

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1654

H.P. 1129

House of Representatives, April 24, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative TREAT of Gardiner.

Cosponsored by Representative JACQUES of Waterville, Senator GAUVREAU of Androscoggin and Representative MARSH of West Gardiner.

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STATE OF MAINE

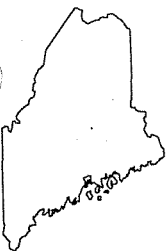
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

**An Act to Facilitate Criminal Enforcement of the Environmental Laws.**

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

2  
3 Sec. 1. 17-A MRSA §1322, sub-§3, ¶C-1, as enacted by PL 1989,  
4 c. 872, §5 and c. 924, §13, is repealed and the following enacted  
5 in its place:

6  
7 C-1. "Environmental clean-up expense" means any reasonable  
8 expense incurred for products and services needed or used to  
9 remove any waste or pollutant discharged or caused to be  
10 discharged into the environment by the defendant, to restore  
11 the environment to its condition prior to the discharge of  
12 the waste or pollutant, and to dispose of the waste or  
13 pollutant in accordance with the standards under state and  
14 federal environmental laws.

15  
16 Sec. 2. 17-A MRSA §1322, sub-§3, ¶C-2 is enacted to read:

17  
18 C-2. "Expense of an emergency response" means reasonable  
19 costs incurred by a public agency in reasonably making an  
20 appropriate emergency response to the incident, but only  
21 includes those costs directly arising because of the  
22 response to the particular incident. Reasonable costs  
23 include the costs of providing police, fire fighting, rescue  
24 and emergency medical services at the scene of the incident,  
25 as well as the compensation for the personnel responding to  
26 the incident. "Public agency" means the State or any  
27 county, municipality, district or public authority located,  
28 in whole or in part, within this State that provides or may  
29 provide police, fire fighting, ambulance or other emergency  
30 services.

31  
32 Sec. 3. 38 MRSA §349, sub-§1, as amended by PL 1989, c. 820,  
33 §9, is repealed and the following enacted in its place:

34  
35 1. Criminal penalties. A person is guilty of a criminal  
36 violation of the environmental laws if that person intentionally,  
37 knowingly or recklessly:

38  
39 A. Discharges any pollutant into the waters of the State,  
40 in violation of this Title or department rules, or in  
41 violation of the terms or conditions of any order, license,  
42 permit, approval or decision of the department;

43  
44 B. Emits any air contaminant into the ambient air in  
45 violation of this Title or department rules, or in violation  
46 of the terms or conditions of any order, license, permit,  
47 approval or decision of the department;

48  
49 C. Handles solid waste in a quantity in excess of 500  
50 pounds or 100 cubic feet in violation of this Title or  
51 department rules or in violation of the terms or conditions

2 of any order, license, permit, approval or decision of the  
3 department;

4 D. Discharges any hazardous waste or hazardous matter onto  
5 the land or into the ambient air or waters of the State, in  
6 violation of this Title or department rules or in violation  
7 of the terms and conditions of any order, license, permit,  
8 approval or decision of the department;

10 E. Transports any hazardous waste without having the proper  
11 license or permit as required by this Title or department  
12 rules;

14 F. Transports any hazardous waste to any location that does  
15 not have a license or permit for the handling of hazardous  
16 waste as required by this Title or department rules;

18 G. Handles any hazardous waste without having obtained a  
19 license to do so as required by this Title or department  
20 rules;

22 H. Handles any hazardous waste in any location that does  
23 not have a license or permit for the handling of hazardous  
24 waste as required by this Title or department rules;

26 I. Establishes, constructs, operates or materially alters  
27 any facility for the handling of hazardous waste without  
28 having obtained a proper license or permit as required by  
29 this Title or department rules;

30 J. Handles or transports any hazardous waste in a manner  
31 that violates the terms or conditions of any order, rule,  
32 license, permit, approval or decision of the department with  
33 respect to the handling or transporting of hazardous waste;  
34

36 K. Gives over hazardous waste to a 3rd person who does not  
37 have a license or permit to transport or handle hazardous  
38 waste as required by this Title or department rules;

40 L. Transports or causes to be transported any hazardous  
41 waste without accurately completing a manifest and filing  
42 that manifest with the department, as required by this Title  
43 or department rules; or

44 M. Violates the provisions of this Title or department  
45 rules or the terms or conditions of any other order, rule,  
46 license, permit, approval or decision of the department.  
47

48 A violation of paragraphs A to C is a Class C crime, except that  
49 notwithstanding Title 17-A, sections 4-A and 1301, the fine may  
50 not exceed \$25,000.

