

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "C" to H.P. 1249, L.D. 1747, Bill, "An Act to Protect the Public from Unsafe Industrial and Commercial Facilities"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

37-B MRSA §805-A is enacted to read:

§805-A. Enforcement of safety requirements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Applicable facility" means any location:

(1) Where extremely hazardous substances or toxic chemicals are present;

(2) At which more than 1/2 of the employees regularly assigned to handle extremely hazardous substances or toxic chemicals at the facility have worked in that capacity for less than 6 consecutive months; and

(3) At which there are more than 100 full-time employees.

B. "Employee" means any person employed by a facility and includes employees of other entities when they are acting as agents of the facility owner or operator.

C. "Extremely hazardous substances" means extremely hazardous substances in greater than threshold planning quantities.

D. "Toxic chemicals" means toxic chemicals in greater than threshold planning quantities.

2 2. Notification to commissioner. A facility owner or
operator, the employees of the facility, persons residing in the
4 vicinity of the facility or any state agency may notify the
Commissioner of Environmental Protection of the potential
6 existence of an applicable facility. The commissioner may
request or subpoena any information necessary to determine the
8 applicability of this section from the facility owner or
operator. The facility owner or operator must provide the
10 information within 48 hours after receiving the request. Within
48 hours after determining the existence of an applicable
12 facility, the Commissioner of Environmental Protection shall
notify the Commissioner of Labor and the Director of the Maine
14 Emergency Management Agency of this determination.

16 3. Public notice. Immediately after determining the
existence of an applicable facility under subsection 2, the
18 Commissioner of Environmental Protection shall notify the
applicable local emergency planning committee of the pending
20 examination of compliance under subsection 4 and shall publish a
notice in a newspaper of general circulation in the area in which
22 the applicable facility is located. The notice must state:

24 A. The name, address and nature of the business of the
facility;

26 B. The fact of the pending examination and its purpose; and

28 C. The date or dates of the examination.

30 4. Examination of compliance. The following actions must
32 be taken within 5 working days after the Commissioner of
Environmental Protection notifies the Commissioner of Labor and
34 the Director of the Maine Emergency Management Agency under
subsection 2.

36 A. The Department of Labor shall determine whether:

38 (1) Employees who are regularly assigned to handle
40 extremely hazardous substances and toxic chemicals and
42 who have worked in that capacity for less than 6 months
44 have received training as required by the Occupational
46 Safety and Health Administration hazard communication
48 standard, 29 Code of Federal Regulations, Section
50 1910.1200, or training as required under Title 26,
52 section 1715, whichever is applicable. The department
shall take any measures that it considers appropriate
to ensure the accuracy of training records for these
employees. These measures may include, but are not
limited to, random verification of employee identity
and the veracity of training records; and

2 (2) The extremely hazardous substances and toxic
3 chemicals are stored and labeled in accordance with the
4 Occupational Safety and Health Administration hazard
5 communications standard, 29 Code of Federal
6 Regulations, Section 1910.1200, or Title 26, section
7 1713, whichever is applicable.

8 B. If the facility is subject to section 795, the Maine
9 Emergency Management Agency shall determine whether the
10 facility has developed the emergency response plan required
11 under that section.

12 C. The Department of Environmental Protection shall:

13 (1) Inspect the facility's air and water pollution
14 control equipment to determine that there is no
15 imminent and substantial threat to public health; and

16 (2) Determine whether any licenses issued to the
17 facility by the department have expired. Licenses are
18 deemed not to have expired if they are currently
19 effective or if the facility is operating:

20 (a) Under a consent order;

21 (b) Under a license continued by operation of
22 law; or

23 (c) Pursuant to other legal authorization.

24 Determinations under this subsection may be made by a review of
25 records filed with the State or the departments or the agency may
26 request or subpoena any relevant documents from the facility
27 owner or operator. The Commissioner of Labor or the Commissioner
28 of Environmental Protection may request access to those portions
29 of the facility necessary to determine compliance with this
30 subsection, and if the facility is not in compliance, whether the
31 noncompliance presents an imminent and substantial danger to
32 public health. If access is refused after request, the state
33 agents may seek an administrative inspection warrant under the
34 Maine Rules of Civil Procedure, Rule 80E.

