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L.D. 2192

(Filing No. S- 657)

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STATE OF MAINE
SENATE
114TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT " A " to H.P. 1583, L.D. 2192, Bill, "An Act to Reduce the Use of Toxic Substances in the Workplace and Minimize the Generation of Hazardous Waste"

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

Sec. 1. 5 MRSA §12004-I, sub-§22-A is enacted to read:

<u>22-A. Envi-</u>	<u>Hazardous</u>	<u>Expenses</u>	<u>38 MRSA</u>
<u>ronment: Natural</u>	<u>Waste</u>	<u>Only</u>	<u>\$2310</u>
<u>Resources</u>	<u>Reduction</u>		
	<u>Advisory</u>		
	<u>Committee</u>		

Sec. 2. 38 MRSA §1303-C, sub-§13-A is enacted to read:

13-A. Generator. "Generator" means a person whose act or process produces a waste that is hazardous.

Sec. 3. 38 MRSA §1319-I, sub-§2-A is enacted to read:

2-A. Fees for noncompliance with reduction requirements. Notwithstanding subsection 8, the commissioner may assess and a generator not in compliance with chapter 26 shall pay a fee as follows:

A. For hazardous waste that is transported off the site to a licensed hazardous waste disposal facility for disposal, 18¢ a pound; and

B. For hazardous waste that is transported off the site to a licensed hazardous waste treatment facility for treatment, storage facility for storage or other licensed facility for handling, including beneficial reuse, reclamation or recycling, 13.5¢.

R. of S.

Sec. 4. 38 MRSA c. 26 is enacted to read:

CHAPTER 26

HAZARDOUS WASTE REDUCTION

§2301. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commercial hazardous waste facility. "Commercial hazardous waste facility" has the same meaning as in section 1303-C, subsection 4.

2. Cross-media pollution. "Cross-media pollution" means pollution that has an impact on or degrades more than one environmental resource.

3. Disposal. "Disposal" has the same meaning as in section 1303-C, subsection 12.

4. Facility. "Facility" means the place of business or site where hazardous waste is generated.

5. Generation. "Generation" means the act or process of producing hazardous waste.

6. Generator. "Generator" means a person whose act or process produces a waste that is hazardous.

7. Hazardous waste. "Hazardous waste" means those wastes determined by the board to be hazardous under section 1319-O, subsection 1.

8. Manifest. "Manifest" has the same meaning as in section 1303-C, subsection 19.

9. Pilot plant or pilot production unit. "Pilot plant or pilot production unit" means a small scale model or temporary change in production process to test or develop a new technology.

10. Practicable. "Practicable" means available and capable of accomplishment after taking into consideration the existing state of technology and economic feasibility for the facility involved.

11. Production unit. "Production unit" means a measure of output of a manufactured product or a quantifiable service by a facility.

2 12. Recycle. "Recycle" has the same meaning as in section
1303-C, subsection 21.

4 13. Source reduction. "Source reduction" means the
6 elimination of waste at the source, usually within a process,
7 including process modifications, feedstock substitutions,
8 improvements in feedstock purity, housekeeping and management
9 practices, increases in the efficiency of machinery and on-site,
10 closed-loop recycling, or any action that reduces the amount and
11 toxicity of the waste generated in the production process.

12 14. State reduction goals. "State reduction goals" means a
13 20% volume reduction in hazardous waste generated in the State by
14 January 1, 1995, and a 30% volume reduction in hazardous waste
15 generated in the State by January 1, 1997.

16 15. Storage. "Storage" has the same meaning as in section
17 1303-C, subsection 36.

18 16. Treatment. "Treatment" has the same meaning as in
19 section 1303-C, subsection 39.

20 17. Waste assessment. "Waste assessment" means a systematic
21 planned procedure with the objective of identifying ways to
22 reduce or eliminate waste. The assessment consists of the review
23 and evaluation of a facility's operations and waste streams and
24 the selection of specific waste streams to be evaluated.

