

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1303

S. P. 447

In Senate, March 13, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Kerry of York.

Cosponsors: Representative Brenerman of Portland, Senator Collins of Knox and Representative Dexter of Kingfield.

STATE OF MAINE

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

AN ACT to Establish a Fund to Implement the Hazardous Waste Program in Lieu of a General Fund Appropriation.

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

Sec. 1. 38 MRSA § 1304, sub-§ 9 is enacted to read:

9. Fees for reviewing applications. The fees for reviewing applications are as follows.

A. Any person who applies for a license for a waste facility for hazardous waste shall pay the appropriate fee as set forth in subparagraphs (1) to (3). An application for a license will not be considered complete and will not be processed until the correct fee is received. All fees shall be deposited in the Maine Hazardous Waste Fund.

Application Fee Schedule

(1) Disposal facility	\$10,000
(2) Treatment facility	7,000
(3) Other waste facility for hazardous waste	2,500

B. A refund of 50% of the fee shall be returned to an applicant who withdraws his application within 30 days of its submission.

C. The application fees established by this section shall be required for an initial application and for any substantial modification to the facility or to the license. The fee shall not be required for renewal applications or for an application to allow a change of ownership or operator, where, in such cases, no other change to the facility or license is sought.

Sec. 2. 38 MRSA c. 13, sub-c. IV is enacted to read:

SUBCHAPTER IV

MAINE HAZARDOUS WASTE FUND

§ 1319-B. Findings and purpose

The Legislature finds and declares that the generation, transportation and handling of hazardous waste within the jurisdiction of the State are dangerous undertakings; that spills, discharges and escape of hazardous waste occurring as a result of the generation, transportation and handling of hazardous waste pose threats of great danger and damage to the owners and users of property, to public and private recreational activities, to the natural environment and to the general health, welfare and safety of the citizens of the State. The Legislature also finds that danger and damage have occurred in the past, is occurring now and presents future threats of potentially catastrophic proportions, all of which are expressly declared inimical to the paramount interests of the State. State interests outweigh any economic burdens imposed by this legislation upon those engaged in generating, transporting or handling hazardous waste.

The Legislature further finds and declares that virtually all waste oil is contaminated by substances defined as hazardous waste and that some control over waste oil is necessary even if the waste oil is not contaminated to such a degree as to be called hazardous waste.

The Legislature further finds and declares that regulation of the generation, transportation and handling of hazardous waste is a matter of grave public interest to the State in promoting the general welfare, preventing acute and chronic damage to health, promoting safety and providing for the general well-being of its citizens and the state's interest in the public welfare, health and safety outweighs any burden of strict liability imposed by this legislation upon those engaged in generating, transporting or handling hazardous waste.

§ 1319-C. Maine Hazardous Waste Fund

The Maine Hazardous Waste Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the department's responsibilities for hazardous waste management. This fund shall not exceed \$1,000,000. To this fund shall be credited all application fees, license fees, penalties, forfeitures, interest and other fees and charges relating to the generation, transportation and handling of hazardous waste and to this fund shall be charged any and all expenses

of the department related to hazardous waste management including administrative expenses and all reasonable costs associated with measures to prevent or mitigate danger or damage to the public health, welfare or safety or the natural environment associated with generation, transportation or handling of hazardous waste.

Moneys in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities for hazardous waste management shall be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest received on that investment shall be credited to the Maine Hazardous Waste Fund.

§ 1319-D. Disbursements from the Maine Hazardous Waste Fund

1. Moneys disbursed. Except as provided in subsection 2, moneys in the Maine Hazardous Waste Fund may be disbursed by the department for the following purposes, but for no other.

A. Administrative expenses, including, but not limited to, amounts for training, equipment, research, development, and personnel associated with the department's hazardous waste management program in accordance with a budget approved by the Legislature as part of the regular appropriation process.

B. Other expenses, including an amount for planning, development, acquisition and operation of waste facilities for hazardous waste in accordance with a budget approved by the Legislature as part of the regular appropriation process.

C. All costs, including expenses and personnel costs involved in the prevention or mitigation of dangers to the public health, welfare, safety and the natural environment relating to the generation, transportation or handling of hazardous waste.

D. Repayments of any loans, including interest, issued in accordance with the provisions of section 1319-H.

2. Moneys in the Maine Hazardous Waste Fund may not be disbursed by the department to the extent that there has been compensation for claims for any costs of response or damages or claims which may be compensated under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (P.L. 96-510).

§ 1319-E. Personnel and equipment

The department may establish and maintain such employees and equipment as in its judgment may be necessary to carry out its responsibilities for hazardous waste management. The commissioner, subject to the Personnel Law, may employ such personnel as may be necessary to carry out the purposes of these statutes and shall prescribe the duties of these employees.

§ 1319-F. Reimbursement to the Maine Hazardous Waste Fund

1. **Recovery.** The department shall seek recovery to the use of the Maine Hazardous Waste Fund all sums expended therefrom, including overdrafts, for all disbursements made from the fund pursuant to section 1319-D, subsection 1, paragraph C, including interest computed at 10% per year from the date of expenditure, unless the board finds the amounts involved too small or the likelihood of recovery too uncertain.

