

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-905)
109TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1759, L.D. 1884,
Bill, "AN ACT to Amend the Hazardous Waste Statutes in
Order that the State May Respond to Dangers to Public
Health, Safety or Welfare and Allow Delegation of the
Federal Program."

Amend the bill by striking out everything after
the ~~Emergency Preamble~~ and before the emergency clause
and inserting in its place the
following:

'Sec. 1. 38 MRSA §349, sub-§1, as amended by PL 1977,
c. 510, §89, is further amended to read:

1. Criminal penalties. Notwithstanding Title 17-A,
section 4-A and except as provided in / ^{subsection} 4, or section
1306-A, any person who violates any provision of the laws
administered by the ~~Department of Environmental Protection,~~
department or the terms or conditions of any order, regula-
tion, license, permit, approval or decision of the ~~Board of~~
Environmental Protection board shall be subject to a fine,
payable to the State, of not more than \$25,000 for each day
of such violation.

Sec. 2. 38 MRSA §349, sub-§2, as enacted by PL 1977,
c. 300, §9, is amended to read:

2. Civil penalties. Any person who violates any pro-
vision of the laws administered by the ~~Department of En----~~

~~virenonmental-Proteeetion~~, department or any order, regulation, license, permit, approval or decision of the ~~Beard~~ of-Environmental-Proteeetion board shall be subject to a civil penalty, payable to the State, of not more than \$10,000 for each day of such violation or, if the violation relates to hazardous waste, of not more than \$25,000 for each day of the violation.

Sec. 3. 38 MRSA §1303, sub-§1-A is enacted to read:

1-A. Conveyances. "Conveyances" means any aircraft, watercraft, vehicles or other machines used for transportation on land, water or in the air.

Sec. 4. 38 MRSA §1303, sub-§4-A is enacted to read:

4-A. Handle. "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

Sec. 5. 38 MRSA §1303, sub-§5, as repealed and replaced by PL 1979, c. 383, §2, is repealed and the following enacted in its place:

5. Hazardous waste. "Hazardous waste" means a waste substance or material, in any physical state, designated as hazardous by the board under section 1303-A. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or a part or constituent may have value or other use or may be sold or

exchanged does not exclude it from this definition.

Sec. 6. 38 MRSA §1303, sub-§8, as repealed and re-
placed by PL 1979, c. 383, §2, is amended to read:

8. Resource recovery. "Resource recovery" means
the recovery of materials or substances that still have
useful physical or chemical properties after serving a
specific purpose and can be reused or recycled for the
same or other purposes.

Sec. 7. 38 MRSA §1303, sub-§12, as repealed and re-
placed by PL 1979, c. 383, §2, is amended by adding to the
end the following new sentence:

Movement of hazardous waste within a licensed waste facility
is not "transport."

Sec. 8. 38 MRSA §1303, sub-§§14 and 15, as enacted by
PL 1979, c. 383, §2, are repealed and the following en-
acted in their place:

14. Waste facility. "Waste facility" means any land
area, structure, location, equipment or combination of them,
including dumps, used for handling hazardous or solid waste,
sludge or septage. A land area or structure shall not be-
come a waste facility solely because:

A. It is used by its owner for disposing of septage
from his residence; or

B. It is used to store hazardous wastes generated on the same premises for less than 3 months.

15. Waste management. "Waste management" means purposeful, systematic and unified control of the handling and transporting of hazardous or solid waste, sludge or septage.

Sec. 9. 38 MRSA §1303-A is enacted to read:

1. Identification of hazardous wastes.

A. The board may adopt rules identifying hazardous wastes. These rules may identify any substance as a hazardous waste if that substance is identified as hazardous by/^aparticular substance, by characteristics, by chemical class or as waste products of specific industrial activities in proposed or final rules of the United States Environmental Protection Agency.

