

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 349

H.P. 258

House of Representatives, February 5, 1991

Reference to the Committee on Labor suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative MCHENRY of Madawaska.

Cosponsored by Representative JOSEPH of Waterville, Senator MILLS of Oxford and Representative PINEAU of Jay.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act to Protect the Public from Unsafe Industrial and Commercial
Facilities.**

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

37-B MRSA c. 13, sub-c. III-B is enacted to read:

SUBCHAPTER III-B

INSPECTION OF HAZARDOUS BUSINESSES

§811. Definitions

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

1. Bureau. "Bureau" means the Department of Labor, Bureau of Labor Standards.

2. Employee. "Employee" means any individual who performs work in the operation of an industrial or commercial facility.

3. Hazardous equipment or machinery. "Hazardous equipment or machinery" means any equipment or machinery used in the operation of an industrial or commercial facility that, if operated improperly, may cause serious injury to persons or property located outside but in the vicinity of the industrial or commercial facility.

4. Hazardous substance. "Hazardous substance" means any extremely hazardous substance or any toxic chemical in an amount requiring a facility's identification under section 794, subsection 1, paragraph A.

5. Initiate or resume operation. "Initiate or resume operation" means:

A. The commencement of operation of a facility that has not been operated previously;

B. The recommencement of operation of a facility that has ceased operation temporarily if:

(1) More than 50% of all employees who will be working during the resumption of operation have worked at that facility for less than 6 consecutive months immediately before the facility ceased operation;

(2) More than 50% of the employees who will be regularly assigned to handle hazardous substances at that facility during the resumption of operation have worked in that capacity for less than 6 consecutive months immediately before the facility ceased operation; or

2 (3) The facility has ceased operation for more than
3 one year; or

4 C. The attempted continuous operation of a facility that
5 has been in operation for more than 6 months if:

6 (1) More than 50% of all employees working at the
7 facility have worked at that facility for less than 6
8 consecutive months; or

9 (2) More than 50% of the employees who are regularly
10 assigned to handle hazardous substances at that
11 facility have worked in that capacity for less than 6
12 consecutive months.

13 6. Local emergency planning committee. "Local emergency
14 planning committee" means the local emergency planning committee
15 established under section 793 that has jurisdiction over the area
16 in which an industrial or commercial facility is located.

17 7. New employee. "New employee" means an employee who has
18 worked at a facility or who has been regularly assigned to handle
19 hazardous substances at a facility for less than 6 consecutive
20 months before the initiation or resumption of operations at the
21 facility.

22 8. Operator of facility or facility operator. "Operator of
23 a facility" or "facility operator" means the person, partnership,
24 corporation or other legal entity that operates an industrial or
25 commercial facility.

26 §812. Initiation or resumption of operation prohibited

27 1. Operation prohibited. An industrial or commercial
28 facility where hazardous substances are present or hazardous
29 equipment or machinery is used that has over 50 full-time
30 employees may not initiate or resume operation except as provided
31 in section 813.

32 2. Rulemaking; determination of applicability. The bureau
33 shall adopt rules under Title 5, chapter 375, to implement this
34 subchapter, including, but not limited to, the establishment of a
35 procedure under which the operator of a facility, the employees
36 of that facility or their recognized bargaining agent, the county
37 commissioners of the county in which the facility is located, the
38 municipal officers of the municipality in which the facility is
39 located or the applicable local emergency planning committee may
40 petition the bureau to determine whether the facility is subject
41 to this section.

42 A. The bureau may inspect the facility or the records of
43 the facility if the inspection is necessary to determine
44 whether the facility is subject to this section. If access

2 to the facility or to the records of the facility is denied
3 after a bureau request, the bureau shall seek an
4 administrative inspection warrant as provided in the Maine
5 Rules of Civil Procedure, Rule 80E.

6 B. The agency shall assist the bureau in identifying
7 facilities where hazardous substances are present.

8
9 C. If the bureau determines that a facility is subject to
10 this section upon petition or on its own motion, the bureau
11 shall immediately notify the facility operator of that fact
12 and initiate an inspection under section 813.

14 **§813. Inspection requirements**

15 An industrial or commercial facility subject to the
16 prohibition of section 812, subsection 1, may initiate or resume
17 operation only if the facility operator permits an inspection to
18 be conducted during the initiation or resumption of operations as
19 provided in this section.

20
21 1. Inspection scheduled. Immediately upon determining that
22 a facility is subject to section 812, subsection 1, the bureau
23 shall contact the facility operator to arrange a date or dates
24 for an inspection of the facility.

25
26 2. Notice of inspection. Immediately after the inspection
27 date or dates have been established, the bureau shall notify the
28 applicable local emergency planning committee of the inspection
29 and shall publish a notice in a newspaper of general circulation
30 in the area in which the facility is located. The notice must
31 state:

32
33 A. That the facility operator is initiating or resuming
34 operation of the facility;

35
36 B. The name, address and nature of the business of the
37 facility;

38
39 C. The fact of the pending inspection and its purpose;

40
41 D. The date or dates of the inspection; and

42
43 E. The opportunity for public comment provided under
44 subsection 3.

45
46 3. Public comment. During the period immediately preceding
47 the inspection and while an inspection is in progress, the bureau
48 shall accept from any source comments relating to any potential
49 public hazard created by the initiation or resumption of
50 operation of the facility.

