

MAINE STATE LEGISLATURE

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(EMERGENCY)
(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1884

H. P. 1759

House of Representatives, January 25, 1980.

Referred to the Committee on Energy and Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Blodgett of Waldoboro.

Cosponsors: Mrs. Mitchell of Vassalboro, Mr. Baker of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

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.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there is being stored, transported, generated, treated, disposed, reduced, incinerated, recovered, processed and transferred waste of unknown quantity or composition; and

Whereas, persons, known and unknown, have carried waste of unknown quantity or composition, into this State from other states, to destinations unknown in this State; and

Whereas, persons, known and unknown, have handled waste of unknown quantity or composition within the State without proper safeguards; and

Whereas, this waste if allowed to escape into the environment will poison land, air, surface water and ground water for generations to come; and

Whereas, this waste by its inherent chemical and physical characteristics may if haphazardly handled cause burns, deformities, mutations and other dangers to the public health, safety or welfare; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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, any person who violates, **orders, authorizes or knowingly permits a violation of any provision of the laws administered by the Department of Environmental Protection, or the terms or conditions of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a fine, payable to the State, of not more than \$25,000 for each day of such violation, except that any person who commits such a violation of sections 413, 591 or chapter 13, subchapter I, which involves hazardous matter or hazardous waste, shall in addition be subject to imprisonment for not more than 5 years.**

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 provision of the laws administered by the Department of Environmental Protection, or any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a civil penalty, payable to the State, of not more than \$10,000 for each day of such violation, **except as otherwise provided.**

Sec. 3. 38 MRSA § 349, sub-§ 2, ¶ A is enacted to read:

A. Any person who violates any provision of the laws administered by the Department of Environmental Protection, or any order, regulation, license, permit, approval or decision of the Board of Environmental Protection relating to hazardous waste shall be subject to a civil penalty, payable to the State, of not more than \$25,000 for each day of violation.

Sec. 4. 38 MRSA § 1303, sub-§ 5, as repealed and replaced by PL 1979, c. 383, § 2, is amended to read:

5. Hazardous waste. ~~“Hazardous waste” means any chemical substances or materials gas, solid or liquid which are gaseous, liquid, semisolid or solid and designated as hazardous by listing or by identification of characteristics by the United States Environmental Protection Agency pursuant to the United States Resource Recovery and Conservation Act, Public Law 94-580 and amendments to the Act or designated hazardous by the Act or its amendments~~ **Board of Environmental Protection.**

Sec. 5. 38 MRSA § 1303, sub-§ 8, as repealed and replaced 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. 6. 38 MRSA § 1304, sub-§ 1, 2nd ¶, as repealed and replaced by PL 1979, c. 383, § 3, is repealed and the following enacted in its place:

The board may adopt rules identifying hazardous wastes, whether by particular substance or material, by categories or by characteristics. In adopting these rules the board may be guided by proposed or final regulations or by guidelines published by the United States Environmental Protection Agency.

Sec. 7. 38 MRSA § 1304, sub-§ 6, as enacted by PL 1979, c. 383, § 8, is repealed and the following enacted in its 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 and quantities of those wastes; and

B. A description of current hazardous waste management practices and costs, including treatment and disposal, within the State.

The basis for the study shall be hazardous wastes as identified by the board pursuant to this section.

Sec. 8. 38 MRSA § 1304, sub-§ 7, ¶ B, as enacted by PL 1979, c. 383, § 8, is amended to read:

B. Identification of those locations within the State which are not suitable for the establishment of hazardous waste treatment or disposal facilities or sites; and

Sec. 9. 38 MRSA § 1304, sub-§ 7, ¶ C, sub-¶¶ (3), (4) and (6), as enacted by PL 1979, c. 383, § 8, are amended to read:

(3) The safe operation and maintenance of ~~hazardous waste storage treatment or disposal facilities or sites~~ any waste facility for hazardous waste, including, but not limited to, record keeping, monitoring before and during operation and after closure or termination of the facility or site, inspection and contingency plans for effective action to minimize potential damage from hazardous wastes;

(4) A listing of wastes or combinations of wastes which are not compatible and ~~which may not be stored or disposed of together~~ and reasonable requirements ensuring that the wastes will not come in contact with each other;

(6) The training of personnel and the certification of supervisory personnel at ~~hazardous waste treatment or disposal facilities or sites~~ waste facilities for hazardous wastes;

Sec. 10. 38 MRSA § 1304, sub-§ 7, ¶C, sub-¶ (9), div. (c), as enacted by PL 1979, c. 383, § 8, is amended to read:

(c) Financial ability to comply with these statutes or permit conditions;
and

Sec. 11. 38 MRSA § 1304, sub-§ 7, ¶D is enacted to read:

D. The plan, including rules set forth in paragraph C, may be published as a single document, or in such portions or segments, published in such order, as the department determines to be necessary for prompt and effective hazardous waste management.

