

MAINE STATE LEGISLATURE

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R. d. S.

L.D. 1757

DATE: 3/29/94

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ENERGY & NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1302, L.D. 1757, Bill, "An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection, Bureau of Hazardous Materials and Solid Waste Control"

Amend the bill by striking out the enacting clause and inserting in its place the following:

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

Whereas, this legislation amends the municipal landfill closure and remediation program; and

Whereas, the changes will improve the use of landfill closure money and will give municipalities a better understanding of their obligations and enable them to more readily complete those obligations; and

Whereas, the amendment makes numerous changes in solid and hazardous waste management programs, which would be of benefit to the people of the State if effective immediately; and

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

COMMITTEE AMENDMENT

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

PART A

Further amend the bill by inserting after the enacting clause the following:

'Sec. 1. 38 MRSA §348, sub-§4 is enacted to read:

4. Settlement. A person who has resolved that person's liability to the State in an administrative or judicially approved settlement and is implementing or has fully implemented that settlement pursuant to its terms is not liable for claims by other persons regarding response actions, response costs or damages, including without limitation natural resource damages, addressed in the settlement. The settlement does not discharge any other potentially responsible persons unless its terms so provide. The protection afforded by this subsection includes protection against contribution claims and all other types of claims under state law that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another person, if those actions, costs or damages are addressed in the settlement, but does not include protection against claims based on contractual indemnification or other express contractual agreements to pay the costs or damages. A person who commences an action against a person who is protected from suits by entering a settlement with the State is liable to the person against whom the claim is brought for all reasonable costs of defending against the claim, including all reasonable attorney's and expert witness fees. Nothing in this section is intended to create a right to contribution or other cause of action or to make a person liable to pay a portion of another person's response costs, damages or civil penalties.'

Further amend the bill in section 1 in paragraph H in the first blocked paragraph in the first line (page 1, line 27 in L.D.) by striking out the following: "any" and inserting in its place the following: 'any a' and in the 6th line (page 1, line 32 in L.D.) by striking out the following: "provided that" and inserting in its place the following: '~~provided that~~ if'

Further amend the bill in section 2 in the 2nd line from the end (page 2, line 2 in L.D.) by inserting after the following: "loss" the following: 'or gain'

Further amend the bill by inserting after section 2 the following:

'Sec. 3. 38 MRSA §568-A, sub-§2, as amended by PL 1993, c. 363, §10 and affected by §21, is further amended to read:

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2. **Deductibles.** Applicants Except as provided in subsection 2-A, applicants eligible for coverage by the fund under subsection 1 shall pay up to the deductible amount for expenses resulting from cleaning up and compensating eligible 3rd-party damages from a discharge prohibited under section 543 on a per occurrence basis according to the following schedule:

Number of facilities owned by facility owner	Costs paid by applicant
1	\$2,500
2 to 5	5,000
6 to 10	10,000
11 to 20	25,000
21 to 30	40,000
over 30	62,500

The commissioner shall pay any eligible additional costs up to \$1,000,000 associated with activities under section 569-A, subsection 8, paragraphs B, D and J resulting from a discharge from the fund. The commissioner shall pay the expenses directly, unless the applicant chooses to pay the expenses and seek reimbursement from the fund. The commissioner may pay any costs eligible for coverage by the fund above \$1,000,000 from the fund but the commissioner shall recover these expenditures from the responsible party pursuant to section 569-A.

Sec. 4. 38 MRSA §568-A, sub-§2-A is enacted to read:

2-A. Limit on deductible. The maximum deductible payable by an applicant with respect to an aboveground oil storage tank that is located outside any building or facility and that serves only the dwelling unit occupied by the owner of that unit is \$1 per gallon of capacity of the tank.'

Further amend the bill in section 3 by striking out all of subsection 12 (page 2, lines 8 to 16 in L.D.) and inserting in its place the following:

'12. **Disposal.** "Disposal" means the discharge, deposit, dumping, spilling, leaking or placing of any hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage into or on any land, air or water and the incineration of ~~any hazardous or~~ solid waste, refuse-derived fuel, sludge or septage so that the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage or any a constituent thereof of the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

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2 Further amend the bill in section 5 in subsection 5 in the
first blocked paragraph in the first line (page 2, line 35 in
L.D.) by striking out the following: "shall be" and inserting in
4 its place the following: 'shall-be are'