B. The board may identify other substances as hazardous wastes under the following conditions:

(1) The substance exhibits hazardous characteristics included in proposed or final United States Environmental Protection Agency rules; and

(2) The substance is identified by/^aparticular substance, by chemical class or as waste products of specific industrial activities.

C. Rules identifying hazardous wastes under paragraph B shall be submitted to the Joint Standing Committee on Energy and Natural Resources for review. These rules shall remain in effect until 90 days after the adjournment of the next regular session of the Legislature, unless these rules are approved by Joint Resolution.

2. Handling of hazardous wastes. The board may adopt rules relating to the handling of hazardous wastes, including:

A. Containerization and labeling of hazardous wastes, consistent with applicable rules of other federal and state agencies;

B. Reporting of handling of hazardous wastes; and

C. Wastes which are not compatible.

3. Transportation of hazardous wastes. The board may adopt rules relating to transportation of hazardous wastes, including:

A. Licensing of transporters of hazardous wastes, conveyances used for the transportation of hazardous wastes and ~~()~~ the operators of these conveyances;

B. A manifest system for hazardous wastes which takes into consideration the requirements of the ^{United States} Resource Recovery and Conservation Act of 1976 ^{Public Law 94-580} and this subchapter. The manifest system shall provide a means by

which hazardous waste is accounted for, from its point of generation through all intermediate points to its point of ultimate disposal, shall allocate responsibilities and liabilities at each point among persons handling the hazardous waste and shall require record-keeping and regular reporting to the department at each point by the person handling the hazardous waste.

4. Waste facilities for hazardous wastes. The board may adopt rules relating to the interim and final licensing and operation of waste facilities for hazardous wastes.

These rules may include:

A. Standards for the safe operation and maintenance of the waste facilities, including, but not limited to, recordkeeping, monitoring before and during operation of the facility and after its termination of use or closure, inspections and contingency plans to minimize potential damage from hazardous wastes;

B. The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities; and

C. The termination, closing and potential future uses of the waste facilities.

5. Evidence of financial capacity. The board may adopt rules relating to evidence of financial capacity of hazardous waste facilities' operators or owners, and those who transport

hazardous waste, to protect public health, safety and welfare and the environment, including, but not limited to:

- A. Liability insurance;
- B. Bonding; and
- C. Financial ability to comply with statutory and regulatory requirements or conditions.

Sec. 10. 38 MRSA §1304, sub-§1, 2nd ¶, as repealed and replaced by PL 1979, c. 383, §3, is repealed.

Sec. 11. 38 MRSA §1304, sub-§§6 and 7, as enacted by PL 1979, c. 383, §8 are repealed and the following enacted in their place:

6. Study. The department shall conduct and publish a study of hazardous waste management in this State. The study shall include, but not be limited to:

- A. A description of the sources of hazardous waste generation within the State, including the types of quantities of those wastes; and
- B. A description of current hazardous waste management practices and costs, including treatment and disposal, within the State.

7. Hazardous waste plan. After publication of the study, the department shall develop and publish a plan for the safe and effective handling of hazardous wastes. The plan shall include, but not be limited to:

A. Identification of those locations within the State which are suitable for the establishment of waste facilities for hazardous waste;

B. Identification of those locations within the State which are not suitable for the establishment of waste facilities for hazardous waste;

C. Methods of encouraging the recycling and recovery of hazardous wastes; and

D. Any other matters the department determines to be necessary for prompt, safe and effective hazardous waste management.

Sec. 12. 38 MRSA §1304, sub-§8, as enacted by PL 1979, c. 383, §8, is repealed and the following enacted in its place:

8. Licenses for waste facilities.

A. The board shall issue a license for a waste facility whenever it finds it will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance. Licenses shall be issued under the terms and conditions as the board may prescribe, and for a term not to exceed 5 years. The board may establish reasonable time schedules for compliance with this subchapter and regulations promulgated by the board.

B. If the facility is for hazardous waste, the board

shall also find that issuing the license is consistent with the standards, requirements and procedures in its rules relating to hazardous waste. To the extent practicable, the board shall coordinate the issuing of this license with the issuing of other licenses of the board for the facility.

