

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 948

H.P. 705

House of Representatives, February 25, 2003

**An Act To Ensure Clean Air in Communities Affected by Privately
Owned Incinerator Facilities**

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LEMOINE of Old Orchard Beach.

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

2
4 **Sec. 1. 38 MRSA §582, sub-§2-A** is enacted to read:

6 **2-A. Air pollutants.** "Air pollutants" includes, but is not
8 limited to, polychlorinated dioxins, furans, biphenyls,
10 polynuclear aromatic hydrocarbons, volatile organic compounds and
12 hazardous metals such as arsenic, beryllium, cadmium, chromium,
14 lead, nickel and mercury, whether or not such substances are also
16 considered hazardous air pollutants.

18 **Sec. 2. 38 MRSA §582, sub-§7-E,** as amended by PL 1991, c. 220,
20 §1, is further amended to read:

22 **7-E. Incinerator.** "Incinerator" means any device,
24 apparatus or equipment used for destroying, reducing or salvaging
26 by fire any material or substance, ~~but does not include any~~
28 ~~device, apparatus or equipment used to burn material separated,~~
30 including solid waste, municipal solid waste, special waste and
32 refuse-derived fuel.

34 **Sec. 3. 38 MRSA §582, sub-§9-E** is enacted to read:

36 **9-E. Privately owned.** "Privately owned" means 50% or more
38 of the ownership interests of the given entity are possessed or
40 controlled by nongovernmental entities.

42 **Sec. 4. 38 MRSA §582, sub-§11-B,** as amended by PL 1991, c.
44 220, §4, is further amended to read:

46 **11-B. Solid waste fuel-burning equipment.** "Solid waste
48 fuel-burning equipment" means any furnace, boiler or apparatus,
50 and all appurtenances thereto, capable of burning solid waste
fuel for the primary purpose of producing thermal energy.
~~Equipment used to burn or capable of burning material separated,~~
~~refuse-derived fuel either alone or with another fuel other than~~
~~solid waste fuel or refuse-derived fuel as defined in section~~
~~1303-C is not solid waste fuel-burning equipment.~~

52 **Sec. 5. 38 MRSA §585-I** is enacted to read:

54 **§585-I. Air pollutant monitoring and emission control**

56 **1. Continuous emissions monitoring.** A privately owned
58 facility operating an incinerator shall install equipment, in
60 consultation with the department, that will operate continuously
on a 24-hour basis without interruption to monitor all air
pollutants and is capable of recording daily testing for later
review and analysis.

2 2. Lowest achievable emissions rate. A privately owned
2 facility subject to the provisions of subsection 1 shall employ
4 devices, treatment and remediation to ensure that emissions from
4 the facility meet the lowest achievable emissions rate.

6 Sec. 6. 38 MRSA §590-F is enacted to read:

8 §590-F. Health and air quality assessment

10 1. Mandatory testing. Every 7 years, the department shall
12 conduct and complete a comprehensive health and air quality
12 assessment of an affected community adjacent to a privately owned
14 incineration facility.

16 2. License. The department may not issue a license under
16 section 590 to a privately owned facility operating an
18 incinerator to burn municipal solid waste, refuse-derived fuel or
18 special waste unless the department has certified that the
20 facility does not present or pose a verifiable health threat to
20 an affected community.

22 3. Cost. The cost of a health and air quality assessment
24 under this section is borne by the incineration facility.

