

MAINE STATE LEGISLATURE

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(New Title)
New Draft of: S. P. 447, L. D. 1303
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1685

S. P. 661

In Senate, June 2, 1981

Reported by the Minority of the Committee on Energy and Natural Resources and Printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

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

AN ACT to Establish a Hazardous Waste Response Fund and to Facilitate the Development of Needed Waste Facilities.

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

Sec. 1. 38 MRSA § 1303, sub-§ 1-B is enacted to read:

1-B. Commercial hazardous waste facility. "Commercial hazardous waste facility" means a waste facility which accepts, for handling, hazardous wastes other than those generated on site by the owner of the facility. The handling of residual hazardous wastes generated on site in the process of handling hazardous wastes are included within the scope of the facility's operations.

Sec. 2. 38 MRSA § 1303, sub-§ 11-A is enacted to read:

11-A. Substantially expand. "Substantially expand" means the expansion of an existing licensed hazardous waste facility by more than 25%, as measured by volume of waste or affected land area, from the date of its initial licensed operation.

Sec. 3. 38 MRSA § 1304, sub-§§ 6 and 7, as repealed and replaced by PL 1979, c. 699, § 11, are repealed.

Sec. 4. 38 MRSA § 1304, sub-§ 8, ¶ B, as enacted by PL 1979, c. 699, § 12, is repealed and the following enacted in its place:

B. If the facility is for hazardous waste, the board shall also find that:

- (1) The applicant presents evidence of sufficient financial capacity, including projections of utilization of the facility by hazardous waste generators, to justify granting the license;**
- (2) Issuing the license is consistent with the applicable standards, requirements and procedures of this chapter; and**
- (3) In the case of a disposal facility, the volume of the waste and the risks related to its handling have been reduced to the maximum practical extent by treatment and volume reduction prior to disposal.**

Sec. 5. 38 MRSA § 1304-A is enacted to read:

§ 1304-A. Data; facility needs plan

1. Data collection and monitoring. The board shall have data on the generation, transportation and handling of hazardous waste collected and monitored in a coordinated manner. It shall use that data to review the need for adequate waste facilities for generators in this State, and it shall develop appropriate policies and recommendations to insure that suitable waste facilities are available.

2. Report to the board. The commissioner shall annually, prior to October 1st, prepare a report to the board covering the prior fiscal year which shall include the following data:

- A. The amount of hazardous waste by type that is generated, handled or transported within the State;**
- B. The amount of hazardous waste by type that is handled at commercial waste facilities within the State;**
- C. The number of hazardous waste facility permits by type currently active and the number granted and revoked in the year;**
- D. The amount of hazardous waste by type generated outside the State that was handled at permitted facilities within the State, and the amount of hazardous waste generated within the State that was handled at facilities located outside the State;**
- E. A list of hazardous waste facilities located within the State and those located outside the State which are available for use by generators in the State; and**
- F. A list of known firms that provide testing, consulting, brokerage, waste exchange, transport or other services to hazardous waste generators.**

3. Facility needs plan. The board shall, prior to January 1st of each year, prepare a plan which shall consider the need for new hazardous waste facilities. Specifically, it shall include:

- A. An identification of hazardous wastes generated within the State for which new commercial treatment facilities would be desirable, and the preferred technologies to be utilized;
- B. An identification of hazardous wastes by type generated within the State which are capable of being reused and recycled, and a corresponding reference to available technology or facilities;
- C. An identification of the hazardous wastes generated within the State for which treatment facilities are not currently available within or outside the State;
- D. A survey of generators of hazardous waste identified in paragraph C and facilities used by them, which provides the best estimates of future waste quantities, costs and capacity for the disposal of those wastes; and
- E. Identification of those geological areas of the State which, based on siting criteria in rules adopted by the United States Environmental Protection Agency and in rules adopted by the board, are unsuitable for hazardous waste disposal facilities.