C. The board shall issue an interim license for a waste facility for hazardous wastes or shall deem the facility to be so licensed if:

(1) the waste facility is in existence on the effective date of this Act;

(2) the owner or operator has:

(a) notified the department of its location;

(b) provided a detailed description of the operation of the facility;

(c) identified the hazardous waste it handles; and

(d) applied for a license to handle hazardous wastes;

(3) the waste facility is not altered or operated except in accordance with the board's rules; and

(4) if the waste facility has a discharge or emission license under sections 414 or 591, and the facility is operated in accordance with that license.

D. Interim licenses shall expire on the earliest of the following dates:

- (1) the date of the final administrative disposition of the application for a hazardous waste facility license;
- (2) the date of a finding of the board that disposition has not been made because of the applicant's failure to furnish information reasonably required or requested to process the application;
- (3) the date of expiration of the license issued under section 414 or 591;
- (4) the date set in rules adopted by the board; or
- (5) January 1, 1982.

Sec. 13. 38 MRSA §1306, as amended by PL 1979, c. 383, §10, is repealed.

Sec. 14. 38 MRSA §1306-A is enacted to read:

§1306-A. Criminal provisions

1. Class C crimes.

Any person who with respect to any substance or material which, in fact, has been identified as hazardous waste by the board and which such person knows or has reason to believe has been so identified or may be harmful to human health, knowingly:

A. Transports any such substance or material without, in fact, having a proper license or permit as may be required

under this subchapter;

B. Transports any such substance or material to a waste facility knowing or consciously disregarding a risk that such facility does not have a proper license or permit as may be required under this subchapter;

C. Treats, stores or disposes of any such substance or material without, in fact, having obtained a proper license or permit to do so as may be required under this subchapter; or

D. Treats, stores or disposes of any such substance or material at any location knowing or consciously disregarding a risk that such location does not have a proper license or permit as may be required under this subchapter for such treatment, storage or disposal;

is guilty of a Class C crime and may be punished accordingly except notwithstanding Title 17-A, section 1301, subsection 1, paragraph A-1, or subsection 3, paragraph C, the fine for such violation shall not exceed \$25,000 for each day of such violation. In a prosecution under paragraph B or paragraph D, the conscious disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

2. Class D crimes. A person is guilty of a Class D crime

if, with respect to any substance or material which, in fact, has been identified as hazardous waste by the board and which such person knows or has reason to believe has been so identified or may be harmful to human health, he knowingly:

A. establishes, constructs, alters or operates any waste facility for any such substance or material without, in fact, having obtained a proper license or permit as may be required under this subchapter;

B. handles or transports any such substance or material in any manner which, in fact, violates the terms of any condition, order, regulation, license, permit, approval or decision of the board or order of the commissioner with respect to the handling or transporting of such substance or material; or

C. transfers any such substance or material to any other person whom he knows or has reason to believe:

(1) does not have a license or permit to handle such substance or material as may be required under this subchapter; or

(2) will handle such substance or material in violation of this ^{subchapter} or rules adopted under it.

Sec. 15. 38 MRSA §1306-B is enacted to read:

§1306-B. Forfeiture; civil liability

1. Forfeiture. All conveyances which are used or intended for use in handling or transporting hazardous waste in violation of this subchapter and all materials, products and equipment used or intended for use in such transportation or transported shall be subject to forfeiture to the State.

A. Property subject to forfeiture, except conveyances, may be declared forfeited by a court having jurisdiction over the property or having final jurisdiction over a related criminal proceeding under this subchapter.

B. The court may order forfeiture of all conveyances subject to forfeiture, except as follows.

(1) No conveyance used by a common carrier in the transaction of business as a common carrier shall be forfeited unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of this subchapter.

(2) No conveyance shall be forfeited by reason of an act or omission established by the owner to have been committed or omitted by another person while the conveyance was unlawfully in the possession of another person in violation of the ^{criminal} laws of the United States or of any state.

