

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2505

H.P. 1832

House of Representatives, April 12, 1990

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

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative LORD of Waterboro.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act Reducing the Use of Toxic Substances in the Workplace by
Minimizing the Generation of Hazardous Waste.**



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

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¢ a pound.

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.

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

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

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

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

11 8. Manifest. "Manifest" has the same meaning as in section
12 1303-C, subsection 19.

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

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

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

23 12. Recycle. "Recycle" has the same meaning as in section
24 1303-C, subsection 21.

25 13. Source reduction. "Source reduction" means the
26 elimination of waste at the source, usually within a process,
27 including process modifications, feedstock substitutions,
28 improvements in feedstock purity, housekeeping and management
29 practices, increases in the efficiency of machinery and on-site,
30 closed-loop recycling, or any action that reduces the amount and
31 toxicity of the waste generated in the production process.

32 14. State reduction goals. "State reduction goals" means a
33 20% volume reduction in hazardous waste generated in the State by
34 January 1, 1995, and a 30% volume reduction in hazardous waste
35 generated in the State by January 1, 1997.

36 15. Storage. "Storage" has the same meaning as in section
37 1303-C, subsection 36.

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

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

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

§2302. Hazardous Waste Minimization Program established

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

§2303. Hazardous waste management policy

It is the policy of the State that the generation of hazardous waste be eliminated or reduced as expeditiously as possible. In accomplishing waste reduction, it is the policy of the State to adhere to the following hierarchy of hazardous waste prevention and management:

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

2. Recover and reuse. Recover and reuse waste;

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

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

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

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

§2304. Hazardous waste reduction goals

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

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

6 **§2305. Department; powers and duties**

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

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

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

24 4. Funding of demonstration programs. The commissioner may
26 provide money from such funds as may be appropriated or otherwise
28 made available to academic institutions, facilities, industries,
30 government agencies or private organizations located in the State
32 to conduct demonstration or pilot programs utilizing innovative
 hazardous waste minimization technologies or procedures. The
 results of these programs must be made available for use by the
 public. The commissioner may allow information to remain
 confidential if the commissioner determines that it is a trade
 secret.

34 5. Information exchange. The commissioner may participate
36 in existing state, federal and industrial networks of individuals
38 and groups actively involved in waste minimization. The
40 commissioner may contract with technical information centers to
42 assist the department in carrying out the provisions of this
 chapter. The assistance must emphasize strategies to encourage
 hazardous waste reduction.

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

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

50 **§2306. Waste reduction achievement**

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

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

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

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

4. Progress evaluation. Progress toward meeting the state reduction goals must be evaluated annually by the commissioner based on manifest data, annual generator reports and other appropriate available information. Facilities constructed after the effective date of this section must be evaluated for volume of hazardous waste generated per production unit.

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

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

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

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

2 Generators required to complete a hazardous waste minimization
4 plan must be notified in writing of the commissioner's
6 determination. The notification must explain the basis for the
8 determination, including the specific wastes evaluated and the
10 annual generation trends of the facility during the previous 3
12 years. The commissioner shall supply the generator with the
14 guidelines for an acceptable hazardous waste minimization plan.

16 6. Exemptions. The following are exempt from the
18 provisions of this section:

20 A. Commercial hazardous waste treatment or storage
22 facilities;

24 B. Pilot plants or pilot production units;

26 C. Hazardous waste transporters;

28 D. Hazardous waste generated as a result of remedial or
30 corrective actions or facility closures required by law or
32 undertaken to protect employee health and safety, public
34 health and safety or the environment;

36 E. Households;

38 F. Agricultural operations; and

40 G. Generators exempted under this paragraph. To qualify
42 for an exemption under this paragraph, a generator must
44 demonstrate to the commissioner that all practicable
46 reductions have been implemented or scheduled for
48 implementation. The commissioner may establish alternate
50 hazardous waste reduction goals for the facility when
52 appropriate.

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

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

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

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

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

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

12 **§2307. Generator waste minimization plans**

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

18 A. A statement of facility-wide management policy regarding
20 hazardous waste reduction;

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

24 (1) Identification and characterization of all
26 hazardous wastes generated at the facility;

28 (2) Identification and evaluation of any appropriate
30 technologies, procedures, processes, equipment or
32 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

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

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

40 D. Performance goals for the reduction, to the extent
42 practicable, of individual waste streams. The specific
44 performance goals must be expressed in numeric terms when
46 possible. When the establishment of numeric performance
48 goals is not practicable, the performance goals must include
 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
50 minimization including those provided for in section 2306,
 subsection 6, paragraph G, subparagraph (1);

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

5 F. A program for maintaining records on hazardous waste
6 generation rates and management costs.

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

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

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

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

29 5. Employee notification. Six months prior to the date
30 when the initial hazardous waste minimization plan or an update
31 must be completed, the owner or operator of each facility
32 required to develop a plan under this chapter shall notify all of
33 its employees of the requirements for the plan or updates,
34 identify the hazardous substances and production units for which
35 a plan or update must be submitted, provide the criteria for
36 plans specified by the commissioner and solicit comments and
37 suggestions on waste minimization options from all employees.

