

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1238

H. P. 1004

House of Representatives, March 10, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Jacques of Waterville.

STATE OF MAINE

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

AN ACT to Establish Strict Penalties for Hazardous Waste Dumping and to Provide Specific Definitions of Hazardous Waste.

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

Sec. 1. 38 MRSA § 1303, sub-§ 5, first sentence, as repealed and replaced by PL 1979, c. 699, § 5, is amended to read:

“Hazardous waste” means a waste substance or material, in any physical state, designated as hazardous ~~by the board~~ under section 1303-A.

Sec. 2. 38 MRSA § 1303-A, sub-§ 1, as enacted by PL 1979, c. 699, § 9, is repealed and the following enacted in its place:

1. Identification of hazardous waste. A waste is a hazardous waste if it falls within any of the definitions provided in paragraphs A to I and is not excluded as a hazardous waste by anything contained in this subsection. As used in this subsection, “Part 261” refers to 40 Code of Federal Regulations, Part 261. A reference to a subpart, section or paragraph as being of Part 261 means it is contained within 40 Code of Federal Regulations, Part 261.

A. Generally a waste is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under Section 261.4(b) of Part 261; and

(2) It meets any of the following criteria:

(a) It is listed in Subpart D of Part 261 and has not been excluded from the lists in Subpart D under Sections 260.20 and 260.22 of 40 Code of Federal Regulations, Part 260;

(b) It is a mixture of a nonhazardous waste and one or more hazardous wastes listed in Subpart D of Part 261 and has not been excluded from this paragraph under Sections 260.20 and 260.22 of 40 Code of Federal Regulations, Part 260; or

(c) It exhibits any of the characteristics of hazardous waste identified in Subpart C of Part 261.

B. A waste which is not excluded from regulation under Sections 260.20 and 260.22 of 40 Code of Federal Regulations, Part 260 becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Subpart D, Part 261, when the waste first meets the listing description set forth in Subpart D of Part 261;

(2) In the case of a mixture of a nonhazardous waste and one or more listed hazardous wastes, when a hazardous waste listed in Subpart D of Part 261 is first added to the nonhazardous waste; or

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in Subpart C of Part 261.

C. Unless and until it meets the criteria of paragraph D:

(1) A hazardous waste will remain a hazardous waste; and

(2) Any waste generated from the handling of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate, but not including precipitation runoff, is a hazardous waste.

D. Any waste described in paragraph C is not a hazardous waste if it meets the following criteria:

(1) In the case of any waste, it does not exhibit any of the characteristics of hazardous waste identified in Subpart C of Part 261; and

(2) In the case of a waste which is a listed waste under Subpart D of Part 261, contains a waste listed under Subpart D of Part 261, or is derived from a waste listed in Subpart D of Part 261, it also has been excluded from paragraph C under Sections 260.20 and 260.22 of Part 261.

E. The following materials are not hazardous wastes for the purpose of this subsection:

(1) Domestic sewage, meaning untreated sanitary waste that passes through a sewer system;

- (2) Any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works for treatment;
- (3) Industrial wastewater discharges that are point source discharges subject to regulation under the United States Clean Water Act of 1977, Public Law 95-217, as amended;
- (4) Irrigation return flows;
- (5) Special nuclear or by-product source material as defined by the United States Atomic Energy Act of 1954, as amended, the United States Code Title 42, Public Law 585;
- (6) Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process;
- (7) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered or reused. "Household waste" means any waste material, including garbage, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels;
- (8) Waste generated by agricultural activities;
- (9) Mining overburden returned to the mine site;
- (10) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; and
- (11) Drilling fluids, produced waters and other waste associated with the exploration, development or production of crude oil, natural gas or geothermal energy.

