

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

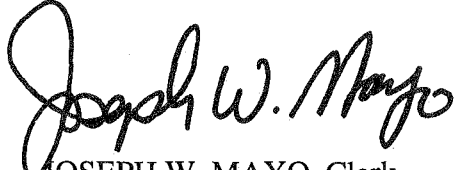
No. 2095

H.P. 1496

House of Representatives, January 20, 1998

**An Act to Clarify Certain Laws Pertaining to the Department of
Environmental Protection, Bureau of Remediation and Waste
Management.**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative SHIAH of Bowdoinham.

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

2 **Sec. 1. 38 MRSA §352, sub-§5-A**, as amended by PL 1995, c. 704,
4 Pt. A, §1 and affected by Pt. C, §2, is further amended by
6 amending the first paragraph to read:

8 **5-A. Accounting system.** In order to determine the extent
10 to which the functions set out in this section are necessary for
12 the licensing process or are being performed in an efficient and
14 expeditious manner, the commissioner shall require that all
16 employees of the department involved in any aspect of these
18 functions keep accurate and regular daily time records. These
20 records must describe the matters worked on, services performed
and the amount of time devoted to those matters and services, as
well as amounts of money expended in performing those functions.
Records must be kept for a sufficient duration of time as
determined by the commissioner to establish to the commissioner's
satisfaction that the fees are appropriate. This subsection is
repealed 90 days after adjournment of the Second Regular Session
of the ~~118th~~ 119th Legislature.

22 **Sec. 2. 38 MRSA §353, sub-§3**, as amended by PL 1995, c. 462,
24 Pt. A, §74, is further amended to read:

26 **3. License fee.** The license fee ~~assessed in section 352,~~
28 ~~subsection 5~~ must be paid at the time of filing the application.
30 Failure to pay the license fee at the time of filing results in
32 the application being returned to the applicant. One-half the
34 processing fee assessed in section 352, subsection 5-A for
36 licenses issued for a 10-year term must be paid at the time of
38 filing the application. The remaining 1/2 of the processing fee
for licenses issued for a 10-year term must be paid 5 years after
issuance of the license. The commissioner shall refund the
license fee if the board or commissioner denies the application
or if the application is withdrawn by the applicant.
Notwithstanding the provisions of this subsection, the license
fee for a subdivision must be paid prior to the issuance of the
license.

40 The license fees for nonferrous metal mining must be paid
42 annually on the anniversary date of the license for the life of
44 the project, up to and including the period of closure and
reclamation.

46 The license fee for a solid waste facility must be paid
48 annually. Failure to pay the annual fee within 30 days of the
anniversary date of a license is sufficient grounds for
revocation of the license under section 341-D, subsection 3.

2 **Sec. 3. 38 MRSA §564, sub-§5**, as amended by PL 1991, c. 494,
§6, is further amended to read:

4 **5. Mandatory facility replacement.** Upon the expiration
date of a manufacturer's warranty for a tank installed in
6 accordance with subsection 1 ~~or for an existing facility~~
~~installed after 1985~~, the tank and its associated piping must be
8 removed from service and properly abandoned in accordance with
section 566-A. Tanks and piping that do not meet the
10 requirements of subsection 1-A or 1-B must be removed from
service and abandoned as provided under department rules.

12 **Sec. 4. 38 MRSA §569-A, sub-§7**, as enacted by PL 1991, c. 817,
14 §26, is amended to read:

16 **7. Reimbursement for fees imposed on transfers out of**
State. Any person who ~~prior to October 9, 1991~~ has paid a fee
18 ~~assessed pursuant to~~ under subsection 5, paragraph A on petroleum
products that were exported from this State must be reimbursed by
20 the department upon presentation of documentation of that payment
and transfer.