25 18. Waste minimization. "Waste minimization" means the
26 reduction, to the extent practicable, of hazardous waste that is
27 generated or subsequently treated, stored or disposed. It
28 includes any source reduction, treatment or recycling activity
29 undertaken by a generator that results in either the reduction of
30 total volume or quantity of hazardous waste or the reduction of
31 toxicity of the hazardous waste, or both, as long as the
32 reduction minimizes present and future threats to human health
33 and the environment.

34 **§2302. Hazardous Waste Minimization Program established**

35 The Hazardous Waste Minimization Program is established
36 within the Department of Environmental Protection to assist
37 generators to eliminate or reduce the amounts, toxicity and
38 adverse environmental and public health effects of hazardous
39 wastes produced.

40 **§2303. Hazardous waste management policy**

41 It is the policy of the State that the generation of
42 hazardous waste be eliminated or reduced as expeditiously as
43 possible. In accomplishing waste reduction, it is the policy of
44 the State to encourage the use of hazardous waste minimization
45 practices.

2 the State to adhere to the following hierarchy of hazardous waste
prevention and management:

4 1. Source reduction. Reduce waste production at the source;

6 2. Recover and reuse. Recover and reuse waste;

8 3. On-site recycling. Recycle waste on-site;

10 4. Off-site recycling. Recycle waste off-site;

12 5. Waste treatment. Treat wastes to reduce volume or
hazardous characteristics or both; and

14 6. Disposal. Dispose of any remaining wastes in a manner
to protect the public health and environment.

18 **§2304. Hazardous waste reduction goals**

20 It is the State's goal to reduce both the volume and
toxicity of hazardous waste that is generated within the State.
22 The goals are a 20% volume reduction by January 1, 1995, and a
30% volume reduction by January 1, 1997.

24 Percentage reductions are to be calculated using the annual
26 average of hazardous waste generated for the years 1987, 1988 and
1989 as a base line.

28 **§2305. Department: powers and duties**

30 1. Data collection. The Commissioner of Environmental
32 Protection shall develop the necessary information base and data
collection programs to establish program priorities and evaluate
34 the progress of hazardous waste reduction.

36 2. Technical services. The commissioner may disseminate
information concerning hazardous waste minimization through
38 various means including publications, seminars, hazardous waste
minimization plans, recommended waste assessment procedures and
40 lists of consultants on waste minimization technologies.

42 3. Grant program. The commissioner shall evaluate the need
for a grant program to provide financial and technical assistance
44 for a facility or industry to conduct hazardous waste assessments
and waste minimization studies.

46 4. Funding of demonstration programs. The commissioner may
48 provide money from such funds as may be appropriated or otherwise
made available to academic institutions, facilities, industries,
50 government agencies or private organizations located in the State
to conduct demonstration or pilot programs utilizing innovative

2 hazardous waste minimization technologies or procedures. The
3 results of these programs must be made available for use by the
4 public. The commissioner may allow information to remain
5 confidential if the commissioner determines that it is a trade
6 secret.

7 5. Information exchange. The commissioner may participate
8 in existing state, federal and industrial networks of individuals
9 and groups actively involved in waste minimization. The
10 commissioner may contract with technical information centers to
11 assist the department in carrying out the provisions of this
12 chapter. The assistance must emphasize strategies to encourage
13 hazardous waste reduction.

14 6. Right of entry. The department has a right of entry as
15 established in section 1304, subsection 4-A to enforce this
16 chapter.

17 7. Contracts. The commissioner may enter into contracts to
18 carry out the purposes of this chapter.

19 **§2306. Waste reduction achievement**

20 1. Regulated community. All facilities that generate 100
21 kilograms or more of hazardous waste in a calendar month for more
22 than 3 months of the year must meet the state reduction goals.

23 2. New facilities. Facilities constructed after the
24 effective date of this section must be designed to minimize
25 hazardous waste generation in accordance with the State's
26 hazardous waste management policy as set forth in section 2303.

