

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2111

S.P. 784

In Senate, January 20, 1998

An Act to Reauthorize the Toxics and Hazardous Waste Reduction Laws.

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

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

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator TREAT of Kennebec.
Cosponsored by Representative ROWE of Portland and
Senators: HARRIMAN of Cumberland, MICHAUD of Penobscot, MITCHELL of Penobscot,
Representatives: COWGER of Hallowell, McKEE of Wayne.

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

2
4 **Sec. 1. 38 MRSA §343-D, sub-§1**, as amended by PL 1995, c. 656,
Pt. A, §18, is further amended to read:

6 **1. Appointment; composition.** The committee consists of 16
8 voting members.

10 A. The Governor shall appoint 2 representatives from the
12 business community, 2 elected or appointed municipal
14 officials who are not owners or representatives of owners of
small business stationary sources, and 2 representatives of
organized labor.

16 B. The President of the Senate shall appoint one member
18 from a public health organization, one member from an
environmental organization and one public member who is an
owner or represents an owner of a small business stationary
source.

20 C. The Speaker of the House of Representatives shall
22 appoint one member from a public health organization, one
24 member from an environmental organization and one public
member who is an owner or represents an owner of a small
business stationary source.

26 D. The commissioner shall appoint a designee to represent
28 the department.

30 E. The Senate Minority Leader and the House Minority Leader
32 shall each appoint one member who is an owner or represents
an owner of a small business stationary source.

34 F. The Director of the Bureau of Air Quality Control shall
36 appoint a designee to represent the bureau.

38 The Commissioner of Labor, the Commissioner of Agriculture, Food
40 and Rural Resources or the commissioner's designee, the state
42 toxicologist in the Department of Human Services and the Director
of the Maine Emergency Management Agency serve as ex officio
members and do not vote on committee matters.

44 As used in this subsection, unless the context otherwise
46 indicates, a "small business stationary source" means a source
that meets the eligibility requirements of 42 United States Code
Annotated, Section 7661f.

48 **Sec. 2. 38 MRSA §2301, sub-§4**, as enacted by PL 1989, c. 929,
50 §7, is repealed.

2 **Sec. 3. 38 MRSA §2301, sub-§7**, as amended by PL 1991, c. 520,
§6, is further amended to read:

4 **7. Generator.** "Generator" means the owner or operator of a
facility that generates hazardous waste. "Generator" does not
6 include small quantity generators as defined in rules adopted by
the board.

8 **Sec. 4. 38 MRSA §2301, sub-§16**, as amended by PL 1991, c. 520,
10 §9, is further amended to read:

12 **16. Toxic substance or toxics.** "Toxic substance" or
"toxics" means any substance in a gaseous, liquid or solid state
14 ~~listed pursuant to the SARA, Title III, Section 313, and listed~~
in 40 Code of Federal Regulations, Part 372.65 ~~and any extremely~~
16 ~~hazardous substance as listed in 40 Code of Federal Regulations,~~
Part 355; listed in 40 Code of Federal Regulations, Chapter 1,
18 Section 423, Appendix A; or listed in rules adopted by the board
pursuant to section 585-C.

20 **Sec. 5. 38 MRSA §2301, sub-§§17 and 19**, as enacted by PL 1989,
22 c. 929, §7, are repealed and the following enacted in their place:

24 **17. Toxics releaser.** "Toxics releaser" means a person who
owns or operates a facility or business that manufactures,
26 processes, uses or releases any of the toxics defined in
subsection 16 in reportable quantities or that is a nonpoint
28 source that operates as a business and releases a toxic substance
in reportable quantities. If a toxic substance appears on the
30 water toxics list but is not on the air toxics list, the
threshold reporting quantity is established in 40 Code of Federal
32 Regulations, Part 302, Table 302.4. If a toxic substance appears
on both the water and air toxics lists, the quantity established
34 in the air toxics list must be used as the reporting threshold.