22 **Sec. 5. 38 MRSA §570, first ¶**, as amended by PL 1997, c. 364,
24 §36 and affected by c. 374, §§14 to 16, is further amended to
read:

26 The intent of this subchapter is to provide the means for
28 rapid and effective cleanup and to minimize direct and indirect
damages and the proliferation of 3rd-party claims. Accordingly,
30 each responsible party is jointly and severally liable for all
disbursements made by the State pursuant to section 569-A,
32 subsection 8, paragraphs B, D, E, H and J, or other damage
incurred by the State, including except for costs found by the
34 commissioner to be eligible for coverage under the fund. The
term "other damages," as used in this paragraph, includes
36 interest computed at 15% a year from the date of expenditure, and
damage for injury to, destruction of, loss of, or loss of use of
38 natural resources and the reasonable costs of assessing natural
resources damage. The commissioner shall demand reimbursement of
40 costs and payment of damages that are not eligible for coverage
by the fund to be recovered under this section and payment must
42 be made promptly by the responsible party or parties upon whom
the demand is made. If payment is not received by the State
44 within 30 days of the demand, the Attorney General may file suit
in the Superior Court and, in addition to relief provided by
46 other law, may seek punitive damages as provided in section 568.
Notwithstanding the time limits stated in this paragraph, neither
48 a demand nor other recovery efforts against one responsible party
may relieve any other responsible party of liability.

50

2 **Sec. 6. 38 MRSA §570, first ¶**, as amended by PL 1991, c. 817,
§27 and affected by §28, is further amended to read:

4 ~~Because--it-is--the~~ The intent of this subchapter is to
6 provide the means for rapid and effective cleanup and to minimize
direct and indirect damages ~~as well as indirect damages~~ and the
8 proliferation of 3rd-party claims. Accordingly, each responsible
party is jointly and severally liable for all disbursements made
10 by the State pursuant to section 569-B, subsection 5, paragraphs
B, D, E and G, or other damage incurred by the State, including
12 interest computed at 15% a year from the date of expenditure, and
damage for injury to, destruction of, loss of or loss of use of
natural resources and the reasonable costs of assessing natural
14 resources damage. The commissioner shall demand reimbursement of
costs and payment of damages to be recovered under this section
16 and payment must be made promptly by the responsible party or
parties upon whom the demand is made. If payment is not received
18 by the State within 30 days of the demand, the Attorney General
may file suit in the Superior Court and, in addition to relief
20 provided by other law, may seek punitive damages as provided in
section 568. Notwithstanding the time limits stated in this
22 paragraph, neither a demand nor other recovery efforts against
one responsible party may relieve any other responsible party of
24 liability.

26 **Sec. 7. 38 MRSA §570-K, sub-§2**, as enacted by PL 1991, c. 694,
§16, is amended to read:

28 **2. Prohibition.** After July 1, 1995, a person may not
30 operate an aboveground oil storage facility ~~constructed after~~
~~July 1, 1985~~ that has underground piping not constructed of
32 cathodically protected steel, fiberglass or other noncorrosive
material approved by the department.

34 **Sec. 8. 38 MRSA §570-K, sub-§3**, as enacted by PL 1991, c. 694,
36 §16, is amended to read:

38 **3. Underground piping installation.** All underground
piping, whether replacement or new, associated with an
40 aboveground oil storage facility must be installed and removed:

42 A. In accordance with section 564 or other applicable
design and, installation, closure and removal rules adopted
44 by the board; and

46 B. By persons certified by the Board of Underground Storage
Tank Installers ~~pursuant to~~ under Title 32, chapter 104-A.

48 **Sec. 9. 38 MRSA §1291, sub-§11**, as enacted by PL 1997, c. 375,
50 §14, is repealed.

2 **Sec. 10. 38 MRSA §1291, sub-§17**, as enacted by PL 1997, c.
375, §14, is amended to read:

4 **17. Lead-based paint activities.** "Lead-based paint
6 activities" means inspection, risk assessment, lead abatement
design, lead abatement and services related to lead-based paint
8 such as ~~interim-controls~~, lead screening, lead determination and
deleading.