27 3. Establishment of production units. When tracking the
28 percent reduction achieved by a facility, the commissioner shall
29 work with the Department of Labor to establish a uniform
30 production unit measure for each standard industrial code to
31 account accurately for changes in hazardous waste generation due
32 to business growth or decline. When production units are not
33 easily established, such as when a facility provides a service
34 rather than a product, the commissioner and the Department of
35 Labor shall work with industry representatives to establish an
36 acceptable accounting method for business activity.

37 On or before June 15, 1991, the commissioner shall issue a list
38 of the production units to be used in meeting reporting
39 requirements for each standard industrial code category for which
40 there are generators required to meet the state reduction goals.

41 4. Progress evaluation. Progress toward meeting the state
42 reduction goals must be evaluated annually by the
43 commissioner.

2 commissioner based on manifest data, annual generator reports and
3 other appropriate available information. Facilities constructed
4 after the effective date of this section must be evaluated for
5 volume of hazardous waste generated per production unit.

6 5. Plan required. After January 1, 1993, the commissioner
7 may require a facility to complete a hazardous waste minimization
8 plan within one year when:

10 A. A facility has not made sufficient progress in
11 minimizing waste as evidenced by achieving less than a 10%
12 reduction of its base line hazardous waste volume and may
13 not meet the state reduction goals;

14 B. The facility has received an exemption under subsection
15 6 and has not made sufficient progress toward meeting any
16 alternate waste reduction goals established under subsection
17 6, paragraph G; or

18 C. A new facility generates hazardous waste in a
19 significantly greater amount per production unit than
20 similar facilities within the same standard industrial code
21 category.

22 Generators required to complete a hazardous waste minimization
23 plan must be notified in writing of the commissioner's
24 determination. The notification must explain the basis for the
25 determination, including the specific wastes evaluated and the
26 annual generation trends of the facility during the previous 3
27 years. The commissioner shall supply the generator with the
28 guidelines for an acceptable hazardous waste minimization plan.

29 6. Exemptions. The following are exempt from the
30 provisions of this section:

31 A. Commercial hazardous waste treatment or storage
32 facilities;

33 B. Pilot plants or pilot production units;

34 C. Hazardous waste transporters;

35 D. Hazardous waste generated as a result of remedial or
36 corrective actions or facility closures required by law or
37 undertaken to protect employee health and safety, public
38 health and safety or the environment;

39 E. Households;

40 F. Agricultural operations; and

2 G. Generators exempted under this paragraph. To qualify
3 for an exemption under this paragraph, a generator must
4 demonstrate to the commissioner that all practicable
5 reductions have been implemented or scheduled for
6 implementation. The commissioner may establish alternate
7 hazardous waste reduction goals for the facility when
8 appropriate.

9 (1) A generator must receive an exemption from the
10 requirement of meeting state reduction goals from the
11 commissioner if the generator proves that:

12 (a) Practicable hazardous waste minimization
13 methods do not exist;

14 (b) Previously implemented reductions or actions
15 have resulted in the maximum achievable waste
16 minimization;

17 (c) Steps necessary to reduce hazardous waste
18 would have an adverse impact on product quantity
19 or quality; or

20 (d) Legal or contractual obligations prohibit
21 steps necessary to minimize hazardous waste.

22 (2) The commissioner shall review exemptions under
23 this paragraph at 3-year intervals. Renewals must be
24 granted for generators that demonstrate that they still
25 meet the criteria in subparagraph 1. If an exemption
26 was granted based on legal or contractual obligations,
27 the exemption is only valid for the term of those
28 obligations. A 2nd exemption may not be granted by the
29 commissioner based on a new or renewed legal or
30 contractual agreement.

