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R/S

L.D. 2111

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DATE: *March 30, 1998*

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NATURAL RESOURCES

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION**

16

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COMMITTEE AMENDMENT "A" to S.P. 784, L.D. 2111, Bill, "An Act to Reauthorize the Toxics and Hazardous Waste Reduction Laws"

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Amend the bill by striking out everything after section 1 and before the summary and inserting in its place the following:

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Sec. 2. 38 MRSA §1319-I, sub-§2-A, as amended by PL 1991, c. 520, §5, is repealed.

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Sec. 3. 38 MRSA §2301, sub-§4, as enacted by PL 1989, c. 929, §7, is repealed.

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Sec. 4. 38 MRSA §2301, sub-§16, as amended by PL 1991, c. 520, §9, is further amended to read:

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16. Toxic substance or toxics. "Toxic substance" or "toxics" means any substance in a gaseous, liquid or solid state listed pursuant to the SARA, Title III, Section 313, and listed in 40 Code of Federal Regulations, Part 372.65 and any extremely hazardous substance as listed in 40 Code of Federal Regulations, Part 355; listed in 40 Code of Federal Regulations, Part 423, Appendix A; or listed in rules adopted by the board pursuant to section 585-C. If a toxic substance is listed in 40 Code of Federal Regulations, Part 423, Appendix A but is not listed in rules adopted by the board pursuant to section 585-C, the threshold reporting quantity is 907.2 kilograms, 2000 pounds, annually. If a toxic substance is listed in both 40 Code of Federal Regulations, Part 423, Appendix A and rules adopted by

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the board pursuant to section 585-C, the threshold reporting quantity is the quantity established in rules adopted by the board pursuant to section 585-C.

Sec. 5. 38 MRSA §2301, sub-§17, as enacted by PL 1989, c. 929, §7, is repealed and the following enacted in its place:

17. Toxics releaser. "Toxics releaser" means a person who owns or operates a facility that releases any of the toxic substances defined in subsection 16 in reportable quantities.

Sec. 6. 38 MRSA §2301, sub-§19, as enacted by PL 1989, c. 929, §7, is repealed and the following enacted in its place:

19. Toxics user. "Toxics user" means a person who owns or operates a facility that uses any of the toxic substances defined in subsection 16 in reportable quantities.

Sec. 7. 38 MRSA §2303, sub-§§1-A, 2-A and 3-A are enacted to read:

1-A. Toxics use reduction goals; revised. Notwithstanding subsection 1, beginning on the effective date of this subsection, using the amount of toxics used statewide in 1998 as a baseline figure, the goals for toxics use reduction are a 10% reduction in the amount of toxics used in the State by January 1, 2002, a 20% reduction by January 1, 2004 and a 30% reduction by January 1, 2006.

2-A. Toxics release reduction goals; revised. Notwithstanding subsection 2, beginning on the effective date of this subsection, using the aggregate amount of toxics released at a facility in calendar year 1998 as a baseline figure, the goals for reducing the aggregate amount of toxics released to the environment are a 10% reduction by January 1, 2002, a 20% reduction by January 1, 2004 and a 30% reduction by January 1, 2006.

3-A. Hazardous waste reduction goals; revised. Notwithstanding subsection 3, beginning on the effective date of this subsection, the goals for minimizing the amount of hazardous waste generated at a facility are a 10% reduction by January 1, 2002, a 20% reduction by January 1, 2004 and a 30% reduction by January 1, 2006. Reductions must be based on a facility's generation rate for the year 1998.

Sec. 8. 38 MRSA §2303, sub-§5, as amended by PL 1991, c. 520, §12, is further amended to read:

2 **5. Progress evaluation; reports.** Progress toward meeting
3 the toxics use, toxics release and hazardous waste reduction
4 goals may must be evaluated annually biennially by the
5 commissioner based on manifest data, ~~progress-reports-submitted~~
6 ~~under Title 37-B, sections 797 and 799, annual hazardous waste~~
7 ~~generator-reports~~ reduction reports submitted under section
8 2307-A and other appropriate available information. To determine
9 achievement of reduction goals, the commissioner may adjust the
10 baseline figure to account for changes in the statutory or
11 regulatory definitions of toxic substances and hazardous wastes.

12 The commissioner shall report by January 1, 2003 and biennially
13 thereafter to the joint standing committee of the Legislature
14 having jurisdiction over natural resources matters on the
15 following:

16 A. Progress toward meeting the toxics use, toxics release
17 and hazardous waste reduction goals, including the progress
18 of individual facilities in the achievement of the goals;

19 B. Facilities that were required but failed to meet the
20 toxics use, toxics release or hazardous waste reduction
21 goals; and

22 C. Exemptions granted under section 2304.

23 The commissioner shall submit an interim report by January 1,
24 2001 to the joint standing committee of the Legislature having
25 jurisdiction over natural resources matters on the following: the
26 establishment of baseline figures, facilities that have achieved
27 51% reductions as defined in section 2304, subsection 5,
28 exemptions granted under section 2304 and progress toward
29 computerizing data reported under this chapter.