(3) No conveyance shall be subject to forfeiture unless the owner knew or should have known that that conveyance was used in and for the handling of hazardous waste in violation of this subchapter. Proof that the conveyance was used on 3 or more occasions for the purpose of handling hazardous waste in violation of this subchapter shall be prima facie evidence that the owner knew thereof or should have known thereof.

C. The Attorney General may seek forfeiture of a conveyance according to the procedure set forth in Title 22, section 2387, subsections 4, 5 and 6 except that:

(1) A final order issued by the court under that procedure shall provide for disposition of the conveyance by the Department of Finance and Administration, including official use by a public agency or sale at public auction or by competitive bidding;

(2) The proceeds of a sale shall be used to pay the reasonable expenses for the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and to pay any bonafide mortgage thereon, and the balance, if any, shall be deposited in the General Fund; and

(3) Records, required by Title 22, section 2387, sub-
shall
section 5, be open to inspection by all federal and state

officers charged with enforcement of federal and state laws relating to the handling of hazardous waste.

2. Civil liability. A person who disposes of hazardous waste, when that disposal, in fact, endangers the health, safety or welfare of another, is \longleftrightarrow liable in a civil suit for all resulting damages. It is \longleftrightarrow not \longrightarrow necessary to prove negligence.

\longleftarrow For the purposes of this section, damages shall be limited to damages to real estate or personal property or loss of income directly or indirectly as a result of a disposal of hazardous wastes. Damages awarded may be mitigated if the disposal is the result of an act of war or an act of God.

\longleftarrow Nothing in this section shall include any action for damages which heretofore may be maintained under the common law or the laws of this State.

Sec. 16. 38 MRS §1310, as enacted by PL 1979, c. 383, §11, is repealed and the following enacted in its place:

§1310. Emergency

If the commissioner finds, after investigation, that any waste, whether or not a hazardous waste, being handled or transported by a person in a manner which may create a danger to public health or safety, he may order the person handling or transporting that waste to immediately cease or prevent that activity and to take ^{such} action as may be necessary to terminate or mitigate the danger or likelihood of danger. He may also order any person contributing to the handling or

transportation to cease or prevent that contribution.

Any order issued under this section shall contain findings of fact describing, insofar as possible, the waste, the site of the activity and the danger to the public health or safety.

Service of the commissioner's findings and an order shall be made pursuant to the Maine Rules of Civil Procedure.

The person to whom the order is directed shall comply immediately. An order may not be appealed to the Superior Court, but a person to whom it is directed may apply to the board for a hearing on the order. The hearing shall be held by the board within 48 hours after receipt of application. Within 7 days after the hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter VII.

Sec. 17. 38 MRSA §1310-B is enacted to read:

§1310-B. Confidential information

1. Public records. Except as provided in subsections 2 and 3, information obtained by the department under this subchapter shall be a public record as provided by Title 1, subchapter I.

2. Hazardous waste information. Information relating to hazardous waste submitted to the department under this subchapter may be designated by the person submitting it as being only for the confidential use of the department and the board, their agents and employees, the Department of Agriculture and

the Department of
√ Human Services and their agents and employees, other agencies
of State government, as authorized by the Governor, employees
of the United States Environmental Protection Agency and the
Attorney General. The designation shall be clearly indicated
on each page or other portion of information. The department
shall establish procedures to insure that information so
designated is segregated from public records of the department.
The department's public records shall include the indication
that information so designated has been submitted to the de-
partment, giving the name of the person submitting the infor-
mation and the general nature of the information. -Upon a re-
quest for information, the scope of which includes information
so designated, the department shall notify the submittor.
Within 15 days after receipt of the notice, the submittor
shall demonstrate to the satisfaction of the commissioner that
the designated information should not be disclosed because the
information is a trade secret, production, commercial or
financial information, the disclosure of which would impair the
competitive position of the submittor and would make available
information not otherwise publicly available. Unless such a
demonstration is made, the information shall be disclosed and
shall become a public record. The commissioner may grant or
deny disclosure for the whole or any part of the designated in-
formation requested and within 15 days shall give written notice
of his decision to the submittor and the person requesting the
designated information. A person aggrieved by a decision of
the commissioner may appeal to the Superior Court in accordance

with the provisions of section 346.