6 Further amend the bill in section 6 in paragraph D in the
first line (page 2, line 45 in L.D.) by striking out the
8 following: "Any" and inserting in its place the following: 'Any
A' and in the 2nd line (page 2, line 46 in L.D.) by striking out
10 the following: "provided that the" and inserting in its place
the following: '~~provided that the~~ if' and in the 3rd line (page
12 2, line 47 in L.D.) by striking out the following: "any" and
inserting in its place the following: 'any a'

14 Further amend the bill by inserting at the end before the
16 statement of fact the following:

18 'Sec. 9. 38 MRSA §2311, sub-§2, as amended by PL 1993, c. 309,
§1, is further amended to read:

20 2. Toxics user. All toxics users must except owners and
22 operators of commercial agricultural operations shall submit \$50
per extremely hazardous substance reported by the facility under
24 SARA, Title III, Section 312 in addition to fees assessed under
Title 37-B, section 801. Fees assessed under this subsection
26 must be submitted annually by April 15th to the department.

28 PART B

30 Sec. B-1. 38 MRSA §1310-N, sub-§1, as affected by PL 1989, c.
890, Pt. A, §40 and as amended by Pt. B, §242, is further amended
32 to read:

34 1. Licenses. The department shall issue a license for a
waste facility whenever it finds that:

36 A. The facility will does not pollute any water of the
38 State, contaminate the ambient air, constitute a hazard to
health or welfare or create a nuisance;

40 B. In the case of a disposal facility, the facility
42 provides a substantial public benefit; and

44 C. In the case of a disposal facility, the volume of the
waste and the risks related to its handling and disposal
46 have been reduced to the maximum practical extent by
recycling and source reduction prior to disposal. This
48 paragraph does not apply to the expansion of a commercial
solid waste disposal facility that accepts only special
50 waste for landfilling.

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2 Sec. B-2. 38 MRSA §1310-N, sub-§5, as amended by PL 1993, c.
383, §36, is further amended to read:

4 5. **Recycling and source reduction determination.** The
5 department shall find that the provisions of subsection 1,
6 paragraph C are satisfied when the applicant demonstrates that
all requirements of this subsection have been satisfied.

8 A. The proposed solid waste disposal facility will accept
10 solid waste that is subject to recycling and source
12 reduction programs, voluntary or otherwise, at least as
effective as those imposed by this chapter and other
14 provisions of state law.

16 (1) The department shall attach this requirement as a
18 standard condition to the license of a solid waste
disposal facility governing the future acceptance of
solid waste at the proposed facility.

20 B. The applicant has shown consistency with the recycling
22 provisions of the state plan.

24 This subsection does not apply to the expansion of a commercial
solid waste disposal facility that accepts only special waste for
landfilling.

26 Sec. B-3. 38 MRSA §2157, sub-§1, as enacted by PL 1989, c.
28 585, Pt. A, §7, is amended to read:

30 1. **Requirement.** After the adoption of the state plan, ~~no~~ a
32 permit for a new or expanded solid waste disposal facility may
not be issued unless the applicant demonstrates to the agency
that the proposed facility:

34 A. ~~Will-meet~~ Meets capacity needs identified in the state
36 plan in addition to capacity that is under development by
the office under section 2156 or by any other party approved
38 by the office at the time of the application;

40 B. ~~Will-be~~ Is consistent with the state plan, except that
42 this paragraph does not apply to expansions of commercial
solid waste disposal facilities that accept only special
44 waste for landfilling; and

46 C. Meets the following requirements:

48 (1) The proposed facility is consistent with local,
regional or state waste collection, storage,
transportation, processing or disposal; and

2 (2) After the adoption of the siting criteria, the
proposed facility meets the criteria in section 2153.

4 Proceedings Except as otherwise provided in this section,
5 proceedings under this subsection are subject to the provisions
6 of Title 5, chapter 375, subchapter IV.

8 Proceedings under this section for the expansion of a commercial
9 solid waste disposal facility that accepts only special waste for
10 landfilling are not subject to the provisions of Title 5, chapter
11 375, subchapter IV.

12 In making the determination required under this section for the
13 expansion of a commercial solid waste disposal facility that
14 accepts only special waste for landfilling, the agency shall
15 consider the written information submitted in support of the
16 application and any other written information the agency
17 considers pertinent. In addition, the agency may hold a public
18 meeting in the vicinity of the proposed expansion to take public
19 comments and shall consider those comments in making the
20 determination.