36 **19. Toxics user.** "Toxics user" means a person who uses any
of the toxic substances defined in subsection 16 in reportable
38 quantities or a person who is required to monitor or report the
presence or release of that toxic substance. If a toxic
40 substance appears on the water toxics list but is not on the air
toxics list, the threshold reporting quantity is established in
42 40 Code of Federal Regulations Part 302, Table 302.4. If a toxic
substance appears on both the water and air toxics lists, the
44 quantity established in the air toxics list must be used as the
reporting threshold.

46 **Sec. 6. 38 MRSA §2303, sub-§§1-A, 2-A and 3-A** are enacted to
48 read:

2 1-A. Toxics use reduction goals; revised. Notwithstanding
3 subsection 1, beginning on the effective date of this subsection,
4 using the amount of toxics used statewide in 1998 as a baseline
5 figure, the goals for toxics use reduction are a 10% reduction in
6 the amount of toxics used in the State by January 1, 2002, a 20%
7 reduction by January 1, 2004 and a 30% reduction by January 1,
8 2006.

10 2-A. Toxics release reduction goals; revised.
11 Notwithstanding subsection 2, beginning on the effective date of
12 this subsection, using the aggregate amounts of toxics released
13 at a facility or business in calendar year 1998 as a baseline
14 figure, the goals for reducing the aggregate amount of toxics
15 released to the environment are a 10% reduction by January 1,
16 2002, a 20% reduction by January 1, 2004 and a 30% reduction by
17 January 1, 2006.

18 3-A. Hazardous waste reduction goals. The goals for
19 minimizing the amount of hazardous waste generated at a facility
20 are a 10% reduction by January 1, 2002, a 20% reduction by
21 January 1, 2004 and a 30% reduction by January 1, 2006.
22 Reductions must be based on a facility's generation rate for the
23 year 1998.

24 **Sec. 7. 38 MRSA §2303, sub-§5,** as amended by PL 1991, c. 520,
25 §12, is further amended to read:

28 **5. Progress evaluation.** Progress toward meeting the toxics
29 use, toxics release and hazardous waste reduction goals may must
30 be evaluated annually biennially by the commissioner based on
31 manifest data, progress reports submitted ~~under Title 37-B,~~
32 ~~sections 797 and 799, annual hazardous waste generator reports~~
33 and other appropriate available information. To determine
34 achievement of reduction goals, the commissioner may adjust the
35 baseline figure to account for changes in the statutory or
36 regulatory definitions of toxic substances and hazardous wastes.

38 **Sec. 8. 38 MRSA §2304, sub-§1, ¶A,** as repealed and replaced by
39 PL 1991, c. 520, §13, is amended to read:

40 **A.** Owners and operators of facilities ~~subject to reporting~~
41 ~~requirements for extremely hazardous substances under the~~
42 ~~SARA, Title III, Section 312 or businesses~~ are not required
43 to meet the toxics use reduction goals, but shall examine,
44 plan and implement means of reducing the use of extremely
45 ~~hazardous substances within their facilities~~ toxics without
46 impairing the quantity or quality of their products or
47 services. ~~For the purpose of developing reduction plans and~~
48 ~~reporting progress toward meeting reduction goals, a~~
49 ~~facility is required to examine only those extremely~~

2 hazardous--substances--which--the--facility--is--required--to
3 report under SARA, Title III, Section 312. If the owner or
4 operator of a facility reduces its use of a toxic, for every
5 amount of reduction of that toxic in use, the reduction
6 amount is doubled and counts twofold towards attainment of
7 that facility's mandatory release reduction goal. A
8 facility is not required to examine toxics use that is
9 incidental to the facility's administrative functions.

10 **Sec. 9. 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 requirements for toxics use:

- 14 (1) ~~Drinking water supply treatment facilities;~~
15
16 (2) ~~Municipal wastewater treatment facilities;~~
17
18 (3) Wholesale distributors of chemicals; and
19
20 (4) Hazardous substance transporters.
21

22 **Sec. 10. 38 MRSA §2304, sub-§1-A** is enacted to read:

23 1-A. Reductions 60% or more. The following provisions
24 apply to certain facilities that have reported under section 2307.