31 **§2307. Generator waste minimization plans**

32 **1. Plan guidelines.** The Board of Environmental Protection
33 may by rule establish guidelines for hazardous waste minimization
34 plans for facilities. A plan must include:

35 **A.** A statement of facility-wide management policy regarding
36 hazardous waste reduction;

37 **B.** A report on the results of waste assessments performed
38 for each hazardous waste stream generated, including:

39 (1) Identification and characterization of all
40 hazardous wastes generated at the facility;

R. of S.

SENATE AMENDMENT "A" to H.P. 1583, L.D. 2192

2 (2) Identification and evaluation of any appropriate
4 technologies, procedures, processes, equipment or
6 production changes that may be utilized by the facility
 to reduce the amount or toxicity of hazardous wastes
 and air or water emissions generated by that facility;
 and

8 (3) Identification of reasonably available potential
10 markets for hazardous waste generated by the facility;

12 C. A strategy for implementing practicable hazardous waste
 minimization options for each waste stream analyzed;

14 D. Performance goals for the reduction, to the extent
16 practicable, of individual waste streams. The specific
18 performance goals must be expressed in numeric terms when
20 possible. When the establishment of numeric performance
22 goals is not practicable, the performance goals must include
24 a clearly stated list of objectives designed to lead to the
 establishment of numeric goals as soon as practicable. The
 generator shall explain the rationale for each performance
 goal and may include any impediments to hazardous waste
 minimization including those provided for in section 2306,
 subsection 6, paragraph G, subparagraph (1);

26 E. An employee awareness and training program to involve
28 employees in hazardous waste minimization planning and
 implementation to the maximum extent feasible; and

30 F. A program for maintaining records on hazardous waste
32 generation rates and management costs.

34 The plan must be signed by a principal executive officer of at
36 least the level of vice-president, if the generator is a
38 corporation; a general partner or a proprietor, if the generator
 is a partnership or sole proprietorship; or a principal executive
 officer or ranking elected official, if the generator is a
 municipal, state, federal or other public agency.

40 2. Submission of plan. Upon completion of the hazardous
42 waste minimization plan, the generator shall notify the
44 commissioner in writing on a form supplied by the commissioner.
46 The generator shall provide the commissioner with a plan summary,
 the evaluation methods used, the findings and conclusions and the
 generator's implementation schedule. A generator may designate
 information as confidential under section 1310-B.

48 3. Plan availability. Facilities required to complete a
50 hazardous waste minimization plan shall keep a complete copy and
52 any back-up data on the premises of that facility for at least 5
 years and make the copy and data available to the commissioner or
 the commissioner's designee upon request.

2 4. Updates. Hazardous waste minimization plans must be
3 updated every 2 years by January 1st of the applicable year. The
4 update must include a summary of the progress made to implement
5 the plan.

6 5. Employee notification. Six months prior to the date
7 when the initial hazardous waste minimization plan or an update
8 must be completed, the owner or operator of each facility
9 required to develop a plan under this chapter shall notify all of
10 its employees of the requirements for the plan or updates,
11 identify the hazardous substances and production units for which
12 a plan or update must be submitted, provide the criteria for
13 plans specified by the commissioner and solicit comments and
14 suggestions on waste minimization options from all employees.

15 6. Review and approval of plan. The commissioner may
16 review a plan or update to determine whether it is adequate
17 according to the guidelines established under this chapter. This
18 chapter does not prohibit the commissioner from seeking
19 additional information from a generator to review the adequacy of
20 a plan or plan update.

21 A. If a plan or update is determined inadequate, the
22 commissioner shall notify the generator of the inadequacy,
23 and identify the specific deficiencies. The commissioner
24 may specify a reasonable time period of not less than 90
25 days within which the generator must submit a modified plan
26 or update addressing the specified deficiencies. The
27 commissioner may, upon request, provide technical assistance
28 to aid the generator in modifying the plan or update.

29 B. If the commissioner determines that a modified plan or
30 update is inadequate, the commissioner may either require
31 further modification or seek penalties as provided in
32 section 2312. If the generator fails to submit a modified
33 plan or update within the required time period, the
34 commissioner may assess additional fees as established in
35 section 1319-L, subsection 2-A until a plan is approved.

36 C. In reviewing the adequacy of any plan or update, the
37 commissioner shall base a determination on whether the plan
38 or update is complete and prepared in accordance with the
39 guidelines established pursuant to this chapter.

