

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2249

H.P. 1595

House of Representatives, January 28, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
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

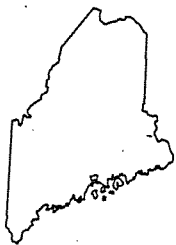
Presented by Representative LORD of Waterboro.

STATE OF MAINE

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

**An Act to Improve the Administration of Municipal Landfill Closure and
Remediation Plans.**

(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, municipalities need additional time to respond
6 financially to the need to close unlicensed landfills and to
adjust municipal budgets to the increased cost of alternate solid
8 waste disposal arrangements; and

10 Whereas, the closure of municipal landfills must be more
effectively coordinated with and linked to the availability of
12 state cost-sharing money that is not sufficient to meet the
demand for reimbursement to municipalities; and

14 Whereas, existing resources need to be targeted more
16 effectively to the closure of high-risk landfills; and

18 Whereas, additional guidance is needed to develop existing
landfill closure plans; and

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

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

28 **Sec. 1. 38 MRSA §1303-C, sub-§§1-B, 19-B and 19-C** are enacted
30 to read:

32 **1-B. Alter.** "Alter," as the term pertains to an
open-municipal solid waste landfill, means to accept wastes other
34 than those specifically approved, to operate or develop in any
way inconsistent with a permit or license or to expand either
36 horizontally or vertically beyond approved boundaries. For
grandfathered municipal solid waste landfills that have no
38 approved boundaries, "alter" means to expand horizontally beyond
any designed solid waste boundary that is readily apparent or, in
40 the absence of any such designed boundary, "alter" means the
expansion of an existing landfill by more than 25%, as measured
42 by volume of waste or affected land area, from the effective date
of this subsection.

44 **19-B. Municipal closure cost obligation.** "Municipal
46 closure cost obligation" means 25% of the total of all costs
associated with closing a municipal landfill that are covered
48 under the state cost-sharing program established by section
1310-F.

2 **19-C. Practicable alternative.** "Practicable alternative"
4 means any solid waste landfill, solid waste facility or solid
6 waste handling and transport system, or any combination, that is
8 or will be available to any municipality as an alternative solid
10 waste disposal service at a total municipal cost, when averaged
12 by reasonable projection over a prospective 5-year period, that
 does not exceed either .0009 of the municipality's current
 state-adjusted valuation or 20% of the total annual municipal
 budget, excluding educational expenditure, whichever is less.
 For the purpose of this definition, the total annual municipal
 cost includes:

14 A. All municipal costs that would be incurred pursuant to
16 this chapter and departmental regulation associated with
18 closing any open-municipal solid waste landfill during the
 projected time period; and

20 B. All reasonably necessary and appropriate costs
22 associated with the alternative solid waste disposal system,
24 including costs of transition, operation, capitalization and
 system closure, that might accrue to the municipality over a
 prospective 5-year period or the designed life of the
 system, whichever is less.

26 **Sec. 2. 38 M RSA §1303-C, sub-§32,** as enacted by PL 1989, c.
28 585, is amended to read:

30 **32. Solid waste landfill.** "Solid waste landfill" means a
32 waste disposal facility for the disposal of solid waste on or in
34 land. This term does not include landspreading sites used in
 programs approved by the department. For the purposes of the
 licensing and closure requirements contained in this article,
 there are 3 categories of open-municipal solid waste landfills:

36 A. New solid waste landfills, which are landfills proposed
38 to be constructed and licensed for operation on or after
 June 29, 1987;

40 B. Existing solid waste landfills, which are solid waste
42 landfills other than new solid waste landfills that are
44 operating or have been operating under a license issued by
 the department; and

46 C. Grandfathered solid waste landfills, which are landfills
48 that were in operation prior to October 3, 1973 and have
 remained in substantially continuous operation since that
 date and for which no operating license has ever been issued
 by the department.

2 **Sec. 3. 38 MRSA §1304, sub-§1**, as amended by PL 1989, c. 585,
Pt. E, §5, is further amended to read:

4
6 **1. Rules.** Subject to the Maine Administrative Procedure
Act, ~~Title 5, chapter 375~~, the board may adopt, amend and enforce
8 rules as it deems determines necessary to govern waste
10 management, including the location, establishment, construction
and alteration of waste facilities as the facility affects the
12 public health and welfare or the natural resources of the State.
The rules ~~shall~~ must be designed to minimize pollution of the
14 State's air, land and surface and ground water resources, prevent
the spread of disease or other health hazards, prevent
16 contamination of drinking water supplies and protect public
health and safety. In adopting these rules, the board shall also
18 consider economic impact, technical feasibility and such
differences as are created by population, hazardous or solid
20 waste, sludge or septage volume and geographic location. A
municipality is not in violation of a rule or regulation adopted
by the board that requires closure of a municipality-owned solid
waste landfill that is not identified as a high-risk landfill
pursuant to section 1310-D, subsection 1 during any period of
time for which no practicable alternative to the municipality's
existing or grandfathered landfill exists. Neither is a
municipality in violation of a rule or regulation adopted by the
board requiring the submission of closure plans or implementation
of closure timetables when closure cost sharing issued pursuant
to section 1310-F is not available to the eligible municipality
within 180 days of any municipal expenditure for the development
of any closure plan or any closure plan implementation that would
exceed the municipal closure cost obligation.

