

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1329

S.P. 420

Received by the Secretary, April 20, 1993

An Act to Deter Deliberate Polluters.

Referred to the Committee on Judiciary and 1200 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LAWRENCE of York.

Cosponsored by Representative MARSH of West Gardiner and
Senator: CLEVELAND of Androscoggin, Representatives: ADAMS of Portland, COLES of
Harpwell, FARNSWORTH of Hallowell, LIBBY of Buxton, LIPMAN of Augusta,
MITCHELL of Freeport, ST. ONGE of Greene, TREAT of Gardiner.

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4 c. 872, §5 and c. 924, §13, is repealed and the following enacted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, and to
11 dispose of the waste or pollutant in accordance with the
12 standards under state and federal environmental laws.

13
14 Sec. 2. 17-A MRSA §1322, sub-§3, ¶C-2 is enacted to read:

15
16 C-2. "Expense of an emergency response" means reasonable
17 costs incurred by a public agency in making an emergency
18 response to the incident, but only includes those costs
19 directly arising because of the response to the particular
20 incident. "Reasonable costs" include the costs of providing
21 police, firefighting, rescue and emergency medical services
22 at the scene of the incident, as well as the compensation
23 for the personnel responding to the incident. "Public
24 agency" means the State or any county, municipality,
25 district or public authority located, in whole or in part,
26 within this State that provides or may provide police,
27 firefighting, ambulance or other emergency services.

28
29 Sec. 3. 38 MRSA §349, sub-§1, as amended by PL 1989, c. 820,
30 §9, is repealed and the following enacted in its place:

31
32 1. Criminal penalty. This subsection governs criminal
33 penalties for violations of the environmental laws.

34
35 A. As used in this subsection, the following terms have the
36 following meanings.

37
38 (1) "Significant," as used in paragraph B,
39 subparagraphs (1) and (2), means capable of increasing
40 the discharge of pollutants or emission of air
41 contaminants.

42
43 (2) "For a nonresidential purpose," as used in
44 paragraph B, subparagraphs (1), (3) and (4), means the
45 discharge of pollutants or disposal of oil, asbestos,
46 biomedical waste or solid waste either as part of a
47 business, industrial, commercial or governmental
48 enterprise or for a fee or other type of remuneration.

2 (3) "Point source," as used in paragraph B,
4 subparagraph (1) means any discernible, confined and
6 discrete conveyance, including but not limited to any
8 pipe, ditch, channel, tunnel, conduit, well, discrete
10 fissure, container, rolling stock, concentrated animal
 feeding operation, or vessel or other floating craft,
 from which pollutants are or may be discharged. This
 term does not include agricultural stormwater
 discharges and return flows from irrigated agriculture.

12 (4) "Hazardous waste," as used in paragraph B,
14 subparagraph (5) means a waste substance or material
 that has been designated as hazardous by the board
 under section 1319-0 and that the person:

16 (a) Knows or has reason to know has been so
18 designated; or

20 (b) Believes may be harmful to human health.

22 B. A person is guilty of a criminal violation of the
 environmental laws if that person intentionally or knowingly:

24 (1) Discharges any pollutant into the waters of the
26 State from any point source for a nonresidential
28 purpose in violation of this Title, department rules or
30 any significant term or condition of any applicable
 order, license or permit of the department. This
 subparagraph does not apply to activities exempted
 under 33 United States Code, Section 1344(f)(1)(E);

32 (2) Emits any air contaminant into the ambient air
34 from a stationary source in violation of this Title,
36 department rules or any significant term or condition
 of any applicable order, license or permit of the
 department;

38 (3) Disposes of oil, biomedical waste, asbestos or
40 asbestos-containing waste for a nonresidential purpose
42 in violation of this Title, department rules or any
 term or condition of any applicable order, license or
 permit of the department;

44 (4) Disposes of solid waste in a quantity in excess of
46 500 pounds or 100 cubic feet for a nonresidential
48 purpose in violation of this Title, department rules or
 the terms or conditions of any applicable order,
 license or permit of the department;

