

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 382

H. P. 314

House of Representatives, January 21, 1981

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.

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

EDWIN H. PERT, Clerk

Presented by Representative J. Mitchell of Freeport.

Cosponsors: Representative Hall of Sangerville and Representative Dexter of Kingfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT to Amend the Hazardous Waste Statute to Meet Certain Requirements for Delegation of the Federal Program and to Provide Internal Consistency.**

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

**Sec. 1. 38 MRSA § 1303, sub-§ 6-A is enacted to read:**

**6-A. On the site.** "On the site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on the site property.

**Sec. 2. 38 MRSA § 1303, sub-§ 12, as amended by PL 1979, c. 699, § 7, is further amended to read:**

**12. Transport.** "Transport" means the movement of hazardous or solid waste, sludge or septage from the point of generation to any intermediate points and finally to the point of ultimate ~~storage or disposal~~ disposition. Movement of

hazardous waste ~~within a licensed waste facility on the site where it is generated or on the site of a licensed waste facility for hazardous waste~~ is not "transport."

Sec. 3. 38 MRSA § 1303, sub-§ 14, ¶ B, as enacted by PL 1979, c. 699, § 8, is amended to read:

B. It is used to store hazardous wastes generated on the same premises for 90 days or less ~~than 3 months~~.

Sec. 4. 38 MRSA § 1303, sub-§ 14-A is enacted to read:

14-A. Waste resulting from agricultural activities. "Waste resulting from agricultural activities" means wastes generated by agricultural activities, as defined in section 361-A, subsection 1-B, which are returned to the soils as fertilizers and includes waste pesticides when generated by a farmer in his own use, provided he triple rinses each emptied pesticide container in accordance with departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label.

Sec. 5. 38 MRSA § 1303, sub-§ 15, as repealed and replaced by PL 1979, c. 699, § 8, is amended to read:

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

Sec. 6. 38 MRSA § 1303-A, sub-§ 2, first sentence, as enacted by PL 1979, c. 699, § 9, is amended to read:

The board may adopt rules relating to the handling of hazardous wastes, including, **but not limited to**:

Sec. 7. 38 MRSA § 1303-A, sub-§ 3, first sentence, as enacted by PL 1979, c. 699, § 9, is amended to read:

The board may adopt rules relating to transportation of hazardous wastes, including, **but not limited to**:

Sec. 8. 38 MRSA § 1303-A, sub-§ 3, ¶ B, last sentence, as enacted by PL 1979, c. 699, § 9, is amended to read:

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 disposition, shall allocate ~~responsibilities~~ responsibilities and liabilities at each point among ~~persons handling~~ generators, transporters and handlers of the hazardous waste and shall require recordkeeping and regular reporting to the department at each point ~~by the person handling the hazardous wastes~~.

Sec. 9. 38 MRSA § 1303-A, sub-§ 4, first 2 sentences, as enacted by PL 1979, c. 699, § 9, are amended to read:

The board may adopt rules relating to the interim and final licensing and operation of waste facilities for hazardous wastes, **including, but not limited to:**  
~~These rules may include:~~

**Sec. 10.** 38 MRSA § 1304, sub-§ 4-A, first sentence, as enacted by PL 1979, c. 383, § 6, is amended to read:

For the purposes of **enforcing any provision of this Act or of developing or enforcing any rule authorized by this Act**, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

**Sec. 11.** 38 MRSA § 1304, sub-§ 4-A, ¶ A, as enacted by PL 1979, c. 383, § 6, is repealed and the following enacted in its place:

**A. Enter any establishment or other place which is not a residence or any conveyance where or in which hazardous or solid waste, sludge or septage is generated, handled or transported;**

**Sec. 12.** 38 MRSA § 1304, sub-§ 4-A, ¶ B, as enacted by PL 1979, c. 383, § 6, is amended to read:

**B. Inspect and obtain samples of any hazardous or solid waste, sludge or septage, including samples from any ~~vehicle~~ conveyance in which hazardous or solid waste, sludge or septage ~~are~~ is being transported, as well as samples of any containers or labels; and**

**Sec. 13.** 38 MRSA § 1306-A, as enacted by PL 1979, c. 699, § 14, is amended by inserting before subsection 1 the following new paragraph:

**In addition to being subject to civil penalties as provided by section 349, subsection 2 and to criminal penalties as provided in section 349, subsection 3, conduct described in subsections 1 and 2 shall be subject to criminal penalties as follows:**

**Sec. 14.** 38 MRSA § 1306-A, sub-§ 1, ¶ C, as enacted by PL 1979, c. 699, § 14, is amended to read:

**C. ~~Treats, stores or disposes of~~ Handles 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**

**Sec. 15.** 38 MRSA § 1306-A, sub-§ 1, ¶ D, as enacted by PL 1979, c. 699, § 14, is amended to read:

**D. ~~Treats, stores or disposes of~~ Handles 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;**

**Sec. 16.** 38 MRSA § 1306-A, sub-§ 2, ¶ C, first sentence, as enacted by PL 1979, c. 699, § 14, is amended to read:

**Transfers Gives custody or possession of any such substance or material to any other person whom he knows or has reason to believe:**

**Sec. 17. 38 MRSA § 1306-A, sub-§ 2, ¶C, sub-¶(1), as enacted by PL 1979, c. 699, § 14, is amended to read:**

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

**Sec. 18. 38 MRSA § 1306-A, sub-§ 2, ¶C, sub-¶(2), as enacted by PL 1979, c. 699, § 14, is amended to read:**

(2) Will **transport or handle** such substance or material in violation of this subchapter or rules adopted under it.