22 **Sec. B-4. Application.** Notwithstanding the Maine Revised
23 Statutes, Title 1, section 302 and Title 38, section 344,
24 subsection 1-A, this Part applies to applications pending before
25 the Maine Waste Management Agency and the Department of
26 Environmental Protection on or after January 1, 1994.

30 PART C

32 **Sec. C-1. 38 MRSA §1310-C, sub-§2, ¶B,** as enacted by PL 1987,
33 c. 517, §25, is amended to read:

34 B. Abandoned or improperly or inadequately closed,
35 municipal or privately-owned solid waste landfills.

38 **Sec. C-2. 38 MRSA §1310-C, sub-§4, ¶¶A and B,** as amended by PL
39 1991, c. 519, §1, are further amended to read:

40 A. "Abandoned" with reference to a solid waste landfill
41 means no longer handling solid waste on or after February 1,
42 1976 when the cessation of handling operations and the
43 covering of the landfill has have not been approved by the
44 department or otherwise accomplished in accordance with the
45 procedures and standards established in this article.

48 B. "Closed" with reference to a solid waste landfill means
49 no longer handling solid waste when the cessation of
50 handling operations has occurred in accordance with the

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provisions of a permanent closure plan approved by the department or the closure of the landfill has occurred in accordance with the procedures established by this article.

Sec. C-3. 38 MRSA §1310-C, sub-§4, ¶B-1 is enacted to read:

B-1. "Closure" means the completion of those activities specified in this article or in rules adopted pursuant to this article or a department closing order as appropriate, including, but not limited to, the placement of a cover or cap as a barrier over a landfill in order to minimize the infiltration of precipitation into the waste contained in the landfill.

Sec. C-4. 38 MRSA §1310-C, sub-§4, ¶H, as enacted by PL 1989, c. 870, §1, is amended to read:

H. "Contamination," as applied to ground water and surface water with respect to subsection 6, means exceeding water quality standards, attributable to the solid waste facility, specified in:

- (1) Primary drinking water standards adopted under Title 22, section 2611;
- (2) Maximum exposure guidelines adopted under Title 22, section 2602-A; or
- (3) A statistically significant increase in concentration of measured parameters above an established baseline, whether or not the existing concentration already exceeds the maximum concentration levels specified in this section, using the 95% confidence interval when the student's t-test is applied. The use of other statistical tests and confidence intervals must be approved by the department.

Sec. C-5. 38 MRSA §1310-C, sub-§4, ¶J is enacted to read:

J. "Remediation" means those actions, other than closure activities, taken at or near a solid waste landfill to prevent or minimize public health impacts or environmental impacts and to prevent or minimize the release of pollutants beyond the boundary of the property on which the landfill is located. The term "remediation" includes but is not limited to installation of landfill leachate collection and treatment systems; vapor extraction systems; ground water collection and treatment; or slurry walls. Other measures such as property purchases and water supply replacements may

2 be defined as remediation only if they are determined to be
3 cost-effective and as protective of public health and the
4 environment as measures defined above as "remediation".

5 Sec. C-6. 38 MRSA §1310-D, sub-§1, as affected by PL 1989, c.
6 890, Pt. A, §40 and as amended by Pt. B, §235, is repealed and
7 the following enacted in its place:

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9 1. Landfill ranking. The department shall create and
10 maintain a list of all open-municipal solid waste landfills
11 ranked on the basis of the hazard each poses or potentially poses
12 to the public health and environment. The list must establish no
13 less than 2 categories of landfills: "high risk" landfills, which
14 include those landfills that are known to pose a public health or
15 environmental threat so immediate or substantial that corrective
16 action must be taken without delay, and landfills that are not
17 known to be "high risk." The department shall inform each
18 affected municipality in writing whenever there are changes made
19 to the priority list and publish the most current version of that
20 list on or about February 1st of each year. All pertinent and
21 related rules adopted by the department establishing standards
22 governing landfill remediation and closure must be designed so
23 that the costs of remediation and closure are coordinated with
24 and reasonably proportionate to the relative public health risk
25 and environmental risk indicated by the specific rank of the
26 municipal landfill.

