

MAINE STATE LEGISLATURE

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ONE HUNDRED AND TENTH LEGISLATURE

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No. 1640

H. P. 1527

House of Representatives, May 21, 1981

Reported by Representative Michaud from the Committee on Energy and Natural Resources. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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-§ 9-A is enacted to read:

9-A. Site. "Site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided that 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 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, as amended by PL 1979, c. 663, § 235 and as

repealed and replaced by PL 1979, c. 699, § 8, is repealed and the following enacted in its place:

14. Waste facility. "Waste facility" means any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous or solid waste, sludge or septage. A land area or structure does not become a waste facility solely because:

- A.** It is used by its owner for disposing of septage from his residence; or
- B.** It is used to store for 90 days or less hazardous wastes generated on the same premises.

Sec. 4. 38 MRSA § 1303, sub-§ 15, as repealed and replaced by PL 1979, c. 699, § 8, is amended to read: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 handling and ~~transporting~~ transportation of hazardous or solid waste, sludge or septage.

Sec. 5. 38 MRSA § 1303, sub-§ 16 is enacted to read:

16. Waste resulting from agricultural activities. "Waste resulting from agricultural activities" means wastes which result from agricultural activities 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 that 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. 6. 38 MRSA § 1303-A, as enacted by PL 1979, c. 699, § 9, is repealed and the following enacted in its place:

§ 1303-A. Hazardous waste; additional rule-making authority

1. Hazardous wastes may be identified as follows.

A. The board may adopt rules identifying hazardous wastes. These rules may identify any substance as a hazardous waste if that substance is identified as hazardous by a particular substance, by characteristics, by chemical class or as waste products or specific industrial activities in proposed or final rules of the United States Environmental Protection Agency, unless the United States Environmental Protection Agency, by rule, no longer identifies the substance as hazardous.

B. The board may identify other substances as hazardous wastes under the following conditions:

- (1) The substance exhibits hazardous characteristics included in proposed or final United States Environmental Protection Agency rules; and
- (2) The substance is identified by a particular substance, by chemical class or as waste products of specific industrial activities.

- C. Rules identifying hazardous wastes under paragraph B shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review. These rules shall remain in effect until 90 days after the adjournment of the next regular session of the Legislature, unless these rules are approved by Joint Resolution.**
- 2. Handling of hazardous wastes. The board may adopt rules relating to the handling of hazardous wastes, including, but not limited to:**
- A. Containerization and labeling of hazardous wastes, consistent with applicable rules of other federal and state agencies;**
 - B. Reporting of handling of hazardous wastes; and**
 - C. Wastes which are not compatible.**
- 3. Transportation of hazardous wastes. The board may adopt rules relating to transportation of hazardous wastes, including, but not limited to:**
- A. Licensing of transporters of hazardous wastes, conveyances used for the transportation of hazardous wastes and the operators of these conveyances; and**
 - B. A manifest system for hazardous wastes which takes into consideration the requirements of the United States Resource Conservation and Recovery Act of 1976, Public Law 94-580, and this subchapter. 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 disposition, shall allocate responsibilities and liabilities at each point among generators, transporters and handlers of the hazardous waste and shall require record keeping and regular reporting to the department at each point.**
- 4. Waste facilities for hazardous wastes. 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:**
- A. Standards for the safe operation and maintenance of the waste facilities, including, but not limited to, record keeping, monitoring before and during operation of the facility and after its termination of use or closure, inspections and contingency plans to minimize potential damage from hazardous waste;**
 - B. The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities;**
 - C. The termination, closing and potential future uses of the waste facilities; and**
 - D. Rules equivalent to rules of the United States Environmental Protection Agency which provide for licensing or permitting by rule.**
- 5. Evidence of financial capacity. The board may adopt rules relating to evidence of financial capacity of hazardous waste facilities' owners or operators,**

and of those who transport hazardous waste, to protect public health, safety and welfare and the environment, including, but not limited to:

- A. Liability insurance;
- B. Bonding; and
- C. Financial ability to comply with statutory and regulatory requirements or conditions.

Sec. 7. 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. 8. 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. 9. 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 or has been transported, as well as samples of any containers or labels; and

Sec. 10. 38 MRSA § 1304, sub-§ 8, ¶ D, as repealed and replaced by PL 1979, c. 699, § 12, is repealed and the following enacted in its place:

- D. Interim licenses shall expire on the earliest of the following dates:

- (1) The date of the final administrative disposition of the application for a hazardous waste facility license;
- (2) The date of a finding of the board that the disposition referred to in subsection 1 has not been made because of the applicant's failure to furnish information reasonably required or requested to process the application;
- (3) The date of expiration of the license issued under section 414 or 591; or
- (4) The date on which the application for a hazardous waste facility license is due and the person operating under the interim license has failed to apply for the hazardous waste facility license.

Sec. 11. 38 MRSA § 1304, sub-§ 9 is enacted to read:

9. Legislative review. Rules adopted by the board under this section and

section 1303-A which impose standards or requirements more stringent than final regulations of the United States Environmental Protection Agency shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review.