10 **Sec. 11. 38 MRSA §1291, sub-§§17-A, 17-B and 17-C** are enacted
12 to read:

14 **17-A. Lead determination.** "Lead determination" means an
16 inspection of a limited portion of a building for the purpose of
identifying the presence of lead-based paint.

18 **17-B. Lead hazard.** "Lead hazard" means any condition that
20 may cause exposure to lead from lead-contaminated dust,
lead-contaminated soil, lead-contaminated water or
lead-contaminated paint that is in poor condition.

22 **17-C. Lead inspection.** "Lead inspection" means a
24 surface-by-surface investigation to determine the presence of
lead-based paint.

26 **Sec. 12. 38 MRSA §1291, sub-§18**, as enacted by PL 1997, c.
28 375, §14, is amended to read:

30 **18. Lead inspector.** "Lead inspector" means an individual
32 ~~whose activities include, but are not limited to, collecting~~
~~samples and assessing the potential for exposure associated with~~
34 ~~the presence of lead containing material~~ who conducts lead
inspections and lead determinations.

36 **Sec. 13. 38 MRSA §1291, sub-§27**, as enacted by PL 1997, c.
38 375, §14, is amended to read:

40 **27. Risk assessment.** "Risk assessment" means the on-site
42 ~~investigation~~ assessment to determine the existence, nature,
severity and location of ~~lead-based-paint~~ lead hazards, and the
44 provision of a written report explaining the results of the
investigation and the options for reducing ~~lead-based-paint~~ lead
hazards.

46 **Sec. 14. 38 MRSA §1292, sub-§5**, as enacted by PL 1997, c. 375,
48 §14, is amended to read:

50 **5. Exemption.** A person who is 18 years of age or older
need not obtain licensing and certification to perform lead

2 abatement activities within a residential dwelling unit that the
3 person owns and personally occupies, as long as a child residing
4 in the dwelling unit has not been identified as lead-poisoned. A
5 person 18 years of age or older who owns ~~or~~ and personally
6 occupies a dwelling unit in which a resident child has been
7 identified as lead-poisoned need not obtain licensing and
8 certification to perform abatement activities within that
9 dwelling unit, as long as the person completes any training
10 required by the Department of Human Services.

11 **Sec. 15. 38 MRSA §1310-S, sub-§4,** as amended by PL 1995, c.
12 465, Pt. A, §19 and affected by Pt. C, §2, is further amended to
13 read:

14 **4. Financial assistance.** The commissioner shall reimburse
15 or make assistance grants for the direct expenses of intervention
16 of any party granted intervenor status under subsection 3, not to
17 exceed \$50,000. The board shall adopt rules governing the award
18 and management of intervenor assistance grants and reimbursement
19 of expenses to ensure that the funds are used in support of
20 direct, substantive participation in the proceedings before the
21 department. Allowable expenses include, without limitation,
22 hydrogeological studies, waste generation and recycling studies,
23 traffic analyses, the retention of expert witnesses and attorneys
24 and other related items. Expenses not used in support of direct,
25 substantive participation in the proceedings before the
26 department, including attorney's fees related to court appeals,
27 are not eligible for reimbursement under this subsection.
28 Expenses otherwise eligible under this section that are incurred
29 by the municipality after notification pursuant to subsection 1
30 are eligible for reimbursement under this subsection only if a
31 completed application is accepted by the department. The
32 commissioner may make an additional assistance grant not to
33 exceed \$50,000, to be paid by the applicant in the same manner as
34 provided under section 1310-T, to any party granted intervenor
35 status under subsection 3 on an application for the expansion of
36 a commercial solid waste disposal facility that accepts only
37 special waste for landfilling when the intervenor demonstrates to
38 the commissioner that the size, nature, location, geological
39 setting or other relevant factors warrant additional expenditures
40 for technical assistance. The board shall also establish rules
41 governing:

42
43
44 A. The process by which an intervenor under subsection 3
45 may gain entry to the proposed facility site for purposes of
46 reasonable inspection and site investigations under the
47 auspices of the department; and

48
49 B. The reduction in the maximum level of reimbursable costs
50 to the extent the municipality establishes by local

2 ordinance any substantially similar financial requirements
of the applicant.