27 Sec. C-7. 38 MRSA §1310-D, sub-§2, as amended by PL 1991, c.
28 519, §4, is further amended by amending the first paragraph to
29 read:

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31 2. Evaluation. In response to the priorities established
32 in the open-municipal solid waste landfill ranking and the
33 objectives of paragraphs A to C, the commissioner shall conduct
34 and complete by January 1, 1993, subject to the availability of
35 funding, environmental evaluations of each open-municipal solid
36 waste landfill. The commissioner may employ private consultants
37 to avoid additions to departmental staff and to accomplish the
38 evaluations in a timely manner. The commissioner may utilize
39 existing analyses of facilities, subject to the provisions of
40 this subsection. Municipalities shall cooperate with the efforts
41 of the department by providing reasonably available and relevant
42 material that the department may require with regard to the
43 purposes of this section. When the commissioner has sufficient
44 knowledge of existing hazards to the environment and public
45 health posed by a specific site, the commissioner may designate
46 the landfill as a high-risk landfill and take measures necessary
47 to effect proper remediation and closure of the landfill,
48 notwithstanding the site's listed priority. In those cases, the
49 commissioner shall ensure that the requirements of this
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subsection are substantially met. The commissioner shall ensure that each evaluation achieves the following objectives:

Sec. C-8. 38 MRSA §1310-D, sub-§3, ¶A, as repealed and replaced by PL 1991, c. 759, §2, is amended to read:

A. ~~Within 90 days of the~~ Following receipt of a landfill evaluation, together with the recommendations for closure and, if any, remediation actions, the commissioner shall issue an order for closure and, if appropriate, remediation. This order must specify the use of compost or reclaimed soil materials for landfill cover to the maximum extent practical and consistent with sound environmental practices. Subject to sections 1310-F and 1310-G, a ~~timetable~~ time schedule for implementation and all pertinent ~~cost-sharing~~ cost sharing must be included as part of the order.

Sec. C-9. 38 MRSA §1310-D, sub-§4, as enacted by PL 1987, c. 517, §25, is amended to read:

4. Implementation. The municipality owning or operating the landfill is the party responsible for the implementation of the plan adopted issued by the board commissioner.

Sec. C-10. 38 MRSA §1310-D, sub-§5, as amended by PL 1991, c. 519, §6, is further amended to read:

5. Certification of completion. A municipality that engages a contractor to close a landfill under an order issued by the department shall hire a licensed engineer independent of the contractor or the municipality to, at a minimum, monitor, evaluate and report on all on-site landfill closure activities performed by the contractor. Upon completion of the closure work in compliance with the order issued by the department, that engineer shall provide the department and municipality with a written report that certifies that the work performed by the contractor conforms with the order issued by the department and all applicable laws and regulations. The cost to the municipality to engage the licensed engineer is a cost of closure under section 1310-F. ~~No later than 60 days after~~ Following receipt of the engineer's report, the department shall accept, conditionally accept or reject the engineer's certification. If the department either conditionally accepts or rejects the certification, the department shall identify and direct the municipality to undertake any measures necessary for completion of the closure in compliance with the order.

Sec. C-11. 38 MRSA §1310-E, as amended by PL 1991, c. 519, §7, is repealed.

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Sec. C-12. 38 MRSA §1310-E-1 is enacted to read:

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§1310-E-1. Closure of landfills

Notwithstanding closure schedules previously established by rule, unlicensed and licensed open-municipal solid waste landfills that have not been closed must be closed in accordance with the schedule established by federal law or rule; state law or rule; schedules of compliance; consent agreements; enforcement orders; or license conditions. Those landfills must be closed in accordance with one of the following procedures.

1. Regulation procedure. This procedure involves the submission of a closure plan and the implementation of the closure plan as approved by the department in accordance with landfill closure standards included in rules adopted pursuant to section 1304. This closure process is required of all licensed municipal solid waste landfills and may be otherwise initiated in one of 3 ways:

A. At the discretion of the municipality;

B. In response to an order issued by the department to close a landfill pursuant to section 1310-D, subsection 2 when the state cost share for the closure is immediately available. For the purposes of this section, "immediately available" means that the municipality is reimbursed the total eligible amount of the state cost share for the anticipated closure operation as ordered within 180 days of the municipality incurring the expense; or

C. In response to an order issued by the department to close a landfill pursuant to section 1310-D, subsection 2 in conjunction with a finding by the commissioner that the landfill poses a "high risk."

