

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1310

S.P. 430

In Senate, April 21, 1987

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate  
Presented by Senator TUTTLE of York.

Cosponsored by Representative MURPHY of Berwick,  
Representative LORD of Waterboro, Senator ESTES of York.

STATE OF MAINE

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

1 AN ACT to Amend the Laws Regarding the  
2 Regulation of Landfills and other  
3 Waste Disposal Facilities.  
4

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

7 Sec. 1. 38 MRS A §1303-C is enacted to read:

8 §1303-C. Emergency rules; landfills

9 The commissioner may declare an emergency morato-  
10 rium on the processing and approval of applications  
11 for the construction and operation of new commercial  
12 landfill disposal facilities subject to this section.

13 1. Procedures. The commissioner shall employ  
14 the emergency rule-making procedures established by  
15 Title 5, chapter 375.

1           2. Duration. The moratorium shall be for a pe-  
2 riod not longer than 90 days following the adjourn-  
3 ment of the next regular or special session of the  
4 Legislature.

5           3. Emergency criteria. In determining the need  
6 for an emergency moratorium, the commissioner shall  
7 consider:

8           A. The adequacy of the department's current  
9 statutory authority and rules to adequately pro-  
10 tect the environment and the public health and  
11 welfare from the potential hazards posed by pend-  
12 ing applications for commercial landfill facili-  
13 ties; and

14           B. The State's need for landfill capacity, the  
15 immediate availability of other disposal options  
16 and the economic impact of a temporary halt in  
17 landfill development.

18           4. Application of rule. Notwithstanding the  
19 provisions of section 344 or Title 1, section 302,  
20 the department shall not process or act upon any ap-  
21 plication for, and the board shall not issue, a li-  
22 cence for a new or substantially expanded commercial  
23 landfill facility during the duration of a moratorium  
24 adopted pursuant to this section.

25           Sec. 2. 38 MRS §1304, sub-§2, as repealed and  
26 replaced by PL 1979, c. 383, §4, is repealed.

27           Sec. 3. 38 MRS §1304, sub-§8, ¶A, as amended by  
28 PL 1985, c. 822, §4, is further amended to read:

29           A. The board shall issue a license for a  
30 hazardous waste facility whenever it finds it  
31 will not pollute any water of the State, contami-  
32 nate the ambient air, constitute a hazard to  
33 health or welfare, or create a nuisance. In mak-  
34 ing these findings, the board shall consider the  
35 criminal record of the applicant and the civil  
36 record of the applicant with regard to compliance  
37 with the environmental laws or rules of this  
38 State or any other state or the Federal Govern-  
39 ment. Licenses shall be issued under the terms  
40 and conditions as the board may prescribe, and

1 for a term not to exceed 5 years. The board may  
2 establish reasonable time schedules for compli-  
3 ance with this subchapter and regulations promul-  
4 gated by the board. Prior to ~~91-days-after-the~~  
5 ~~First-Regular-Session-of--the--113th--Legislature~~  
6 adjourns July 1, 1988, the department shall not  
7 process or act upon any application for, and the  
8 board shall not issue, a license for a new com-  
9 mercial landfill facility or the substantial ex-  
10 pansion of a commercial landfill facility. In  
11 processing applications after the moratorium,  
12 priority shall be given to applications for com-  
13 mercial landfill facilities used for the disposal  
14 of solid waste which is generated by an energy  
15 recovery facility designed to reduce the volume  
16 or alter the physical characteristics of municip-  
17 al solid waste and to produce electricity  
18 through incineration.

19 Sec. 4. 38 MRSa §§1310-C to 1310-E are enacted  
20 to read:

21 §1310-C. Site location license

22 No person may locate, establish, construct, alter  
23 or operate any solid waste facility, unless approved  
24 by the board under this chapter and the site location  
25 of development law, chapter 3, subchapter I, article  
26 6. The board shall consider the criminal record of  
27 the applicant and the civil record of the applicant  
28 with regard to compliance with the environmental laws  
29 or rules of this State or any other state or the Fed-  
30 eral Government.