4 **Sec. 16. 38 MRSA §1319-O, sub-§2, ¶A**, as amended by PL 1995,
c. 573, §4, is further amended to read:

6
8 A. The board may adopt rules relating to the
transportation, collection and storage of waste oil by-waste
10 oil-dealers to protect public health, safety and welfare and
the environment. The rules may include, without limitation,
12 rules requiring licenses for waste oil dealers and the
location of waste oil storage sites that are operated by
14 waste oil dealers, evidence of financial capability and
manifest systems for waste oil. A person licensed by the
16 department to transport or handle hazardous waste is not
required to obtain a waste oil dealer's license, but the
18 hazardous waste license must include any terms or conditions
determined necessary by the department relating to the
transportation or handling of waste oil; and

20
22 **Sec. 17. 38 MRSA §1319-R, sub-§6**, as enacted by PL 1989, c.
794, §6, is amended to read:

24 **6. Post-closure licenses.** When the board determines that a
facility under the jurisdiction of this subchapter does not have
26 and will not be issued a license pursuant to this subchapter, the
board may issue a license containing terms and conditions
28 governing the post-closure requirements applicable to the
facility, including, but not limited to, environmental monitoring
30 and corrective action. The findings in subsection 1, paragraph
A, subparagraphs (1), (2) and (3) are not required for
32 post-closure licenses.

34 **Sec. 18. PL 1991, c. 817, §28**, as amended by PL 1997, c. 374,
§15, is further amended to read:

36
38 **Sec. 28. Effective date.** That section of this Act that amends
the Maine Revised Statutes, Title 38, section 570, first
40 paragraph, as repealed and replaced by Public Law 1987, chapter
735, section 72, takes effect December 31, 2005 2008.

42
44 **SUMMARY**

This bill:

46
48 1. Extends the repeal date of the Maine Environmental
Protection Fund fee schedule to 90 days after adjournment of the
Second Regular Session of the 119th Legislature;

- 2 2. Clarifies that license fees for solid waste disposal
3 facilities are to be paid annually and that failure to pay the
4 annual fee is grounds for license revocation;
- 5 3. Eliminates a loophole allowing nonconforming underground
6 oil storage tanks installed after 1985 to remain in place until
7 the manufacturer warranty expires;
- 8 4. Clarifies the circumstances under which oil export fees
9 may be reimbursed;
- 10 5. Clarifies the statutory provision requiring all
11 underground piping at aboveground oil storage facilities to be
12 constructed of noncorrosive material;
- 13 6. Clarifies the statutory provision requiring all
14 underground piping at aboveground oil storage facilities to be
15 installed and removed in accordance with applicable rules adopted
16 by the Board of Environmental Protection;
- 17 7. Clarifies certain definitions set forth in the statutes
18 governing lead abatement;
- 19 8. Requires applicants seeking the Department of
20 Environmental Protection approval to expand a special waste
21 landfill to pay the cost of municipal intervention in the
22 department proceedings;
- 23 9. Broadens the rule-making authority of the Board of
24 Environmental Protection for the purpose of adopting waste oil
25 rules consistent with federal requirements;
- 26 10. Requires the Board of Environmental Protection to
27 consider an applicant's financial capacity in issuing
28 post-closure licenses for hazardous waste facilities;
- 29 11. Amends the definition of lead-based paint activities;
30 and
- 31 12. Changes the law to require that an unlicensed person
32 must both own and occupy a dwelling in which the person performs
33 abatement activities.