

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2388

H.P. 1729

House of Representatives, March 1, 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 dark ink, appearing to read "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative DEXTER of Kingfield.

Cosponsored by Representative MICHAUD of East Millinocket.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Amend the State's Hazardous Materials and Underground
Tank Installer Laws.

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, confusion has resulted from using 2 separate classification lists as the basis for the collection of transportation fees for hazardous materials; and

Whereas, the Legislature, on May 11, 1989, directed the Board of Environmental Protection to adopt rules to regulate the handling and disposal of infectious and pathogenic waste as hazardous waste in order to protect the public health, safety, welfare and the environment; and

Whereas, the Legislature created a separate rule-making authority under the Maine Revised Statutes, Title 38, section 1319-O, subsection 3, for the handling and disposal of biomedical waste; and

Whereas, the Legislature directed the board to submit the rules to the Joint Standing Committee on Energy and Natural Resources for review on or before January 1, 1990; and

Whereas, the board adopted the rules on November 8, 1989, and the rules were submitted to the Legislature by January 1, 1990; and

Whereas, Public Law 1989, chapter 124, lists pathogenic and infectious waste as hazardous waste and, therefore, subjects their management to the requirements of the hazardous waste management rules rather than the biomedical waste management rules which take effect on February 1, 1990, unless superceding legislation is enacted; and

Whereas, regulation of pathogenic and infectious waste under the hazardous waste management rules is unnecessary and would impose a financial hardship on the generators of pathogenic and infectious waste; and

Whereas, this legislation is needed immediately to prevent a regulatory and statutory conflict; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 29 MRSA §246-B, as amended by PL 1989, c. 546, §2, is repealed.

2 Sec. 2. 29 MRSA §246-C, as enacted by PL 1987, c. 750, §1, is
3 repealed.

4 Sec. 3. 29 MRSA §246-D is enacted to read:

5 §246-D. Hazardous materials transport licenses

6 1. Application. Every person, firm or corporation
7 transporting by motor vehicle materials required to be placarded
8 in accordance with 49 Code of Federal Regulations, Section
9 177.823, shall apply to the Secretary of State for a hazardous
10 materials transport license for each vehicle.

11 2. Exception. This section does not apply to:

12 A. Any motor vehicle owned or operated by the Federal
13 Government or any political subdivision of the Federal
14 Government;

15 B. Any properly registered agricultural motor vehicle used
16 in a bona fide farming operation;

17 C. Any motor vehicle used during an emergency with the
18 specific approval of a peace officer, fire chief, or
19 designated official of the Department of Environmental
20 Protection or the Department of Public Safety;

21 D. Any motor vehicle that has a valid license issued by
22 the Department of Environmental Protection for the
23 transportation of hazardous waste or waste oil pursuant to
24 Title 38, section 1319-O; or

25 E. Any vehicle used exclusively to transport oil as
26 defined in Title 38, section 542, subsection 6.

27 3. Form of application. Application must be made on a form
28 and in the manner prescribed by the Secretary of State and must
29 include such information as the Secretary of State requires. The
30 application must be accompanied by a fee of \$50 for each vehicle
31 licensed. For applications made after December 31st, the license
32 fee for the current year is reduced by 1/2.

33 4. Issuance; display; expiration. The Secretary of State
34 shall issue a cab card of such size and design as the Secretary
35 of State requires. The cab card must be completed by the
36 licensee and carried in the vehicle. The cab card must be
37 presented to any law enforcement officer upon demand. Cab cards
38 expire annually on June 30th.

39 5. Trip permits. The Secretary of State may issue, by
40 facsimile or other means, a trip permit in lieu of a license.
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2 The trip permit must identify a specific vehicle and is valid for
3 5 days. The fee for the 5-day trip permit is \$25.