38 6. Review and approval of plan. The commissioner may
39 review a plan or update to determine whether it is adequate
40 according to the guidelines established under this chapter. This
41 chapter does not prohibit the commissioner from seeking
42 additional information from a generator to review the adequacy of
43 a plan or plan update.

44 A. If a plan or update is determined inadequate, the
45 commissioner shall notify the generator of the inadequacy,
46

and identify the specific deficiencies. The commissioner may specify a reasonable time period of not less than 90 days within which the generator must submit a modified plan or update addressing the specified deficiencies. The commissioner may, upon request, provide technical assistance to aid the generator in modifying the plan or update.

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

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

§2308. Confidentiality

Upon a satisfactory showing to the commissioner by the generator that a plan summary or update developed under this chapter, if made public, would divulge methods, processes or other information entitled to protection, the commissioner shall 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.

2 3. Exemption renewal. If granted, an exemption under this
4 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.

6 4. Department authority. This section does not diminish
8 the existing authority of the department, pursuant to any laws,
10 to establish by regulation, permit, license or order, any
12 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.

14 §2310. Hazardous Waste Reduction Advisory Committee

16 The Hazardous Waste Reduction Advisory Committee, as
18 authorized in Title 5, section 12004-I, subsection 22-A, shall
20 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.

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

26 A. The Governor shall appoint 3 representatives from the
28 business community and 2 representatives of organized
 labor. At least one of the representatives from the
 business community must represent the interests of toxic
 users.

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

34 C. The Speaker of the House of Representatives shall
36 appoint one member from a public health organization, one
38 member from an environmental organization and one public
 member.

40 D. The Commissioner of Environmental Protection, the
42 Commissioner of Labor, the Director of the Maine Emergency
44 Management Agency and the Executive Director of the Maine
 Waste Management Agency shall serve as nonvoting ex officio
 members.

46 2. Terms. All appointed members are appointed for
48 staggered terms of 3 years. The President of the Senate and the
50 Speaker of the House of Representatives shall each appoint one
52 member for a one-year initial term, one member of a 2-year
 initial term and one member for a 3-year initial term. The
 Governor shall appoint one member for a one-year initial term, 2
 members for 2-year initial terms and 2 members for 3-year initial

terms. A vacancy must be filled by the same appointing authority that made the original appointment. An appointed member may not serve more than 2 4-year terms.

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

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

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

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

7. Duties; powers. The committee may:

A. Review the priorities for reducing hazardous waste;

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

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;

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

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

§2311. Generator registration

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.

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.

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.

§2312. Enforcement; penalties

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.

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:

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.

2 DEPARTMENT OF ENVIRONMENTAL PROTECTION
3 TOTAL

\$122,720

4
5 FISCAL NOTE

6 If enacted, this legislation will result in:

8
9 1. An increase in dedicated revenue to the Department of
10 Environmental Protection (the Maine Hazardous Waste Fund) in the
11 amount of \$125,000 for fiscal year 1990-91. This additional
12 revenue would be derived from the proposed \$50 registration fee
13 on hazardous waste generators. These fees will be collected in
14 March of each year and could result in a potential cash flow
15 problem.

16
17 2. An allocation of Other Special Revenue to the Department
18 of Environmental Protection (the Maine Hazardous Waste Fund) in
19 the amount of \$122,720 for fiscal year 1990-91. This allocation
20 would provide funds for required staff, anticipated costs of the
21 Hazardous Waste Reduction Advisory Committee, and general
22 operating expenses to administer the Hazardous Waste Minimization
23 Program.

24
25 STATEMENT OF FACT

26
27 In the public interest of the State and its citizens, this
28 bill creates new state policy, goals and a new program to ensure
29 that the generation of hazardous waste is minimized as
30 expeditiously as possible. The bill provides the Department of
31 Environmental Protection with the authority to create a hazardous
32 waste minimization program:

- 33
34 1. To register generators with the department; and
35
36 2. To require and oversee hazardous waste reduction.