2. Reduced closure procedure. To achieve compliance with this section, a municipality has the option to close its landfill, in accordance with a reduced procedure as established by this subsection, except when:

A. The landfill is a licensed municipal solid waste landfill or the municipality has been ordered to close or remediate a landfill pursuant to section 1310-D, subsection 2 in which case the landfill must be closed in accordance with subsection 1;

B. The landfill meets one of the following criteria, in which case the landfill must close in accordance with subsection 3:

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2 (1) The landfill has a drinking water supply well
 within 1,000 feet of the solid waste boundary;

4 (2) The landfill has a public water supply well within
6 10,000 feet of the solid waste boundary and in the same
 aquifer, for landfills located on a sand and gravel
 aquifer as mapped by the Maine Geological Survey;

8 (3) The landfill has an enclosed building within 100
10 feet of the waste boundary; or

12 (4) The landfill has received hazardous industrial
14 wastes.

16 Those municipalities that are able to establish that their
18 open-municipal landfill is not excluded from the closure option
20 provided by this subsection may proceed with the option for a
22 reduced closure procedure. This closure option is met if the
24 closure complies with the landfill closure standards of 40 Code
 of Federal Regulations, Part 258, Section 258.60 (a). The
 municipal officers shall submit to the department a certification
 of completion of closure operations in accordance with the
 standards of this subsection no later than 60 days from the date
 of that completion.

26 3. Alternative closure procedure. A municipality that
28 determines that it owns or operates a landfill that by the terms
30 of subsection 2, paragraph B is not automatically eligible for
32 the reduced closure option must notify the department in writing
34 of that circumstance within 60 days of making the determination
36 and the notification must be considered by the department as a
38 request for permission to close the landfill in accordance with
40 the closure standards established by subsection 2. Upon receipt
42 of the notification and after further evaluating the
44 circumstances of the landfill as may be necessary, the department
 must notify the municipality in writing that permission is
 granted to close the landfill in accordance with the standards
 established in subsection 2, or that permission is granted to
 close the landfill in accordance with the standards of subsection
 2 and any reasonable additional closure or remediation standards
 that the department may require that are related to the
 identified characteristics that cause the landfill to not be
 automatically eligible for the reduced closure option.

46 4. Subsequent landfill closure activity. Any municipality
48 that closes a landfill pursuant to subsection 1, 2 or 3 is
 entitled to an assurance from the department that the
 municipality has met its closure obligations and that no further
 closure action is required of the municipality by the department

2 with regard to that landfill unless one or more of the following
3 circumstances arises:

4 A. The commissioner finds that the landfill, although
5 closed, is nonetheless a high-risk landfill and orders
6 further closure or remediation activities;

8 B. Additional closure or remediation activities are needed
9 and the department's cost share of the additionally required
10 activity is immediately available; or

12 C. Additional closure or remediation activities are required
13 as a result of an existing or pending formal department
14 enforcement action with respect to the violation of the
15 license conditions under which a landfill was operated.

16 Nothing with regard to this assurance is construed to limit the
17 department's authority to act using its own resources as that
18 activity may be otherwise authorized by law.

20 5. Existing closure procedures. The closure procedures
21 established in this section do not override or impair closure
22 procedures established prior to the effective date of this
23 section pursuant to a legally binding consent agreement, license
24 condition, enforcement order or other form of contract between a
25 municipality and that department that was executed prior to the
26 effective date of this section.

28 Sec. C-13. 38 MRSA §1310-F, sub-§1, as amended by PL 1991, c.
29 519, §9, is repealed.

32 Sec. C-14. 38 MRSA §1310-F, sub-§§1-A and 1-B are enacted to
33 read:

34 1-A. Remediation cost-share fraction. Subject to the
35 availability of funds, the commissioner shall issue grants or
36 payments to eligible municipalities for 90% of the planning and
37 implementation costs of remediation.

40 1-B. Closure cost-share fraction. Subject to the
41 availability of funds, the commission shall issue grants or
42 payments to eligible municipalities for the following percentages
43 of planning and implementation costs of closure.

44 A. Notwithstanding paragraph B, the state cost share is 75%
45 for the following:

48 (1) Costs incurred by a municipality prior to July 1,
49 1994;

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2 (2) Costs incurred at any time by a municipality
3 pursuant to a written landfill closure agreement
4 between the municipality and the department executed
5 prior to July 1, 1994;

6 (3) Costs incurred pursuant to licensure requirements
7 for landfills licensed by the department to operate
8 after July 1, 1994;

10 (4) Costs other than those described in paragraph B if
11 approved in writing by the department; and

12 (5) Costs incurred by a municipality for a landfill
13 closure not required to occur by October 9, 1994 by
14 federal or state law, rule or regulation.