2. **Requests for reimbursement.** Requests for reimbursement to the fund not paid within 30 days of demand shall be referred to the Attorney General for prompt collection.

3. **Claims.** The department may file a claim with or otherwise seek money from federal agencies to recover to the use of the fund all disbursements from the fund.

4. **Petition.** Upon petition of any person who had paid into the fund, the board, after opportunity for a hearing, may waive the right to reimbursement to the fund if it finds that the incident was the result of:

A. An Act of war;

B. An Act of government, either State, Federal or municipal, except insofar as the act was pursuant to section 1319-D, subsection 1, paragraph C; or

C. An Act of God, which shall mean an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

The findings of the board shall be conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred, not a right granted.

§ 1319-G. Fees

1. **Fees for actions taken on the site of generation.** Any person who generates hazardous waste in the State with regard to which any of the following actions are taken on the site of generation shall pay a fee as follows:

A. For hazardous waste which is disposed in a licensed hazardous waste disposal facility: 12¢ per gallon;

B. For hazardous waste which is treated in a licensed hazardous waste treatment facility: 6¢ per gallon;

C. For hazardous waste which is stored in a licensed hazardous waste storage facility for more than 90 days but less than 6 calendar months and for each time period thereafter of 6 calendar months or portion thereof: 3¢ per gallon; and

D. For hazardous waste which is beneficially used or reused or legitimately recycled or reclaimed: 3¢ per gallon.

2. **Fees for actions taken off the site of generation.** Any person who generates

hazardous waste in the State with regard to which any of the following actions are taken off the site of generation shall pay a fee as follows:

- A. For hazardous waste which is transported to a licensed hazardous waste disposal facility: 15¢ per gallon;
- B. For hazardous waste which is transported to a licensed hazardous waste treatment facility: 9¢ per gallon;
- C. For hazardous waste which is transported to a licensed hazardous waste storage facility and stored at that facility for more than 90 days: 6¢ per gallon; and
- D. For hazardous waste which is beneficially used or reused or legitimately recycled or reclaimed: 6¢ per gallon.

3. Fee for transportation into Maine from out-of-state. If hazardous waste is transported into Maine from out-of-state, the person who first transports the waste into Maine shall pay a fee equal to twice the amount indicated by the schedule outlined in subsection 2, as if that person was the generator of the hazardous waste. The commissioner may waive up to 50% of the fee imposed pursuant to this subsection if the state from which the hazardous waste is transported to Maine observes the same rules of reciprocity with regard to hazardous waste transported to that state from Maine.

4. Fee by person who owns or operates hazardous waste storage facility. Any person who owns or operates a licensed hazardous waste storage facility shall pay a fee for all hazardous waste which arrives at the storage facility according to the fee schedule in subsections 1 and 2, as if that person was the generator of the hazardous waste.

5. Fee for failure to treat hazardous waste within 90 days from arrival. Any person who owns or operates a hazardous waste treatment facility and who does not treat hazardous waste within 90 days from the date the hazardous waste arrives at the hazardous waste treatment facility shall pay a fee according to the fee schedule in subsections 1 and 2, as if that person was the generator of the hazardous waste.

6. Fee for transportation of waste oil not identified as hazardous waste. The transporter of waste oil not identified as hazardous waste shall pay a fee of \$0.01 per gallon. No fee shall be imposed by this subsection with respect to the waste oil if the transporter who would be liable for the fee establishes that a prior fee has been imposed by this subsection and paid to the Maine Hazardous Waste Fund with respect to the waste oil. The transporter of waste oil not identified as hazardous waste shall maintain records sufficient to determine whether the transporter is liable for any and all fees imposed on him pursuant to this subsection.

7. Time for payment of fees. Fees required by this section shall be paid on or before the 10th day of each calendar month, unless the fee due is less than \$1,000, in which case the fee may be paid quarterly.

8. **Penalty for late payment of fee.** In addition to any other liability or penalty imposed by law, any person liable for any fee imposed by this section shall pay 3 times the appropriate fee if the fee has not been paid to the Maine Hazardous Waste Fund within 6 months after the fee becomes due or if the hazardous waste is disposed, treated or stored in or transported to an unlicensed hazardous waste facility.

9. **Fees reduced when Maine Hazardous Waste Fund reaches limit.** Whenever the balance in the Maine Hazardous Waste Fund has reached the limit provided under this subchapter, and provided further that there are no loans authorized by section 1319-H which are outstanding, all fees imposed by subsections 1 through 6 shall be proportionately reduced to cover only administrative expenses and other sums approved by the Legislature.

§ 1319-H. Loans for emergency occurrence

Whenever in the judgment of the Governor or his designee circumstances involving hazardous waste exist that present a threat to the public health, safety or welfare, the Governor or his designee may declare an emergency. After such an emergency is declared, the Governor may borrow funds to implement section 1319-D, subsection 1, paragraph C in anticipation of fees to be paid into the fund.

§ 1319-I. Liabilities

All persons shall be liable for all acts and omissions of their agents, servants and employees.

