenuation landfill must be placed and compacted to a minimum of
6 inches in thickness over all exposed waste at the end of each
day of operation in such a manner that the solid waste is
completely and effectively covered. A landfill that accepts
sludge from the paper-making process may use sludge as an
alternative daily cover material. Other cover materials or
methods may be proposed for approval by the department.

44 **Sec. 6. 38 MRSA §1310-P**, as affected by PL 1989, c. 890, Pt.
46 A, §40 and amended by Pt. B, §§243 and 244, is repealed.

48 **Sec. 7. 38 MRSA §1310-S, sub-§2**, as affected by PL 1989, c.
50 890, Pt. A, §40 and amended by Pt. B, §249, is further amended to
read:

2 **2. Public hearing.** The department shall ~~held~~ determine
4 whether an adjudicatory public hearing on the application must be
6 held. The hearing must be conducted in accordance with Title 5,
8 chapter 375, subchapter IV and must be held within the
 municipality in which the facility may be located or in such
 other a convenient location in the vicinity of the proposed
 facility as the municipal officers may agree.

10 **Sec. 8. 38 MRSA §§1310-Y to 1310-ZA** are enacted to read:

12 **§1310-Y. Financial assurance**

14 Except for municipally owned solid waste disposal facilities
16 that do not accept municipal solid waste, the department shall
18 apply this section to each license for a new or expanded solid
 waste disposal facility and to the license of each existing solid
 waste disposal facility at the time of relicensing.

20 **1. Financial assurance.** The owner or operator of a solid
22 waste disposal facility shall provide to the department assurance
24 of its financial capacity to satisfy the estimated cost of
26 closure and post-closure care and maintenance at the facility for
28 a period of 20 years after closure. Acceptable forms of
30 financial assurance must include one or more of the following: a
32 letter of credit; a surety bond; an escrow account; an
34 irrevocable trust account; a reserve account calculated as
36 described in the United States Internal Revenue Code, Section
38 468(a); a satisfactory corporate guarantee of the owner or an
40 affiliate of the owner; or, in the case of a municipal solid
42 waste disposal facility, any of the allowable financial assurance
44 mechanisms set forth in 40 Code of Federal Regulations, Section
 258.74. A corporate guarantee is satisfactory if the department
 finds that the net worth of the entity that guarantees
 performance, as shown on the guarantor's most recent audited
 financial statements, exceeds 5 times the estimated cost of the
 facility's closure and post-closure care. When a corporate
 guarantee is used, the entity guaranteeing performance must
 submit annually to the department copies of that entity's audited
 financial statements. The department shall review these
 statements annually. If the department finds at any time that
 the net worth of the entity guaranteeing performance falls below
 the standard under this subsection, the department shall request
 another form of financial assurance.

46 **2. Rules.** The board shall amend its existing rules to
 conform with and apply this section.

48 **3. Application.** This section applies to all solid waste
 disposal facility license or relicense applications pending

2 before or granted by the department on or after January 1, 1990,
3 except for municipally owned disposal facilities that do not
4 accept municipal solid waste.

6 **§1310-Z. Laboratory analyses**

8 Laboratory analyses required in support of the licensing,
9 operation or closure of a solid waste facility must be performed
10 by a qualified laboratory. Six months after the adoption of
11 laboratory certification rules required by Title 22, section 567,
12 all laboratories must be certified or exempted from certification
13 pursuant to those rules.

14 **§1310-ZA. Corrective action program**

16 When the results of compliance monitoring demonstrate that
17 contamination attributable to a disposal facility has occurred,
18 the commissioner or department may require the licensee to submit
19 a corrective action program for review and approval. Review and
20 approval of a corrective action program must be based on a
21 realistic assessment of the potential exposure points and adverse
22 effects on public health and safety, as well as consideration of
23 economic reasonableness and engineering feasibility. In
24 formulating a corrective action program, the licensee shall
25 strive to ensure a level or standard of control of pollutants in
26 surface waters at least as stringent as the water quality
27 criteria established in chapter 3, subchapter I, article 4-A. In
28 formulating the corrective action program, the licensee shall
29 also strive to achieve a level or standard of control of
30 pollutants in ground water at least as stringent as the water
31 quality criteria established under sections 465-C and 470, unless
32 the commissioner or the department finds that meeting those
33 standards is technically or economically infeasible and that the
34 implementation of other measures will ensure adequate protection
35 of public health and safety.

36
37
38 **STATEMENT OF FACT**

40 This bill makes the following changes to the laws governing
41 solid waste management.

42
43 1. The bill adds a statutory requirement for daily cover at
44 all landfills.

45
46 2. The bill replaces the escrow closure account provisions
47 of current law with a new financial assurance provision required
48 for closure and post-closure care at landfills.

2 3. The bill adds a statutory requirement that all
laboratory analyses performed in support of solid waste facility
4 licensing, operation or closure efforts be conducted by a
qualified lab.

6 4. The bill clarifies requirements regarding relicensing or
remediation at landfill sites.

8
10 5. The bill repeals the so-called "300-foot law," which
required the issuance of "300-foot law" variances and renewals.

12 6. The bill sets standards for the Department of
Environmental Protection to use in its recommendations for and
14 review and approval of corrective action programs for solid waste
disposal facilities. Under current law, there are no express
16 guidelines except for remediation measures at open-municipal
landfills. This bill makes the corrective action measures at
18 private landfills consistent with those already in place for
open-municipal landfills.

20
22 7. The bill modifies the provisions for the terms of solid
waste facility licenses. Under present law, these licenses are
24 issued for a term not to exceed 5 years. This bill also amends
the law to issue licenses with no specific terms, as is the case
26 with licenses issued under the site location of development laws
and the natural resource protection laws. As long as the
28 licensee complies with the license and current solid waste rules,
the license would continue indefinitely. Violations of rules or
30 license conditions would still subject the licensee to
enforcement action, including license revocation. The bill
32 clarifies, however, that a previously unlicensed landfill or a
landfill that has not been relicensed at least once under the
34 solid waste management rules of 1989 adopted by the Department of
Environmental Protection must be licensed once pursuant to those
rules.

36
38 8. The bill provides that relicensing of a landfill with
evidence of contamination may occur if the applicant agrees to a
40 schedule of compliance or corrective action plan as a condition
of the license. If the applicant does not comply with the
42 schedule of compliance or corrective action plan, the Department
of Environmental Protection may take enforcement action to ensure
that the condition is satisfied.

44
46 9. The bill modifies existing law by eliminating the
requirement for mandatory public hearings on every new solid
48 waste disposal facility application. As with other environmental
license applications, whether to hold a public hearing would be
within the Department of Environmental Protection's discretion.