4 6. Apportionment of fees. Fees collected are credited to
5 the Maine Hazardous Waste Fund. All fees collected must be
6 apportioned in the following manner:

8 A. Sixty-five percent to the Maine Hazardous Waste Fund
9 administered by the Department of Environmental Protection;

10 B. Fifteen percent to the Secretary of State for the costs
11 of administering this section;

12 C. Ten percent to the Department of Public Safety for the
13 costs related to motor vehicle inspection and enforcement of
14 this section; and

15 D. Ten percent to the State Emergency Response Commission
16 for hazardous materials training of local and state
17 officials.

18 7. Enforcement. Every state police officer or any member
19 of the Department of Public Safety designated by the Commissioner
20 of Public Safety shall enforce this section. A violation of this
21 section is a Class E crime. Notwithstanding any other provision
22 of the law, the minimum fine for violation of this section is
23 \$250. Any owner or operator who causes or permits to be
24 displayed a fictitious cab card, or causes or permits to be
25 displayed a cab card issued for another motor vehicle, commits a
26 Class D crime. All fines collected under this section accrue to
27 the Maine Hazardous Waste Fund.

28 8. Rules. The Department of the Secretary of State and the
29 Department of Public Safety may adopt rules necessary to
30 administer and enforce this section.

31 9. Transition. Any hazardous materials transport license
32 issued by the Secretary of State relative to former section 246-B
33 remains in effect until the license expires.

34 Sec. 4. 32 MRSA §10002, sub-§1-A is enacted to read:

35 1-A. Class I liquid. "Class I liquid" means any liquid
36 having a flash point below 100° Fahrenheit.

37 Sec. 5. 32 MRSA §10003, sub-§1, as amended by PL 1987, c. 410,
38 §4, is further amended to read:

39 1. Establishment and membership. There is established
40 within the Department of Environmental Protection, the Board of
41 Underground Storage Tank Installers. The board shall--consist
42 consists of 7 members appointed by the Governor as follows: One

one from the Department of Environmental Protection; one from either the Maine Oil Dealer's Association or the Maine Petroleum Association; one underground oil or underground hazardous substance storage tank installer; one from either the Oil and Solid Fuel Board, the Plumber's Examining Board or the State Board of Certification for Geologists and Soil Scientists; one from the Maine Chamber of Commerce and Industry; one from the Maine Fire Chiefs Association; and 2 one public members member.

Sec. 6. 32 MRSA §10006, sub-§3, ¶¶B to D, as enacted by PL 1989, c. 312, §4, are amended to read:

B. A Class 2 underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed, or heavy oil storage ~~er-impressed-current-cathedieally-protected~~ tanks.

C. A Class 3 underground oil storage tank installer may only install or remove underground oil storage tanks for the storage of #2 heating oil. Class 3 installers are not certified to install or remove field-constructed, or heavy oil storage ~~er---impressed-current---cathedieally-protected~~ tanks.

D. Currently certified underground oil storage tank installers ~~shall-be~~ are certified as Class 2 installers until they demonstrate to the satisfaction of the board one of the following: training and experience commensurate with a Class 1 certification; completion of additional board-approved training in the areas of ~~cathedie-protection~~ and heavy oil storage tank installations; or passage of the Class 1 written final examination.

Sec. 7. 32 MRSA §10010, sub-§3, ¶A, as repealed and replaced by PL 1989, c. 312, §7, is amended to read:

A. Passage of an initial written or oral examination based on laws outlined in and any rules promulgated under Title 38, chapter 3, subchapter II-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks, any regulations promulgated by the federal Environmental Protection Agency regarding the installation and removal of underground oil storage tanks and any technical concepts necessary to understand and implement those laws, rules or regulations;

Sec. 8. 32 MRSA §10010, sub-§3-A, ¶A, as enacted by PL 1989, c. 312, §10, is amended to read:

A. To be eligible to take the final examination for a Class 1 certification, the applicant must provide documentation of completion of at least 12 underground oil storage tank

installations, of which 6 shall must be marketing and distribution systems or other motor fuel storage tanks and 6 shall must be heavy oil tank installations. ~~At least 2 of these qualifying installations shall be impressed current tanks.~~

Sec. 9. 32 MRSA §10010, sub-§4, as enacted by PL 1987, c. 410, §12, is amended to read:

4. Education and examination for certification of new underground hazardous substance storage tank installers. An applicant must meet the following requirements+.

