

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1880

H.P. 1300

House of Representatives, May 17, 1991

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

A handwritten signature in cursive script that reads "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-ONE

**An Act to Provide Tire Disposal Alternatives and Fund Waste
Management Programs.**

(EMERGENCY)

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, this legislation requires that certain acts be
6 performed prior to 90 days after adjournment; and

8 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
10 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
12 safety; now, therefore,

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

16

PART A

18

Sec. A-1. 38 MRSA c. 13, sub-c. II-A is enacted to read:

20

SUBCHAPTER II-A

22

TIRE STOCKPILE ABATEMENT

24

§1316. Definitions

26

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

30

32 1. Responsible party. "Responsible party" means any or all
of the following persons:

34

36 A. The owner or operator of an uncontrolled tire stockpile;
and

38

40 B. Any person who owned or operated an uncontrolled tire
stockpile from the time any tire arrived at that stockpile.

42

44 2. Uncontrolled tire stockpile. "Uncontrolled tire
stockpile" means an area or location, whether or not licensed,
where used motor vehicle tires are or were stored in violation of
state rules in such a manner as to present a significant fire
hazard or a threat to the quality of a classified body of surface
water or a significant sand and gravel aquifer or fractured
bedrock aquifer as defined in section 1310-N, subsection 2-A.

46

§1316-A. Investigation and enforcement

48

50 Upon investigation, if the commissioner finds that an
uncontrolled tire stockpile exists, the commissioner may issue
notice and conduct an enforcement hearing in accordance with

2 section 347-A, subsection 2 and issue an order to end the
3 violation.

4 Upon investigation, if the commissioner finds that an
5 uncontrolled tire stockpile is creating or is likely to create a
6 substantial and immediate danger to public health or safety or to
7 the environment, the commissioner may issue an emergency order in
8 accordance with section 347-A, subsection 3 directing the
9 responsible party or parties to take immediate action necessary
10 to reduce or alleviate the danger.

12 **§1316-B. Abatement; cleanup; mitigation**

14 If a responsible party does not comply immediately with all
15 conditions of an order issued pursuant to section 1316-A, or
16 exercise the rights to appeal provided in section 347-A,
17 subsection 3, the commissioner may act to abate, clean up or
18 mitigate the threat or hazard posed by an uncontrolled tire
19 stockpile. The commissioner may:

20
21 1. Assistance. Employ private consultants and other
22 persons to evaluate, design or conduct tire removal or site
23 remediation activities;

24
25 2. Process and remove. In consultation with the Maine
26 Waste Management Agency, process or remove all stockpiled tires;

27
28 3. Secure. Construct barriers and implement sufficient
29 security measures to prohibit the access of unauthorized persons
30 to the site, including the responsible party;

31
32 4. Equipment. Purchase and store fire-fighting or
33 pollution abatement equipment or materials, either at or away
34 from the tire stockpile;

35
36 5. Alter. Alter the physical characteristics of the
37 stockpile site, including the construction of fire lanes, fire or
38 pollution barriers or other necessary site remediation activity;
39 or

40
41 6. Close. Permanently close and prohibit the use of the
42 site as a tire stockpile facility.

44 **§1316-C. Liability; recovery by the State**

45
46 Each responsible party is jointly and severally liable for
47 all costs incurred by the State for the abatement, cleanup or
48 mitigation of the threat or hazard posed by an uncontrolled tire
49 stockpile. The commissioner shall demand prompt reimbursement of
50 costs incurred under sections 1316-A and 1316-B. If payment is
not received by the State within 30 days of demand, the Attorney

2 General may file suit in the Superior Court and may seek punitive
3 damages in addition to other costs and relief provided by law.

4 **§1316-D. Immunity**

6 Notwithstanding Title 14, chapter 741, the State, its
7 agencies or employees are not liable for the death or injury of
8 any person or for any property damage that results from
9 abatement activities pursuant to this subchapter. This section
10 does not affect the right of any person to receive workers'
11 compensation or other applicable benefits.

12 **§1316-E. Lien established**

14
15 1. Established. All costs incurred by the State for the
16 abatement, cleanup or mitigation of an uncontrolled tire
17 stockpile and all related interest and penalties constitute a
18 lien against the real estate of the responsible party or parties.

19 2. Priority. The priority of a lien filed pursuant to this
20 section is governed by the following.

21
22 A. Any lien filed pursuant to this section on real estate
23 where an uncontrolled tire stockpile is located has
24 precedence over all encumbrances on the real estate recorded
25 after the effective date of this section. The term "real
26 estate" in this paragraph includes all real estate of a
27 responsible party that has been included in the property
28 description of the affected real estate within the 3-year
29 period preceding the date of the filing of the lien or on or
30 after the effective date of this section, whichever period
31 is shorter.

