

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2313

H.P. 1671

House of Representatives, February 12, 1990

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative LORD of Waterboro.

Cosponsored by Representative COLES of Harpswell.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Amend the State's Hazardous Waste Laws to Be Consistent
with the Federal Hazardous and Solid Waste Laws.**



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

2
4 **Sec. 1. 38 MRSA §1310-B, sub-§1**, as amended by PL 1987, c. 517, §24, is further amended to read:

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

10 If a request for information obtained by the department under this chapter has been refused and the person aggrieved by that refusal has appealed to Superior Court pursuant to Title 1, chapter 13, subchapter I, and the Superior Court enters an order for disclosure, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by the aggrieved person in pursuing the appeal.

18
20 **Sec. 2. 38 MRSA §1319-O, sub-§1, ¶¶D and E**, as enacted by PL 1987, c. 517, §28, are amended to read:

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

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

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

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

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

32 (5) Corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this chapter, regardless of the time waste was placed in the unit. Corrective action is required beyond the facility boundary or site to remove the danger to the public health or the environment unless the facility owner or operator is

2 unable to undertake the action and demonstrates to the
4 satisfaction of the board that, despite that person's
6 best efforts, the owner or operator was unable to
8 obtain the necessary permission to undertake the
10 action. Permits issued pursuant to this chapter must
12 contain schedules of compliance for corrective action,
14 if the action cannot be completed prior to issuance of
16 the permit, and assurances of financial responsibility
18 for completing the corrective action.

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

- 30 (1) Liability insurance;
- 32 (2) Bonding; and
- 34 (3) Financial ability to comply with statutory and
36 regulatory requirements or conditions.

38 (a) Financial capacity required by this paragraph
40 may be established in accordance with rules
42 promulgated by the board by any one, or any
44 combination, of the following: insurance,
46 guarantee, surety bond, letter of credit, or
48 qualification as a self-insurer. In promulgating
50 requirements under this paragraph, the board is
52 authorized to specify policy or other contractual
terms, conditions or defenses that are necessary
or are unacceptable in establishing such evidence
of financial capacity in order to effect the
purposes of this chapter.

(b) If the owner or operator is in bankruptcy,
reorganization or arrangement pursuant to the
federal Bankruptcy Reform Act of 1978, Public Law
95-598, or when, with reasonable diligence,
jurisdiction in any state court or any federal
court cannot be obtained over an owner or operator
likely to be solvent at the time of judgment, any
claim arising from conduct for which evidence of
financial capacity must be provided under this
paragraph may be asserted directly against the
guarantor providing evidence of financial
capacity. In any action pursuant to this
paragraph, the guarantor is entitled to invoke all
rights and defenses that would be available to the
owner or operator if any action was brought
against the owner or operator by the claimant and

2 that would be available to the guarantor if an
3 action was brought against the guarantor by the
4 owner or operator.

5 (c) The total liability of any guarantor is
6 limited to the aggregate amount that the guarantor
7 has provided as evidence of financial capacity to
8 the owner or operator under this chapter. Nothing
9 in this paragraph may be construed to limit any
10 other liability of a guarantor to its owner or
11 operator as established by state or federal
12 statutory, contractual or common law including,
13 but not limited to, the liability of the guarantor
14 for bad faith either in negotiating or in failing
15 to negotiate the settlement of any claim. Nothing
16 in this paragraph may be construed to diminish the
17 liability of any person under this chapter or
18 other applicable law.

19 (d) For the purpose of this paragraph, the term
20 "guarantor" means any person, other than the owner
21 or operator, who provides evidence of financial
22 capacity for an owner or operator under this
23 paragraph.

