

MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "A" to H.P. 1671, L.D. 2313, Bill, "An Act to Amend the State's Hazardous Waste Laws to Be Consistent with the Federal Hazardous and Solid Waste Laws"

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. 38 MRSA §352, sub-§4, as amended by PL 1989, c. 405, §1, is further amended by inserting after section 1304, paragraph H, the following:

<u>1319-R. Post-closure licenses</u>	<u>2,000</u>	<u>500</u>
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Sec. 2. 38 MRSA §1303-C, sub-§15-A is enacted to read:

15-A. Hazardous waste incinerator. "Hazardous waste incinerator" means an enclosed device using controlled flame combustion to thermally break down hazardous waste.

Sec. 3. 38 MRSA 1310-B, sub-§1, as amended by PL 1987, c. 517, §24, is further amended to read:

1. **Public records.** Except as provided in subsections 2 and 3, information obtained by the department under this chapter ~~shall-be~~ is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.

2 **Sec. 4. 38 MRSA §1319-O, sub-§1, ¶¶D and E**, as enacted by PL
4 1987, c. 517, §28, are amended to read:

6 D. The board may adopt rules relating to the interim and
8 final licensing and operation of waste facilities for
 hazardous waste, including, but not limited to:

10 (1) Standards for the safe operation and maintenance
12 of the waste facilities, including, but not limited to,
14 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;

16 (2) The training of personnel and the certification of
18 supervisory personnel involved in the operation of the
 waste facilities;

20 (3) The termination, closing and potential future uses
22 of the waste facilities; and

24 (4) Rules equivalent to ~~rules~~ regulations of the
 United States Environmental Protection Agency ~~which~~
 that provide for licensing or permitting by rule; and

26 (5) Corrective action for all releases of hazardous
28 waste or constituents from any solid waste management
30 unit at a treatment, storage or disposal facility
32 seeking a permit under this subchapter, regardless of
34 the time waste was placed in the unit. For purposes of
36 this paragraph, solid waste management unit includes
 any waste pile, landfill, surface impoundment or land
 treatment facility from which hazardous constituents
 might migrate, regardless of whether the unit was
 intended for the management of solid or hazardous
 wastes.

38 E. The board may adopt rules relating to evidence of
40 financial capacity of hazardous waste facilities' owners or
42 operators, and of those who transport hazardous waste, to
44 protect public health, safety and welfare and the
 environment, including, but not limited to:

46 (1) Liability insurance;

48 (2) Bonding; and

50 (3) Financial ability to comply with statutory and
 regulatory requirements or conditions.

52 Evidence of financial capacity required by the board may
 include one, or any combination, of the following:

2 insurance, guarantee, surety bond, letter of credit or
3 qualification as a self-insurer. In establishing the
4 required evidence of financial capacity to further the
5 purposes of this subchapter, the board may specify policy or
6 other contractual terms, conditions or defenses that are
7 necessary or that are unacceptable.

8 **Sec. 5. 38 MRSA §1319-R, sub-§1, ¶¶ A to C, as enacted by PL**
9 **1987, c. 517, §28, are amended to read:**

10 A. The board shall also find that:

11 (1) The applicant presents evidence of sufficient
12 financial capacity, including projections of
13 utilization of the facility by hazardous waste
14 generators, to justify granting the license;

15 (2) Issuing the license is consistent with the
16 applicable standards, requirements and procedures of
17 this chapter; and

18 (3) In the case of a disposal facility, the volume of
19 the waste and the risks related to its handling have
20 been reduced to the maximum practical extent by
21 treatment and volume reduction prior to disposal; and

22 (4) If corrective action required by section 1319-V
23 can not be completed by an applicant prior to issuance
24 of a license, the applicant has the financial capacity
25 to undertake and complete the corrective action.

26 B. The board shall issue an interim license for a waste
27 facility for hazardous waste or shall deem the facility to
28 be so licensed if:

29 (1) The waste facility is in existence on April 1,
30 1980, or the waste facility is in existence on the
31 effective date of statutory or regulatory changes that
32 first render the facility subject to the requirement to
33 have a license under this subchapter;

34 (2) The owner or operator has within 60 days of first
35 becoming subject to the license requirements of this
36 subchapter:

37 (a) Notified the department of its location;

38 (b) Provided a detailed description of the
39 operation of the facility;

40

COMMITTEE AMENDMENT "~~A~~" to H.P. 1671, L.D. 2313

2 (c) Identified the hazardous waste it handles;
and

4 (d) Applied for a license to handle hazardous
waste;

6
8 (3) The waste facility is not altered or operated
except in accordance with the board's rules; and

10 (4) ~~If--the~~ The waste facility has a discharge or
12 emission license under ~~sections~~ section 414 or 591, and
the facility is operated in accordance with that
14 license; and

16 (5) The facility was not previously denied a
noninterim hazardous waste license or an interim
license has not expired pursuant to paragraph C,
18 subparagraphs (2) to (6).