30 **Sec. 9. 38 MRSA §2304, sub-§1, ¶A,** as repealed and replaced by
31 PL 1991, c. 520, §13, is repealed and the following enacted in
32 its place:

33 A. Owners and operators of facilities or businesses are not
34 required to meet the toxics use reduction goals established
35 in section 2303 but shall examine, plan and implement means
36 of reducing the use of toxics without impairing the quantity
37 or quality of their products or services. A facility is not
38 required to examine or report a toxics use that is
39 incidental to the facility's administrative functions or the
40 use of a toxic substance listed in 40 Code of Federal
41 Regulations, Part 372.65 the use of which meets the
42 exemption provisions in 40 Code of Federal Regulations, Part
43 372.38, (a), (b), (c) or (d). A facility that reported
44 under section 2307, subsection 1 and that increased its use
45 under section 2307, subsection 1 and that increased its use
46 under section 2307, subsection 1 and that increased its use
47 under section 2307, subsection 1 and that increased its use
48 under section 2307, subsection 1 and that increased its use
49 under section 2307, subsection 1 and that increased its use
50 under section 2307, subsection 1 and that increased its use

2 of toxics or did not reduce its use of toxics from the 1990
3 baseline must be put on a department priority list for
4 on-site technical assistance to achieve the original toxics
5 use reduction goals and is required to submit a reduction
6 plan summary by July 1, 1999 for department approval. The
7 department's approval process must proceed as set forth in
8 section 2307, subsection 5.

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10 **Sec. 10. 38 MRSA §2304, sub-§1, ¶B**, as amended by PL 1995, c.
11 493, §16, is further amended to read:

12 B. The following facilities are exempt from the planning
13 and reporting and fee requirements for toxics use:

14 (1) Drinking water supply treatment facilities;

15 (2) Municipal wastewater treatment facilities;

16 (3) Wholesale distributors of chemicals; and

17 (4) Hazardous substance transporters;

18 (5) Retail and wholesale distribution facilities of
19 motor fuel, aviation fuel, heating oil or other refined
20 petroleum products; and

21 (6) Pesticide distribution and application activities
22 regulated by the Board of Pesticides Control.

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24 **Sec. 11. 38 MRSA §2304, sub-§1, ¶H** is enacted to read:

25 H. The department shall prioritize drinking water supply
26 treatment facilities and municipal wastewater treatment
27 facilities for on-site assistance or individual planning
28 assistance to help identify practical toxics use reduction
29 opportunities.

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31 **Sec. 12. 38 MRSA §2304, sub-§2, ¶A**, as repealed and replaced
32 by PL 1991, c. 520, §13, is repealed and the following enacted in
33 its place:

34 A. Toxics releasers that have achieved the 30% toxics
35 release reduction goals established in section 2303,
36 subsection 2 are required to meet the revised toxics release
37 reduction goals established in section 2303, subsection
38 2-A. Those facilities that were required but failed to meet
39 the toxics release reduction goals established in section
40 2303, subsection 2 shall meet those goals by January 1,
41 1999. Thereafter, those facilities shall meet the revised
42 goals established in section 2303, subsection 2-A using

2 1998 as the new base year. Those facilities must be put on
4 a department priority list for on-site technical assistance
6 to achieve the original reduction goals and are required to
8 submit a reduction plan summary by July 1, 1998 for
10 department approval. The department's approval process must
12 proceed as set forth in section 2307, subsection 5. The
14 board may establish by rule reduction planning levels for
16 specific toxics. A facility is not required to examine or
18 report a toxics release that is incidental to the facility's
20 administrative functions or the release of a toxic substance
22 listed in 40 Code of Federal Regulations, Part 372.65 the
24 release of which meets the exemption provisions in 40 Code
26 of Federal Regulations, Part 372.38, (a), (b), (c) or (d).

28 **Sec. 13. 38 MRSA §2304, sub-§2, ¶B,** as amended by PL 1995, c.
30 493, §17, is further amended to read:

32 B. The following exemptions apply to toxics releasers.

34 (1) The following facilities are exempt from the
36 planning, reporting, fee and reduction requirements for
38 toxics release:

40 (a) Drinking water supply treatment facilities;

42 (b) Municipal wastewater treatment facilities;

44 (c) ~~Retail and wholesale motor-fuel-and-heating~~
46 ~~oil-distributors~~ distribution facilities of motor
48 fuel, aviation fuel, heating oil or other refined
50 petroleum products; and

52 (d) ~~Agricultural-----activities~~ Pesticide
54 distribution and application activities regulated
56 by the Board of Pesticides Control.

58 (2) To qualify for an exemption from the toxic release
60 reduction requirements under this paragraph
62 subparagraph, a toxics releaser must demonstrate to the
64 commissioner that all practicable reductions have been
66 implemented or scheduled for implementation. The
68 commissioner may establish alternate toxics release
70 reduction goals for the facility when appropriate.

