

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1687

S.P. 639

In Senate, April 24, 1991

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 cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LUDWIG of Aroostook
Cosponsored by Senator CAHILL of Sagadahoc, Representative ROTONDI of Athens and
Representative MICHAUD of East Millinocket.

STATE OF MAINE

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

An Act to Clarify the Solid Waste Landfill Remediation and Closure
Program.



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

2
4 Sec. 1. 38 MRSA §1310-C, sub-§4, ¶¶A to C, as enacted by PL 1987, c. 517, §25, are amended to read:

6 A. "Abandoned" with reference to a solid waste landfill means ~~not~~ no longer handling solid waste on or after the ~~effective date of this article~~ January 1, 1983 when the cessation of handling operations has not been approved by the department.

12 B. "Closed" with reference to a solid waste landfill means ~~not~~ no longer handling solid waste ~~on or after the effective date of this article~~ when the cessation of handling operations has occurred in accordance with the provisions of a permanent closure plan approved by the department.

18 C. "~~Municipal~~ Open-municipal solid waste landfill" means a solid waste landfill owned by a municipality or group of municipalities or a quasi-municipal entity, such as a county, Indian tribe or legislatively chartered village corporation, handling solid waste on or after January 1, 1983.

24 Sec. 2. 38 MRSA §1310-C, sub-§4, ¶D, as enacted by PL 1987, c. 517, §25, is repealed.

28 Sec. 3. 38 MRSA §1310-C, sub-§4, ¶E, as enacted by PL 1987, c. 517, §25, is amended to read:

30 E. "Solid waste landfill" means a waste facility for the permanent disposal of solid waste on or in land. This term does not include land spreading sites used in programs approved by the department, but includes sludge landfills.

36 Sec. 4. 38 MRSA §1310-D, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §236, is further amended to read:

40 2. Evaluation. ~~In the order of response to~~ the priorities established in the ~~initial~~ open-municipal solid waste landfill ranking and the objectives of paragraphs A to D C, the commissioner shall conduct and complete by January 1, 1993, subject to the availability of funding, environmental evaluations of each open-municipal solid waste landfill. The commissioner may employ private consultants to avoid additions to departmental staff and to accomplish the evaluations in a timely manner. The commissioner may utilize existing analyses of facilities, subject to the provisions of this subsection. When the commissioner has sufficient knowledge of existing hazards to the environment and public health posed by a specific site, the commissioner may take measures necessary to effect proper remediation and closure of the landfill, notwithstanding the site's listed priority. In

2 those cases, the commissioner shall ensure that the requirements
of this subsection are substantially met. The commissioner shall
4 design ensure that each evaluation ~~to--achieve~~ achieves the
following objectives:

6 A. To identify the actual hazards, if any, to the
environment and public health posed by the landfill and to
8 determine the closure and remediation requirements of the
landfill;

10 B. To establish a ~~ground-water~~ monitoring system, including
12 monitoring wells and test borings sufficient to assure
ensure identification and monitoring of potential hazards;

14 C. When potential hazards are identified, to provide:

16 (1) A complete description of the movement of surface
18 and waters, ground waters and landfill gases on or near
the landfill;

20 (2) An identification of pollutants in those waters;

22 (3) An evaluation of the scope, direction and rate of
24 movement of the contamination plume, if any; and

26 (4) Any other information that the commissioner
28 determines necessary to prepare the closure or
remediation recommendations pursuant to this subchapter;

30 D. To provide a recommended closure plan for the landfill
and, when necessary, a recommended plan for the remediation
32 of any hazards identified by the evaluation. Closure and
remediation recommendations must ensure a level or standard
34 of control of pollutants in surface waters at least as
stringent as the water quality criteria established under
36 chapter 3, subchapter I, article 4-A. Those recommendations
must also seek to achieve a level or standard of control of
38 pollutants in ground water at least as stringent as the
water quality criteria established under sections 465-C and
40 470, unless the commissioner finds that meeting those
standards is technically and economically infeasible and
42 that other measures can be implemented to ensure protection
of public health and safety; and

44 E. To consult with and involve the affected municipality or
46 municipalities in the conduct of the evaluation and the
analysis of its results.

48 **Sec. 5. 38 MRSA §1310-D, sub-§3**, as enacted by PL 1987, c.
50 517, §25, is repealed and the following enacted in its place:

2 3. Closing orders. The commissioner may incorporate the
3 recommendations of the landfill evaluations into a department
4 closing order and, if appropriate, remediation order subject to
5 the following provisions.

6 A. Within 90 days of the receipt of a landfill evaluation,
7 together with the recommendations for closure and, if any,
8 remediation actions, the commissioner shall issue an order
9 for closure and, if appropriate, remediation. Subject to
10 the provisions of sections 1310-F and 1310-G, a timetable
11 for implementation and all pertinent cost-sharing must be
12 included as part of the order.