4. Legislative recommendations. The commissioner shall make an annual status report to the Legislature concerning hazardous waste management, which shall include any recommendations of the board for legislative action to develop and establish needed hazardous waste facilities. These may include tax and other financial incentives or recommendations to directly, or through an instrumentality, acquire suitable sites for hazardous waste facilities, or to construct and operate hazardous waste facilities. Recommendations in the annual status report shall be based solely on the information and plans prepared pursuant to this section and information obtained at public hearings.

5. Procedural requirements. All policies, plans and recommendations adopted by the board under this section, except for the report in subsection 2, shall be subject to the notice and hearing requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 6. 38 MRSA § 1305-A is enacted to read:

§ 1305-A. Municipal participation for commercial hazardous waste facilities

1. Municipal ordinances. Municipalities may enact necessary police power ordinances dealing with commercial hazardous waste facilities, provided that they are not more stringent than or duplicative of the hazardous waste provisions of this chapter or rules and orders promulgated by the board. The board shall incorporate all applicable local requirements to the fullest extent practicable.

2. Site review. All persons who make application for a license to construct, operate or substantially expand a commercial hazardous waste facility shall, at the same time, give written notice to the municipal officers of the municipality in which the proposed facility will be located. The municipality through its

municipal officers shall be granted intervenor status in any proceeding for site review of a commercial hazardous waste facility. The department shall reimburse the municipalities' direct costs, not to exceed \$5,000, for participation in the proceedings.

The Governor may appoint a person to facilitate communications between the applicant and the municipality and between the department and the municipality.

The State may accept public and private funds from any source for the purpose of carrying out responsibilities under this section.

The board shall hold at least one public hearing within the municipality in which the facility will be located.

During any proceeding for site review of a commercial hazardous waste facility, the municipal legislative body in which the facility is to be located may appoint 4 nonvoting representatives to the board. These nonvoting members shall participate on the board only for that site review, until final disposition of the application, including any administrative or judicial appeals. The municipal members shall receive the same pay for each day and expenses as regular board members during the period of their service, to be paid by the department.

3. **Municipal fees authorized.** A municipality may, by ordinance, levy a fee on a commercial hazardous waste facility located in the municipality. These fees shall be applied as a percentage of the annual billings of the facility to its customers. No fee so levied may exceed 2% of the annual billings. The department may audit the accounts of a facility to determine the amount of the fee owed to the municipality.

4. **Application.** Except for substantial expansion, this section does not apply to any facility which has been granted an interim or final license prior to the effective date of this Act.

Sec. 7. 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 that the proper handling of hazardous waste and protection of the natural environment are important to the public health, safety and welfare. The Legislature also finds that spills and unlicensed discharges of hazardous waste may cause damage to owners and users of property, public and private recreational activities, the natural environment and the general health and safety of citizens of the State.

The Legislature further finds that it is in the public interest of the State and its citizens to provide the capability for prompt and effective response to spills and unlicensed discharges of hazardous waste and that this state's interest outweighs

the economic burdens and any burden of strict liability imposed by this subchapter upon those engaged in generating, transporting and handling hazardous waste.

§ 1319-C. 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, disposing, emptying or dumping of hazardous waste onto the land or into the water or ambient air.

2. **Remove or removal.** “Remove” or “removal” means:

A. Treatment or cleanup of a discharge of hazardous waste; or

B. Action necessary to prevent or minimize danger from a discharge or threatened discharge of hazardous waste.

§ 1319-D. 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 under this subchapter. This fund shall not exceed \$600,000. All fees, penalties, interest and other charges under this subchapter shall be credited to this fund.

Money 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 fund.