72 (a) A toxics releaser must receive an exemption
74 from the requirement of meeting state reduction
76 goals from the commissioner if the toxics releaser
78 proves that:

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- 2 (i) Practicable toxics release reduction methods do not exist;
- 4 (ii) All practicable reductions or actions have been previously implemented or are being implemented and will be completed on a schedule acceptable to the commissioner;
- 6
- 8 (iii) Practicable steps necessary to reduce toxics release would have an unreasonable adverse impact on product quality or quantity;
- 10
- 12 (iv) Practicable means of measuring a toxics release do not exist; or
- 14
- 16 (v) Legal or contractual obligations prohibit steps necessary to reduce toxics release.
- 18

20 (b) The commissioner shall review exemptions under this paragraph subparagraph at 3-year intervals. Renewals must be granted for toxics releasers that demonstrate that they still meet the requirements set forth in division (a), subdivisions (i) to (iv). If an exemption has been granted based on legal or contractual obligations, the exemption is only for the term of that obligation. An exemption or renewal for a new or renewed legal or contractual obligation may not be granted by the commissioner. A toxics releaser that has received an exemption based on legal or contractual obligations may apply for a renewal based on division (a), subdivision (i), (ii), (iii) or (iv).

36 (3) The following chemicals, when released in the context specified in this subparagraph, are exempt from the planning, reporting and reduction requirements for toxics release:

- 40 (a) Zinc emissions from tire burning; and
- 42 (b) Sulfuric acid emissions from burning fuel approved by the department.
- 44

46 **Sec. 14. 38 MRSA §2304, sub-§3, ¶A**, as enacted by PL 1991, c. 520, §13, is repealed and the following enacted in its place:

48 A. Hazardous waste generators that ship 598.7 kilograms, 50 1,320 pounds, or more of hazardous waste in a calendar year

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2 and that have achieved the 30% reduction goal established in
3 section 2303, subsection 3 are required to meet the revised
4 hazardous waste reduction goals established in section 2303,
5 subsection 3-A. For the purpose of developing reduction
6 plans, a facility must examine all hazardous waste generated
7 in the production process and related operations and
8 maintenance activities or, in the case of a service
9 industry, all hazardous waste generated in the performance
10 of the service, including hazardous wastes that are
11 recycled. Progress toward meeting the reduction goals is
12 based on the amount of hazardous waste that is shipped off
13 site. Those generators that were required but failed to
14 meet the reduction goals established in section 2303,
15 subsection 3 shall meet those goals by January 1, 1999.
16 Thereafter, those generators shall meet the revised goals
17 established in section 2303, subsection 3-A, using 1998 as
18 the new base year. Those facilities must be put on a
19 department priority list for on-site technical assistance to
20 achieve the original reduction goals and are required to
21 submit a reduction plan summary by July 1, 1998 for
22 department approval. The department's approval process must
23 proceed as set forth in section 2307, subsection 5.

24 **Sec. 15. 38 MRSA §2304, sub-§3, ¶B,** as amended by PL 1995, c.
25 493, §18, is further amended to read:

26 B. The following exemptions apply:

27 (1) The following are exempt from the planning,
28 reporting, fee and reduction requirements for hazardous
29 waste:

30 (a) Commercial hazardous waste treatment or
31 storage facilities;

32 (b) Pilot plants or pilot production units;

33 (c) Hazardous waste transporters;

34 (d) Hazardous waste generated as a result of
35 remedial or corrective actions or facility
36 closures required by law or undertaken to protect
37 employee health and safety, public health and
38 safety or the environment;

39 (e) Households;

40 (f) Agricultural-----activities Pesticide
41 distribution and application activities regulated
42 by the Board of Pesticides Control;
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2 (g) Wholesale motor fuel and heating oil
3 distributors; and

4 (h) One-time cleanups of polychlorinated
5 biphenyls, lead, mercury wastes or other material
6 if the cleanup is approved for an exemption by the
7 commissioner. This exemption does not include
8 periodic or infrequent routine cleanups of
9 materials that are expired or no longer needed or
10 general housekeeping activities.

11 (2) To qualify for an exemption from the hazardous
12 waste reduction requirement under this paragraph
13 subparagraph, a generator ~~must~~ shall demonstrate to the
14 commissioner that all practicable reductions have been
15 implemented or scheduled for implementation. The
16 commissioner may establish alternate hazardous waste
17 reduction goals for the facility when appropriate.

18 (a) A generator ~~must~~ shall receive an exemption
19 from the requirement of meeting state reduction
20 goals from the commissioner if the generator
21 proves that:

22 (i) Practicable hazardous waste reduction
23 methods do not exist;

24 (ii) All practicable reductions or actions
25 have been previously implemented or are being
26 implemented and will be completed on a
27 schedule acceptable to the commissioner;

28 (iii) Practicable steps necessary to reduce
29 hazardous waste would have an unreasonable
30 adverse impact on product quality or
31 quantity; or

32 (iv) Legal or contractual obligations
33 prohibit steps necessary to reduce hazardous
34 waste generation.

