

# MAINE STATE LEGISLATURE

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MAJORITY  
NATURAL RESOURCES

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
118TH LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 344, L.D. 466, Bill, "An Act to Establish Guidelines for the Utilization of Municipal Solid Waste Incinerator Ash and Its Derivatives"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 38 MRSA §1304, sub-§§13-B and 13-C are enacted to read:

13-B. Municipal solid waste incinerator ash; rulemaking. The board shall adopt rules establishing requirements for the use of municipal solid waste incinerator ash, referred to in this subsection as "ash." In developing these rules, the board shall consult with the Department of Transportation and the Maine Turnpike Authority on those issues relating to the use of ash in or on roads. In developing these rules, the board shall consider, but is not limited to considering, the following issues:

A. The feasibility and comparative health risk of using bottom ash versus using combined bottom ash and fly ash;

B. The risk to human health and the environment from toxic constituents of ash, including dioxin and heavy metals;

C. Site-specific restrictions and prohibitions on the use of ash, particularly on uses that might expose sensitive populations or sensitive natural resources to health or environmental risks;

D. Methods of tracking the physical location of ash in all initial and subsequent uses, and whether uses should be restricted to those that can be tracked;

2 E. Methods of state and municipal notification of  
4 activities involving the use of ash, which may include  
6 individual notice or permits for specific projects as  
8 needed; and

10 F. State and municipal liability in the case of a release  
12 or threat of release of a hazardous substance, hazardous  
14 waste, hazardous matter, special waste or contaminant into  
16 the environment resulting from the use of ash.

18 Rules adopted pursuant to this subsection must require that any  
20 risk assessment performed as part of an application for a license  
22 to use ash use the most current available data and methods and be  
24 reviewed by the Department of Human Services, Bureau of Health in  
26 consultation with the department.

28 Except as specified in subsection 13-C, a person may not use ash  
30 without a license from the department issued pursuant to this  
32 subsection. The department may not process or act upon an  
34 application for a license under this subsection until rules are  
36 finally adopted by the board pursuant to this subsection. For  
38 purposes of this subsection, the term "use" includes, but is not  
40 limited to, the following: use in a manufacturing process, use as  
42 aggregate for asphalt or concrete products, use in the  
44 construction industry, use as final landfill closure material and  
46 the use of a product manufactured from ash. The term "use" does  
48 not include transport, storage or disposal in a landfill licensed  
50 to accept ash.

Rules adopted pursuant to this subsection are major substantive  
rules under Title 5, chapter 375, subchapter II-A.

13-C. Use of treated ash in secure landfills. Subject to  
the requirements of other applicable laws, a person may do the  
following without a license issued pursuant to subsection 13-B:

A. Process municipal solid waste incinerator ash to remove  
noncombusted materials, size the ash and reduce the  
solubility of metals contained within the ash; and

B. Use municipal solid waste incinerator ash processed in  
the manner specified in paragraph A as follows:

(1) As landfill daily cover material in a secure  
landfill;

(2) As construction material in a secure landfill; and

(3) In pilot projects in a secure landfill.

2 The use of municipal solid waste incinerator ash pursuant to this  
3 subsection is limited to the lined areas within a secure landfill  
4 and each use must receive case-by-case approval from the  
5 department. Prior to approving the use of municipal solid waste  
6 incinerator ash in a secure landfill, the department shall ensure  
7 that the use provides adequate protection of human health and the  
8 environment.

10 For purposes of this subsection, the term "secure landfill" means  
11 a landfill that utilizes a liner system, a leachate collection  
12 and treatment system and a final cover system to minimize  
13 discharges of waste or leachate and control the release of gas to  
14 the environment.

16 **Sec. 2. Findings.** The Legislature makes the following findings:

18 1. Municipal solid waste incinerator ash contains highly  
19 toxic materials such as dioxin that, if inadequately regulated  
20 and controlled, can cause very serious damage to the environment  
21 and harm to human health and safety;

22 2. New processing techniques have made possible new uses of  
23 this ash that were not contemplated when current laws were  
24 enacted; and

26 3. This Act is essential to ensure that before this ash is  
27 used in any manner that introduces the ash into the environment  
28 in a way other than through proper landfill disposal the use will  
29 be adequately reviewed to ensure protection against and control  
30 of the environmental, health and safety risks.'

32 Further amend the bill by inserting at the end before the  
33 summary the following:

36 **FISCAL NOTE**

38 The Board of Environmental Protection within the Department  
39 of Environmental Protection will incur some minor additional  
40 costs to adopt certain rules pertaining to municipal solid waste  
41 incinerator ash. These costs can be absorbed within the  
42 department's existing budgeted resources.

44 The issuance of certain licenses pertaining to the use of  
45 municipal solid waste incinerator ash will result in  
46 insignificant increases of dedicated revenue to the Department of  
47 Environmental Protection from license fees.

2 The additional costs associated with providing consultation  
3 to the Board of Environmental Protection regarding the use of ash  
4 in or on roads can be absorbed by the Department of  
5 Transportation utilizing existing budgeted resources.'

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7 **SUMMARY**

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9 This amendment replaces the bill. The bill would have  
10 established guidelines in statute for the use of municipal solid  
11 waste incinerator ash. The amendment requires the Board of  
12 Environmental Protection to adopt rules establishing requirements  
13 for the use of municipal solid waste incinerator ash. These  
14 rules are major substantive rules and must be reviewed by the  
15 Legislature. The amendment also specifies 6 issues that the  
16 board must consider in developing the rules.

17  
18 The amendment prohibits the use of municipal solid waste  
19 incinerator ash, except certain uses in a secure landfill,  
20 without a license from the Department of Environmental Protection  
21 issued pursuant to the new rules. The amendment prohibits the  
22 department from processing or acting upon an application for this  
23 license until rules are finally adopted by the board.

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25 The amendment authorizes the use of municipal solid waste  
26 incinerator ash processed to remove noncombusted materials and  
27 reduce the solubility of metals as daily cover, construction  
28 material or in pilot projects in the lined areas of a secure  
29 landfill. Each use must receive case-by-case approval from the  
30 department.

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32 The amendment also enumerates several findings made by the  
33 Legislature with respect to municipal solid waste incinerator ash.

34  
35 The amendment also adds a fiscal note to the bill.