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

1. **Money disbursed.** Money in the Maine Hazardous Waste Fund may be disbursed by the department for the following purposes, but for no other:

A. Costs incurred in the removal of an unlicensed discharge or threatened discharge of hazardous waste. Whenever practical, the department shall offer the responsible party the opportunity to remove the discharge or threatened discharge;

B. Notwithstanding paragraph A, disbursements to remove discharges of hazardous waste, which are not sudden and which involve costs exceeding \$10,000, may only be expended in accordance with an allocation approved by the Legislature;

C. Costs incurred for the purchase of necessary hazardous waste response equipment and supplies, response personnel and training of response personnel in accordance with an allocation approved by the Legislature; and

D. Amounts necessary to reimburse municipalities as required by section 1305-A, subsection 3.

2. Limitation. Money 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, Public Law 96-510.

1319-F. Personnel and equipment

The commissioner may employ personnel, subject to the Personnel Laws, and maintain equipment necessary to carry out the department's responsibilities under this subchapter.

§ 1319-G. Reimbursement to the fund

1. Recovery. The department shall seek recovery to the use of the Maine Hazardous Waste Fund all sums expended therefrom, including overdrafts, for disbursements made from the fund under section 1319-E, subsection 1, paragraphs A, B and C, including interest computed at 10% a year from the date of expenditure, unless the board finds the amount too small or the likelihood of recovery too uncertain. Requests for reimbursement shall be referred to the Attorney General for collection.

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.

2. Waiver of reimbursement. Upon petition of any person who has 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-E; and
- C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

§ 1319-H. Application and annual fees

1. Fees for reviewing applications. The following fees are required for reviewing applications.

A. Any person who applies for a license for a hazardous waste facility shall pay the appropriate fee. An application for a license will not be considered complete and will not be processed until this fee is received. Application fees are as follows.

- (1) Disposal facility\$10,000

- (2) Commercial treatment facility 7,000
- (3) On-site treatment facility 4,000
- (4) Other waste facility for hazardous waste, including treatment facilities other than on-site and commercial treatment facilities 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 are required for an initial application and for any substantial modification to the facility or to the license. The fee is not required for renewal applications or for an application to allow a change of ownership or operator, where, in such cases, no substantial change to the facility or license is sought.

2. Annual fees. Licensed hazardous waste facilities are subject to the following annual fees.

- A. Disposal facility \$1,500
- B. Commercial treatment facility and on-site treatment facility 1,000
- C. Other waste facilities for hazardous waste, including treatment facilities other than on-site and commercial treatment facilities 500

3. Commercial and on-site treatment facilities. For the purposes of this section, a commercial treatment facility is a commercial hazardous waste facility which treats hazardous waste. An on-site treatment facility is a licensed hazardous waste treatment facility which uses a noncontinuous treatment process to treat in excess of 1,000 kilograms of hazardous waste in any calendar month.

§ 1319-I. Fees

1. Fees for actions taken on the site of generator. Any person in the State who generates more than 1000 kilograms of hazardous waste in any calendar month shall pay a fee as follows:

- A. For hazardous waste which is disposed of on the site of generation in a licensed hazardous waste disposal facility, 12¢ a gallon; and
- B. For hazardous waste which is stored on the site of generation in a licensed hazardous waste storage facility for more than 90 days, but less than 6 calendar months, and for each time period thereafter or 6 calendar months or portion thereof, 3¢ a gallon.

2. Fees for action taken off site of generation. Any person in the State who generates more than 1,000 kilograms of hazardous waste in any calendar month shall pay a fee for actions taken off the site of generation as follows:

- A. For hazardous waste which is transported off site to a licensed hazardous waste disposal facility for disposal, 15¢ a gallon;

B. For hazardous waste which is transported off site to a licensed hazardous waste treatment facility for treatment, 9¢ a gallon;

C. For hazardous waste which is transported off site to a licensed hazardous waste storage facility and stored at the storage facility for more than 3 months, but less than 6 months, 6¢ a gallon. After storage at the facility for 6 months, the owner or operator of that hazardous waste facility shall pay 3¢ a gallon for the hazardous waste stored at that facility for each 6-month period or portion thereof; and

D. For hazardous waste which is transported off site to be beneficially used or reused or legitimately recycled or reclaimed, 6¢ a 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 hazardous waste into Maine shall pay a fee equal to twice the amount indicated by the schedules outlined in subsections 2 and 5, as if that person were the generator of the hazardous waste.