2 A violation of paragraphs D to K is a Class C crime, except that  
4 notwithstanding Title 17-A, sections 4-A and 1301, the fine may  
not exceed \$50,000 for each day of violation.

6 A violation of paragraphs L or M is a Class D crime, except that  
8 notwithstanding Title 17-A, sections 4-A and 1301, the fine may  
not exceed \$10,000.

10 Sec. 4. 38 MRSA §349, sub-§3, as affected by PL 1989, c. 890,  
12 Pt. A, §40 and amended by Pt. B, §7, is repealed and the  
following enacted in its place:

14 3. Falsification of environmental records. A person is  
16 guilty of criminal falsification of environmental records if that  
person intentionally, knowingly or recklessly:

18 A. Makes any false statement, representation or  
20 certification in any document filed with the department  
pursuant to this Title, department rules or pursuant to the  
22 terms and conditions of any order, license, permit, approval  
or decision of the department;

24 B. Makes a false statement, representation or certification  
26 in any document required to be maintained by a person or  
entity other than the department pursuant to this Title,  
28 department rules or pursuant to the terms and conditions of  
any order, license, permit, approval or decision of the  
department;

30 C. Fails to monitor, sample or report any discharges or  
32 emissions of pollutants as required pursuant to the terms  
and conditions of any order, license, permit or approval or  
34 decision of the department; or

36 D. Fails to make any information submittal required by the  
38 commissioner under section 568, subsection 3 or section  
1364, subsection 3.

40 Falsification of environmental records is a Class C crime, except  
42 that, notwithstanding Title 17-A, sections 4-A and 1301, the fine  
may not exceed \$10,000.

44 Sec. 5. 38 MRSA §349, sub-§3-A is enacted to read:

46 3-A. Tampering with a monitoring device. A person is  
48 guilty of tampering with a monitoring device if that person  
recklessly tampers with or renders inaccurate any monitoring  
50 device or a device for making any sampling, preservation,  
handling or analytical measurement required by this Title,  
52 department rules or the terms and conditions of any order,  
license, permit, approval or decision of the department.  
Tampering with a monitoring device is a Class C crime, except

2 that, notwithstanding Title 17-A, sections 4-A and 1301, the fine  
3 may not exceed \$10,000.

4  
5  
6 **STATEMENT OF FACT**

7 This bill is intended to clarify the existing criminal  
8 provisions of the environmental laws and to facilitate the  
9 enforcement of those provisions by the State.

10  
11 First, the bill incorporates all the criminal provisions  
12 currently existing in the Maine Revised Statutes, Title 38,  
13 including those provisions relating to hazardous waste.

14  
15 Second, the bill amends Title 38, section 349, subsection 1  
16 by expressly stating the culpable mental states of  
17 "intentionally," "knowingly" and "recklessly." Title 38, section  
18 349, subsection 1 is currently silent as to the level of culpable  
19 mental state required for a conviction of a criminal violation  
20 under the environmental laws.

21  
22 Third, the bill raises the class of crime for violations of  
23 environmental laws other than hazardous waste from a Class E  
24 crime to a Class C crime. The bill, however, specifies the  
25 conduct subject to the higher degree of sanctions. The bill  
26 retains a general violation section for conduct that violates  
27 unspecified terms and conditions of the law and licenses,  
28 permits, approvals or decisions issued by the department. A  
29 violation of the general violation section is classified as a  
30 Class D crime.

31  
32 With respect to the hazardous waste provisions, the bill  
33 simplifies the statutes by using terms that are already defined  
34 in Title 38, rather than defining those terms within the criminal  
35 penalty section. In addition, the bill reduces the culpable  
36 mental state required for a conviction of a hazardous waste crime  
37 from "knowingly" to "recklessly." The purpose of the change is  
38 to incorporate into state law federal concepts of imposing  
39 liability on those persons who engage in "willful blindness" or a  
40 "conscious avoidance" of hazardous waste violations. The  
41 reckless standard, which is defined under Maine's Criminal Code  
42 as a "conscious disregard of the risk," Title 17-A, section 35,  
43 subsection 3, removes any incentive to avoid becoming familiar  
44 with the legal requirements for handling hazardous waste.

45  
46 The bill also amends the definition of "environmental  
47 clean-up expense" and resolves a numbering conflict by  
48 renumbering the definition of "expense of an emergency response"  
as Title 17-A, section 1322, subsection 3, paragraph C-2.