26 4. Manner of testing and review. The department, in
26 cooperation with the Department of Human Services or any other
28 department or agency of the State the department considers
28 necessary, shall conduct the following review and testing:

30 A. Analysis of medical and death records from care
32 providers, hospitals, cancer registries, institutions and
32 patients in affected communities to determine if illness
34 anomalies or patterns exist;

36 B. Interviews with hospital administrators, care providers
36 and other similarly situated individuals to gather
38 additional verifiable data regarding community health and
38 risk factors;

40 C. Air sampling within affected communities at certain
42 points for solids, particles, toxins, air pollutants and air
42 contaminants to determine if a risk of illness or injury
44 exists in such communities;

46 D. Soil sampling within affected communities to determine
46 whether incinerators are emitting solids, particles, toxins,
48 air pollutants or air contaminants that pose a risk of
48 contamination;

2 E. Water sampling of lakes, ponds, brooks, rivers, marshes
3 and estuaries within affected communities to determine
4 whether incinerators are emitting solids, particles or air
5 contaminants that pose a risk of contamination to waters or
6 risk of illness; and

7 F. Review of continuous emissions monitoring reports under
8 section 585-I, subsection 1.

9 5. Results. The department shall furnish its findings
10 under subsection 4 to the privately owned facility operating an
11 incinerator, the public and each affected community prior to the
12 holding of a public hearing on a health and air quality
13 assessment. At the public hearing, the department shall take
14 advice and comment on whether additional testing is needed,
15 whether any threats to health have been identified and additional
16 licensing limitations to protect the public. A hearing may not
17 be later than 60 days following the issuance of the department's
18 findings.

19 6. Verifiable health threat. If, after a health and air
20 quality assessment and any follow-up assessment testing, the
21 department concludes there exists a verifiable health threat to
22 an affected community, the department shall recommend to the
23 board to suspend or revoke the license of the incineration
24 facility until the threat is eliminated.

25 7. Rules. The department shall adopt rules to carry out
26 the purposes of this section. Rules adopted pursuant to this
27 subsection are major substantive rules as defined in Title 5,
28 chapter 375, subchapter 2-A.

29 **Sec. 7. 38 MRSA §597**, as enacted by PL 1969, c. 474, §1, is
30 amended to read:

31 **§597. Municipal air pollution control**

32 Nothing in this chapter shall may be construed as a
33 preemption of the field of air pollution study and control on the
34 part of the State. Municipalities may study air pollution and
35 adopt and enforce air pollution control and abatement ordinances,
36 to the extent that these ordinances are not less more stringent
37 than this chapter or than any standard, order or other action
38 promulgated adopted pursuant to this chapter. Local-ordinance
39 provisions-which-touch-on-matters-not-dealt-with-by-this-chapter
40 or-which-are-more-stringent-than-this-chapter-shall-bind-persons
41 residing-in-the-municipality. Notwithstanding this section, a
42 local ordinance regulating air emissions in force and effect on
43 December 31, 2002 is not preempted by this section if the
44 ordinance is not less stringent than the state standard.

2 **Sec. 8. 38 MRSA §1303-C, first ¶**, as enacted by PL 1989, c.
385, Pt. E, §4 and amended by c. 878, Pt. H, §7, is further
4 amended to read:

6 As used in this chapter, chapter 4 or ~~in~~ chapter 24, unless
the context otherwise indicates, the following terms have the
8 following meanings.

10 **Sec. 9. 38 MRSA §1303-C, sub-§1-B** is enacted to read:

12 **1-B. Affected community.** "Affected community" means a
13 town, township or city within a 10-mile radius of a privately
14 owned incineration facility burning municipal solid waste or
15 refuge-derived fuel, regardless of whether the community is also
16 a charter community or a host community.

18 **Sec. 10. 38 MRSA §1303-C, sub-§2-C** is enacted to read:

20 **2-C. Charter community.** "Charter community" means a town,
21 township or city presently delivering solid waste or municipal
22 solid waste to an incineration facility by virtue of a contract
23 or charter agreement dated prior to December 31, 2002.

24 **Sec. 11. 38 MRSA §1303-C, sub-§§15-B and 15-C** are enacted to
25 read:

28 **15-B. Health and air quality assessment.** "Health and air
29 quality assessment" means a comprehensive analysis of the effects
30 of an incineration facility upon the soil, air, water and
31 population within an affected community as described in section
32 590-F.