The commissioner may waive up to 50% of the fee imposed under this subsection if the state from which the hazardous waste is transported to Maine observes the same reciprocity with regard to hazardous waste transported to that state from Maine.

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

5. Time of payment of fees. Fees required by this section shall be paid according to time schedules established by the commissioner, but not more frequently than quarterly.

6. 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.

7. Fees reduced when fund reaches limit. Whenever the balance in the fund has reached the limit provided in this subchapter, all fees imposed by this section shall be proportionately reduced to cover only removal costs incurred and sums approved by the Legislature.

8. Limit on fees. No person may be required to pay, for any calendar year, more than \$20,000 in fees under subsections 1 and 2.

9. Hazardous waste subject to fees. No hazardous waste may be subject to fees established in this section unless the waste is identified under section 1303-A,

subsection 1, provided that waste identified under section 1303-A, subsection 1, paragraph B, shall not be subject to the fees until approved according to section 1303-A, subsection 1, paragraph C.

10. Sunset on certain fees. Fees established in this section are repealed, effective December 31, 1983, unless continued by the Legislature.

§ 1319-J. Liability

Any person who permits, causes or is responsible for a discharge or threatened discharge of hazardous waste shall reimburse the State for all costs incurred, including personnel costs, in the removal of the discharge or threatened discharge. Funds recovered under this section shall be deposited to the account from which they were expended. Requests for reimbursement, if not made 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 or threatened discharge. The State need only plead and prove the fact of the discharge or threatened discharge and that the discharge or threatened discharge occurred while the hazardous waste was in the custody or control of the person causing permitting or responsible for the discharge or threatened discharge or that the discharge or threatened discharge occurred at or involved any real property, structure, equipment or conveyance under the custody or control of that person.

§ 1319-K. Construction

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

Sec. 8. 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		
Bureau of Oil and Hazardous Materials Control for hazardous waste response personnel, training and equipment.		
Positions	(5)	(5)
Personal Services	\$109,865	\$115,727

All Other	25,135	19,273
Capital Expenditures	<u>35,000</u>	<u>110,000</u>
TOTAL	\$170,000	\$245,000

This allocates the Maine Hazardous Waste Fund.

FISCAL NOTE

It is estimated that this new draft will generate the following revenues.

Annual fees on hazardous waste	\$188,900
Annual fees on hazardous waste facilities	20,000
One-time revenue from hazardous waste application fees	119,000
	<u>\$327,900</u>

The new draft allocates \$170,000 of this revenue to the Bureau of Oil and Hazardous Materials Control for fiscal year 1982 and \$245,000 for fiscal year 1983.

STATEMENT OF FACT

This new draft incorporates the hazardous waste facility string provisions of L. D. 1508 and the fee and emergency response capability in L. D. 1303.

Sections 1 and 2 provide new definitions.

Sections 3, 4 and 5 repeal the existing provisions for study and hazardous waste planning, and substitute a requirement for the Board of Environmental Protection to gather certain data and annually develop a facility needs plan.

Section 6 provides for municipal participation in review of new commercial hazardous waste facilities. Municipalities may not enact ordinances restricting these facilities, but the municipalities are parties in state review, may appoint 4 nonvoting members to the board for this review and may require fees of up to 2% of annual billings on commercial hazardous waste facilities.

Section 7 enacts a new subchapter relating to a hazardous waste fund. The subchapter assesses application and annual fees on hazardous waste facilities and fees on generation of hazardous wastes. Revenues are credited to the Maine Hazardous Waste Fund. The fund is modeled after the Maine Coastal Protection Fund. It may not exceed \$600,000 and is to be used for costs incurred in the removal of discharge or threatened discharge of hazardous wastes. Fees to the fund are repealed December 31, 1983.

This new draft deletes fees on waste oil.