25 A. If a facility reported a chemical pursuant to section
26 2307 and has reduced that chemical's use by 60% or more from
27 the base year amount established in section 2307, then that
28 facility is not required to count that chemical as part of
29 its new base year amount; however, the facility must report
30 on the use or release of that chemical so that the
31 department can accurately aggregate the state reduction
32 numbers and verify the facility's normalized use or release
33 of that chemical.

34 B. If a facility reported under section 2307 and has
35 reduced its overall use or release of the aggregate amount
36 of all its reportable chemicals by 60% or more, that
37 facility in order to meet the requirements of this chapter
38 may choose from the following options:

- 39 (1) Continue reduction efforts to meet the new
40 requirements of section 2303;
41
42 (2) Serve as a mentor to another company, with the
43 approval and guidance of the department, to help that
44 company meet the reduction requirements;
45

2 (3) Develop an environmental management system, or
4 "EMS," based on criteria established by, and with
6 guidance from, the department. Once the EMS is
8 developed to the satisfaction of the facility, the
10 facility shall perform a comprehensive compliance and
12 pollution prevention audit based on department audit
 policy. The facility's audit must be observed and
 evaluated by a 3rd-party auditor and department staff.
 Based on audit findings, the EMS must be refined and
 finalized. The facility shall review and update its
 EMS biennially; or

14 (4) Conduct a comprehensive multimedia pollution
16 prevention and compliance audit of the facility and
18 complete a pollution prevention project approved by the
 department.

20 **Sec. 11. 38 MRSA §2304, sub-§2, ¶A, as repealed and replaced**
 by PL 1991, c. 520, §13, is amended to read:

22 A. ~~Owners and operators of facilities required to report~~
24 ~~under SARA, Title III, Section 313 using or releasing toxics~~
26 ~~that have achieved the 30% release reduction goal as~~
28 ~~established in section 2303, subsection 2 are required to~~
30 ~~meet the revised toxics release reduction goals established~~
32 ~~in section 2303, subsection 2-A. For the purpose of~~
34 ~~developing reduction plans and meeting reduction goals,~~
36 ~~"toxics" refers only to those substances which the facility~~
38 ~~is required to report under SARA, Title III, Section 313.~~
40 ~~Those facilities that were required but failed to meet the~~
42 ~~toxics release reduction goals established in section 2303,~~
44 ~~subsection 2 shall meet those goals by January 1, 1999.~~
 ~~Thereafter those facilities shall meet the revised goals~~
 ~~established in section 2303, subsection 2-A, using 1998 as~~
 ~~the new base year. These facilities must be put on a~~
 ~~department priority list for on-site technical assistance to~~
 ~~achieve the original reduction goals and are required to~~
 ~~submit a reduction plan summary by June 1, 1998 for~~
 ~~department approval. The department's approval process must~~
 ~~proceed as set forth in section 2307, subsection 5. The~~
 ~~board may establish by rule reduction planning levels other~~
 ~~than the SARA reportable quantities for specific toxics.~~

46 **Sec. 12. 38 MRSA §2304, sub-§3, ¶A, as enacted by PL 1991, c.**
 520, §13, is amended to read:

48 A. ~~All facilities that generate 100 kilograms ship 1,000~~
50 ~~pounds or more of hazardous waste in a calendar month for~~
 ~~more than 3 months of the year and that have achieved the~~

2 mandatory 30% reduction goal established in section 2303,
3 subsection 3 are required to meet the revised state
4 hazardous waste reductions goals established in section
5 2303, subsection 3-A. For the purpose of developing
6 reduction plans, a facility must examine all hazardous waste
7 generated in the production process and related operations
8 and 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 either
13 shipped off site or disposed of on site. Those facilities
14 that were required but failed to meet the reduction goals
15 established in section 2303, subsection 3 shall meet those
16 goals by January 1, 1999. Thereafter those facilities shall
17 meet the revised goals established in section 2303,
18 subsection 3-A, using 1998 as the new base year. These
19 facilities must be put on a department priority list for
20 on-site technical assistance to achieve the original
21 reduction goals and are required to submit a reduction plan
22 summary by June 1, 1998 for department approval. The
23 department's approval process must proceed as set forth in
24 section 2307, subsection 5.