31 1. Licenses. The board shall issue a license  
32 for a waste facility whenever it finds that:

33 A. The facility will not pollute any water of  
34 the State, contaminate the ambient air, consti-  
35 tute a hazard to health or welfare or create a  
36 nuisance;

37 B. In the case of disposal facilities, the fa-  
38 cility is required to meet clearly identified  
39 public needs for disposal capacity;

1 C. In the case of a disposal facility, the vol-  
2 ume of the waste and the risks related to its  
3 handling and disposal have been reduced to the  
4 maximum practical extent by recycling and source  
5 reduction prior to disposal; and

6 D. The applicant has received all necessary lo-  
7 cal permits or licenses.

8 2. Finding of environmental suitability. The  
9 board shall issue a finding of environmental  
10 suitability when it determines that the appli-  
11 cant has satisfied the requirements of the subsection  
12 1, paragraph A and the site location of development  
13 law, chapter 3, subchapter I, article 6, and prior to  
14 making its determinations pursuant to subsection 1,  
15 paragraphs B, C and D.

16 3. Public needs determination. The board shall  
17 find that a facility meets clearly identified public  
18 needs for disposal capacity when the applicant demon-  
19 strates that:

20 A. The applicant possesses firm contractual com-  
21 mitments from waste generators located within the  
22 State; and the proposed facility is sized to meet  
23 the requirements of the applicant's contractual  
24 commitments, the capacity needs identified pursu-  
25 ant to section 1310-D and an additional amount as  
26 the board finds necessary to reasonably provide  
27 for unpredictable future circumstances. The ad-  
28 ditional amount may not exceed 20% of the capaci-  
29 ty needs identified pursuant to section 1310-D;  
30 or

31 B. In the case of an emergency in which the  
32 board finds that the capacity needs analysis pre-  
33 pared pursuant to section 1310-D, does not re-  
34 fect the immediate needs of the State for dis-  
35 posal capacity, the board may waive the require-  
36 ment that the size of the proposed facility be  
37 consistent with capacity needs analysis. In such  
38 situations, the board shall base its decision on  
39 facility size on information provided by the ap-  
40 plicant under paragraph A.

1           4. Presumption of public need. In the case of a  
2 waste disposal facility receiving only wastes gener-  
3 ated by the applicant or, in the case of a municipal  
4 applicant, by the citizens of the municipality, the  
5 board shall find that the applicant has met the re-  
6 quirements of subsection 3.

7           5. Recycling and source reduction determination.  
8 The board shall find that subsection 1, paragraph C,  
9 are satisfied when the applicant demonstrates that:

10           A. The proposed solid waste disposal facility  
11 will accept solid waste which is, at its source  
12 or point of generation, subject to recycling and  
13 source reduction requirments at least as strin-  
14 gent as those imposed by this chapter and other  
15 provisions of law.

16                 (1) The board shall attach this requirement  
17 as a standard condition to the license of a  
18 solid waste disposal facility governing the  
19 future acceptance of solid waste at the pro-  
20 posed facility; and

21           B. The applicant has incorporated into the fa-  
22 ility design the best technically and economi-  
23 cally feasible recycling alternatives which are  
24 reasonably within the applicant's control.

25                 (1) The board may require an applicant for  
26 a solid waste disposal facility license to  
27 conduct an assessment of the recycling al-  
28 ternatives applicable to the solid waste  
29 stream of the proposed facility. The appli-  
30 cant shall study the technical and economic  
31 feasibility of the alternatives under pre-  
32 vailing market conditions. The board shall  
33 evaluate the applicant's recycling assess-  
34 ment in conjunction with the most recent  
35 state recycling plan.

36           6. Terms and compliance schedules. Licenses  
37 shall be issued under the terms and conditions as the  
38 board may prescribe and for a term not to exceed 5  
39 years. The board may establish reasonable time  
40 schedules for compliance with this article and rules  
41 promulgated by the board.

1 §1310-D. Capacity needs analysis

2 The board shall complete and adopt by rule an  
3 analysis of the solid waste disposal capacity needs  
4 of the State by January 1, 1989. The analysis shall  
5 provide the basis for facility siting decisions as  
6 provided in section 1310-C, subsection 1, paragraph B  
7 and subsection 3. The analysis shall also serve as  
8 guide for municipal and commercial entities inter-  
9 ested in developing solid waste facilities to meet  
10 the State's needs. The board shall prepare the ca-  
11 capacity needs analysis according to the following pro-  
12 visions.