24
25 **Sec. 3. 38 MRS §1319-R, sub-§1, ¶¶B and C, as enacted by PL**
26 **1987, c. 517, §28, are amended to read:**

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

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

35 (2) The owner or operator has within 60 days of first
36 becoming subject to the permit requirements of this
37 chapter:

- 38 (a) Notified the department of its location;
39 (b) Provided a detailed description of the
40 operation of the facility;
41 (c) Identified the hazardous waste it handles; and
42 (d) Applied for a license to handle hazardous
43 waste;

- 2 (3) The waste facility is not altered or operated
except in accordance with the board's rules; and
- 4 (4) If the waste facility has a discharge or emission
6 license under ~~sections~~ section 414 or 591, and the
8 facility is operated in accordance with that license;
and
- 10 (5) The facility was not previously denied a state
12 hazardous waste license or interim status was not
previously terminated pursuant to paragraph C,
subparagraphs (2) to (8).

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

- 18 (1) The date of the final administrative disposition
20 of the application for a hazardous waste facility
license;
- 22 (2) The date of a finding of the board that the
24 disposition referred to in subsection 1 has not been
made because of the applicant's failure to furnish
26 information reasonably required or requested to process
the application;
- 28 (3) The date of expiration of the license issued under
section 414 or 591; ~~or~~
- 30 (4) The date on which the application for a noninterim
32 hazardous waste facility license is due and the person
operating under the interim license has failed to apply
34 for the noninterim hazardous waste facility license;
- 36 (5) November 8, 1985, in the case of a land disposal
38 facility with an interim license issued prior to
40 November 8, 1984, unless the facility owner or operator
42 applies for a final permit in accordance with the
board's rules and certifies compliance with all
applicable ground water and financial responsibility
requirements prior to November 8, 1985;
- 44 (6) In the case of a land disposal facility with an
46 interim license issued after November 8, 1984, 12
months after the facility first becomes subject to the
permit requirements of this chapter unless the facility
owner or operator applies for a final permit in
accordance with the board's rules and certifies
compliance with all applicable ground water and
financial responsibility requirements prior to that
date;

2 (7) November 8, 1986, in the case of an incinerator
4 with an interim license issued prior to November 8,
6 1984, unless the facility owner or operator applies for
8 a final permit in accordance with the board's rules
10 prior to November 8, 1986; or

12 (8) November 8, 1989, in the case of any facility
14 other than a land disposal facility or an incinerator,
16 if the facility has an interim license issued prior to
18 November 8, 1984, unless the facility owner or operator
20 applies for a final permit in accordance with the
22 board's rules prior to November 8, 1989.

24 **Sec. 4. 38 MRS §1319-R, sub-§1, ¶D is enacted to read:**

26 D. Without restricting or limiting any other remedy, the
28 board may consider the operation of a waste facility for a
30 hazardous waste without a license or interim license as
32 grounds for revocation or suspension of any and all other
34 licenses issued by the department.

36 **Sec. 5. 38 MRS §1319-R, sub-§6 is enacted to read:**

38 6. Post-closure licenses. In the case of a facility with
40 an interim license under subsection 1, paragraph B that will not
42 receive a final license to operate, the board may issue a license
44 containing terms and conditions governing the post-closure
46 requirements applicable to the facility, including, but not
48 limited to, environmental monitoring and corrective action. The
50 board may issue a post-closure license without the findings
52 specified in subsection 1 otherwise required prior to the
 issuance of licenses.

A. Without restricting or limiting any other remedy, the
 board may consider the failure to comply with post-closure
 licensing requirements, including application requirements,
 as grounds for revocation or suspension of any or all other
 licenses issued by the board or the department to the
 facility owner or operator.

B. Without restricting or limiting any other remedy, the
 board may issue a post-closure license and enforce its terms
 when the facility owner or operator has failed to submit a
 complete application for a post-closure license in a timely
 manner.

STATEMENT OF FACT

 This bill enables the Department of Environmental Protection
to modify its hazardous waste management rules. It is necessary

2 to modify these rules to provide consistency with corresponding
3 federal regulations and to enable federal administrators to make
4 a determination that the State's hazardous waste rules are "no
5 less stringent than" those administered by the United States
6 Environmental Protection Agency. The "no less stringent than"
7 determination must be made if the State is to remain eligible to
8 receive federal grant money to administer the hazardous waste
9 program.