35 5. Representatives during inspection. If an on-site
36 inspection of the applicable facility is conducted under
37 subsection 4, the Department of Labor or the Department of
38 Environmental Protection shall permit the following persons, if
39 they desire, to accompany the state agents during any inspection:

40 A. Representatives of the facility owner or operator;

41 B. One municipal officer designated by the municipal
42 officers of the municipality in which the applicable
43 facility is located; and

2 C. One member of the local emergency planning committee
3 designated by that committee.

4
5 6. Injunction. If any of the determinations under
6 subsection 4, paragraphs A to C, are negative and the
7 Commissioner of Environmental Protection, after consulting with
8 the Department of Labor and the Maine Emergency Management
9 Agency, determines that continued operation of the facility is
10 likely to cause an imminent and substantial danger to public
11 health, the commissioner shall request that the Attorney General
12 file an action in Superior Court to obtain a preliminary or final
13 injunction under this subsection. If the court finds that
14 continued operation of the facility is likely to cause an
15 imminent and substantial danger to public health, the court shall
16 issue an injunction directing the facility owner or operator to
17 cease the processing of extremely hazardous substances at the
18 facility in greater than threshold quantities or to cease the
19 manufacturing, processing or use of toxic chemicals in greater
20 than threshold quantities. This injunction may not prohibit the
21 taking of any measures related to the handling of the substances
22 or chemicals necessary to protect health and the environment.
23 When the owner or operator of the facility certifies to the
24 Commissioner of Environmental Protection that all the
25 requirements of subsection 4 have been met, the commissioner
26 shall notify the Court and the Court shall dissolve the
27 injunction.

28
29 7. Notice of determinations. The Department of
30 Environmental Protection shall promptly notify any person who
31 notifies the commissioner under subsection 2 of any
32 determinations made under this section and make the findings of
33 the examination conducted under subsection 4 available to the
34 public.

35 8. Penalty. Any owner or operator of an applicable
36 facility who fails to comply with any injunction issued under
37 subsection 6 is subject to a civil penalty of \$5,000, payable to
38 the State. Each day of violation constitutes a separate offense.

39 9. Liability and remedies unaffected. This section does
40 not affect in any way the liability of a facility owner or
41 operator or the remedies of any person, under common law or under
42 any other statute, for injury or damage caused by the operation
43 of a facility subject to this section.

FISCAL NOTE

44
45 The Department of Environmental Protection, the Department
46 of Labor, the Maine Emergency Management Agency, the Department
47 of the Attorney General and the Judicial Department will each
48 incur some additional costs if the provisions of the bill are

invoked. The frequency of occurrence and the amount of incremental costs are such that the costs could be absorbed within the existing budgeted resources of the respective departments and agencies.'

STATEMENT OF FACT

This amendment replaces the bill and provides a means to protect the public from the hazard that may arise from the replacement of a significant number of workers at companies using hazardous chemicals. The amendment permits the Department of Environmental Protection to respond to requests to investigate the potential existence of an unsafe facility. The amendment applies only to those facilities that employ over 100 full-time workers and use extremely hazardous substances or toxic chemicals in amounts large enough to pose a public safety hazard. If, upon investigation, it is found that more than 1/2 of the workers regularly assigned to handle those substances or chemicals are new to a facility, the Commissioner of Environmental Protection must initiate an inspection process and publish a notice of the pending examination of compliance in local newspapers to inform the public.

The inspection process is designed to ensure that the facility is complying with applicable laws regulating the use of hazardous substances or toxic chemicals. The inspection requires the Department of Labor to determine whether the employees have received the required training to handle extremely hazardous substances and toxic chemicals and whether these substances and chemicals are stored and labeled in compliance with applicable laws. The Maine Emergency Management Agency must determine if the facility has developed the required emergency response plan. Finally, the Department of Environmental Protection must inspect the facility's air and water pollution control equipment to ensure that no imminent threat to public health exists and must determine whether the facility's licenses have expired. Representatives of the facility owner or operator, local government and a local emergency planning committee are permitted to accompany the state agents during any on-site inspection of the facility. The Department of Labor and the Department of Environmental Protection may seek an administrative inspection warrant to perform the inspection if the facility owner or operator refuses access to the facility. The facility is permitted to continue its operations while the inspection is in progress. If the facility is found not to be in compliance with any of these requirements and if an imminent threat to the public health exists, the Commissioner of Environmental Protection must request that the Attorney General seek an injunction requiring the facility to cease the use of those substances or chemicals until compliance is certified to the commissioner. The penalty for violating the injunction is \$5,000 for each day of violation.