40 **§2308. Confidentiality**

41 Upon a satisfactory showing to the commissioner by the
42 generator that a plan summary or update developed under this
43 chapter, if made public, would divulge methods, processes or
44 other information entitled to protection, the commissioner shall
45 protect such information from public disclosure.

R. of S.

hold as confidential that plan summary or update, or a portion of that plan summary or update, pursuant to section 1310-B.

§2309. Cross-media pollution control

1. Prohibition. A generator is prohibited from using any change in a process or material that results in new or increased air or wastewater toxic releases to meet state reduction goals.

2. Exemptions. A generator may apply to the commissioner for an exemption from subsection 1 if the generator demonstrates that the change resulting in the toxic release or toxic release increase results in a long-term benefit to public health and the environment that outweighs the benefits of other hazardous waste minimization techniques and:

A. The increase in the toxic release does not cause a violation of the facility's existing wastewater discharge or air emission license or permit limits; or

B. If the toxic emission is new to a facility's existing air or wastewater stream, the facility possesses and complies with all necessary federal, state and local licenses or permits applicable for the release.

3. Exemption renewal. If granted, an exemption under this section is valid for a 3-year period. Renewal of the exemption may be granted only if the generator meets the criteria set forth in subsection 2.

4. Department authority. This section does not diminish the existing authority of the department, pursuant to any laws, to establish by regulation, permit, license or order, any treatment technology standards, emission or discharge limits, operation and maintenance requirements or management practices for abating, controlling or preventing a release or threat of release of hazardous substances to the environment.

§2310. Hazardous Waste Reduction Advisory Committee

The Hazardous Waste Reduction Advisory Committee, as authorized in Title 5, section 12004-I, subsection 22-A, shall serve as a review body to assess the progress in implementation of this chapter and shall advise the department in carrying out the policies and purposes of the department.

1. Membership. The Governor shall appoint the chair of the committee. The committee consists of 11 voting members.

A. The Governor shall appoint 3 representatives from the business community and 2 representatives of organized

R. of S.
SENATE AMENDMENT "A" to H.P. 1583, L.D. 2192

2 labor. At least one of the representatives from the
3 business community must represent the interests of toxic
4 users.

6 B. The President of the Senate shall appoint one member
7 from a public health organization, one member from an
8 environmental organization and one public member.

10 C. The Speaker of the House of Representatives shall
11 appoint one member from a public health organization, one
12 member from an environmental organization and one public
13 member.

14 D. The Commissioner of Environmental Protection, the
15 Commissioner of Labor, the Director of the Maine Emergency
16 Management Agency and the Executive Director of the Maine
17 Waste Management Agency shall serve as nonvoting ex officio
18 members.

20 2. Terms. All appointed members are appointed for
21 staggered terms of 3 years. The President of the Senate and the
22 Speaker of the House of Representatives shall each appoint one
23 member for a one-year initial term, one member of a 2-year
24 initial term and one member for a 3-year initial term. The
25 Governor shall appoint one member for a one-year initial term, 2
26 members for 2-year initial terms and 2 members for 3-year initial
27 terms. A vacancy must be filled by the same appointing authority
28 that made the original appointment. An appointed member may not
29 serve more than 2 4-year terms.

30 3. Compensation. Members are entitled to compensation for
31 expenses according to Title 5, section 12004-I, subsection 22-A.

34 4. Quorum; actions. A quorum is a majority of the voting
35 members of the committee. An affirmative vote of the majority of
36 the members present at a meeting is required for any action.
37 Action may not be considered unless a quorum is present.

38 5. Meetings. The committee shall meet at least 4 times per
39 year and at any time at the call of the chair or upon written
40 request to the chair by 4 of the members.

41 6. Staff support. The commissioner shall provide the
42 committee with staff support.