A. ~~He shall have passed~~ The applicant must pass a written or oral examination based on Title 38, section 1364, subsection 2, and any rules promulgated under that subsection by the Board of Environmental Protection concerning underground hazardous substance storage tank installation, any regulations promulgated by the federal Environmental Protection Agency regarding the installation of underground hazardous substance storage tanks and any technical concepts necessary to understand and implement that law or those rules or regulations; and

B. ~~He shall have completed~~ The applicant must complete successful installation of an underground hazardous substance storage tank under the supervision of a designated representative of the Department of Environmental Protection.

Sec. 10. 32 MRSA §10010, sub-§5, ¶¶A and B, as enacted by PL 1989, c. 312, §10, are amended to read:

A. Passage of an initial written or oral examination based on Title 38, chapter 3, subchapter II-B, and any rules promulgated by the Board of Environmental Protection concerning the removal of underground gasoline storage tanks, any regulations promulgated by the federal Environmental Protection Agency regarding the removal of underground gasoline storage tanks and any technical concepts necessary to understand and implement that law and those rules or regulations; and

B. Completion of a successful removal of an underground gasoline oil storage tank used for the storage of motor fuel under the supervision of a designated representative of the Department of Environmental Protection. The board may include in this requirement that the applicant successfully demonstrate knowledge relative to the use of equipment for monitoring gasoline vapors.

Sec. 11. 32 MRSA §10010-A, as amended by PL 1989, c. 312, §11, is further amended to read:

2 **§10010-A. Certification requirements regarding**
4 **on-site installation of underground hazardous**
6 **substance storage tank or removal of underground**
8 **oil storage tank used for storage of motor fuel**
10 **under supervision of designated representative**
12 **of Department of Environmental Protection**

14 To provide for the completion of the on-site installation of
16 an underground hazardous substance storage tank or removal of an
18 underground oil storage tank used for the storage of motor fuel
20 under the supervision of a designated representative of the
22 Department of Environmental Protection, the Board of Underground
24 Storage Tank Installers may issue a provisional certificate valid
26 for no more than 6 months after issuance to tank installers and
28 removers who have successfully completed the examination
30 requirements pursuant to section 10010.

32 When the board determines that reasonable extenuating
34 circumstances prevent the administration or completion of an
36 on-site installation or removal within the 6-month provisional
38 certification period, it may grant one renewal of a provisional
40 certificate for a specific limited time not to exceed 3 months.

42 The board shall establish a written set of criteria to be
44 used as a checklist by the representative of the Department of
46 Environmental Protection designated to supervise the on-site
48 installation or removal to ensure that each installation or
50 removal is evaluated consistently and equitably.

52 **Sec. 12. 32 MRSA §10015, sub-§2,** as amended by PL 1989, c.
312, §15, is further amended to read:

34 **2. Grounds for disciplinary action.** ~~The board may modify,~~
36 ~~reclassify, suspend or revoke a certificate pursuant to Title 5,~~
38 ~~section 10004. The board may refuse to issue or renew a~~
40 ~~certificate or the Administrative Court may suspend, revoke or~~
42 ~~refuse to renew a certificate of any certified person.~~ The
44 following shall be ~~are~~ grounds for an action to modify,
46 reclassify, suspend, revoke or refuse to issue or renew a
48 certificate:

50 A. The practice of any fraud or deceit in obtaining a
52 certificate under this chapter or in connection with
services rendered within the scope of the certificate issued;

54 B. Unprofessional conduct, including any gross negligence,
56 incompetency or misconduct in the certified person's
58 performance of the work of underground oil storage tank
60 installation or removal, underground hazardous substance
62 storage tank installation or removal, or underground
gasoline storage tank removal or violation of any standard

of professional behavior which ~~has been~~ established by the board;