50 (5) Discharges any hazardous waste or hazardous matter
 onto the land or into the ambient air or waters of the

- 2 State in violation of this Title, department rules or
4 the terms or conditions of any applicable order,
 license or permit of the department;
- 6 (6) Transports any hazardous waste without having the
 proper license or permit as required under this Title
8 or department rules;
- 10 (7) Transports any hazardous waste for disposal at any
 location that does not have a license or permit for the
12 handling of hazardous waste as required under this
 Title or department rules;
- 14 (8) Handles any hazardous waste without having
 obtained a license to do so as required under this
16 Title or department rules;
- 18 (9) Handles any hazardous waste in any location that
 does not have a license or permit for the handling of
20 hazardous waste as required under this Title or
 department rules;
- 22 (10) Establishes, constructs, operates or
 substantially alters any facility for the handling of
24 hazardous waste without having obtained a proper
 license or permit as required under this Title or
26 department rules;
- 28 (11) Handles or transports any hazardous waste in any
 manner that violates the terms or conditions of any
30 applicable order, rule, license, permit or decision of
 the department with respect to the handling or
32 transporting of hazardous waste;
- 34 (12) Gives over hazardous waste to a 3rd person who
 does not have a license or permit to transport or
36 handle hazardous waste as required by this Title or
 department rules;
- 40 (13) Transports or causes to be transported any
 hazardous waste without accurately completing a
42 manifest and filing that manifest with the department
 as required by this Title or department rules; or
- 44 (14) Violates any provision of this Title administered
 by the department or department rules or the terms or
46 conditions of any other applicable order, rule, license
 or permit of the department.
48

2 C. A person is guilty of a criminal violation of the
4 environmental laws if that person intentionally, knowingly
6 or recklessly discharges into the waters of the State a
8 quantity of oil equal to or in excess of 100,000 gallons
10 without a license or permit.

12 D. Criminal violation of the environmental laws under
14 paragraph B, subparagraphs (1) to (4) or paragraph C is a
16 Class C crime, except that notwithstanding Title 17-A,
18 sections 4-A and 1301, the fine may not exceed \$50,000.

20 E. Criminal violation of the environmental laws under
22 paragraph B, subparagraphs (5) to (11) is a Class C crime,
24 except that notwithstanding Title 17-A, sections 4-A and
26 1301, the fine may not exceed \$50,000 for each day of
28 violation.

30 F. Criminal violation of the environmental laws under
32 paragraph B, subparagraphs (12) and (13) is a Class D crime,
34 except that notwithstanding Title 17-A, sections 4-A and
36 1301, the fine may not exceed \$50,000.

38 G. Criminal violation of the environmental laws under
40 paragraph B, subparagraph (14) is a Class E crime, except
42 that notwithstanding Title 17-A, sections 4-A and 1301, the
44 fine may not exceed \$50,000.

46 **Sec. 4. 38 MRSA §349, sub-§1-A is enacted to read:**

48 1-A. Affirmative defense to and restrictions on criminal
50 prosecution. Criminal prosecutions under subsection 1 are
governed by the following.

A. Except for intentional violations, it is an affirmative
defense to a prosecution under subsection 1, paragraph A,
subparagraphs (1) and (2), that the person:

(1) Notified the department of the violation as soon
as reasonably practical, but no later than 24 hours
after the person discovered the violation; and

(2) Promptly took steps to remedy the violation.

B. The Attorney General has exclusive authority to bring a
prosecution under subsection 1. The Attorney General shall
file a written report concerning criminal prosecutions under
subsection 1 with the joint standing committees of the
Legislature having jurisdiction over energy and natural
resources matters and over judiciary matters. The report
must be filed on February 1, 1994 and on February 1, 1995,

2 and thereafter upon request of either of the joint standing
3 committees. Each report must contain the following
4 information: a list of cases under subsection 1 that have
5 been initiated or resolved in the previous 12-month period,
6 a brief synopsis of the facts of each case and the results
7 of those cases that have been completed or resolved.