44 7. Duties; powers. The committee may:

45 A. Review the priorities for reducing hazardous waste;

R. of S.

SENATE AMENDMENT "A" to H.P. 1583, L.D. 2192

2 B. Review the criteria for the submission of hazardous waste minimization plans;

4 C. Study and evaluate the practicability of achieving reductions in the use or release of specific substances through the use of substitute substances, alternate procedures or processes or other means of achieving toxics use reduction or hazardous waste minimization;

10 D. Evaluate existing programs relating to chemical production and use, hazardous waste generation, industrial hygiene, worker safety, public exposure to toxics and toxics releases and recommend coordination of information and program changes or development; and

16 E. If appropriate, recommend to the department revisions to the state reduction goals.

18 **§2311. Generator registration**

20 1. Registration program. All generators of hazardous waste other than households and agricultural operations shall register annually with the commissioner. Registration forms and an accompanying fee of \$50 are due to the commissioner by March 1, 1991. Subsequent registration forms and fees are due on March 1st of each year.

28 The commissioner shall deposit all money received in payment of fees under this section to a separate account within the Maine Hazardous Waste Fund to cover expenses incurred by the department in the administration of this chapter.

32 2. Fee reassessment. The commissioner, on an annual basis, shall reassess the generator registration fee schedule and make necessary recommendations to the Legislature for adjustments.

36 **§2312. Enforcement; penalties**

38 Generators that fail to meet any requirements set forth in this chapter, including, but not limited to, achievement of state reduction goals and the preparation and submission of required plans, are subject to enforcement action, civil or criminal penalties and the fees established in section 1319-I, subsection 2-A.

46 **Sec. 5. Report to the Legislature.** On or before March 1, 1992, the Commissioner of Environmental Protection shall report to the Joint Standing Committee on Energy and Natural Resources on the status of implementing this Act. This report must include:

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R. of S.

SENATE AMENDMENT "A" to H.P. 1583, L.D. 2192

1. Information regarding progress in reducing the quantities of hazardous wastes generated in the State; and

2. An analysis and recommendations for changes to the Hazardous Waste Minimization Program, including, but not limited to, the need for any additional enforcement provisions for meeting required goals and for the establishment of a hazardous waste assessment grant program.

Sec. 6. Allocation. The following funds are allocated from the Maine Hazardous Waste Fund to the Department of Environmental Protection to carry out the purposes of this Act.

1990-91

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Maine Hazardous Waste Fund

Positions	(3)
Personal Services	\$86,915
All Other	25,805
Capital Expenditures	10,000

Provides funds for an Environmental Specialist III, an Environmental Specialist IV, a Data Control Clerk and general operating expenses to administer the Hazardous Waste Minimization Program.

DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL \$122,720

FISCAL NOTE

If enacted, this legislation will result in:

1. An increase in dedicated revenue to the Department of Environmental Protection (the Maine Hazardous Waste Fund) in the amount of \$125,000 for fiscal year 1990-91. This additional revenue would be derived from the proposed \$50 registration fee on hazardous waste generators. These fees will be collected in March of each year and could result in a potential cash flow problem.

2. An allocation of Other Special Revenue to the Department of Environmental Protection (the Maine Hazardous Waste Fund) in the amount of \$122,720 for fiscal year 1990-91. This allocation

SENATE AMENDMENT "A" to H.P. 1583, L.D. 2192

2 would provide funds for required staff, anticipated costs of the
Hazardous Waste Reduction Advisory Committee, and general
4 operating expenses to administer the Hazardous Waste Minimization
Program.'

6

STATEMENT OF FACT

8

10 This amendment changes the definitions in the original bill
to cross-reference existing law administered by the Department of
Environmental Protection. Several definitions are added.

12

14 The amendment deletes several proposed sections of the law
that would have empowered the department to undertake actions it
may already undertake by law.

16

18 Provisions that allow the Commissioner of Environmental
Protection to require a plan for hazardous waste reduction are
clarified. Exemption provisions and plan guidelines for
20 generator waste minimization are amended.

22

24 The registration fee for generators of hazardous waste is
increased to fund the Hazardous Waste Minimization Program and
reporting requirements are changed. The allocation section is
amended.

26

28

30

(Senator BALDACCI)

32

SPONSORED BY: 

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COUNTY: Penobscot

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