F. The following special requirements apply to hazardous waste generated by small quantity generators.

- (1) Except as otherwise provided in this paragraph, if a person generates, in a calendar month, a total of less than 1,000 kilograms of hazardous wastes, those wastes are not subject to regulation under this chapter and related rules in the same manner and to the same extent that such wastes are not subject to regulation as provided in Section 261.5(a) of Part 261.
- (2) If a person whose waste has been excluded from regulation under this paragraph accumulates hazardous wastes in quantities greater than 1,000 kilograms, those accumulated wastes are subject to regulation under this chapter and related rules in the same manner and to the same extent that such wastes are subject to regulation as provided in Section 261.5(b) of Part 261.
- (3) If a person generates in a calendar month or accumulates at any time any of the following hazardous wastes in quantities greater than set forth in

divisions (a) to (e), those wastes are subject to regulation under this chapter and related rules in the same manner and to the same extent that such wastes are subject to regulation under Section 261.5(c) of Part 261:

(a) One kilogram of any commercial product or manufacturing chemical intermediate having the generic name listed in Section 261.33 (e) of Part 261;

(b) One kilogram of any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Section 261.33 (e) of Part 261;

(c) Any containers identified in Section 261.33 (c) of Part 261 that are larger than 20 liters in capacity;

(d) Ten kilograms of inner liners from containers identified under Section 261.33(c) of Part 261; or

(e) One hundred kilograms of any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Section 261.33(e) of Part 261.

(4) In order for hazardous waste to be excluded from regulation under this section, the generator must comply with Section 262.11 of Part 261. He must also either treat or dispose of the waste in an on-site waste facility for hazardous waste, or ensure delivery to an off-site waste facility for hazardous waste, either of which is:

(a) Permitted by the United States Environmental Protection Agency under 40 Code of Federal Regulations, Part 122;

(b) In interim status under 40 Code of Federal Regulations, Parts 122 and 265; or

(c) Licensed by the department under rules of the board for the interim or noninterim licensing of waste facilities for hazardous waste.

(5) Hazardous waste subject to these reduced requirements may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this paragraph unless the mixture meets any of the characteristics of hazardous waste identified in Subpart C of Part 261.

G. The following special requirements apply to hazardous waste which is used, reused, recycled or reclaimed.

(1) Except as otherwise provided in subparagraph (2), a hazardous waste which meets either of the following criteria is not subject to regulation under this chapter and related rules in the same manner and to the same extent as

such waste is not subject to regulation as provided in Section 261.6(a) of Part 261 until such time as the board adopts rules to the contrary:

(a) It is being beneficially used or reused or legitimately recycled or reclaimed; or

(b) It is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation.

(2) A hazardous waste which is a sludge, or which is listed in Subpart D of Part 261, or which contains one or more hazardous wastes listed in Subpart D of Part 261; and which is transported or stored prior to being used, reused, recycled or reclaimed is subject to regulation under this chapter and related rules with respect to such transportation and storage in the same manner and to the same extent that such waste is subject to requirements as provided in Section 261.6(b) of Part 261.

H. A waste which is not excluded from regulation as a hazardous waste under paragraph E is a hazardous waste if it exhibits any of the characteristics identified in this paragraph. A hazardous waste which is identified by a characteristic in this paragraph, but is not listed as a hazardous waste in Subpart D of Part 261, is assigned the United States Environmental Protection Agency Hazardous Waste Number set forth in the respective characteristic. This number, alone or in combination with another number assigned by the department as provided by rule, must be used in complying with regulatory requirements as provided by rule. For purposes of this paragraph, the department will consider a sample obtained using any of the applicable sampling methods specified in Appendix I of Part 261 to be a representative sample within the meaning of 40 Code of Federal Regulations, Part 260. Until the Appendix I sampling methods are formally adopted by the United States Environmental Protection Agency, a person who desires to employ an alternative sampling method is not required to demonstrate the equivalency of his method under the procedures set forth in Sections 260.20 and 260.21 of 40 Code of Federal Regulations, Part 260.

(1) A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(a) It is a liquid, other than an aqueous solution containing less than 24% alcohol by volume, and as a flash point less than 60° Celsius, 140° Fahrenheit, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in the American Society for Testing Materials Standard D-93-79, or a Setaflash Closed Cup Tester, using the test method specified in the American Society for Testing Materials Standard D-3278-78, or as determined by an equivalent test method approved by the United States Environmental Protection Agency under the procedures set forth in sections 260.20 and 260.21 of 40 Code of Federal Regulations, Part 260;

(b) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard;

(c) It is an ignitable compressed gas as defined in 49 Code of Federal Regulations, Section 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the United States Environmental Protection Agency under Sections 260.20 and 260.21 of 40 Code of Federal Regulations, Part 260; or

(d) It is an oxidizer as defined in 49 Code of Federal Regulations, Section 173.151.

A waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste in Subpart D of Part 261, has the United States Environmental Protection Agency Hazardous Waste Number of D001.

(2) A solid waste exhibits the characteristic or corrosivity if a representative sample of the waste has either of the following properties:

(a) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the test method specified in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" or an equivalent test method approved by the United States Environmental Protection Agency under the procedures set forth in Sections 260.20 and 260.21 of 40 Code of Federal Regulations, Part 260; or

(b) It is a liquid and corrodes steel, Society of Automotive Engineers 1020, at a rate greater than 6.35 millimeters, 0.250 inches, per year at a test temperature of 55° Celsius, 130° Fahrenheit, as determined by the test method specified in the National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," or an equivalent test method approved by the United States Environmental Protection Agency under the procedures set forth in Sections 260.20 and 260.21 of 40 Code of Federal Regulations, Part 260.

A waste that exhibits the characteristic of corrosivity, but is not listed as a hazardous waste in Subpart D of Part 261, has the United States Environmental Protection Agency Hazardous Waste Number of D002.

(3) A waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(a) It is normally unstable and readily undergoes violent change without detonating;

(b) It reacts violently with water;

- (c) It forms potentially explosive mixtures with water;
- (d) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;
- (e) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;
- (f) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement;
- (g) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or
- (h) It is a forbidden explosive as defined in 49 Code of Federal Regulations, Section 173.51, or a Class A explosive as defined in 49 Code of Federal Regulations, Section 173.53 or a Class B explosive as defined in 49 Code of Federal Regulations, Section 173.88.

A waste that exhibits the characteristic of reactivity, but is not listed as a hazardous waste in Subpart D of Part 261, has the United States Environmental Protection Agency Hazardous Waste Number of D003.

(4) A waste exhibits the characteristic of EP toxicity if, using the test methods described in Appendix II of Part 261 or equivalent methods approved by the United States Environmental Protection Agency under the procedures set forth in Sections 260.20 and 260.21 of 40 Code of Federal Regulations, Part 260, the extract from a representative sample of the waste contains any of the contaminants listed in Table I, found after Section 261.24 of Part 261, at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5% filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this section.

A waste that exhibits the characteristic of EP toxicity, but is not listed as a hazardous waste in Subpart D of Part 261, has the United States Environmental Protection Agency Hazardous Waste Number specified in Table I, found after Section 261.24 of Part 261, which corresponds to the toxic contaminant causing it to be hazardous.

I. A solid waste is a hazardous waste if it is listed in the lists found at Section 261.31 or Section 261.32 of Part 261, unless it has been excluded from a list under Sections 260.20 and 260.22 of 40 Code of Federal Regulations, Part 260.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

- (1) Any commercial chemical product, or manufacturing chemical intermediate have the generic name listed in subparagraph (5) or (6);
- (2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subparagraph (5) or (6);
- (3) Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subparagraph (5) unless:
 - (a) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;
 - (b) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or
 - (c) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed;
- (4) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subparagraph (5) or (6);
- (5) The commercial chemical products or manufacturing chemical intermediates, referred to in subparagraph (4) and this subparagraph, are identified as acute hazardous wastes and are subject to the small quantity exclusion defined in Section 261.5(c) of Part 261. These wastes and their corresponding United States Environmental Protection Agency Hazardous Waste Numbers are shown at Section 261.33(e) of Part 261; and
- (6) The commercial chemical products or manufacturing chemical intermediates, referred to in subparagraphs (2) and (4), are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in Sections 261.5(a) and 261.5(b) of Part 261. These wastes and their corresponding United States Environmental Protection Agency Hazardous Waste Numbers are shown at Section 261.33(f) of Part 261.

Sec. 3. 38 MRSA § 1306-A, sub-§ 1, as enacted by PL 1979, c. 699, § 14, is repealed and the following enacted in its place:

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 commits any act described in paragraphs A, B, C or D 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 \$50,000 for each day of such violation:

- A. Transports any such substance or material without 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 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.**

In a prosecution under paragraph B or 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.

STATEMENT OF FACT

This bill replaces the Board of Environmental Protection's rule making authority over the definition of hazardous waste, enacts as a statutory provision the board's current rules defining hazardous wastes, and raises the maximum per day fine from \$25,000 to \$50,000.