

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1724

S.P. 564

In Senate, March 21, 2001

An Act to Provide for Remediation of Abandoned Landfills.

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 DAGGETT of Kennebec.
Cosponsored by Representatives: COLLINS of Wells, MITCHELL of Vassalboro, TESSIER
of Fairfield.

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

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Sec. 1. 38 MRSA §1310-D, as amended by PL 1993, c. 732, Pt. C, §§6 to 10, is amended to read:

§1310-D. Closure of open-municipal landfills

The provisions of this article govern open-municipal solid waste landfills.

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

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

2 A. To identify the actual hazards, if any, to the
environment and public health posed by the landfill and to
4 determine the closure and ~~remediation~~ requirements of the
landfill;

6 B. When appropriate, to establish a monitoring system,
which may include monitoring wells and test borings
8 sufficient to ensure identification and monitoring of
potential hazards;

10 C. When potential hazards are identified, to provide:

12 (1) A complete description of the movement of surface
14 waters, ground waters and landfill gases on or near the
landfill;

16 (2) An identification of pollutants in those waters;

18 (3) An evaluation of the scope, direction and rate of
20 movement of the contamination plume, if any; and

22 (4) Any other information that the commissioner
determines necessary to prepare the closure or
24 ~~remediation~~ recommendations pursuant to this subchapter;

26 D. To provide a recommended closure plan for the landfill
and, ~~when necessary, a recommended plan for the remediation~~
28 ~~of any hazards identified by the evaluation.~~ Closure and
~~remediation~~ recommendations must ensure a level or standard
30 of control of pollutants in surface waters at least as
stringent as the water quality criteria established under
32 chapter 3, subchapter I, article 4-A. Those recommendations
must also seek to achieve a level or standard of control of
34 pollutants in ground water at least as stringent as the
water quality criteria established under sections 465-C and
36 470, unless the commissioner finds that meeting those
standards is technically and economically infeasible and
38 that other measures can be implemented to ensure protection
of public health and safety; and

40 E. To consult with and involve the affected municipality or
42 municipalities in the conduct of the evaluation and the
analysis of its results.

44 **3. Closing orders.** The commissioner may incorporate the
46 recommendations of the landfill evaluations into a department
closing order and, ~~if appropriate, remediation order~~ subject to
48 the following provisions.

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

12 B. Any person who is aggrieved by the department order may
14 appeal it as provided in section 341-D, subsection 4.

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

20 **5. Certification of completion.** A municipality that
engages a contractor to close a landfill under an order issued by
22 the department shall hire a licensed engineer independent of the
contractor or the municipality to, at a minimum, monitor,
24 evaluate and report on all on-site landfill closure activities
performed by the contractor. Upon completion of the closure work
in compliance with the order issued by the department, that
26 engineer shall provide the department and municipality with a
written report that certifies that the work performed by the
28 contractor conforms with the order issued by the department and
all applicable laws and regulations. The cost to the
30 municipality to engage the licensed engineer is a cost of closure
under section 1310-F. Following receipt of the engineer's
32 report, the department shall accept, conditionally accept or
reject the engineer's certification. If the department either
34 conditionally accepts or rejects the certification, the
department shall identify and direct the municipality to
36 undertake any measures necessary for completion of the closure in
compliance with the order.

38 **Sec. 2. 38 MRSA §1310-E-2** is enacted to read:

40 **§1310-E-2. Investigation and remediation of landfills**

42 **1. Investigation.** The commissioner may investigate a solid
44 waste landfill, including an abandoned landfill, when there is a
46 reasonable basis to believe that an unauthorized discharge has
48 occurred or may be occurring. The commissioner shall consult
with and involve the affected municipality or municipalities in
the conduct of the investigation and evaluation of the results of
the investigation.

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2 2. Remediation recommendations. When, after investigation,
the commissioner has sufficient knowledge that a solid waste
landfill poses a hazard to public health or the environment, the
commissioner may undertake additional evaluations to develop a
recommended plan for remediation of the hazard. Remediation
recommendations must ensure a level or standard of control of
pollutants in surface waters at least as stringent as the water
quality criteria established under chapter 3, subchapter I,
article 4-A. Those recommendations must also seek to achieve a
level or standard of control of pollutants in groundwater at
least as stringent as the water quality criteria established
under sections 465-C and 470, unless the commissioner finds that
meeting those standards is technically and economically
infeasible and that other measures may be implemented to ensure
protection of public health and safety.

3. Remediation orders. The commissioner may take measures
necessary to effect a recommended plan for remediation or may
incorporate the plan recommendations into a remediation order.
The order must include the time schedule for implementation as
required under section 1310-G. The person or municipality owning
or operating the landfill is the party responsible for the
implementation of the order. Any person aggrieved by the order
may appeal the order as provided in section 341-D, subsection 4.