In accordance with the intent of this subchapter as stated in section 1319-B, any person who permits or suffers to take place or contributes to any incident which involves the generation, transportation or handling of hazardous waste which threatens or results in danger or damage to public health, safety or welfare or to the natural environment, or which involves a violation of the statutes and regulations regarding hazardous waste, shall be liable to the State for all disbursements made by it pursuant to section 1319-D, subsection 1, paragraph C and for all other damage incurred by the State. In any suit to enforce claims of the State under this section to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the person causing, contributing to or responsible for the incident. The State need only plead and prove the fact of the incident and that the incident involved hazardous waste which was in the custody or possession or under the control of that person or that the incident occurred at or involved any real property, structure, equipment or conveyance under the control of that person.

§ 1319-J. Construction

This subchapter, being necessary for the general welfare, the public health and the public safety of the State and its inhabitants, shall be liberally construed to effect the purposes set forth under this subchapter. No rule, regulation or order of the board shall be stayed pending appeal under this subchapter.

Sec. 3. Allocation of Maine Hazardous Waste Fund. Income to the Maine Hazardous Waste Fund for the next 2 fiscal years from July 1, 1981 to June 30, 1982 and from July 1, 1982 to June 30, 1983 shall be segregated, apportioned and disbursed as designated in the following schedule.

	1981-82	1982-83
Natural Resources		
Department of Environmental Protection		
Operations	\$330,000	\$270,000

This allocates the Maine Hazardous Waste Fund.

Sec. 4. Allotments required. Upon receipt of allotments duly approved by the Governor based upon work programs submitted to the State Budget Officer, the State Controller shall authorize expenditure of these allocations together with expenditures for other purposes necessary to the conduct of State Government on the basis of such allotments and not otherwise.

Sec. 5. State requirements shall be followed. Accounting and budgeting requirements of the fund shall conform to those applicable to the expenditure of the state's own revenue.

STATEMENT OF FACT

The purpose of this bill is to fund the state's hazardous waste program by means of placing a fee on hazardous waste in Maine, similar to the way in which the State funds its Oil Division by means of a fee placed on oil transfers in Maine. It is appropriate that the businesses which create the necessity for a hazardous waste division in the Department of Environmental Protection pay the costs associated with the division, rather than having the burden fall directly on the shoulders of the general taxpayer.

The fees suggested in the bill are imposed on the generators of hazardous waste in Maine, as well as on those persons transporting hazardous waste to Maine from out-of-state. The fee schedule has been designed such that the greater the risk to the State, the greater the fee imposed.

The bill also establishes 2 licensing fees: and initial fee, which corresponds to the expenses the Department of Environmental Protection expects to incur in processing the license application, and an annual fee after the license is granted, which corresponds to the expenses the Department of Environmental Protection expects to incur in enforcing the license and processing license renewal requests.

The bill imposes strict liability on those persons responsible for incidents which result in or which threaten damage to the state's citizens or natural environment; the liability parallels the liability imposed by the Coastal Conveyance Act for incidents involving the discharge of oil.

The Department of Environmental Protection is directed to recover money spent by the fund to prevent or mitigate dangers from hazardous waste incidents. The budget for the hazardous waste unit will be presented to the Legislature for approval through the normal appropriation process. The attached tables provide an estimate of the amount of money that will be generated by this bill.

TABLE 1
Annual Revenue Estimated From Proposed Fee Schedule

Activity	Hazardous Waste Generated In-State			Hazardous Waste Generated Out-of-State Transported In-State			Total Dollars
	Gallons	Rate	Dollars	Gallons	Rate	Dollars	
Disposal on-site	260,000	0.12	31,200				31,200
Disposal off-site	450,000	0.15	67,500		0.15		67,500
Treatment on-site	325,000	0.06	19,500				19,500
Treatment off-site	35,000	0.09	3,150	7,500	0.09x2	1,350	4,500
Storage on-site	200,000	0.03	6,000				6,000
Storage off-site		0.06			0.06		
Recycle/Reuse on-site		0.03					
Recycle/Reuse off-site	620,000	0.06	37,200	400,000	0.06x2	48,000	85,200
Waste Oil	2,500,000	0.01	25,000	2,200,000	0.01	22,000	47,000
TOTALS	4,390,000		189,550	2,607,500		71,350	260,900

TABLE II
Annual Revenue Estimate From Proposed License Fee Schedule

Activity	Number	Fee	Dollars
Disposal	2	1,500	3,000
Treatment	7	1,000	7,000

Other	20	500	10,000
TOTALS			<u>20,000</u>

TABLE III (Sum of Table I & II)

**Annual Revenue Estimate From Proposed Fee Schedule
And Proposed License Fee Schedule**

Activity	Dollars
License	20,000
In-State Generation of Hazardous Generation	189,550
Out-of-State Generation of Hazardous Waste	71,350
TOTALS	<u>280,900</u>

TABLE IV

**First Year, One-Time, Revenue Estimate
From
Proposed Application Fee Schedule**

Activity	Number	Fee	Dollars
Disposal	2	10,000	20,000
Treatment	7	7,000	49,000
Other	20	2,500	50,000
TOTALS			<u>119,000</u>