16 B. Until January 1, 1996, the state cost share is 50%, and
17 for closure costs incurred after that date, the State's cost
18 share is 30% for the following:

20 (1) The cost of materials and the cost of placement of
21 materials associated with the physical construction of
22 that portion of a cover over a landfill that meets the
23 minimum landfill cover permeability of 1 x
24 10(-5)cm./sec. and the thickness standards of 40 Code
25 of Federal Regulations, Part 258, Section 258.60(a).

28 Sec. C-14. 38 MRSA §1310-F, sub-§2, as amended by PL 1993, c.
29 355, §49, is repealed and the following enacted in its place:

30 2. Eligibility. A municipality that owns, rents or leases
31 a solid waste landfill for which obligations are required or
32 permitted by this chapter or rules adopted under this chapter is
33 eligible for cost-sharing grants or reimbursement payments. In
34 order to receive reimbursement pursuant to this section, the
35 municipality must, at a minimum, provide such reasonable proof of
36 municipal expenditures as the department may require, as well as
37 certification signed by the municipal officers that to the best
38 of their knowledge and the knowledge of all the pertinent
39 municipal officials, the closure activities were performed in
40 accordance with the applicable standards established by section
41 1310-E-1. A municipality that has spent funds to close its solid
42 waste landfill or to remedy environmental and public health
43 hazards posed by the landfill prior to the adoption of a closure
44 or remediation plan under this subchapter or that closed a
45 landfill or remediated environmental or public health hazards
46 posed by a landfill is also eligible for reimbursement of closure
47 or remediation costs incurred after February 1, 1976, as
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2 long as the closure or remediation actions were in conformance
3 with all applicable laws or rules in effect at the time. Costs
4 incurred by closure or remediation actions taken after the
5 adoption of a closure or remediation plan under this subchapter
6 are eligible for reimbursement only if those actions conform to
7 that plan. Grant or reimbursement payments may not be made to a
8 municipality for a portion of payments to settle civil or
9 criminal judgments against that municipality for damages or
10 injuries caused by the landfill. In addition, for landfills in
11 operation prior to January 1, 1993, grant payments may not be
12 made to a municipality for remediation to mitigate a threat posed
13 by that landfill to structures built after January 1, 1994 by
14 that municipality, the county in which that municipality is
15 located, a school administrative unit as defined in Title 20-A,
16 section 1, a quasi-municipal corporation as defined in Title
17 30-A, section 2351 or a special district as defined in Title
18 30-A, section 5704 that includes any portion of the municipality
19 unless the commissioner determines that the municipality could
20 not have reasonably anticipated the threat. Any interest paid by
21 a municipality prior to reimbursement on a municipal bond or
22 commercial bank note issued to raise funds for remediation and
23 closure activities is a cost eligible for reimbursement under
24 this section. Unless otherwise directed by the terms of a bond
25 issue approved by the voters, the commissioner shall use at least
26 1/3 of the funds approved by the voters for municipalities
27 eligible for reimbursement of closure and remediation costs
28 eligible under this subsection until all those municipalities
29 have been reimbursed. The remainder of the available funds must
30 be allocated in an equitable manner so that, at a minimum, an
31 adequate cap is constructed over all identified high-risk
32 landfills subject to closure. The department shall issue, upon
33 the request of a municipality, a notice in writing that projects
34 to a date certain the availability of cost-sharing funds for
35 which the municipality is eligible. The inability or failure of
36 the department to issue a written projection to a date certain
37 means that the cost-sharing funds are not available for the
38 foreseeable future. A landfill that is privately owned and
operated is not eligible for reimbursement under this subchapter.

40 A. The commissioner may act to abate public health, safety
41 and environmental threats at sites identified as
42 uncontrolled hazardous substance sites under section 1362,
43 subsection 3 or at federally declared Superfund sites.
44 Notwithstanding any other provision of this article, the
45 commissioner shall determine the amount of funds expended at
46 those sites.

48 B. The commissioner may enter into contracts with the Maine
Municipal Bond Bank to manage bonds issued under this

2 article, as long as the management fee structure does not
allow dilution of the bond principal.