25 **Sec. 13. 38 MRSA §2304, sub-§4,** as enacted by PL 1991, c. 520,
26 §13, is amended to read:

27 **4. Report.** The commissioner shall report annually by
28 January ~~1st~~ 1, 2003 and biennially thereafter to the joint
29 standing committee of the Legislature having jurisdiction over
30 energy and natural resource matters listing all exemptions
31 granted under this section and all facilities that have failed to
32 meet the reduction goals set forth in section 2303.

33 **Sec. 14. 38 MRSA §2305, first ¶,** as amended by PL 1991, c. 520,
34 §14, is further amended to read:

35 Those facilities subject to regulation under this chapter
36 shall develop by January 1, ~~1993~~ 2000 and update every 2 years
37 thereafter plans for their own use in meeting the State's goals.
38 The board may establish rules for toxics use, toxics release and
39 hazardous waste reduction plans to be prepared pursuant to this
40 section. A plan must include:

41 **Sec. 15. 38 MRSA §2305, sub-§2, ¶C,** as enacted by PL 1989, c.
42 929, §7, is amended to read:

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

2 **Sec. 16. 38 MRSA §2305, sub-§2, ¶D**, as enacted by PL 1989, c.
929, §7, is repealed.

4 **Sec. 17. 38 MRSA §2305, sub-§4, 2nd ¶**, as enacted by PL 1989,
6 c. 929, §7, is amended to read:

8 Owners and operators of facilities shall keep a complete
copy of the plan and any back-up data on the premises of that
10 facility for at least 5 3 years and make the copy and data
available to the commissioner or the commissioner's designee upon
12 request. A plan summary based on a tiered schedule set by the
department must be submitted to the department for approval. The
14 plan summary approval process must proceed as set forth in
section 2307. The first tier of plans are due to the department
16 by January 1, 2000, except for those summaries required in
section 2304.

18 **Sec. 18. 38 MRSA §2306**, as amended by PL 1991, c. 520, §15,
20 is further amended to read:

22 **§2306. Employee notification**

24 Six months prior to the date when a reduction plan or update
must be completed, the owner or operator of each facility must
26 notify all of its employees of the requirements for the plans,
identify the toxic substances and hazardous wastes and production
28 units for which plans must be developed and solicit comments or
suggestions from all employees on toxics use, toxics release and
30 hazardous waste reduction options. A description of the employee
notification process and of employee involvement must be included
32 in the plan summary submitted in accordance with section 2305.

34 **Sec. 19. 38 MRSA §2307-A** is enacted to read:

36 **§2307-A. Reporting requirements beginning January 1, 1998**

38 Notwithstanding section 2307, beginning January 1, 1998,
this section governs reporting requirements.

40 **1. Toxics use reduction reports.** Toxics users must report
42 their progress toward meeting the toxics use reduction goals as
part of their reporting requirements to the department.

44 **2. Toxics release reduction reports.** Toxics releasers must
46 report their progress toward meeting the toxics release reduction
goals as part of their reporting requirements to the department.

48 **3. Hazardous waste reduction reports.** Facilities that ship
50 1,000 pounds or more of hazardous waste in a calendar year must

2 report their progress toward meeting the hazardous waste
3 reduction goals as part of their reporting requirements to the
4 department.

6 4. Plan summary. The plan summary submitted to the
7 commissioner pursuant to section 2305 must include, without
8 limitation, the evaluation methods used, the findings and
9 conclusions and the implementation schedule. An owner or
10 operator may designate information as confidential under section
11 1310-B.

12 5. Review of plan summary. Once the department determines
13 a plan summary is complete, the commissioner shall review the
14 plan summary within 90 days to determine whether the plan summary
15 meets the guidelines established under this chapter.