**Sec. 19. 38 MRSA § 1306-B, as enacted by PL 1979, c. 699, § 15, is repealed.**

**Sec. 20. 38 MRSA § 1306-C is enacted to read:**

**§ 1306-C. Forfeiture; civil liability**

**1. Property forfeited. The following property shall be subject to forfeiture to the State and all property rights therein shall be in the State:**

**A. 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 handling or transportation or handled or transported shall be subject to forfeiture to the State; and**

**B. All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in any transaction involving a hazardous waste in violation of this subchapter, all proceeds traceable to such a transaction and all moneys, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of this subchapter.**

**2. Jurisdiction. Property subject to forfeiture may be declared forfeited by a court having jurisdiction over the property or having final jurisdiction over a related civil or criminal proceeding under this subchapter.**

**3. Exceptions. The court may order forfeiture of all property subject to forfeiture, except as follows:**

**A. 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.**

**B. 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.**

C. 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.

D. No property subject to forfeiture under subsection 1, paragraph B shall be forfeited, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

4. Procedure. 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 with the following exceptions.

A. 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.

B. 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 bona fide mortgage thereon, and the balance, if any, shall be deposited in the General Fund.

C. Records, required by Title 22, section 2387, subsection 5, shall 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.

Sec. 21. 38 MRSA § 1310, first ¶, as repealed and replaced by PL 1979, c. 699, § 16, is amended to read:

If the commissioner finds, after investigation, that any waste, whether or not a hazardous waste, being **generated**, handled or transported by a person in a manner which may create a danger to public health or safety, he may order the person **generating**, 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 **generation**, handling or transportation to cease to prevent that contribution.

#### STATEMENT OF FACT

The hazardous waste statute, enacted by the 109th Legislature and amended at its 2nd session, is intended to provide the State with the capability to manage hazardous wastes, primarily by enabling the State to be delegated to the federal hazardous waste management program. Some of the requirements for delegation were not established by the United States Environmental Protection Agency at the time the statute was enacted and amended. Other requirements were unclear

even to the environmental protection agency and have only become clarified as the agency has begun the actual process of reviewing states' applications for delegation of the federal program.

The environmental protection agency has reviewed Maine's application for delegation, which involves review of applicable legislation and rules and has indicated several areas where changes are needed for purposes of delegation. Amendments made by the following sections are the result of the environmental protection agency's review:

Sections 1 and 2. Conform the exclusion from the definition of transportation more closely to the exclusion provided by federal law and rule. While the new language is more complex it is at the same time more precise. Section 1 of the bill repeals the ban on the importation of out-of-state waste, which an Attorney General's opinion has advised is unconstitutional under the ruling of the United States Supreme Court in **Philadelphia v. New Jersey**, 437 United States 617, 1978;

Section 3. Conforms the "short term storage" terminology to that used in federal law and rules and used in state rules as well. The new language is also more precise;

Section 4. The definition of hazardous waste, Maine Revised Statutes, Title 38, section 1303, subsection 5, excludes "wastes resulting from.....agricultural activities." A basic requirement for delegation of the federal program is that the State regulate a universe of hazardous waste no smaller than that regulated under the federal program. The vague exclusion presently provided is defined by the amendment to indicate its limits, which conform to the agricultural exclusion provided in the federal program;

Sections 5, 8 and 20. While the state's authority to regulate operators of hazardous waste is clearly implied in the present law, the environmental protection agency is concerned that the authority be explicitly stated, particularly with respect to the inclusion of generators in the manifest system and with respect to their inclusion within the scope of the commissioner's authority to issue immediate administrative orders in hazardous waste situations which threaten public health or safety. The amendments in these sections make more explicit the authority of the State to regulate generators of hazardous wastes. Section 9 also responds to the environmental protection agency's concern that Maine clearly be able, through the manifest system, to trace hazardous waste to all destinations, not just to disposal;

Sections 10 and 11. These amendments respond to the environmental protection agency's concern that the State be able to use its authority to enter to enforce the Act itself, not just to enforce rules authorized by the Act and its concern that the provision as presently worded might not permit entry into all nonresidential establishments where hazardous wastes may be, e.g., might not permit entry into hospitals, universities, etc. The amendment broadens the language while retaining the residential exception which was of concern to the enacting Legislature;

Amendments in the following sections are made to achieve greater internal consistency or otherwise clarify the statute;

Sections 6, 7 and 9. These amendments provide consistent language in all subsections of section 1303-A, without substantive change;

Section 12. This amendment substitutes a term defined in the statute for one not defined and makes a grammatical correction;

Section 13. This amendment makes it clear that the improper conduct defined in the section to which the amendment relates is punishable civilly as well as criminally and is subject to particular criminal penalties as provided in section 349, subsection 2, as well as in the amended section itself;

Sections 14 and 15. The amendments substitute the defined term "handle" for the terms "treat, store or dispose," all of which are included, along with other hazardous waste activities, in the term handle. The amendment makes it clear that all hazardous waste handling activities, not just treating, storing and disposing, are subject to penalties when improperly conducted.

Section 16. This amendment substitutes more appropriate general language for the term "transfers," which has a particular meaning in relation to hazardous waste which is not appropriate in the context;

Sections 17 and 18. The Department of Environmental Protection has the authority to and now does license transporters of hazardous waste. This amendment makes it illegal to give hazardous waste to an unlicensed transporter or to a person who will transport the waste in violation of law or rule; and

Sections 19 and 20. These sections amend the forfeiture provisions to clear up internal inconsistencies, i.e., inserts the word "handling" and "handled" in 2 places consistent with its present appearance at a 3rd point; and inserts the term "civil" as not all proceedings under the statute in which forfeiture may be sought will be civil; adds an additional class of property subject to forfeiture, closing the same loophole found in the drug violations forfeiture law; and reorganizes the section to accommodate the new language.