3. Release of information. The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

4. License and enforcement information. Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

5. Rules. The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, subchapter I.

6. Prohibition; penalties

A. It is ~~()~~ unlawful to disclose designated information to any person not authorized by this section.

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C.

C. Any person who knowingly discloses designated information, knowing that he is not authorized to do so, is subject to a civil penalty of not more than \$5,000.

D. In any action under this subsection, the court shall

first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available.'

Statement of Fact

This amendment completely revises and clarifies the provisions of the original bill.

Section 1 cross-references criminal penalties to a "prohibited acts" explained later in this statement of fact.

Section 2 simplifies the language of the civil penalties contained in the original bill, but makes no substantive changes. The section sets civil penalties for violation of hazardous waste provisions at not more than \$25,000 for each day of the violation.

Sections 3 and 4 provide new definitions for terms used in the amendment.

Section 5 amends the definition of hazardous waste. It excludes new materials and wastes produced by household and agricultural activities, and clarifies that a waste may be included even if it has some potential use.

Section 6 is the same as ^{section 5 in} the original bill.

Section 7 clarifies the definition of transport in the context of the Act.

Section 8 simplifies the definition of waste facilities and waste management. Industries that generate hazardous wastes are not considered waste facilities unless they store these wastes for more than 3 months.

Section 9 is a new section. The specific rule-making authority previously contained in a Hazardous Waste Management Plan is now spelled out as a power of the Board of Environmental Protection. The most important rule-making authority is to adopt a list of hazardous wastes to be regulated. The board may adopt a proposed or final list from the United States Environmental Protection Agency, or it can add other specific substances subject to legislative oversight. The board is also given specific rule-making authority over the handling and transportation of hazardous wastes, criteria for waste facilities and requirements for evidence of financial capacity.

Section 9 clarifies the language for the study and plan for hazardous waste management.

Sections 10 and 11 require that the Department of Environmental Protection conduct a study on hazardous waste management, and to publish a hazardous waste management plan. Most of the rule-making authority contained in the original bill has been moved to the previous section.

Section 12 establishes licensing requirements for waste facilities, and gives standards for approval of these licenses. The Board of Environmental Protection is authorized to issue interim licenses, or deem facilities to be licensed, if they;

1. Are already in existence;
2. Apply for a license under this Act;
3. Meet certain reporting requirements;
4. Are not altered without permission of the board; and
5. Operate in compliance with existing licenses.

Sections 13 and 14 describe prohibited acts and set penalties. Class C crimes include knowingly transporting, treating, storing or disposing of hazardous wastes without a license. Violating license conditions or rules relating to hazardous wastes is a Class D crime.

Section 15 is a new section, providing for forfeiture of substances and conveyances illegally used to transport hazardous wastes.

This section also contains the provision, from the original bill, providing for strict civil liability for damages resulting from disposal of hazardous wastes. A provision has been inserted creating a defense for this strict liability if the disposal is a result of an act of war or an act of God. It is also made clear that this section does not affect existing statutory or common law remedies.

Section 16 clarifies the emergency powers of the Commissioner of the Department of Environmental Protection.

The last section of the bill deals with proprietary information, such as trade secrets, production, commercial and financial information that might impair the competitive position of a company if disclosed. It establishes a procedure for labeling and handling this information, and sets penalties for unauthorized disclosures. The restrictions only apply to information related to hazardous wastes. Information required by license, however, may not be treated as confidential.

This bill and LD 1964 are in conflict. It is the intention of the Legislature that this bill shall take precedence over LD 1964 and take effect.