

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 511

S.P. 202

In Senate, February 11, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Oxford

Cosponsored by Representative PINEAU of Jay, Senator ESTY of Cumberland and
Representative RAND of Portland.

STATE OF MAINE

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

An Act to Ensure Safety in the Workplace.

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

22 MRSA c. 271, sub-c. IV is enacted to read:

SUBCHAPTER IV

INSPECTION OF HAZARDOUS BUSINESSES

§1696-I. 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 person 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 may cause serious injury to persons or property in the vicinity of the industrial or commercial facility if the equipment or machinery is operated improperly.

4. Hazardous substances. "Hazardous substances" means those extremely hazardous substances listed in 40 Code of Federal Regulations, Part 355.

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

A. The commencement of operation of a facility that has never been operated previously;

B. The recommencement of operation of a facility that has ceased operation temporarily; or

C. The attempted continuous operation of a facility where more than 50% of the employees currently employed at the facility have worked at that facility for less than 6 consecutive months and the facility has been in operation for more than 6 months.

6. Local emergency response planning committee. "Local emergency response planning committee" means a local emergency response planning committee established as provided in Title 37-B, section 793.

7. Operator of facility or facility operator. "Operator of a facility" or "facility operator" means the person,

partnership, corporation or other legal entity that operates an industrial or commercial facility.

8. State Emergency Response Commission. "State Emergency Response Commission" means the State Emergency Response Commission described in Title 37-B, section 792.

§1696-J. Initiation or resumption of operation prohibited

1. Operation prohibited. Except as provided in section 1696-K, no industrial or commercial facility may initiate or resume operation if:

A. The facility has over 250 full-time employees;

B. Hazardous substances or hazardous equipment or machinery is used in the operation of the facility; and

C. More than 50% of the employees who will be working during the initiation or resumption of operation have worked at the facility for less than 6 months immediately preceding the initiation or resumption of operations at the facility.

2. Rulemaking. The bureau shall adopt rules under Title 5, chapter 375, that identify those industrial or commercial operations that use hazardous substances or hazardous equipment or machinery, but need not designate specific facilities. The State Emergency Response Commission shall assist the bureau in identifying those operations that use hazardous substances.

A. The rules adopted by the bureau must provide a procedure under which the operator of an industrial or commercial facility, the employees of that facility or their recognized bargaining agent, public officials of local governmental units located in the vicinity of that facility, a local emergency response planning committee or persons who reside in the vicinity of that facility may petition the bureau to determine whether the facility is subject to this section. If the bureau determines that a facility is subject to this section upon petition or on its own motion, the bureau shall immediately notify the facility operator of that fact and, if the facility is currently in operation, order the immediate cessation of that operation.

B. The rules adopted by the bureau must provide a procedure under which the operator of an industrial or commercial facility may obtain a waiver from application of this section. The bureau shall waive the application of this section for any facility that provides an essential public service, such as a hospital or public utility, when the prevention of immediate initiation or resumption of

operation would clearly result in greater harm to the public than the potential for injury created by hazardous substances or hazardous equipment or machinery used in the facility. Any such facility remains subject to the inspection requirements of section 1696-K.

§1696-K. Inspection requirements

An industrial or commercial facility subject to the prohibition of section 1696-J may initiate or resume operation only as provided in this section.

1. Notice to bureau. After receiving notice from the bureau under section 1696-J, subsection 2, paragraph A, the operator of the facility shall notify the bureau if the facility operator intends to initiate or resume operation of the facility. The bureau shall determine the form and content of this notice.

2. Inspection scheduled. Immediately upon receiving notice from the facility operator under subsection 1, the bureau shall arrange a date and time for an inspection of the facility. This date may not be less than 20 days from receipt of the notice.

3. Notice of inspection. Immediately upon establishing the date and time for an inspection of the facility, the bureau shall notify any appropriate local emergency response planning committee of the pending inspection and shall publish on at least 2 separate days a notice in a newspaper of general circulation in the locality in which the facility is located. The notice must state:

A. That the bureau has received notice of the facility operator's intent to initiate or resume operation of the facility;

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

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

D. The date and time of the inspection; and

E. The opportunity for public comment provided under subsection 4.

4. Public comment. The bureau shall accept public comments from any source relating to any potential hazard created by the initiation or resumption of operation of the facility during the period immediately preceding the inspection and for 20 days after the inspection is completed.