13 B. Any person who is aggrieved by the department order may
14 appeal it as provided in section 341-D, subsection 4.

15 Sec. 6. 38 MRSA §1310-D, sub-§5, as enacted by PL 1989, c.
16 870, §3, is amended to read:

17 5. Certification of completion. A municipality that
18 engages a contractor to close a landfill under a plan-approved an
19 order issued by the department shall hire a licensed engineer
20 independent of the contractor or the municipality to, at a
21 minimum, monitor, evaluate and report on all on-site landfill
22 closure activities performed by the contractor. Upon completion
23 of the closure work in compliance with the plan-approved order
24 issued by the department, that engineer shall provide the
25 department and municipality with a written report that certifies
26 that the work performed by the contractor conforms with the plan
27 approved order issued by the department and all applicable laws
28 and regulations. The cost to the municipality to engage the
29 licensed engineer is a cost of closure under section 1310-F. No
30 later than 60 days after receipt of the engineer's report, the
31 department shall accept, conditionally accept or reject the
32 engineer's certification. If the department either conditionally
33 accepts or rejects the certification, the department shall
34 identify and direct the municipality to undertake any measures
35 necessary for completion of the closure in compliance with the
36 plan order.

37 Sec. 7. 38 MRSA §1310-E, sub-§1, ¶D, as enacted by PL 1987, c.
38 517, §25, is amended to read:

39 D. Any person may request the department to include --a
40 closed--or an abandoned or improperly closed solid waste
41 landfill site in its subsequent evaluations. In considering
42 such a request, the department shall consider the potential
43 environmental and public health hazards posed by the solid
44 waste landfill and the availability of funds for such an
45 evaluation.

2 **Sec. 8. 38 MRSA §1310-F, first ¶**, as amended by PL 1989, c. 869,
Pt. A, §6; affected by c. 890, Pt. A, §40 and amended by Pt. B,
§238, is repealed and the following enacted in its place:

4
6 The commissioner shall administer a closure and remediation
cost-sharing program to assist municipalities and other public
8 entities as provided in subsection 3 in the planning and
implementation of the closure and remediation orders. The
10 program is subject to the following provisions.

12 **Sec. 9. 38 MRSA §1310-F, sub-§1**, as affected by PL 1989, c.
890, Pt. A, §40 and amended by Pt. B, §238, is further amended to
14 read:

16 **1. Cost-share fraction.** Subject to the availability of
funds, the commissioner shall issue grants or payments to
18 eligible municipalities for 75% of the planning and
implementation costs of closure and for 90% of the planning and
20 implementation costs of remediation.

22 **Sec. 10. 38 MRSA §1310-F, sub-§2**, as affected by PL 1989, c.
890, Pt. A, §40 and amended by Pt. B, §238, is repealed and the
24 following enacted in its place:

26 **2. Eligibility.** Any municipality owning or operating a
solid waste landfill for which a remediation or closure order has
been issued by the department is eligible for cost-sharing
28 payments or grants. Under the provisions of this article, the
commissioner may act to abate public health, safety and
30 environmental threats at sites identified as uncontrolled
hazardous substance sites as defined in section 1362, subsection
32 3 or federally declared superfund sites. The commissioner, at
the commissioner's discretion, shall determine the amount of
34 funds to be expended at such sites. A municipality, which has
acted to plan or implement a closure of its solid waste landfill
36 or to remedy environmental and public health hazards posed by the
landfill prior to the award of a grant under this section, but
38 after January 1, 1983, is also eligible for reimbursement of
those costs provided the costs were incurred since January 1,
40 1983 and are consistent with any closure or remediation order
approved under this chapter for that site.

42 Any interest paid by a municipality on that portion of a
44 municipal bond used to finance remediation and closure activities
since January 1, 1983 is eligible for reimbursement.

46 The commissioner may establish agreements as necessary with the
48 Maine Municipal Bond Bank to deposit reimbursements of principal
and interest to be applied to particular bonds or to capitalize a
50 fund or funds for future payments for particular bonds.

2 The commissioner shall use at least 1/3 of the available funds
3 for municipalities eligible for reimbursement of closure and
4 remediation costs under this section until all those
5 municipalities have been reimbursed.

6 Sec. 11. 38 MRSA §1310-F, sub-§4 is enacted to read:

8 4. Audit. A municipality or other public entity receiving
9 grants or reimbursement of interest shall include the remediation
10 or closure project in its annual independent audit to provide
11 assurance of the proper expenditure of state funds. A copy of
12 this audit must be provided in a timely manner to the Solid Waste
13 Closure and Remediation Program of the Department of
14 Environmental Protection.

15 STATEMENT OF FACT

16
17
18
19
20 This bill makes a number of changes to the solid waste
21 landfill remediation and closure laws to clarify the statutory
22 language and legislative intent of those laws, especially with
23 regard to municipal eligibility for cost sharing.

24 Specifically, this bill:

25
26
27 1. Amends the definition section of the law to make its
28 definitions consistent with the eligibility provisions of the
29 original legislation;

30
31 2. Clarifies how the Department of Environmental Protection
32 is to conduct landfill evaluations;

33
34 3. Streamlines the process for approval of closing plans
35 resulting from the evaluations by having the Commissioner of
36 Environmental Protection issue an order rather than having the
37 Board of Environmental Protection adopt a closing plan after
38 receiving the commissioner's recommendations. Board oversight is
39 maintained through the usual appeals process. Additionally, an
40 incorrect reference to the law defining applicants' rights of
41 appeal has been corrected;

42
43 4. Makes minor amendments in the section of the law
44 relating to certification of the completion of landfill closures
45 to make its language consistent with changes enacted in 1990;

46
47 5. Clarifies how the department is to respond to a request
48 for an evaluation of a closed or abandoned landfill; and

6. Makes a number of changes to the cost-sharing section of
2 the remediation and closure laws intended to clarify the language
and legislative intent regarding eligibility for grants and
4 reimbursements to municipalities.