2 4. Representatives during inspection. The bureau shall
3 permit the following persons, if they desire, to accompany the
4 bureau's representatives during the inspection:

6 A. Any designated representative of the operator of the
7 facility;

8 B. One representative designated by the county
9 commissioners of the county in which the facility is located;

10 C. One representative designated by the municipal officers
11 of the municipality in which the facility is located;

12 D. One designated representative of any recognized
13 bargaining agent for employees of the facility; and

14 E. One designated representative of the applicable local
15 emergency planning committee.

16 5. Inspection; standards. The bureau shall have an
17 inspection of the facility conducted and shall consult with the
18 employees of the facility to determine if:

19 A. All hazardous substances present at the facility are
20 properly stored and labeled in such a manner as to minimize
21 any risk of injury to persons and property located in the
22 vicinity of the facility;

23 B. All hazardous equipment or machinery used in the
24 facility is in proper working condition so as to minimize
25 any risk of injury to persons and property located in the
26 vicinity of the facility;

27 C. All new employees of the facility who work with
28 hazardous substances or hazardous equipment and machinery
29 are adequately trained to perform their assigned tasks so as
30 to minimize any risk of injury to persons and property
31 located in the vicinity of the facility;

32 D. Adequate safeguards have been taken to minimize any risk
33 of injury to persons and property located in the vicinity of
34 the facility caused by the mishandling or accidental release
35 of hazardous substances or improper operation of hazardous
36 equipment or machinery; and

37 E. All new employees of the facility are aware of the
38 hazardous substances present or hazardous equipment or
39 machinery used in the facility and are knowledgeable
40 regarding proper safety procedures to be taken in the event
41 of an emergency, including any emergency response plans

2 developed by the facility operator and the applicable local
3 emergency planning committee.

4 6. Conduct of inspection; expenses. The bureau may conduct
5 the inspection under this section with its own personnel or may
6 contract with private parties to perform the inspection under the
7 bureau's supervision. Upon request, the Department of
8 Environmental Protection and the agency shall assist the bureau
9 during this inspection when hazardous substances are present at
10 the facility.

11 The facility operator shall pay all costs associated with the
12 inspection conducted under this section, including, but not
13 limited to, bureau staff time, contracts with other state
14 agencies and private companies, and other administrative costs
15 directly related to the inspection. Payments from a facility
16 operator must be deposited with the Treasurer of State in a
17 continuous carrying account, with appropriate subaccounts, solely
18 for the reimbursement of all costs associated with the inspection
19 of the facility. Any payments by the facility operator in excess
20 of the inspection costs for the facility must be promptly repaid
21 to the facility operator.

22 7. Bureau determination. The bureau shall determine
23 whether the factors described in subsection 5 have been
24 adequately addressed. The bureau shall consider all comments
25 received from the public in making its determination.

26 A. If the bureau determines that all of the factors
27 described in subsection 5 have been adequately addressed,
28 the bureau shall immediately notify the facility operator of
29 that fact.

30 B. If the bureau determines that any of the factors
31 described in subsection 5 has not been adequately addressed,
32 the bureau shall order the immediate cessation of any
33 operations at that facility affected by the deficiency. The
34 bureau shall immediately notify the facility operator of the
35 order, the specific areas in which a deficiency has been
36 determined and the actions that must be taken to remedy the
37 deficiency. Upon notice from the facility operator that the
38 deficiencies have been remedied, the bureau shall follow the
39 provisions of this section relating to initial inspections
40 except that any subsequent inspections must be limited to
41 the areas of deficiency determined by the bureau under this
42 paragraph. When the bureau determines that all of the
43 deficiencies have been remedied, the bureau shall
44 immediately rescind its order and notify the facility
45 operator of that fact.

2 C. All determinations made by the bureau under this
4 subsection are deemed to be final agency action and may be
6 appealed as provided in Title 5, chapter 375, subchapter VII.

8 §814. Enforcement

10 1. Civil penalty. Any facility operator who violates this
12 subchapter, any rule adopted under this subchapter or any order
14 issued under this subchapter is subject to a civil penalty of
16 \$5,000, payable to the State, to be recovered in a civil action.
18 Each day the violation continues constitutes a separate offense.

20 2. Equitable relief. The Attorney General, the bureau, the
22 county or municipality in which the facility is located, the
24 applicable local emergency planning committee or the employees of
26 the facility or their recognized bargaining agent may seek
28 equitable relief from the Superior Court to enforce this
30 subchapter, any rule adopted under this subchapter or any order
32 issued under this subchapter.

34 §815. Liability and remedies unaffected

36 This subchapter does not affect in any way the liability of
38 a facility operator or the remedies of any person, under common
40 law or any other statute, for injury or damage caused by the
42 operation of a facility subject to this subchapter.

44 **STATEMENT OF FACT**

 This bill is intended to protect public safety by requiring
inspections of certain industrial and commercial facilities that
use potentially hazardous substances, equipment and machinery to
ensure that operations will be undertaken properly.

 The Department of Labor, Bureau of Labor Standards is
authorized to inspect a facility and consult with the employees
of the facility to ensure that the facility is safe to initiate
or resume operations. Opportunity is provided for public comment
and input from local government and the facility's employees to
ensure that adequate information is obtained about potential
hazards caused by the facility's operation. Upon request, the
Department of Environmental Protection and the Maine Emergency
Management Agency shall assist the Bureau of Labor during the
inspection of hazardous substances at a facility.