34 **15-C. Host community.** "Host community" means a town,
35 township or city presently delivering solid waste or municipal
36 solid waste to an incineration facility by virtue of a contract
37 or host community agreement dated prior to December 31, 2002.

38 **Sec. 12. 38 MRSA §1304, sub-§1-D** is enacted to read:

40 **1-D. Municipal powers.** Notwithstanding the other
41 provisions of this section, an affected community may establish
42 its own reasonable regulations on the transportation of solid
43 waste, municipal solid waste, special waste and refuse-derived
44 fuel through the community, including posting certain roads with
45 weight limitations, setting route limitations or restrictions to
46 minimize the disruption of predominantly residential areas or
47 areas of special environmental concern or sensitivity, limiting
48 hours for the delivery of wastes and setting penalties for
49 transporters who leak, spill or discharge wastes onto public ways.
50

2 **Sec. 13. 38 MRSA §1304-B, sub-§4-A, ¶E** is enacted to read:

4 E. A contract for disposal of solid waste or municipal
6 solid waste entered into by a host community or a charter
8 community must meet the conditions set forth in section
 1310-N, subsection 9, paragraph B.

10 **Sec. 14. 38 MRSA §1310-N, sub-§9, ¶B**, as enacted by PL 1995,
 c. 465, Pt. A, §16 and affected by Pt. C, §2, is amended to read:

12 ~~B. Based upon the nature, size and projected impacts of the~~
14 ~~proposed facility, host community agreements~~ Agreements
16 ~~between an incineration facility, its owner or operator and~~
 ~~a host community or charter community must, when applicable,~~
 include provisions regarding:

18 (1) Improvement, maintenance and repair of local roads
20 directly affected by traffic to and from the facility
22 and of other infrastructural elements directly affected
 by the facility, including sewerage, storm water or
 drainage pipes and other aboveground and belowground
 utilities;

24 (2) Development and maintenance of adequate local
26 emergency response capacity to accommodate the facility;

28 (3) Financial support for personnel or other means to
30 provide technical assistance to the municipality in
32 interpreting data and to advise the municipality on
 other technical issues concerning the facility; and

34 (4) Other issues determined on a case-specific basis
36 by the applicant and municipality to be appropriate
 given the nature of the proposed facility;

38 (5) Reasonable reductions in disposal costs and
40 tipping fee rates to offset the burden borne by the
 charter community or host community;

42 (6) Guaranteed disposal of all municipal solid waste
44 from the charter communities and host communities
 regardless of tonnage;

46 (7) For a host community, reasonable hours of
48 operation of the incineration facility consistent with
 the location and proximity of operation to residential
 zones, including:

2 (a) Not later than 11:00 p.m. if located within
3 1,000 feet of any residence; and

4 (b) Not earlier than 6:00 a.m. if located within
5 1,000 feet of any residence;

6
7 (8) Reasonable restrictions on the type of solid
8 wastes that may be handled, processed or disposed of in
9 the incineration facility, including an option for the
10 charter community or the host community to bar disposal
11 of special wastes; and

12 (9) Reasonable noise controls and limitations.

13
14 The department shall adopt rules concerning the expenditure
15 of funds made available to a municipality under the
16 provisions of subparagraph (3) to ensure that funds are used
17 to provide direct technical support to the municipality
18 necessary for the conduct of municipal planning and decision
19 making.
20

21 **Sec. 15. Health and air quality assessments.** The Department of
22 Environmental Protection shall initiate all health and air
23 quality assessments required under the Maine Revised Statutes,
24 Title 38, section 590-F within one year of the effective date of
25 this Act.
26

27

SUMMARY

28

29 This bill amends the statutes concerning incinerators to
30 strengthen the regulation of air emissions from privately owned
31 incinerator facilities to ensure that the public health of the
32 surrounding communities is not negatively affected.
33
34