35 (b) The commissioner shall review exemptions
36 under this paragraph subparagraph at 3-year
37 intervals. Renewals may be granted for hazardous
38 waste generators that demonstrate that they still
39 meet the requirements set forth in division (a),
40 subdivisions (i) to (iii). If an exemption has
41 been granted based on legal or contractual
42 obligations, the exemption is only for the term of
43

2 that obligation. An exemption or renewal for a
4 new or renewed legal or contractual commitment may
6 not be granted by the commissioner. A generator
8 that has received an exemption based on legal or
contractual obligations may apply for a renewal
based on division (a), subdivision (i), (ii) or
(iii).

10 **Sec. 16. 38 MRSA §2304, sub-§4**, as enacted by PL 1991, c. 520,
§13, is repealed.

12 **Sec. 17. 38 MRSA §2304, sub-§§5 and 6** are enacted to read:

14 **5. Alternatives for facilities that have reduced 51% or**
16 **more.** A facility that reported under section 2307 and that
18 **reduces by January 1, 2000 the aggregate amount of toxics used,**
20 **toxics released or hazardous waste generated at the facility by**
22 **51% or more from the facility's original baseline amount**
24 **established for the purposes of section 2303, subsection 1, 2 or**
3 shall meet the reporting requirements in section 2307-A,
subsection 1, 2 or 3 and the fee requirements in section 2311 but
is exempt from the applicable requirements of subsection 1,
paragraph A, subsection 2, paragraph A or subsection 3, paragraph
A. The facility may perform one of the following alternative
projects.

26 **A. The facility may continue planning and reduction efforts**
28 **to meet the revised reduction goals established in section**
2303, using 1998 as a baseline figure.

30 **B. The facility may serve as a mentor to another company to**
32 **assist that company in meeting the reduction goals**
34 **established in section 2303 and improving its environmental**
36 **management and performance. Such a project must be**
conducted pursuant to a written agreement with the other
company and approved by the department.

38 **C. The facility may develop an environmental management**
40 **system based on criteria established by the department and**
42 **review and update it biennially. Such a project must be**
approved by the department and performed with guidance from
the department.

44 **D. The facility may conduct a comprehensive multimedia**
46 **pollution prevention and compliance audit of the facility,**
with the approval of the department.

48 **E. The facility may complete a pollution prevention project**
50 **approved by the department.**

2 Change of ownership of a facility does not affect the application
3 of this subsection.

4 6. **Antibacksliding provision.** A facility that is subject
5 to subsection 5 may not increase the amount of toxics used,
6 toxics released or hazardous waste generated per unit of product
7 at the facility, whichever is applicable, using 1998 as the base
8 year. If a facility increases the amount of toxics used, toxics
9 released or hazardous waste generated in violation of this
10 subsection, the commissioner, considering factors such as process
11 and product changes, may require that facility to develop a
12 reduction plan and to submit a reduction plan summary within 60
13 days for department approval. The department's approval process
14 must proceed as set forth in section 2307-A, subsection 5. If
15 the commissioner denies approval of the plan, the facility is no
16 longer considered to meet the requirements of subsection 5 and
17 the commissioner may require the facility to meet the other
18 applicable requirements of this section.

20 **Sec. 18. 38 MRSA §2305, first ¶**, as amended by PL 1991, c. 520,
21 §4, is further amended to read:

22
23 Those facilities subject to regulation under this chapter
24 shall develop by January 1, 1993 2000 and update every 2 years
25 thereafter plans for their own use in meeting the State's goals.
26 The owners and operators of a facility shall keep a complete copy
27 of the plan and any back-up data on the premises of the facility
28 for at least 3 years and shall make the plan and data available
29 to the commissioner or the commissioner's designee upon request.
30 The board may establish rules for toxics use, toxics release and
31 hazardous waste reduction plans to be prepared pursuant to this
32 section. A plan must include:

34 **Sec. 19. 38 MRSA §2305, sub-§2, ¶B-1** is enacted to read:

36 B-1. An analysis of the practicality of reducing the amount
37 of toxics used to meet the reduction goals established in
38 section 2303, subsection 1-A;

40 **Sec. 20. 38 MRSA §2305, sub-§2, ¶C**, as enacted by PL 1989, c.
41 929, §7, is amended to read:

42
43 C. A strategy and schedule for implementing practicable
44 reduction options for each production process utilized to
45 meet reduction goals; and

46
47 **Sec. 21. 38 MRSA §2305, sub-§2, ¶D**, as enacted by PL 1989, c.
48 929, §7, is repealed.

2 **Sec. 22. 38 MRSA §2305, last ¶**, as enacted by PL 1989, c. 929,
§7, is repealed.