32 **Sec. 4. 38 MRSA §1305, sub-§1**, as repealed and replaced by PL
34 1989, c. 585, Pt. E, §17, is amended to read:

36 **1. Disposal services.** Each municipality shall provide
solid waste disposal services for domestic and commercial solid
38 waste generated within the municipality and may provide these
services for industrial wastes and sewage treatment plant
40 sludge. The municipal obligation to provide solid waste disposal
services for inert debris and land-clearing debris is limited to
42 providing a site or sites for drop-off or collection, and the
further disposition of such materials, if untreated, is not the
44 subject of rule or regulation adopted under this chapter.

46 **Sec. 5. 38 MRSA §1308**, as amended by PL 1973, c. 788, §213,
is further amended to read:

48 **§1308. Exemptions**

50
52 Rules and regulations adopted pursuant to this chapter
concerning the location, establishment and construction of solid

2 waste disposal facilities, but not concerning alteration or
3 operation, shall do not affect such facilities in existence prior
4 to October 3, 1973. The department shall adopt and make
5 available for distribution rules that pertain specifically to
6 such facilities in accordance with this section. At the time of
7 any licensing or closure order, the department shall issue a copy
8 of those rules to any municipal landfill ordered licensed or
9 closed to which the standards of this section apply. Landscape
10 refuse and fill disposal sites established in connection with
11 public works projects and commonly known as "stump dumps" are
12 exempt from this chapter.

13 **Sec. 6. 38 MRSA §1310-B, sub-§1,** as amended by PL 1989, c.
14 794, §3 is further amended to read:

15 **1. Public records.** Except as provided in subsections 2 and
16 3, information obtained by the department under this chapter,
17 along with any and all enforcement documentation in the
18 possession of the department including without limitation all
19 closure orders, consent decrees and memoranda or letters of
20 compliance, is a public record as provided by Title 1, chapter
21 13, subchapter I.

22
23 In addition to remedies provided under Title 1, chapter 13,
24 subchapter I, the Superior Court may assess against the
25 department reasonable attorney fees and other litigation costs
26 reasonably incurred by an aggrieved person who prevails in the
27 appeal of the department's denial for a request for information
28 under subchapter V.

29
30 **Sec. 7. 38 MRSA §1310-C, sub-§4, ¶H,** as enacted by PL 1989, c.
31 870, §1, is repealed and the following enacted in its place:

32
33 **H. "Contamination,"** as applied to ground water and surface
34 water means:

35
36 (1) Exceeding water quality standards, attributable to
37 the solid waste facility, specified in primary drinking
38 water standards adopted under Title 22, section 2611
39 and maximum exposure guidelines adopted under Title 22,
40 section 2602-A; or

41
42 (2) A statistically significant increase in
43 concentration of measured parameters above an
44 established baseline, when the existing concentration
45 already exceeds the maximum concentration levels
46 specified in this section, using the 95% confidence
47 interval when the student's t-test is applied. The use
48 of other statistical tests and confidence intervals
49 must be approved by the department.
50

2 **Sec. 8. 38 MRSA §1310-C, sub-§5**, as affected by PL 1989, c.
390, Pt. A, §40 and amended by Pt. B, §234 is further amended to
4 read:

6 **5. Coordination with uncontrolled sites program.** Nothing
7 in this article may be construed to limit the authority of the
8 department under any other provisions of law administered by the
9 department. At any time prior to or following the evaluations
10 conducted pursuant to section 1310-D, subsection 2 subsections
11 2-A and 2-B, the commissioner may proceed under chapter 13-B to
12 properly close any landfill or mitigate any threats posed by the
13 landfill to public health, safety or the environment.