4 C. In a circumstance where the department finds that
further closure or remediation activities are required for a
landfill because the landfill was not closed in accordance
with the standards of closure that the municipal officers
certified to the department pursuant to this subsection and
further finds that the certification was a negligent
misrepresentation of a material fact results in the
ineligibility of the municipality for cost sharing for the
additional activities that may be required as a result of
the nonperformance of the previously certified activities.

14 D. A municipality that is eligible or authorized by the
department to use the closing procedure established in
section 1310-E-1, subsection 1, 2 or 3 is not eligible for
reimbursement of costs associated with closing activities
that are more stringent than the minimum required by that
section unless those additional activities are approved in
writing by the department.

22 **Sec. C-15. 38 MRSA §1310-F, sub-§4, as amended by PL 1991, c.**
24 **885, Pt. E, §46 and as affected by §47, is further amended to**
26 **read:**

28 **4. Insurance.** Notwithstanding subsection 1 1-B, the
30 commissioner may not issue a grant or reimbursement payment under
32 this section to a municipality for the costs of closure unless
34 the municipality demonstrates to the commissioner that each
person who performs work to implement the closure plan is
self-insured or is covered by a workers' compensation insurance
policy in accordance with Title 39-A.

36 **Sec. C-16. 38 MRSA §1310-F, sub-§5, as enacted by PL 1991, c.**
519, §12, is amended to read:

38 **5. Audit.** A municipality or other public entity receiving
40 grants or reimbursement ~~of--interest~~ payments shall include the
remediation or closure project in its annual independent audit to

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2 provide assurance of the proper expenditure of state funds. A
3 copy of this audit must be provided in a timely manner to the
4 solid waste closure and remediation program of the Department of
Environmental Protection.

6 Sec. C-17. 38 MRSA §1310-G, as amended by PL 1993, c. 355,
7 §50, is further amended to read:

8
9 **§1310-G. Time schedules for closure of existing facilities**

10 The board department shall establish, as part of the
11 proposed a municipal landfill closure and remediation plan,
12 reasonable time schedules for the implementation of the plan.

13 1. Criteria. In establishing the time schedule, the board
14 department shall consider the following criteria:

15 A. The level of environmental and public health hazard
16 posed by the landfill in its current state;

17 B. The availability of reasonable, alternative disposal
18 options available to the municipality following closure of
19 the existing landfill; and

20 C. The period reasonably needed by the municipality to
21 raise its share of plan costs; and

22 D. The availability of state cost-share funds for the
23 project.

24 Sec. C-18. 38 MRSA §1310-N, sub-§6-E is enacted to read:

25 6-E. Unlicensed wood-waste, construction and demolition
26 debris landfills. An unlicensed municipal solid waste landfill
27 accepting waste consisting exclusively of wood, landscape refuse
28 or construction and demolition debris and operating as of the
29 effective date of this subsection, may:

30 A. Continue to operate until April 9, 1994; and

31 B. Continue to operate until December 31, 1995 if:

32 (1) The landfill was operating as of December 31,
33 1993; and

34 (2) The landfill is a separate and discrete disposal
35 unit that does not overlie or overlap a municipal solid
36 waste landfill that accepts or has accepted "household
37 waste" as defined in 40 Code of Federal Regulations,
38 Part 288, Section 258.2.

Municipalities continuing to operate unlicensed wood-waste, construction and demolition debris landfills under paragraph B shall submit a progress report to the department on or before January 31, 1995. The report must include a description of the alternative handling and disposal method that the town plans to implement prior to December 31, 1995 and an implementation schedule.

Notwithstanding this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.'

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

1994-95

REVENUES

Other Funds (\$2,000)

The exemption of certain agricultural operators and owners from toxic user fee requirements will reduce fee collections to the Maine Hazardous Waste Fund. The estimated annual reduction of dedicated revenue to the Department of Environmental Protection is \$2,000 beginning in fiscal year 1994-95.

The Department of Environmental Protection will incur some minor additional costs to amend certain rules pertaining to landfill ranking. These costs can be absorbed within the department's existing budgeted resources.'

STATEMENT OF FACT

The amendment adds an emergency clause and preamble.

The amendment extends the exemption from inventory and

1 analysis requirements for underground oil tanks to those that
2 have monitoring devices able to detect the gain of 0.1 gallon of
3 product per hour as well to those that detect product loss of 0.1
4 gallon.