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

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

8 B. Any designated representative of local government for
9 the county or municipality in which the facility is located;

10 C. Any designated representative of a recognized bargaining
11 agent for the employees of the facility; and

12 D. Any designated representative of a local emergency
13 response planning committee.

14 6. Inspection; standards. The bureau shall inspect the
15 facility and consult with the employees of the facility to
16 determine if:

17 A. All hazardous substances used in the facility are
18 properly stored and labeled;

19 B. All hazardous equipment or machinery used in the
20 facility is in proper working condition;

21 C. All new employees of the facility who work with
22 hazardous substances or hazardous equipment and machinery
23 used in the facility are adequately trained to perform their
24 assigned tasks;

25 D. Adequate safeguards have been taken to reduce the
26 likelihood of injury to persons and property located in the
27 vicinity of the facility caused by mishandling of hazardous
28 substances or improper operation of hazardous equipment or
29 machinery used in the facility; and

30 E. All new employees of the facility are aware of the
31 hazardous substances or hazardous equipment or machinery
32 used in the facility and are knowledgeable regarding proper
33 safety procedures to be taken in the event of an emergency,
34 including any applicable emergency response plans developed
35 by a local emergency response planning committee.

36 Upon request, the Department of Environmental Protection and
37 the State Emergency Response Commission shall assist the
38 bureau during this inspection when hazardous substances are
39 used in the operation of the facility.

40 7. Bureau determination. The bureau shall determine
41 whether all of the factors described in subsection 6 have been

adequately addressed. This determination may not be made until the close of the period for accepting public comments under subsection 4. The bureau shall consider all comments received from the public in making its determination.

A. If the bureau determines that all of the factors described in subsection 6 have been adequately addressed, the bureau shall immediately notify the facility operator of that fact and the operator may initiate or resume operation of the facility.

B. If the bureau determines that all of the factors described in subsection 6 have not been adequately addressed, the bureau shall immediately notify the facility operator of that fact, the specific areas in which a deficiency has been determined and the actions that must be taken to remedy the deficiency. Upon notice from the facility operator that the deficiencies have been remedied, the bureau shall follow the provisions of this section relating to initial inspections except that any subsequent inspections are limited to the areas of deficiency determined by the bureau under this paragraph.

C. All determinations made by the bureau under this subsection are deemed to be final agency action and may be appealed as provided in Title 5, chapter 375, subchapter VII. A bureau determination under paragraph A is stayed for 30 days after an appeal is filed under this paragraph. During this period, the court shall conduct a preliminary hearing and accept any relevant evidence submitted by the parties upon leave of the court. At the end of the 30-day period, the court shall extend the stay pending a final determination of the appeal unless it finds that the appellants have failed to provide any reasonable evidence demonstrating that all of the factors described in subsection 6 have not been adequately addressed.

8. Failure to inspect. If the bureau fails to complete an initial inspection of the facility within 60 days after receiving notice from the facility operator under subsection 1, the inspection is deemed to have been successfully completed and the facility operator may initiate or resume operation of the facility.

§1696-L. Enforcement

1. Civil penalty. Any operator of a facility who violates this subchapter is subject to a civil penalty of at least \$10,000 and not more than \$25,000, payable to the State, to be recovered in a civil action. Each day the violation continues constitutes a separate offense.

2 2. Injunctive relief. The Attorney General, the bureau,
4 the municipality or county in which the facility is located or
6 the employees of the facility or their recognized bargaining
 agent may seek injunctive relief from the Superior Court to
 enforce this subchapter.

8
10 **STATEMENT OF FACT**

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

16 Many industrial and commercial facilities use substances,
18 equipment and machinery that, if improperly handled or operated,
20 can cause severe injury and damage to persons and property
22 located near the facility. In the normal course of business,
24 adequate safeguards exist to reduce any potential hazards caused
26 by these substances, equipment and machinery. When the labor
28 force of such a facility is inadequately trained in the proper
30 handling or operation of these substances, equipment or
32 machinery, an unacceptable risk of injury exists. This situation
34 is most likely to occur when such a facility begins or resumes
36 operation and a large number of the workers are new to the
 facility and inexperienced at their jobs. This situation occurs
 for 2 primary reasons: the substances, equipment and machinery
 have not been in regular use and may be unknowingly defective;
 and the new workers may not have adequate experience to perform
 their assigned tasks or react to an emergency situation. The
 latter problem is most acute in facilities which employ a large
 number of persons where it is difficult to ensure proper training
 for each employee. These large industrial and commercial
 facilities are also more likely to use hazardous substances,
 equipment or machinery in their operation.

38 For these reasons, this bill prevents the initiation or
40 resumption of operation of any facility which employs more than
42 250 persons, uses hazardous substances or hazardous equipment or
44 machinery in its operations and is being operated by an
46 inexperienced work force. The operator of such a facility must
48 notify the Bureau of Labor Standards of the impending initiation
50 or resumption of operation. The Bureau of Labor Standards will
 schedule and conduct an inspection of the facility and consult
 with the employees of the facility to ensure that the facility
 may safely initiate or resume operation. Opportunity is provided
 for public comment and input from local government and the
 facility's employees to ensure adequate information is obtained
 about potential hazards caused by the facility's operation. The
 bureau will cooperate with the State Emergency Response

Commission and local emergency response planning committees to
2 ensure that local emergency response plans are understood and
followed in the event of an emergency at the facility. The
4 facility may not begin or resume operation until it has been
inspected by the Bureau of Labor Standards and found to be safe
6 for operation.