13 1. Data collection. The board shall develop and  
14 maintain a comprehensive data base on solid waste in  
15 the State. The types of data collected shall in-  
16 clude:

17 A. The amount of solid waste generated, handled  
18 or transported within the State;

19 B. The source of the waste;

20 C. The type of waste;

21 D. The type of treatment or disposal technolo-  
22 gies currently employed, including, without limi-  
23 tation, recycling, landspreading, composting or  
24 incineration; and

25 E. The capacity of existing licensed solid waste  
26 treatment and disposal facilities receiving  
27 wastes generated within the State.

28 2. Needs analysis. The board shall identify the  
29 need for solid waste treatment and disposal capacity  
30 by type of solid waste. Specifically, the analysis  
31 shall include:

32 A. Identification of solid wastes by type gener-  
33 ated within the State which are capable of being  
34 reused or recycled in an economically and  
35 environmentally sound manner and the preferred  
36 technologies to be utilized;

37 B. A survey of the solid waste generators and  
38 the facilities they utilize;

1 C. Estimation of waste generation by waste type  
2 over the next 10 years based on the best availa-  
3 ble forecasts of economic activity within the  
4 State, estimates provided by the solid waste gener-  
5 ators and other available information; and

6 D. Comparison of the projected waste generation  
7 levels with existing capacity.

8 3. Regional and local considerations. In devel-  
9 oping the capacity needs analysis, the board shall  
10 consult with regional planning commissions and munic-  
11 ipal officials concerning the specific needs of their  
12 locale. The board shall identify areas of the State  
13 which are underserved with regard to waste treatment  
14 or disposal capacity or which have capacity in excess  
15 of regional need.

16 4. Revisions. The board shall revise the analy-  
17 sis as necessary, but in no case less than every 2  
18 years to incorporate changes in the waste generation  
19 trends, changes in waste disposal technologies, the  
20 development of new waste generating activities and  
21 other factors affecting solid waste management as the  
22 board finds appropriate.

23 5. Rules and procedural requirements. The board  
24 may adopt rules as necessary to require waste genera-  
25 tors, handlers and disposal facility operators to re-  
26 port on the types, quantities and characteristics of  
27 the solid wastes they handle and on the capacity of  
28 the facilities they operate. The board shall coordi-  
29 nate development of the solid waste capacity needs  
30 analysis with the hazardous waste facility needs plan  
31 developed annually pursuant to section 1304-A.

32 §1310-E. Transition provisions

33 The following transition provisions shall apply  
34 to applicants for solid waste disposal facility li-  
35 censes.

36 1. Recycling. The provisions of section 1310-C,  
37 subsection 1, paragraph C, and subsection 5, shall  
38 apply to all solid waste disposal facilities licensed  
39 after January 1, 1988. Beginning on January 1, 1992,  
40 the board, at the time of renewal of licenses issued



1 under this article, shall apply to section 1310-C,  
2 subsection 1, paragraph C, and subsection 5 to all  
3 solid waste disposal facilities.

4 2. Capacity needs. The provisions of section  
5 1310-C, subsection 1, paragraph B, and subsection 3,  
6 shall apply to all applications for solid waste dis-  
7 posal facility licenses accepted after the adoption  
8 of the capacity needs analysis pursuant to section  
9 1310-D. An applicant for a solid waste disposal fa-  
10 ility submitting a complete application prior to the  
11 initial adoption of the capacity needs analysis shall  
12 submit such information as the board may require to  
13 demonstrate that the proposed facility is sized to  
14 meet a clearly demonstrated state need for additional  
15 disposal capacity. Renewal of a license granted pri-  
16 or to the initial adoption of the capacity needs  
17 analysis shall be conditioned on a finding by the  
18 board of consistency with the current capacity needs  
19 analysis.

20 STATEMENT OF FACT

21 The purpose of this bill is to strengthen the  
22 solid waste management laws of the State. The bill  
23 extends the current moratorium on commercial  
24 landfills to give the State time to implement provi-  
25 sions of this bill. The bill gives the Commissioner  
26 of Environmental Protection the authority to declare  
27 emergency moratoriums on licensing under certain sit-  
28 uations. The bill also explicitly authorizes the  
29 Board of Environmental Protection to consider the  
30 criminal record of an applicant for a solid waste and  
31 hazardous waste disposal facility during the licens-  
32 ing process. Finally, the bill sets up a revised  
33 siting and licensing process for solid waste disposal  
34 facilities to control the development of capacity to  
35 meet the State's needs.

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