14 **Sec. 9. 38 MRSA §1310-D, sub-§1**, as affected by PL 1989, c.
15 890, Pt. A, §40 and amended by Pt. B, §235, is repealed and the
16 following enacted in its place:

18 **1. Landfill ranking.** The board shall adopt by rule a
19 ranking of all open municipal solid waste landfills on the basis
20 of the hazard each poses to the environment and public health.
21 The express purpose of ranking municipal solid waste landfills is
22 to accomplish the goals of this chapter in a manner rationally
23 associated with the relative environmental risks and to provide
24 municipalities and the State with guidance concerning the manner
25 by which their respective administrative and financial
26 responsibilities and obligations should be prioritized in
27 practice and by rule. Accordingly, rules adopted by the
28 department pursuant to this section must establish at least 2
29 categories of landfills: "high-risk" landfills, which are
30 landfills posing an environmental risk so immediate or
31 substantial that corrective actions must be taken without delay,
32 and landfills that are not "high-risk." All pertinent and
33 related rules adopted by the department establishing standards
34 governing landfill closure and remediation must be designed so
35 that the costs of closure and remediation are coordinated with
36 and reasonably proportionate to the relative environmental risk
37 indicated by the specific rank of the municipal landfill. Any
38 municipality owning an open-municipal solid waste landfill that
39 is not especially identified as a high-risk landfill pursuant to
40 this subsection and subsection 2-A and with regard to which the
41 municipality is in substantial compliance with this chapter and
42 rules adopted by the department is entitled to a reasonable
43 expectation that satisfaction of all pertinent, quantified rules
44 adopted by the department will result in satisfaction of that
45 municipality's closure obligations.

46 **Sec. 10. 38 MRSA §1310-D, sub-§2**, as amended by PL 1991, c.
47 519, §4, is repealed.

2 **Sec. 11. 38 MRSA §1310-D, sub-§§2-A, 2-B and 6** are enacted to
read:

4
6 **2-A. Evaluation.** In response to the priorities established
7 in the open-municipal solid waste landfill ranking and the
8 objectives of subsection 2-B, paragraphs A to C, the commissioner
9 shall conduct and complete by January 1, 1993, subject to the
10 availability of funding, environmental evaluations of each
11 open-municipal solid waste landfill. The commissioner may employ
12 private consultants to avoid additions to departmental staff and
13 to accomplish the evaluations in a timely manner. The
14 commissioner may utilize existing analyses of facilities, subject
15 to the provisions of this subsection.

16 **2-B. Closure orders for landfills identified as high-risk.**
17 When the commissioner has sufficient knowledge of existing
18 hazards to the environment and public health posed by a specific
19 site and, in the case of municipal landfills, the municipality is
20 not in substantial compliance with the closure requirements of
21 this subchapter or the rules adopted under this chapter, the
22 commissioner may take measures necessary to effect proper
23 remediation and closure of the high-risk landfill,
24 notwithstanding the site's listed priority. In those cases, the
25 commissioner shall ensure that the requirements of this
26 subsection are substantially met. The commissioner shall ensure
27 that each evaluation achieves the following objectives:

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

32 B. When appropriate, to establish a monitoring system,
33 which may include monitoring wells and test borings
34 sufficient to ensure identification and monitoring of
35 potential hazards;

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

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

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

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

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

2 D. To provide a recommended closure plan for the landfill
4 and, when necessary, a recommended plan for the remediation
6 of any hazards identified by the evaluation. Closure and
8 remediation recommendations must ensure a level or standard
10 of control of pollutants in surface waters at least as
12 stringent as the water quality criteria established under
14 chapter 3, subchapter I, article 4-A. Those recommendations
16 must also seek to achieve a level or standard of control of
18 pollutants in ground water at least as stringent as the
20 water quality criteria established under sections 465-C and
22 470, unless the commissioner finds that meeting those
24 standards is technically and economically infeasible and
26 that other measures can be implemented to ensure protection
 of public health and safety; and

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

6. Closure plans for municipal landfills not identified as
 high-risk. In accordance with the provisions of subsection 1 and
 section 1308, and except as provided by section 1304, subsection
 2, municipalities shall submit to the department closure plans,
 on a form prepared by the department and made available for that
 purpose, in accordance with rules adopted by the department.

28 **Sec. 12. 38 MRSA §1310-F, sub-§1,** as amended by PL 1991, c.
30 519, §9, is further amended to read:

32 1. **Cost-share fraction.** Subject to the availability of
34 and in accordance with the distribution provisions of this
36 section, the commissioner shall issue grants or payments to
 eligible municipalities for 75% of the planning and
 implementation costs of closure and for 90% of the planning and
 implementation costs of remediation.