8 **Sec. 5. 38 MRSA §349, sub-§3**, as affected by PL 1989, c. 890,
9 Pt. A, §40 and amended by Pt. B, §7, is repealed and the
10 following enacted in its place:

11 **3. Falsification of environmental records.** This subsection
12 governs falsification of environmental records.

13 **A. As used in this subsection, the following term has the**
14 **following meaning.**

15 (1) "Material" as used in paragraph B, subparagraph
16 (1) means capable of affecting the course or outcome of
17 any licensing or other proceeding or capable of
18 affecting the department's ability to monitor
19 compliance with any statute, rule, order, license or
20 permit.

21 **B. A person is guilty of falsification of environmental**
22 **records if that person intentionally or knowingly:**

23 (1) Makes any false material statement, representation
24 or certification in any document filed with the
25 department or required to be maintained by a person or
26 entity other than the department, pursuant to this
27 Title or department rules or pursuant to the terms and
28 conditions of any order, license or permit of the
29 department;

30 (2) Fails to monitor, sample or report any discharges
31 or emission of pollutants as required pursuant to the
32 terms and conditions of any order, license or permit of
33 the department with intent to deceive the department; or

34 (3) Fails to make any information submittal required
35 by the commissioner under section 568, subsection 3 or
36 section 1364, subsection 3, with intent to deceive the
37 department.

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

41 **Sec. 6. 38 MRSA §349, sub-§3-A** is enacted to read:

2 "recklessly" cause a major oil spill, in excess of 100,000
3 gallons, in Maine waters without a license or permit. A
4 100,000-gallon marine oil spill has the potential of causing the
5 State serious environmental and economic harm. This crime is
6 classified under the bill as a Class C crime.

7
8 The bill makes no change with respect to the general
9 environmental provision, which currently exists under state law,
10 other than to expressly provide for the culpable mental states
11 required for proof of that crime. Accordingly, land use
12 violations and violations not specifically listed under the
13 felony provisions remain Class E crimes. The State, however,
14 would have to prove that such violations were committed
15 intentionally or knowingly.

16 The bill ensures that even an intentional and knowing
17 violation of a "technical" air or water permit provision will not
18 result in a felony prosecution. Rather, the State must prove
19 that any violation of air and water pollution standards is
20 "significant," which is defined as capable of increasing the
21 discharge of pollutants or emission of air contaminants. It
22 further limits felony prosecution of solid waste violations to
23 the disposal of significant quantities of solid waste, in excess
24 of 500 pounds or 100 cubic feet.

25
26 The bill also increases the classification of the crime of
27 falsifying environmental records to a felony under certain
28 circumstances. Under the State's enforcement program, the State
29 depends upon the truthful self-reporting of violations by
30 industry. Falsification of such reports undermines the integrity
31 of the enforcement program and unfairly sanctions those who
32 comply with the reporting requirements. Under this bill, it is a
33 felony to submit false statements only if those statements are
34 "material." The term "material" is defined as "capable of
35 affecting the course and outcome of any licensing proceeding or
36 capable of affecting the department's ability to monitor
37 compliance." This definition is adapted from current perjury
38 statutes. In addition, the failure to provide information
39 required by the department is a Class C crime only if there is an
40 intent to deceive the department. If intent can not be proved,
41 the offense is a Class E crime.

42
43 Finally, it is not the State's intent to discourage owners
44 of pollution sources from conducting self-evaluations or
45 self-audits and acting to correct problems discovered during such
46 audits. On the contrary, the environmental benefits from such
47 review and prompt corrective action are substantial and this bill
48 should be read to encourage such conduct. For this reason, the
49 criminal penalties under this bill would not apply in a situation
50 where a person, acting in good faith, promptly reports the

2 results of an audit or test and promptly acts to correct any
noncompliance. Accordingly, the bill provides an affirmative
defense to a knowing violation of the air and water pollution
4 laws for those persons who promptly notify the department of the
violation and take steps to remedy it.