Sec. 12. 38 MRSA § 1306, as amended by PL 1979, c. 663, § 237, and as repealed by PL 1979, c. 699, § 13, is repealed and the following enacted in its place:

§ 1306. Prohibition

It shall be unlawful for any person to establish, construct, alter or operate any waste facility without a permit issued by the board.

Sec. 13. 38 MRSA § 1306-A, as enacted by PL 1979, c. 699, § 14, is amended by adding before sub-§ 1 a new paragraph to read:

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, as enacted by PL 1979, c. 699, § 14, is amended to read:

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

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

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

Sec. 17. 38 MRSA § 1306-B, as enacted by PL 1979, c. 699, § 15, is repealed.

Sec. 18. 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 may 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 may 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 may 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 may 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.

5. Civil liability. A person who disposes of hazardous waste, when that disposal, in fact, endangers the health, safety or welfare of another, is liable in a civil suit for all resulting damages. It is not necessary to prove negligence.

For the purposes of this action, damages shall be limited to damages to real estate or personal property or loss of income directly or indirectly as a result of a disposal of hazardous wastes. Damages awarded may be mitigated if the disposal is the result of an act of war or an act of God.

Nothing in this section shall preclude any action for damages which may be maintained under the common law or the laws of this State.

Sec. 19. 38 MRSA § 1310, first paragraph, as repealed and replaced by PL 1979, c. 699, § 16, is repealed and the following enacted in its place:

If the commissioner finds, after investigation, that any waste, whether or not hazardous waste, is being handled, transported or otherwise dealt with in a manner which may create a danger to public health or safety, he may order any person handling, transporting or otherwise dealing with the 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 danger or likelihood of danger to cease or prevent that contribution.

STATEMENT OF FACT

The hazardous waste statute, enacted by the 109th Legislature and amended by its 2nd session, is intended to provide the State with the capability to manage hazardous wastes, primarily by enabling the State to be delegated 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 United States Environmental Protection Agency and have only become clarified as that agency has begun the actual process of reviewing states' applications for delegation of the federal program.

The United States Environmental Protection Agency has reviewed Maine's applications for delegation, which involves review of applicable legislation and

rules, and has indicated several areas where changes are needed for purposes of delegation. Changes made by the following sections are the result of the United States Environmental Protection Agency's review.

Sections 1 and 2. These sections 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 also more precise.

Section 3. This section 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. Further, there are presently 2 versions of Title 38, section 1303, subsection 14 in the law and this new draft eliminates one version.

Section 4. The definition of hazardous waste, 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 new draft to indicate its limits, which conform to the agricultural exclusion provided in the federal programs.

Sections 6 and 19. While the state's authority to regulate generators of hazardous waste is clearly implied in the present law, the United States 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 changes in these sections make more explicit the authority of the State to regulate generators of hazardous wastes. Section 6 also responds to the United States 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. Section 6 also requires legislative review of rules identifying hazardous wastes that have been "delisted" by the United States Environmental Protection Agency.

Sections 7 and 8. These changes respond to the United States 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 new draft broadens the language while retaining the residential exception which was of concern to the enacting Legislature.

Changes in the following sections are made to achieve greater internal consistency or otherwise clarify the statute.

Section 5. This change substitutes a term defined in the statute for one not defined.

Section 6. In addition to changes made in response to the United States Environmental Protection Agency's concerns, as discussed earlier in this statement of fact, this section contains a change which makes explicit the department's presently implicit authority to use the permit-by-rule method in licensing hazardous waste facilities. The section also provides consistent language in all subsections of Title 38, section 1303-A, corrects a word error and adds a section number and headnote.

Section 9. This change substitutes a term defined in the statute for one not defined, makes a grammatical correction and permits the taking of samples from conveyances in which hazardous waste has been transported as well as from those in which it is being transported.

Section 10. This section clarifies language which specifies one of the dates on which interim licenses for hazardous waste facilities expire and substitutes a more generally applicable date for the date certain which is presently in the statute.

Section 11. This section provides legislative oversight over state rules that are more strict than the United States Environmental Protection Agency requirements.

Section 12. This section clarifies the confusion brought about by different actions taken on Title 38, section 1306, by 2 different bills at the last session and does so by retaining the explicit prohibition which is implicit in the statute as a whole.

Section 13. This change makes it clear that the improper conduct defined in the section to which the change relates is punishable civilly as well as criminally and is subject to particular criminal penalties as provided in Title 38, section 349, subsection 3 as well.

Sections 14 and 15. These changes 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 changes make it clear that all hazardous waste handling activities, not just treating, storing and disposing, are subject to penalties when improperly conducted.

Section 16. This change 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.

Also, the Department of Environmental Protection has the authority to and now does license transporters of hazardous waste. This change 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.

Sections 17 and 18. Section 17 repeals the present forfeiture provision, Title 38, section 1306-B, and section 18 replaces that provision with Title 38, section 1306-C. The repeal is necessary because the provision is completely reorganized. Section

18 also makes the following changes: Inserts the word "handling" and "handled" in 2 places consistent with its present appearance at a 3rd point; inserts the term "civil," as not all proceedings under the statute in which forfeiture may be sought will be criminal; adds an additional class of property subject to forfeiture, closing the same loophole as found in the drug violations forfeiture law; and corrects a word error.