C. Subject to the limitation of Title 5, chapter 341, conviction of a crime which that involves dishonesty or false statement or which relates directly to the practice for which the certified person is certified or conviction of any crime for which imprisonment for one year or more may be imposed; or

D. Any violation of this chapter or any rule adopted by the board.

Sec. 13. 32 MRSA §10015, sub-§§2-A to 2-C are enacted to read:

2-A. Disciplinary action authority. For each violation of applicable laws, rules or conditions of certification, the board may take one or more of the following actions:

A. Issue warnings, censures or reprimands to a certified person or applicant. Each warning, censure and reprimand issued must be based on violations of different applicable laws, rules, or conditions of certification or on separate instances of actionable conduct or activity;

B. Suspend a certificate for up to 90 days for each violation or instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and, in total, may not exceed one year. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the certified person's record;

C. Impose civil penalties of up to \$1,500 for each violation or each instance of actionable conduct or activity;

D. Impose conditions of probation upon an applicant or certified person. Probation may run for such time period as the board determines appropriate. Probation may include such conditions as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or certified person; and such other conditions as the board determines appropriate. Cost incurred in the performance of terms of probation is borne by the applicant or certified person. Failure to comply with the conditions of probation is grounds for disciplinary action against a certificate holder;

E. Suspend or revoke a certificate pursuant to Title 5, section 10004; and

2 F. Refuse to issue or renew a certificate.

4 2-B. Consent agreements. The board may execute a consent
6 agreement which resolves a complaint or investigation without
8 further proceedings. Consent agreements may be entered into only
10 with the consent of the applicant, the board and the Department
12 of the Attorney General. Any remedy, penalty or fine that is
14 otherwise available by law, even if in the Administrative Court,
16 may be achieved by consent agreement, including long-term
 suspension and permanent revocation of a certificate. A consent
 agreement is not subject to review or appeal and may be modified
 only by a writing executed by all parties to the original consent
 agreement. A consent agreement is enforceable by an action in
 Superior Court.

18 2-C. Surrender of certificate. The board may require
20 surrender of certificates. In order for a certified person's
22 surrender of a certificate to be effective, a surrender must
24 first be accepted by vote of the board. The board may refuse to
 accept surrender of the certificate if the certified person is
 under investigation or is the subject of a pending complaint or
 proceeding unless a consent agreement is first entered into
 pursuant to this chapter.

26 Sec. 14. 32 MRSA §10015, last ¶ is enacted to read:

28 The jurisdiction to suspend certificates conferred by this
30 section is concurrent with that of the Administrative Court.
32 Civil penalties accrue to the Ground Water Oil Clean-up Fund.
34 Any nonconsensual disciplinary action taken under authority of
36 this section may be imposed only after a hearing conforming to
38 the requirements of Title 5, chapter 375, subchapter IV, and is
 subject to judicial review exclusively in the Administrative
 Court in accordance with Title 5, chapter 375, subchapter VII,
 substituting the term "Administrative Court" for "Superior
 Court," notwithstanding any other provision of law.

40 Sec. 15. 38 MRSA §1303-C, sub-§1-A is enacted to read:

42 1-A. Biomedical waste. "Biomedical waste" means waste that
44 may contain human pathogens of sufficient virulence and in
46 sufficient concentrations that exposure to it by a susceptible
 host could result in disease. Biomedical waste is further
 defined by the department by rule.

48 Sec. 16. 38 MRSA §1303-C, sub-§34, ¶H, as enacted by PL 1989,
 c. 585, Pt. E, §4, is amended to read:

50 H. Medical and other biological waste not identified under
52 section 1319-0, 1303-C, subsection 1 1-A, paragraph--A,
 subparagraph-(4);.