Sec. 12. 38 MRSA § 1304, sub-§ 8, as enacted by PL 1979, c. 383, § 8, is amended to read:

8. Permits. The board shall grant a permit approving a waste facility whenever it finds that hazardous or solid waste, sludge or septage to be managed in a waste facility will not contaminate any water or ambient air of the State or constitute a hazard to health or welfare or create a nuisance to any person.

Sec. 13. 38 MRSA § 1306, sub-§ 5 is enacted to read:

5. Civil Liability. Any person who causes the contamination of waters of the State or ambient air shall be liable in civil suit for all damages resulting from this contamination. In any suit to enforce this section, it shall not be necessary to prove negligence on the part of the person causing the contamination. It is only necessary to prove the fact of the contamination, and that the person was in control of the waste facilities causing the contamination.

Sec. 14. 38 MRSA § 1310, first, 2nd and 3rd paragraphs, as enacted by PL 1979, c. 383, § 11, are repealed and the following enacted in their place:

If the commissioner finds after investigation that the transportation, storage or disposal of any waste, whether or not designated hazardous pursuant to this Act or other law, has created, or is likely to create, a danger to public health or safety, he may order the person causing the activity found to create the danger to immediately cease or prevent that activity and to take such actions as may be necessary to terminate or mitigate the danger or likelihood of danger.

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

Service of the commissioner's findings and any order directed to a person pursuant to this section shall be made pursuant to the Maine Rules of Civil Procedure.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect with approved.

STATEMENT OF FACT

The primary objective of this bill is to allow the State to protect the public health, safety or welfare by allowing the Department of Environmental Protection to take emergency action when danger exists or is likely to exist. In addition, the bill will allow the State, through the Department of Environmental Protection, to be able to administer its own hazardous waste management program under the United States Resource Recovery and Conservation Act.

Section 1 increases criminal penalties and authorizes prison terms for willful violations of the laws established by the Department of Environmental Protection and the Board of Environmental Protection.

Sections 2 and 3 increase the civil penalty for certain violations of hazardous waste statutes and regulations from a maximum of \$10,000 per day to a maximum of \$25,000 per day for each day of violation.

Section 4 adds to the definition of hazardous waste by including "characteristic" parameters, in accordance with Environmental Protection Agency standards and by describing the physical states of substances and materials, gas, liquid, solids and semisolids, as all inclusive.

Section 5 corrects and clarifies the definition of "resource recovery."

Sections 6 and 7 correct wording to achieve internal consistency as necessitated by amendments to other sections of the environmental laws made by this bill.

Section 8 corrects language to conform to the style of the Revised Statutes.

Section 9 expands jurisdiction and identifies specific responsibilities required of hazardous waste facility operators, consistent with Environmental Protection Agency standards. Section 9 also broadens the area of regulation of noncompatible hazardous wastes, and further expands requirements for certification for supervisory personnel in regarding training for all personnel at such facilities, in accordance with Environmental Protection Agency standards.

Section 10 corrects language to conform to the style of the Revised Statutes.

Section 11 permits the department to begin administration of the program as soon as information sufficient to begin is available.

Section 12 adds noncontamination of the ambient air to the criteria for granting a permit for a hazardous waste facility.

Section 13 imposes strict liability on the handlers of substances declared hazardous by the Board of Environmental Protection when spills, leaks, explosions and the like cause personal injury or property damage to others.

Section 14 broadens the authority of the Commissioner of Environmental Protection to act in situations where the handling of wastes creates or is likely to create danger to health or safety. Such broadened authority would provide greater

public protection and would also permit the commissioner to act in an emergency situation.

The combination of these measures should substantially increase the ability of the State to control the disposal of hazardous wastes in Maine.