4 **Sec. 23. 38 MRSA §2306**, as amended by PL 1991, c. 520, §15,
is further amended to read:

6
8 **§2306. Employee notification and involvement**

10 Six months prior to the date when a reduction plan or update
12 must be completed, the owner or operator of each facility must
14 ~~shall~~ notify all of its employees of the requirements for the
plans, identify the toxic substances and hazardous wastes and
16 production units for which plans must be developed and ~~select~~
~~comments or suggestions from all employees on~~ involve employees
18 in developing the reduction plan or update, including the
identification of toxics use, toxics release and hazardous waste
20 reduction options. In a facility in which employees are
represented by a labor organization, employee representatives who
22 work at the facility and who are selected by the labor
organization must be involved in the development of the plan. In
24 a facility in which employees are not represented by a labor
organization, the employee involvement requirement must be met
through employee representation on committees or groups formed to
develop the plan.

26 A description of the employee notification process and
employee involvement must be included in the plan summary
28 submitted in accordance with section 2307-A.

30 **Sec. 24. 38 MRSA §2307, sub-§5, ¶C**, as enacted by PL 1989, c.
929, §7, is amended to read:

32 C. If the commissioner determines that a modified plan
34 summary is inadequate, the commissioner may either require
36 further modification or assess fees penalties as provided in
section 2312. ~~If the generator fails to submit a modified~~
38 ~~plan summary within the required time period, the~~
~~commissioner may assess additional fees as established in~~
section 1319-I, subsection 2-A.

40 **Sec. 25. 38 MRSA §2307, sub-§8** is enacted to read:

42 8. Repeal date. This section is repealed January 1, 2000.

44 **Sec. 26. 38 MRSA §2307-A** is enacted to read:

46 §2307-A. Reporting requirements beginning January 1, 2000

48 1. Toxics use reduction reports. Toxics users shall report
50 to the department in 2000 and biennially thereafter on their

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2 progress toward meeting the toxics use reduction goals
established in section 2303, subsection 1-A.

4 2. Toxics release reduction reports. Toxics releasers
shall report to the department in 2000 and biennially thereafter
6 on their progress toward meeting the toxics release reduction
goals established in section 2303, subsection 2-A.

8 3. Hazardous waste reduction reports. Hazardous waste
10 generators that ship 598.7 kilograms, 1,320 pounds, or more of
hazardous waste in a calendar year shall report to the department
12 in 2000 and biennially thereafter on their progress toward
meeting the hazardous waste reduction goals established in
14 section 2303, subsection 3-A.

16 4. Plan summary. A facility that is required to develop a
plan pursuant to section 2305 and that has not attained the
18 revised reduction goals established in section 2303 shall submit
a summary of the plan to the commissioner for approval. The
20 first plan summary must be submitted in 2000 according to a
schedule set by the department. A plan summary must include,
22 without limitation, the following:

24 A. Facility identification information, including the name
of the facility and its owner or operator;

26 B. A description of the production unit and the product by
28 which reductions are tracked;

30 C. An identification of the toxics used, toxics released and
hazardous wastes generated and the amounts per production
32 unit;

34 D. A description of the reduction options identified and the
reasons why the options were accepted or rejected or need
36 further evaluation;

38 E. A summary of the results of the analysis of the
practicality of reducing the amounts of toxics used to meet
40 the reduction goals established in section 2303, subsection
1-A;

42 F. An identification of the expected reductions and the
44 implementation schedule per production unit; and

46 G. A description of employee notification and involvement in
the planning process.

48 5. Review of plan summary. Once the department determines
50 that a plan summary is complete, the commissioner shall review

2 the plan summary within 90 days to determine whether the plan
3 summary is adequate according to the goals of this chapter and
4 the guidelines established in subsection 4.

5 A. If the commissioner determines that a plan summary is
6 inadequate, the commissioner shall notify the toxics user,
7 the toxics releaser or the generator of hazardous waste of
8 the inadequacy, identifying specific deficiencies. The
9 commissioner may specify a reasonable time period of not
10 less than 90 days within which the toxics user, toxics
11 releaser or generator shall submit a modified plan summary
12 addressing the specified deficiencies. The commissioner
13 may, upon request, provide technical assistance, if
14 available, to aid the toxics user, toxics releaser or
15 generator in modifying the plan summary.

16 B. If the commissioner determines that a modified plan
17 summary is inadequate, the commissioner may either require
18 further modification or assess penalties as provided in
19 section 2312.

20 6. Confidentiality. Information in a plan summary submitted
21 to the department pursuant to this section may be designated
22 confidential in accordance with this subsection.

23 A. An owner or operator that believes information in a plan
24 summary should be treated as confidential pursuant to this
25 subsection shall clearly identify on each page or other
26 portion of the plan summary that information that the owner
27 or operator believes to be confidential.