2 **Sec. 17. 38 MRSA §1319-O, sub-§1**, as amended by PL 1989, c.
124, §2, is further amended by amending sub-¶(4) to read:

4 (4) In addition to hazardous waste identified under
6 subparagraphs (1) and (2), the Legislature identifies
8 the following chemicals, materials, substances or waste
as being hazardous waste:

10 (a) Polychlorinated biphenyls and any substance
12 containing polychlorinated biphenyls; ~~and.~~

14 ~~(e)---Pathogenic---and---infectious---waste---For---the~~
~~purposes---of---this---section,---"pathogenic---and~~
16 ~~infectious---waste"---means---any---material---containing~~
~~microorganisms---or---viruses---capable---of---causing---human~~
18 ~~disease.~~

20 **Sec. 18. 38 MRSA §1319-O, sub-§3**, as enacted by PL 1989, c.
124, §3, is amended to read:

22 **3. Biomedical waste.** ~~On-or-before-January-1,-1990,-the~~ The
board shall adopt rules relating to the packaging, labeling,
24 handling, storage, collection, transportation, treatment and
disposal of biomedical waste, including infectious and pathogenic
26 waste, to protect public health, safety and welfare and the
environment.

28 A. The rules shall must include, without limitation:

30 (1) Registration of biomedical waste generators;

32 (2) Handling of biomedical waste by generators;

34 (3) Licensing of biomedical waste transporters and the
36 conveyances used for the transportation of biomedical
waste;

38 (4) Implementation of a biomedical waste tracking or
40 manifest system; and

42 (5) Establishment of treatment and disposal standards.

44 B. The board shall adopt rules governing the siting,
licensing, operational and record keeping requirements for
46 biomedical waste treatment, storage and disposal facilities.

48 C. The board shall require evidence of financial capacity.

50 D. The board may assess licensing fees sufficient to pay for
the department's administrative costs in regulating
52 biomedical waste.

2 ~~The board shall submit the rules to the joint standing committee~~
3 ~~of Legislature with jurisdiction over natural resources for~~
4 ~~review on or before January 1, 1990.~~

6 **Sec. 19. Retroactivity.** Sections 15 to 18 of this Act apply
7 retroactively to February 1, 1990.

8 **Sec. 20. Effective date.** Sections 1, 2 and 3 of this Act take
9 effect on July 1, 1990.

12 **Emergency clause.** In view of the emergency cited in the
13 preamble, this Act takes effect when approved, except as
14 otherwise indicated.

16

18

STATEMENT OF FACT

20 Public Law 1987, chapter 750 established a license and fee
21 program for over-the-road and over-the-rail transportation of
22 hazardous materials. In the past one and one half years,
23 confusion has resulted from using 2 separate lists as the basis
24 for the collection of fees. This bill changes the list used as a
25 basis to the hazardous materials list of the federal Department
26 of Transportation. This change was made for the railroads in
27 Public Law 1989, chapter 419. This bill also replaces the
28 current system of vehicle-specific licensing with a fleet
29 licensing process.

30

31 The bill corrects some technical problems created by the
32 enactment of Public Law 1989, chapter 312, which made the Class 1
33 underground storage tank installer class too restrictive by
34 including impressed current cathodically protected tanks. In
35 addition, this bill increases the enforcement authority of the
36 Board of Underground Storage Tank Installers to temporarily
37 suspend installers' certificates if the situation warrants it.

38

39 The bill also establishes in the Maine Revised Statutes a
40 definition of biomedical waste to prevent such waste from being
41 regulated as a hazardous waste subject to the requirements of the
42 hazardous waste management rules of the Department of
43 Environmental Protection after February 1, 1990. Since the Board
44 of Environmental Protection adopted the biomedical waste
45 management rules on November 8, 1989, regulating such wastes
46 under the hazardous waste management rules is unnecessary and
47 would impose a financial hardship on medical facilities which are
48 the generators of such wastes. Without this bill, both rules
49 apply to the management of pathogenic and infectious waste.

50