38 **Sec. 13. 38 MRSA §1310-F, sub-§2,** as amended by PL 1991, c.
40 519, §10, is further amended to read:

42 2. **Eligibility.** Any municipality that owns, rents or
44 or is required by this chapter or rules
46 promulgated under this chapter is eligible for grants. A
48 municipality that has acted to close its solid waste landfill or
50 to remedy environmental and public health hazards posed by the
 landfill prior to the adoption of a closure or remediation plan
 under this subchapter or that closed a landfill or remediated
 environmental or public health hazards posed by a landfill, is
 also eligible for reimbursement of closure or remediation costs
 incurred after February 1, 1976, as long as the closure or

2 remediation actions were in conformance with all applicable laws
3 or rules in effect at the time. Costs incurred by closure or
4 remediation actions taken after the adoption of a closure or
5 remediation plan under this subchapter are eligible for
6 reimbursement only if those actions conform to that plan. Any
7 interest paid by a municipality prior to reimbursement on a
8 municipal bond issued or any money otherwise borrowed to raise
9 funds for remediation and closure activities during this period
10 is a cost eligible for reimbursement under this section. The
11 commissioner shall use at least 1/3 of the available funds for
12 municipalities eligible for reimbursement of closure and
13 remediation costs under this subsection until all those
14 municipalities have been reimbursed. The remainder of the
15 available funds must be allocated in a rational and equitable
16 manner with the intent to target all available funding so that,
17 at a minimum, an adequate cap is constructed over all identified,
18 high-risk landfills subject to closure. In accordance with
19 section 1304, subsection 1, the department shall issue, upon the
20 request of any municipality, a notice in writing that projects to
21 a date certain the availability of any cost-sharing funds for
22 which the municipality is eligible. The inability or failure of
23 the department to issue a written projection to a date certain
24 means that the cost-sharing funds are not available for the
25 foreseeable future. A landfill that is privately owned and
26 privately operated is not eligible for reimbursement under this
subchapter.

28 **Sec. 14. 38 MRSA §1310-G, sub-§1, ¶¶B and C,** as enacted by PL
29 1987, c. 517, §25 are amended to read:

30 B. The availability of ~~reasonable,--alternative--disposal~~
31 ~~options---available~~ a practicable alternative to the
32 municipality following closure of the existing landfill; and
33

34 C. The period reasonably needed by the municipality to
35 raise its share of plan costs,; and
36

37 **Sec. 15. 38 MRSA §1310-G, sub-§1, ¶D** is enacted to read:

38 D. The availability of any cost-sharing funding under the
39 provisions of section 1310-F.
40

41 **Sec. 16. 38 MRSA §1310-N, first ¶,** as affected by PL 1989, c.
42 890, Pt. A, §40 and amended by Pt. B, §242, is further amended to
43 read:
44

45 No A person may not locate, establish, construct, expand
46 disposal capacity or subsequently operate any solid waste
47 facility unless approved by the department under the site
48 location of development laws, chapter 3, subchapter I, article 6
49 and the provisions of this chapter. ~~Where~~ When the proposed
50

2 facility is located within the jurisdiction of the Maine Land Use
3 Regulation Commission, in addition to any other requirement, the
4 department shall require compliance with existing standards of
5 the commission.

6 **Sec. 17. 38 MRSA §1310-N, sub-§2-A**, as affected by PL 1989, c.
7 890, Pt. A, §40 and amended by Pt. B, §242, is further amended to
8 read:

10 **2-A. Aquifer protection.** The department shall may not
11 issue a license for a new, expanded or altered solid waste
12 disposal facility when it finds that the proposed facility
13 overlies a significant sand and gravel aquifer or when the
14 department finds that the proposed facility poses an unreasonable
15 threat to the quality of a significant sand and gravel aquifer
16 which that it does not overlie, or to an underlying fractured
17 bedrock aquifer.

18
19 A. "Significant sand and gravel aquifer" is defined as a
20 porous formation of ice-contact and glacial outwash sand and
21 gravel that contains significant recoverable quantities of
22 water which that are likely to provide drinking water
23 supplies.

24
25 B. "Fractured bedrock aquifer" is defined as a consolidated
26 rock formation which that is fractured and which is
27 saturated and recharged by precipitation percolating through
28 overlying sediments to a degree which that will permit wells
29 drilled into the rock to produce a sufficient water supply
30 for domestic use.

31
32 C. In determining whether or not the proposed facility
33 poses an unreasonable threat to the quality of a significant
34 sand and gravel aquifer or to an underlying fractured
35 bedrock aquifer, the department shall require the applicant
36 to provide:

37 (1) A thorough hydrogeological assessment of the
38 proposed site and the contiguous area including any
39 classified surface waters, significant sand and gravel
40 aquifers and fractured bedrock aquifers which that
41 could be affected by the proposed facility during
42 normal operation or in the event of unforeseen
43 circumstances including the failure of any engineered
44 barriers to ground water flow. The assessment must
45 include a description of ground water flow rates, the
46 direction of ground water flow in both the horizontal
47 and vertical directions, and the degree of dilution or
48 attenuation of any contaminants that may be released
49 from the proposed site and flow toward any classified
50 surface water, significant sand and gravel aquifer or
51 fractured bedrock aquifer.
52