16 A. In reviewing the adequacy of any plan summary, the
17 commissioner shall base a determination on whether the plan
18 summary is complete and prepared in accordance with the
19 goals and guidelines established pursuant to this chapter.

22 B. If the commissioner determines that a plan summary is
23 inadequate, the commissioner shall notify the toxics user,
24 toxics releaser or generator of the inadequacy, identifying
25 the specific deficiencies. The commissioner may specify a
26 reasonable time period of not less than 90 days within which
27 the toxics user, toxics releaser or generator must submit a
28 modified plan summary addressing the specified
29 deficiencies. The commissioner may, upon request, provide
30 technical assistance, if available, to aid the toxics user,
31 toxics releaser or generator in modifying the plan summary.

32 C. If the commissioner determines that a modified plan
33 summary is inadequate, the commissioner may either require
34 further modification or assess fees as provided in section
35 2312. If the generator fails to submit a modified plan
36 summary within the required time period of 60 calendar days,
37 the commissioner may assess additional fees as established
38 in section 1319-I, subsection 2-A.

40 6. Confidentiality. Upon a satisfactory showing to the
41 commissioner by the owners or operators of a facility required to
42 submit information under this chapter that a plan summary
43 developed under this chapter, if made public, would divulge
44 methods, processes or other information entitled to protection,
45 the commissioner shall hold as confidential that plan summary or
46 a portion of that plan summary pursuant to section 1310-B.

48

2 7. Additional information. This chapter does not prohibit
3 the commissioner from seeking additional information from a
4 toxics user, toxics releaser or generator in order to review the
5 adequacy of a plan or plan summary required by this chapter.

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

8 **Sec. 21. 38 MRSA §2311,** as amended by PL 1995, c. 493, §19,
9 is further amended to read:

10 **§2311. Fees**

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

15 **1. Hazardous waste generators.** The fee required by this
16 subsection is due to the commissioner by ~~April 15, 1994 and~~
17 August 1st annually after ~~that date.~~ For ~~facilities that~~
18 ~~generate 100 kilograms or more of hazardous waste in a calendar~~
19 ~~month for more than 3 months of the year, the fee is \$100 per~~
20 ~~facility. For all other generators, the fee is \$50 per~~
21 ~~facility. For facilities that ship 2,000 or more pounds of~~
22 ~~hazardous waste in a calendar year, the fee is \$1,000. For~~
23 ~~facilities that ship between 1,000 and 1,999 pounds per calendar~~
24 ~~year, the fee is \$500.~~
25 For facilities that ship 2,000 or more pounds of
26 hazardous waste in a calendar year, the fee is \$1,000. For
27 facilities that ship between 1,000 and 1,999 pounds per calendar
28 year, the fee is \$500.

29 **2. Toxics user.** All toxics users except owners and
30 operators of commercial agricultural operations, public drinking
31 water supply treatment facilities and municipal wastewater
32 treatment facilities shall submit \$50 ~~\$100~~ per extremely
33 hazardous toxic substance reported by the facility under ~~SARA,~~
34 ~~Title III, Section 312 in addition to fees assessed under Title~~
35 ~~37-B, section 801, as required by this chapter.~~ Fees assessed
36 under this subsection must be submitted annually by ~~April 15th~~
37 August 1st to the department.

38 **3. Toxics releaser.** All toxics releasers except owners and
39 operators of commercial agricultural operations, public drinking
40 water supply treatment facilities and municipal wastewater
41 treatment facilities must submit \$100 per chemical toxic
42 substance reported by the facility under ~~SARA, Title III, Section~~
43 ~~313 in addition to fees assessed under Title 37-B, section 801,~~
44 as required by this chapter. Fees assessed under this subsection
45 must be submitted annually by ~~July August~~ August 1st to the department.
46

47 **4. Fee limitation.** A company subject to fees under this
48 section may not be assessed more than ~~\$1,000~~ \$5,000 per year.
49