28 B. The commissioner shall establish procedures to ensure
29 that information identified by an owner or operator as
30 confidential pursuant to paragraph A is segregated from
31 public records of the department and not disclosed except in
32 accordance with the provisions of this subsection. The
33 portions of the plan summary that are not identified as
34 confidential must be kept with the public records of the
35 department. The department, in the public records, shall
36 clearly indicate that information identified by the owner or
37 operator as confidential has been submitted as part of the
38 plan summary and shall provide a description of the general
39 nature of that information.

40 C. The commissioner shall review and act on requests for
41 access to information identified by an owner or operator as
42 confidential pursuant to paragraph A. Until the
43 commissioner makes a determination that the information is
44 not confidential, it must be segregated from public records
45 pursuant to paragraph B. The commissioner shall establish
46 procedures to ensure that information identified by an owner
47 or operator as confidential pursuant to paragraph A is
48 segregated from public records of the department and not
49 disclosed except in accordance with the provisions of this
50 subsection.

2 procedures to implement this paragraph. The procedures must
3 be substantially equivalent to the procedures and periods
4 for review and action specified in section 1310-B,
5 subsection 2. The commissioner shall designate as
6 confidential information that is identified by an owner or
7 operator as confidential pursuant to paragraph A if the
8 commissioner finds that the information:

9
10 (1) Relates to methods, processes or other information
11 that constitutes a trade secret;

12 (2) If made public, would impair the competitive
13 position of the owner or operator; and

14 (3) Is not required to be disclosed or otherwise made
15 available to the public pursuant to any federal or
16 state law.

17
18 The owner or operator has the burden of making a
19 satisfactory showing to the commissioner that the
20 information identified as confidential meets the standards
21 in this paragraph. Any information in the plan summary that
22 the commissioner designates confidential pursuant to this
23 paragraph is not a public record for the purposes of Title
24 1, chapter 13, subchapter I and may not be disclosed. If
25 the commissioner finds that the information identified as
26 confidential does not meet the standards for confidentiality
27 in this paragraph, then the information is a public record
28 and must be disclosed.

29
30 D. The prohibitions on disclosure of confidential
31 information and penalties for unlawful disclosure of such
32 information specified in section 1310-B, subsection 6 apply
33 to the disclosure of information designated confidential by
34 the commissioner pursuant to paragraph C.

35
36 E. Upon petition by an owner or operator of a facility, the
37 commissioner may allow the owner or operator to keep
38 portions of a plan summary on the premises of the facility
39 as long as:

40
41 (1) The commissioner has examined those portions of the
42 plan summary and designated those portions confidential
43 in accordance with paragraph C; and

44
45 (2) Those portions of the plan summary are made
46 available to the commissioner for review upon request.

47
48 If the commissioner grants a petition pursuant to this
49 paragraph, the commissioner shall issue a written approval.
50

2 signed by the commissioner, and that written approval must
be kept with the public records of the department.

4 7. Additional information. Nothing in this chapter
prohibits the commissioner from seeking additional information
6 from a toxics user, toxics releaser or hazardous waste generator
in order to review the adequacy of a plan or plan summary
8 required by this chapter.

10 **Sec. 27. 38 MRSA §2309, sub-§1**, as enacted by PL 1989, c. 929,
12 §7, is amended to read:

14 **1. Data collection.** The commissioner shall develop the
16 necessary information base and data collection programs to
18 establish program priorities and evaluate the progress of toxics
use, toxics release and hazardous waste reduction goals. Data
collected under section 2307-A must be computerized.

20 **Sec. 28. 38 MRSA §2309, sub-§3**, as enacted by PL 1989, c. 929,
§7, is repealed.

22 **Sec. 29. 38 MRSA §2311**, as amended by PL 1995, c. 493, §19,
24 is repealed and the following enacted in its place:

26 **§2311. Fees**

28 The commissioner shall deposit all money received in payment
of fees under this section in a separate account within the Maine
Hazardous Waste Fund to cover expenses incurred by the department
30 in the administration of this chapter.

32 **1. Hazardous waste generators.** Generators that ship 598.7
kilograms, 1,320 pounds, or more of hazardous waste in a calendar
34 year shall submit the following fees to the department annually
by August 1st: for generators that ship 2,268.0 kilograms, 5,000
36 pounds, or more of hazardous waste in a calendar year, the fee is
\$1,000; for generators that ship between 1,197.5 and 2,267.5
38 kilograms, 2,640 and 4,999 pounds, per calendar year, the fee is
\$500; and for generators that ship between 598.7 and 1,197.0
40 kilograms, 1,320 and 2,639 pounds, per calendar year, the fee is
\$100.

42 **2. Toxics user.** Toxics users shall submit \$100 per toxic
44 substance reported by the facility under this chapter to the
department annually by August 1st.

46 **3. Toxics releaser.** Toxics releasers shall submit \$100 per
48 toxic substance reported by the facility under this chapter to
the department annually by August 1st.
50

2 4. Fee limitation. A company subject to fees under this
section may not be assessed more than \$5,000 per year.