20 C. Interim licenses shall expire on the earliest of the
following dates:

22
24 (1) The date of the final administrative disposition
of the application for a hazardous waste facility
license;

26
28 (2) The date of a finding of the board that the
disposition referred to in ~~subsection---1---~~ has
subparagraph (1) was not been made because of the
30 applicant's failure to furnish information reasonably
required or requested to process the application;

32
34 (3) The date of expiration of the license issued under
section 414 or 591; or

36 (4) The date on which the application for a noninterim
hazardous waste facility license is due and if the
38 person operating under the interim license has failed
to apply for the ~~hazardous waste facility~~ that
40 noninterim license;

42 (5) For interim licenses issued prior to November 8,
1984, unless the owner or operator of the facility has
filed a complete application with the commissioner
before one of the following dates and that application
demonstrates compliance with all applicable ground
46 water and financial responsibility requirements:

48 (a) November 8, 1985, for a land disposal
50 facility;

2 (b) November 8, 1986, for a hazardous waste
incinerator;

4 (c) November 8, 1989, for any facility other than
a land disposal facility or hazardous waste
6 incinerator; or

8 (6) Twelve months after the facility first becomes
subject to the permit requirements of this subchapter
10 unless the owner or operator of the facility has filed
a complete application with the commissioner before
12 that date and that application demonstrates compliance
with all applicable ground water and financial
14 responsibility requirements.

16 **Sec. 6. 38 MRSA §1319-R, sub-§6 is enacted to read:**

18 6. Post-closure licenses. When the board determines that a
facility under the jurisdiction of this subchapter does not have
20 and will not be issued a license pursuant to this subchapter, the
board may issue a license containing terms and conditions
22 governing the post-closure requirements applicable to the
facility, including, but not limited to, environmental monitoring
24 and corrective action. The findings in subsection 1, paragraph A
are not required for post-closure licenses.

26 **Sec. 7. 38 MRSA §1319-S, sub-§5 is enacted to read:**

28 5. Post-closure orders. Without restricting or limiting
30 any other remedy, the department may issue a post-closure order
and enforce its terms when the facility owner or operator has
32 failed to submit a complete application for a post-closure
license under section 1319-R, subsection 6, in a timely manner.

34 **Sec. 8. 38 MRSA §§1319-V and 1319-W are enacted to read:**

36 **§1319-V. Corrective action**

38 1. Requirement. The facility owner or operator shall
40 undertake corrective action beyond the facility boundary or site
to remove the danger to public health or the environment unless
42 the facility owner or operator demonstrates to the satisfaction
of the board that the owner or operator is unable to undertake
44 the action and despite the owner or operator's best efforts, the
owner or operator was unable to obtain the necessary permission
46 to undertake the action. If the board makes these findings, the
facility owner or operator is not relieved of responsibility to
48 clean up a release that has migrated off the facility site. The
board shall decide how to proceed on a case-by-case basis.

50 2. Compliance schedules. If corrective action can not be
52 completed by an applicant prior to issuance of a license pursuant

2 to this subchapter, the license must contain a schedule of
3 compliance for corrective action.

4 **§1319-W. Rights of action against financial guarantors**

6 If the owner or operator of a facility permitted under this
7 subchapter is in liquidation, reorganization or adjustment
8 pursuant to the federal Bankruptcy Reform Act of 1978, Public Law
9 95-598, as amended, or when, with reasonable diligence,
10 jurisdiction in any state court or any federal court can not be
11 obtained over an owner or operator likely to be solvent at the
12 time of judgment, any claim arising from conduct for which
13 evidence of financial capacity must be provided under this
14 subchapter may be asserted by the department directly against the
15 guarantor providing evidence of financial capacity. For the
16 purpose of this section, the term "guarantor" means any person,
17 other than the owner or operator, who provides evidence of
18 financial capacity for an owner or operator under this subchapter.

20 1. Rights of guarantor. In any action pursuant to this
21 section, the guarantor is entitled to invoke all rights and
22 defenses that would be available to the owner or operator if any
23 action was brought against the owner or operator by the claimant
24 and that would be available to the guarantor if an action was
25 brought against the guarantor by the owner or operator.

26 2. Liability. The total liability of any guarantor is
27 limited to the aggregate amount that the guarantor has provided
28 as evidence of financial capacity to the board on behalf of the
29 owner or operator under this subchapter. Nothing in this section
30 may be construed to limit any other liability of a guarantor to
31 its owner or operator as established by state or federal
32 statutory, contractual or common law including, but not limited
33 to, the liability of the guarantor for bad faith either in
34 negotiating or in failing to negotiate the settlement of any
35 claim. Nothing in this section may be construed to diminish the
36 liability of any person under this subchapter or other applicable
37 law.

40 **FISCAL NOTE**

42 Enactment of this bill would modify hazardous waste
43 provisions to correspond with federal regulations. Any costs
44 associated with this bill would be absorbed by the Department of
45 Environmental Protection utilizing existing resources.

48 Also, this bill establishes a processing and licensing fee
49 for post-closure licenses. The proposed fees are expected to
50 raise \$0 to \$7,500 annually in dedicated revenue to the Maine
51 Hazardous Waste Fund. The exact amount, however, can not be
52 determined at this time.'

2

STATEMENT OF FACT

4

6 This amendment reorganizes and clarifies provisions of the
original bill. It also provides definitions for several terms
8 that are used throughout sections in the bill. A provision to
specifically allow the Department of Environmental Protection to
revoke all licenses held by a person in violation of a
10 post-closure license for a hazardous waste facility is deleted
because the Board of Environmental Protection already has that
12 authority.

14

The amendment also enacts processing and licensing fees for
post-closure licenses.

16

Reported by the Committee on Energy and Natural Resources
Reproduced and distributed under the direction of the Clerk of the
House
3/15/90 (Filing No. H-932)