6 The amendment exempts owners and operators of commercial
7 agricultural operations from the toxics user fee.

8
9 The amendment provides that a person who resolves his or her
10 liability to the State for environmental response actions, costs
11 or damages is not liable for claims for contribution by other
12 persons for actions, costs or damages addressed in the
13 settlement. The amendment also provides that a person who brings
14 suit against a person protected from contribution liability by
15 this provision must pay the attorney's fees and other costs
16 incurred by the protected person in the litigation.

18 Part B of the amendment exempts from certain recycling
19 provisions of existing law the expansion of a commercial solid
20 waste disposal facility that will handle only special waste.
21 This Part also amends the procedural requirements that apply to
22 the review of such a proposal by the Maine Waste Management
23 Agency.

24
25 Part C of the amendment changes the municipal solid waste
26 landfill remediation and closure program by requiring the
27 department to separate open-municipal solid waste landfills into
28 2 categories: high-risk landfills, which are those landfills
29 that pose known immediate and substantial risks to public health
30 or the environment; and those landfills not known to be high risk.

32 High-risk landfills, licensed municipal solid waste
33 landfills and landfills ordered to close after a department
34 evaluation, where the state cost share for closure is immediately
35 available, must close in accordance with rules and procedures
36 established by the department. Other landfills may comply with
37 the closure requirement by meeting a reduced closure option
38 consisting of standards contained in federal rules, unless the
39 landfill is disqualified from this closure option by virtue of
40 having received hazardous industrial wastes or by being within a
41 specified distance from a water supply well or an enclosed
42 building. If the landfill is disqualified from the reduced
43 option, but does not fall within the mandatory department rule
44 closure method, the municipality must apply to the department for
45 further direction. The department may decide to permit the
46 municipality to close using the reduced closure option, or may
47 permit that option only with additional closure or remediation
48 standards determined by the department.

2 These changes in closure procedures do not apply to
3 landfills for which a closure procedure is established prior to
4 the effective date of the legislation by a legally binding
5 consent agreement, license condition, enforcement order or other
6 contract between the department and the municipality. The
7 schedule for closure of those facilities is affected.

8 The amendment also changes the State's cost-share payments
9 to municipalities for closure but not for remediation. Current
10 law requires the State to pay, subject to availability of funds,
11 75% of the costs of planning and implementing closure actions,
12 and 90% of the costs of planning and implementing remediation.
13 The amendment provides that the State would pay 50% of that
14 portion of the cost of capping the landfill that achieves the
15 minimum federal permeability and thickness standards, and to pay
16 75% for costs associated with additional approved closure
17 efforts. No cost-share remediation from 75% to 50% will occur
18 whenever any of the following apply: the cost was incurred prior
19 to July 1, 1994; the cost was incurred pursuant to a written
20 agreement entered into before July 1, 1994; the cost was incurred
21 to perform closure actions required in a license that authorizes
22 a landfill to operate after July 1, 1994; the cost was incurred
23 to perform additional closing actions approved in writing by the
24 department; or the cost was incurred by a municipality that was
25 not required to close its landfill by October 9, 1994 by state or
26 federal law, rule or regulation.

28 A municipality must receive assurance from the department
29 that it has met its closure obligations and that no further
30 closure action will be required, unless the commissioner finds
31 that the landfill is a high-risk landfill, the additional closure
32 or remediation activities are needed and cost-share money is
33 available, or are required as a result of existing or pending
34 enforcement actions with respect to violation of license
35 conditions.

36 To receive reimbursement of costs, the municipal officers
37 must certify that the closure was performed in accordance with
38 the required standards. If the department must order additional
39 closure or remediation activities as a result of the failure of
40 the municipality to close in accordance with law and that the
41 certification was a negligent misrepresentation of material fact,
42 the municipality is not eligible for cost sharing for those
43 additional activities.

46 The amendment also changes the category of sites for which
47 municipalities are prohibited from receiving landfill remediation
48 grants. Current law excludes grants to remediate threats to any
49 structure built or approved by the municipality. The amendment
50 excludes grants for structures built by the municipality or any

COMMITTEE AMENDMENT "A" to H.P. 1302, L.D. 1757

2 local government entity in which the municipality or its
residents participates.

4 The amendment also permits unlicensed wood-waste,
6 construction and demolition debris landfills to operate until
April 9, 1994 and to operate until December 31, 1995 if the
8 landfill operated as of December 31, 1993 and is separate from
any municipal solid waste landfill that has accepted household
waste.

10 The amendment also adds a fiscal note to the bill and also
12 conforms existing law to current drafting standards.