4 5. Fee adjustment. The commissioner may adjust the fees
6 established in this chapter on an annual basis according to the
United States Consumer Price Index established by the federal
Department of Labor, Bureau of Labor Statistics.

8
10 **Sec. 30. 38 MRSA §2312**, as amended by PL 1991, c. 520, §§24
and 25, is further amended to read:

12 **§2312. Enforcement; penalties**

14 1. **Toxics users.** Toxics users that fail to meet any
16 requirements set forth in this chapter ~~except the achievement of~~
~~the toxics use reduction goals~~ are subject to enforcement action
and ~~penalty fees.~~ ~~Toxics users are subject to~~ the general
18 penalties in chapter 2.

20 2. **Toxics releasers.** Toxics releasers that fail to meet
22 any requirements set forth in this chapter including, but not
limited to, achievement of toxics release reduction goals and the
24 preparation of plans and submission of required plan summaries,
are subject to enforcement action and ~~penalty fees.~~ ~~Toxics~~
~~releasers are subject to~~ the general penalties in chapter 2.

26 3. **Hazardous waste generators.** Generators that fail to
28 meet any requirements set forth in this chapter including, but
not limited to, achievement of hazardous waste reduction goals
30 and the preparation of plans and submission of required plan
summaries, may be subject to enforcement action and ~~penalties.~~
32 ~~Hazardous waste generators are subject to~~ the general penalties
in chapter 2 and ~~fees assessed in section 1319-F, subsection 2-A.~~

34 4. Penalty fees for failure to meet reduction
36 requirements. In addition to other penalties assessed under this
section, the following penalty fees apply to a toxics releaser or
38 a hazardous waste generator that fails to meet applicable
reduction goals. The commissioner shall assess penalty fees
40 under this subsection within 90 days of a toxics releaser's or a
generator's filing a reduction report under section 2307-A that
42 indicates the reduction goals have not been met and shall assess
penalty fees annually thereafter until the reduction goals are
44 met.

46 A. For a toxics releaser that fails to meet the reduction
48 goals established in section 2303, subsection 2-A, the
commissioner shall assess and the toxics releaser shall pay
a penalty fee of 8.2¢ per kilogram, 18¢ per pound, of toxics
50 released in excess of the applicable reduction goal.

2 B. For a hazardous waste generator that fails to meet the
3 reduction goals established in section 2303, subsection 3-A,
4 the commissioner shall assess and the generator shall pay a
5 penalty fee of 8.2¢ per kilogram, 18¢ per pound, of
6 hazardous waste transported off site for disposal and 6.1¢
7 per kilogram, 13.5¢ per pound, of hazardous waste
8 transported off site for treatment, storage or handling,
9 including beneficial reuse, reclamation or recycling.
10 Penalty fees are based on the amount of hazardous waste in
11 excess of the applicable reduction goal.

12 **Sec. 31. Health ranking; fee-based incentives.** For the purpose of
13 developing a fee-based incentive system designed to encourage
14 toxics use reduction, the Department of Environmental Protection
15 shall develop a health-based ranking system for toxic substances,
16 as defined in the Maine Revised Statutes, Title 38, section 2301,
17 subsection 16. The ranking system must be developed in
18 consultation with the Department of Human Services, Bureau of
19 Health. In developing the ranking system, the department shall
20 consider existing ranking systems and shall base the system on
21 human health and ecological parameters such as toxicity,
22 persistence in the environment and bioaccumulation.

23 The department shall develop a graduated fee system for
24 toxic substances for purposes of Title 38, section 2311,
25 subsection 2. In developing the fee system, the department shall
26 consider using a base fee and a multiplier based on the toxic
27 ranking. The department shall also consider whether the volume
28 of toxics used should be incorporated into the fee system.

29 The department shall submit by January 1, 1999 an interim
30 report to the joint standing committee of the Legislature having
31 jurisdiction over natural resources matters on the ranking system
32 and shall submit by January 1, 2000 a final report on the ranking
33 system and the fee system proposed to replace the toxics use fee
34 in Title 38, section 2311, subsection 2, together with any
35 implementing legislation.

36 **Sec. 32. Environmental awards program for toxics use reductions.**
37 The Department of Environmental Protection shall establish a
38 biennial awards program to publicly reward facilities that
39 achieve the use reduction goals established in the Maine Revised
40 Statutes, Title 38, section 2303. The program must be designed
41 to give an environmental award to facilities that achieve a 51%
42 reduction in the amount of toxics used at the facility by January
43 1, 2000 based on a 1990 baseline, that perform a project under
44 section 2304, subsection 5 and that are not in violation of
45 section 2304, subsection 6 and to facilities

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2 that achieve a 30% reduction in the amount of toxics used at the facility by January 1, 2006 based on a 1998 baseline.'