32
33 B. Any lien filed pursuant to this section on any other
34 real estate of the responsible party has precedence over all
35 transfers and encumbrances filed after the date that the
36 lien is filed with the registry of deeds.

37
38 3. Notice. A certificate of lien signed by the
39 commissioner must be mailed by certified mail, return receipt
40 requested, to all persons of record holding an interest in the
41 real estate over which the commissioner's lien is entitled to
42 priority under subsection 2, paragraph A. A certificate may be
43 filed for record in the office of the clerk of any municipality
44 in which the real estate is situated.

45
46 4. Recording. Any lien filed pursuant to this section is
47 effective when filed with the registry of deeds for the county in
48 which the real estate is located. The lien must include a
49 description of the real estate, the amount of the lien and the
50 name of the owner as grantor.

51
52

2 H. Removal of solid waste from a home or business location.

4 Sec. B-4. 36 MRSA §4832, sub-§2, as amended by PL 1989, c.
6 927, §5, is further amended to read:

8 2. Exemption. Transactions that, under the laws of this
10 State, are not subject to taxation in accordance with Part 3 are
12 exempt from the fee imposed by subsection 1. ~~Sales of tires and
14 lead-acid batteries that occur as part of a sale of any meterized
16 vehicle are exempt from the fee imposed by subsection 1.~~

18 Sec. B-5. 38 MRSA §2203, sub-§§3 and 4 are enacted to read:

20 3. Special waste landfills. Fees are imposed in the
22 following amounts for special waste disposed of at a solid waste
24 landfill owned or operated by a special waste generator. This
26 fee does not apply to special waste disposed of by municipalities
28 or regional associations.

Asbestos	<u>\$.50 per cubic yard</u>
Ash, all types	<u>\$.50 per ton</u>
Paper mill sludge	<u>\$.50 per ton</u>
All other special waste	<u>\$.50 per ton</u>

30 4. Imported special waste. In addition to any other fee
32 assessed under this section, a fee of \$2 per ton is imposed on
34 special waste brought into the State for disposal, except that a
36 fee of \$2 per cubic yard is imposed on asbestos brought into the
38 State for disposal. The fee must be assessed at the first point
40 of disposal, processing or treatment within the State.

42 Sec. B-6. 38 MRSA §2204, as amended by PL 1989, c. 869, Pt.
44 A, §14 and affected by §20, is repealed and the following enacted
46 in its place:

48 §2204. Municipal disposal surcharge; recycling and import fees

50 The agency shall impose the following fees.

52 1. Landfill surcharge. A disposal surcharge of \$4 per ton
is assessed on any municipal solid waste disposed of at a
commercial landfill facility.

 2. Recycling progress. A \$1.50 per ton fee is assessed on
any solid waste delivered to a commercial solid waste facility or
to a solid waste disposal facility owned by the agency or a
regional association from a municipality that does not meet the
requirements of section 2133, subsection 5, paragraph B.

2 TOTAL \$800,000 \$2,000,000

4 **Sec. B-8. Allocation.** The following funds are allocated from
the Maine Solid Waste Management Fund to carry out the purposes
of this Act.

6 1991-92 1992-93

8 MAINE WASTE MANAGEMENT AGENCY

10 Office of Siting

12 All Other \$240,000 \$760,000

14 Provides funds to contract
16 for services to screen and
18 select landfill sites.

20 **Sec. B-9. Effective date.** Part B of this Act takes effect July
1, 1991, except that sections B-1 to B-3 take effect January 1,
22 1992..

24 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved unless otherwise
26 indicated.

28 STATEMENT OF FACT

30 This bill authorizes programs to handle the existing and
32 ongoing problem of waste tire disposal and provides new revenues
to support existing waste management programs and the landfill
34 siting process.

36 Part A authorizes a tire stockpile clean-up program to be
administered by the Department of Environmental Protection and a
38 program to develop uses for discarded tires to be administered by
the Maine Waste Management Agency. Funding is not provided for
40 these programs.

42 Part B adds waste collection services to the list of
services subject to the sales tax, removes the current exemption
44 in the advance disposal fee for tires and batteries sold with new
cars and assesses a fee of 50¢ per ton on privately generated
46 special waste disposed of at a landfill owned or operated by the
special waste generator. Part B also assesses a fee of \$2 per
48 ton on municipal solid waste and on special waste brought to
Maine for incineration or landfilling. Part B allocates funds
50 from the Solid Waste Management Fund and General Fund to screen
and select sites for special waste municipal solid waste
52 landfills.