Sec. 3. 38 MRSA §1310-F, sub-§2, as amended by PL 1999, c.
334, §11, is further amended to read:

2. **Eligibility.** A municipality that owns, rents or leases
a solid waste landfill for which obligations are required or
permitted by this chapter or rules adopted under this chapter is
eligible for cost-sharing grants or reimbursement payments. In
order to receive reimbursement pursuant to this section, the
municipality must shall, at a minimum, provide such reasonable
proof of municipal expenditures as the department may require, as
well as certification signed by the municipal officers that, to
the best of their knowledge and the knowledge of all the
pertinent municipal officials, the closure activities were
performed in accordance with the applicable standards established
by section 1310-E-1 and remediation activities were performed in
accordance with a plan approved or issued by the department. A
municipality that has spent funds to close its solid waste
landfill or to remedy environmental and public health hazards
posed by the landfill prior to the adoption of a closure or
remediation plan under this subchapter or that closed a landfill
or remediated environmental or public health hazards posed by a
landfill is also eligible for reimbursement of closure or
remediation costs incurred after February 1, 1976, as long as the
closure or remediation actions were in conformance with all
applicable laws or rules in effect at the time. Costs incurred

2 by closure or remediation actions taken after the adoption of a
3 closure or remediation plan under this subchapter are eligible
4 for reimbursement only if those actions conform to that plan.
5 Grant or reimbursement payments may not be made to a municipality
6 for a portion of payments to settle civil or criminal judgments
7 against that municipality for damages or injuries caused by the
8 landfill. In addition, for landfills in operation prior to
9 January 1, 1993, grant payments may not be made to a municipality
10 for remediation to mitigate a threat posed by that landfill to
11 structures built after January 1, 1994 by that municipality, the
12 county in which that municipality is located, a school
13 administrative unit as defined in Title 20-A, section 1, a
14 quasi-municipal corporation as defined in Title 30-A, section
15 2351 or a special district as defined in Title 30-A, section 5704
16 that includes any portion of the municipality unless the
17 commissioner determines that the municipality could not have
18 reasonably anticipated the threat. Any interest paid by a
19 municipality prior to reimbursement on a municipal bond or
20 commercial bank note issued to raise funds for remediation and
21 closure activities is a cost eligible for reimbursement under
22 this section. Unless otherwise directed by the terms of a bond
23 issue approved by the voters, the commissioner shall use at least
24 1/3 of the funds approved by the voters for municipalities
25 eligible for reimbursement of closure and remediation costs
26 eligible under this subsection until all those municipalities
27 have been reimbursed. The remainder of the available funds must
28 be allocated in an equitable manner so that, at a minimum, an
29 adequate cap is constructed over all identified high-risk
30 landfills subject to closure. The department shall issue, upon
31 the request of a municipality, a notice in writing that projects
32 to a date certain the availability of cost-sharing funds for
33 which the municipality is eligible. The inability or failure of
34 the department to issue a written projection to a date certain
35 means that the cost-sharing funds are not available for the
36 foreseeable future. A landfill that is privately owned and
operated is not eligible for reimbursement under this subchapter.

38 A. The commissioner may act to abate public health, safety
39 and environmental threats at municipal solid waste landfills
40 identified as uncontrolled hazardous substance sites under
41 section 1362, subsection 3 or at federally declared
42 Superfund sites. Notwithstanding subsections 1-A and 1-B,
43 the commissioner shall determine the amount of grants or
44 payments issued to municipalities for the costs of
45 remediation and closure at those sites.

46 B. The commissioner may enter into contracts with the Maine
47 Municipal Bond Bank to manage bonds issued under this
48 article, as long as the management fee structure does not
49 allow dilution of the bond principal.
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2 C. In a circumstance where the department finds that
4 further closure or remediation activities are required for a
6 landfill because the landfill was not closed in accordance
8 with the standards of closure that the municipal officers
10 certified to the department pursuant to this subsection and
12 further finds that the certification was a negligent
14 misrepresentation of a material fact results in the
16 ineligibility of the municipality for cost sharing for the
18 additional activities that may be required as a result of
20 the nonperformance of the previously certified activities.

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

28 E. If the municipality has taken reasonable steps to
30 anticipate and abate threats posed by a municipal landfill,
32 a municipality is eligible to receive a maximum
34 reimbursement of 50% of the remediation costs related to any
36 threat posed by the municipal landfill to wells or other
38 structures constructed after December 31, 1999.

40 **Sec. 4. 38 MRSA §1310-Y, first ¶,** as amended by PL 1995, c. 44,
42 §1, is further amended to read:

44 An owner or operator of a solid waste disposal facility
46 licensed under section 1310-N shall provide the department
48 assurance of its financial ability to satisfy the estimated cost
of corrective action for known releases from the facility and its
financial capacity to satisfy the estimated cost of closure and
postclosure care and maintenance at the facility for a period of
at least 30 years after closure. The board may adopt rules that
increase or decrease that postclosure care period, as long as
those rules are consistent with applicable federal rules. This
section applies to all privately owned solid waste disposal
facilities licensed by the department, including facilities
licensed by the department before June 16, 1993. This section
does not apply to a municipally owned or operated solid waste
disposal facility that accepts exclusively special waste,
construction and demolition debris, land-clearing debris or any
combination of those types of waste or to a municipally owned or
operated solid waste disposal facility licensed before June 16,
1993.

2 The bill clarifies that the financial assurance requirement
3 for post-closure care of solid waste facilities applies to all
4 private facilities licensed by the Department of Environmental
5 Protection, regardless of when the facilities were licensed,
6 closed or ceased handling waste. Maine law requires licensees to
7 provide a letter of credit, surety bond or other assurance that
8 the licensee has the financial capacity to maintain the facility
9 for at least 30 years after closure. This requirement minimizes
10 state costs for post-closure care in the event the facility owner
11 goes out of business, becomes bankrupt or insolvent or can not be
12 located.

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14 Finally, the bill clarifies that money may be disbursed from
15 the Maine Solid Waste Management Fund to abate public health
16 threats from solid waster disposal without waiting until the
threat becomes "imminent" and regardless of whether the threat
stems from legal or illegal disposal activity.