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

6
8

FISCAL NOTE

10

1998-99

12

REVENUES

14

Other Funds

\$136,000

16

18 The establishment of a new fee structure based on the amount of hazardous waste generated by larger entities will increase fee collections for the Maine Hazardous Waste Fund and thereby eliminate an anticipated shortfall of currently budgeted revenues for fiscal year 1998-99. The estimated annual increase of dedicated revenue collected for the fund by the Department of Environmental Protection is \$136,000 beginning in fiscal year 1998-99. If the department's hazardous waste program is successful in reducing the volume of hazardous waste, the total volume-based fee revenues authorized by this bill will gradually decrease in future years.

28

30 The establishment of certain fee exemptions and the repeal of certain fees charged for noncompliance with toxic waste reduction requirements may result in insignificant increases of dedicated revenue to the Hazardous Waste Fund.

34

36 This bill may increase prosecutions for Class D crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$86.45 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

40

42 The additional workload, administrative costs and indigent defense costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.

48

50 The Department of Human Services will incur some minor additional costs to work with the Department of Environmental Protection in the development of a health-based ranking system.

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2 These costs can be absorbed within the department's existing
budgeted resources.

4 The Department of Environmental Protection will incur some
6 minor additional costs to develop a health-based ranking system,
submit a required report to the Legislature and establish an
8 environmental awards program for toxics use reductions. These
costs can be absorbed within the department's existing budgeted
resources.'

10
12 **SUMMARY**

14 This amendment, which is the majority report of the Joint
16 Standing Committee on Natural Resources, retains the provision in
the bill that adds the state toxicologist and the Commissioner of
18 Agriculture, Food and Rural Resources to the Pollution Prevention
Advisory Committee within the Department of Environmental
Protection and strikes the rest of the bill.

20 The amendment repeals the definition of "extremely hazardous
22 substance" and amends the definitions of "toxic substance,"
"toxics releaser" and "toxics user." The amendment establishes
24 new toxics use, toxics release and hazardous waste reduction
goals through the year 2006.

26 The amendment requires the Department of Environmental
28 Protection to report to the joint standing committee of the
Legislature having jurisdiction over natural resources matters
30 biennially beginning January 1, 2003 on progress toward meeting
the reduction goals and requires an interim report by January 1,
32 2001 on the establishment of baselines, facilities that have
achieved 51% reductions, exemptions and progress toward
34 computerizing data.

36 The amendment makes the toxics use reduction goals voluntary
but requires a toxics user to examine, plan and implement means
38 of reducing toxics use. The amendment specifies that a facility
that increased or did not reduce its use of toxics from the 1990
40 baseline must be put on a department priority list for technical
assistance and must submit a reduction plan summary by July 1,
42 1999 for department approval. The amendment maintains the
exemption from toxics use planning, reporting and fee
44 requirements for drinking water supply treatment facilities and
municipal wastewater treatment facilities and adds an exemption
46 from the toxics use and toxics release requirements for retail
and wholesale distribution facilities of refined petroleum
48 products and an exemption from the toxics use, toxics release and
hazardous waste requirements for pesticide distribution and

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2 application activities regulated by the Board of Pesticides
Control.

4 The amendment requires toxics releasers and hazardous waste
6 generators that ship 1,320 pounds or more of hazardous waste in a
calendar year to meet the revised reduction goals and requires
8 those that did not meet the original reduction goals to meet them
by January 1, 1999.

10 The amendment exempts from the reduction goals a facility
12 that reduces by January 1, 2000 the aggregate amount of toxics
used, toxics released or hazardous waste generated by 51% or more
14 from the facility's original baseline amount but requires such a
facility to meet the reporting and fee requirements. It also
16 establishes alternative projects that such a facility may
perform. The amendment also specifies that such a facility may
18 not increase the amount of toxics used, toxics released or
hazardous waste generated per unit of product at the facility,
20 whichever is applicable, using 1998 as the base year.

22 The amendment continues the requirement in current law that
facilities develop plans for their own use in meeting the
24 reduction goals and specifies requirements for employee
involvement in developing the plans. It also requires facilities
26 to submit summaries of the plans to the Commissioner of
Environmental Protection for approval and specifies a process for
28 protecting confidential information in the plan summaries.

30 The amendment establishes a revised fee structure for
hazardous waste generators, toxics users and toxics releasers.
32 It also establishes penalty fees for failure to meet reduction
requirements.

34 The amendment requires the Department of Environmental
Protection to develop, in consultation with the Bureau of Health
36 within the Department of Human Services, a health-based ranking
system for toxic substances and a graduated fee system for toxic
38 substances based on the toxicity ranking. The amendment requires
the department to submit to the joint standing committee of the
40 Legislature having jurisdiction over natural resources matters an
interim report on the ranking system by January 1, 1999 and a
42 final report on the ranking system and the fee system by January
1, 2000. The amendment also requires the department to establish
44 a biennial environmental awards program to reward facilities that
are high achievers in meeting the toxics use reduction goals.

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