

MAINE STATE LEGISLATURE

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L.D. 1902

STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-957)
109TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1780, L.D. 1902, Bill,
"AN ACT to Enable the State to Protect the People of Maine
and its Natural Environment from Damages Resulting from the
Discharge of Hazardous Matter."

Amend the bill by striking out everything after the
enacting clause and inserting in its place the following:

'Sec. 1. 25 MRSA §2108, as enacted by PL 1977, c. 622,
is repealed.

Sec. 2. 38 MRSA c. 13, subchapter III is enacted to
read:

SUBCHAPTER III

HAZARDOUS MATTER CONTROL

§1317. Definitions

As used in this subchapter, unless the context indicates
otherwise, the following terms have the following meanings.

1. Discharge. "Discharge" includes, but is not limited
to, any spilling, leaking, pumping, pouring, emitting, dis-
posing, emptying or dumping onto the land or into the water
or ambient air.

2. Hazardous matter. "Hazardous matter" means substances
identified by the board under section 1319 that present a
present or potential danger to the people of the State or to

its natural environment when deposited on land or discharged on or into waters of the State or ambient air.

3. Remove or removal. "Remove" or "removal" means the mitigation of the danger created by hazardous matter by either:

A. Treatment or clean up of a discharge of hazardous matter; or

B. Any action necessary to prevent or minimize danger from a discharge or threatened discharge.

4. Responsible party. "Responsible party" means the person having care, custody, possession or control of hazardous matter.

§1317-A. Discharge prohibited

The discharge of hazardous matter into or upon any waters of the State, or into or upon any land within the state's territorial boundaries or into the ambient air is prohibited unless licensed or authorized under state or federal law.

§1318. Mitigation of penalties

1. Reporting. The immediate reporting of a discharge or threatened discharge by the responsible party or by the person causing the discharge may be considered in mitigation of any criminal or civil penalties assessed under this subchapter.

2. Removal. If the responsible party or person causing the discharge immediately reports and removes the discharge in accordance with the rules and orders of the board, he shall not be subject to criminal or civil penalties under this subchapter.

§1318-A. Recovery by the State for expenditures for removal of discharges

1. Responsible party. The responsible party or the person causing the discharge is liable for all acts and omissions of its servants and agents which are committed within the course and scope of their employment.

2. State to recover for expenditures for removal. Any person who permits, causes or is responsible for a prohibited discharge shall reimburse the State for all costs incurred, including personnel costs, in removing the discharge. Funds recovered under this section shall be deposited to the account from which they were expended. Requests for reimbursement, if not paid within 30 days of demand, shall be turned over ^{to} the Attorney General for collection.

In any suit to enforce claims of the State under this section, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge and that the discharge occurred while the hazardous

matter was in the custody or control of the person causing, permitting or responsible for the discharge.

§1318-B. Procedures for removal of discharges of hazardous matter

1. Reporting. The responsible party or the person causing the discharge shall report a discharge immediately to the local public safety agency or to the Department of Public Safety, which shall immediately notify the Department of Environmental Protection.

2. Preservation of public order. The local public safety agency or the Department of Public Safety shall exercise authority for preservation of public order and safety, and shall coordinate the response to the spill.

3. Department of Environmental Protection to direct removal. The Department of Environmental Protection shall have authority and responsibility to plan, implement and, with the cooperation of the appropriate public safety agency, direct that part of the response to a discharge of hazardous matter which involves removal.

A. The responsible party or the person causing the discharge shall immediately undertake removal of the discharge.

B. The department may undertake the removal of the discharge and may retain agents and make contracts for this purpose.

C. Any unexplained discharge of hazardous matter occurring within state jurisdiction, or on land or in water or air beyond state jurisdiction that for any reason penetrates within state jurisdiction, shall be removed by or under the direction of the department.

§1319. Powers of the board

1. Identification of hazardous matter.

A. Any substance which has been designated as hazardous by the United States Environmental Protection Agency in proposed or final regulations under the United States Clean Water Act, Section 311, ^{Public Law 92-500,} may be identified by rule as hazardous matter by the board.

B. Any substance which has not been so designated by the United States Environmental Protection Agency may be identified by rule as hazardous matter by the board.

C. Rules adopted under paragraph B shall be submitted to the Joint Standing Committee on Energy and Natural Resources for review. These rules shall become effective after the next regular session of the Legislature only if approved by Joint Resolution.

2. Rules. The board shall have authority to adopt rules in order to:

A. Prescribe procedures for reporting discharges prohibited by this subchapter;

B. Prescribe procedures, methods, means and equipment to be used in the removal of discharges of hazardous matter; and

C. Exempt type or methods of discharges of hazardous matter from the requirements of this subchapter that the board determines do not present danger, imminent, present or delayed, to the people of the State or to its natural environment.

§1319-A. Duties of the commissioner

1. Facilities. The commissioner may undertake studies and evaluations necessary to develop suitable waste facilities.

2. Training. The commissioner may train state and local personnel to remove discharges of hazardous matter. Insofar as practical the commissioner shall rely on existing sources to deliver this training.

Sec. 3. Study. The Board of Environmental Protection shall study the need for one or more hazardous waste facilities to handle certain types of hazardous wastes generated within the State. In making their evaluation, the board shall consider the study conducted pursuant to the Revised Statutes Title 38, section 1304, subsection 6, the plan prepared under the Revised Statutes, Title 38, section 1304, subsection 7, the capabilities and probabilities of existing generators treating or disposing of their own hazardous wastes, the probabilities of private

firms establishing commercial hazardous waste facilities in Maine, the probabilities and costs of transporting hazardous waste to waste facilities outside of Maine, and the capabilities of existing commercial waste facilities in Maine and out of state.

The board shall submit its findings, including recommended legislation and recommended funding, to the Governor and the appropriate committee of the Legislature assigned in this area of Energy and Natural Resources during the first regular session of the 110th Legislature.

Upon acceptance, by the Governor and the committee, of the board's determination of necessity for one or more hazardous waste facilities, the board shall prepare a plan which provides for the location and acquisition of suitable sites, and the planning, construction, maintenance and operation of hazardous waste facilities on those sites. The plan shall include the board's recommendation for public or private financing of all projects proposed by the plan. Specifically, the board shall prepare a budget covering a period of not less than 3 years and shall provide one or more methods of assessing generators of hazardous waste a fee to fund all reasonable and necessary planning, engineering, acquisition and construction of hazardous waste facilities, and shall provide one or more methods for assessing fees on users of the hazardous waste facilities to cover maintenance and operating costs, insurance, monitoring, closing costs and other necessary expenditures.

The board, when proposing site locations, shall consider the geographic location of probable generators, the distances and costs involved in the transport of hazardous waste to waste facilities, the compatibility of potential wastes and the board's rules and regulations.

Statement of Fact

This amendment deletes the Maine Hazardous Matter Discharge Prevention and Control Fund contained in the original bill. As amended, this bill will do 4 things. First, it prohibits the discharge of hazardous matter onto land or into the air or water. Hazardous matter will be identified by the Board of Environmental Protection, considering the designation of similar substances under the United States Clean Water Act, Section 311.

/ Second, the bill authorizes the Department of Environmental Protection to direct the removal of discharges of hazardous matter. Third, the bill creates strict liability for clean-up costs on the person who permits or causes a prohibited discharge. Finally, the bill provides specific guidance for the board to conduct a study for the need for hazardous waste sites. The board is directed to report its preliminary findings to the first regular session of the 110th Legislature.