

MAINE STATE LEGISLATURE

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Legislative Document

No. 1954

H.P. 1392

House of Representatives, December 20, 2007

An Act To Amend the Potato Cull Pile Law

Submitted by the Department of Agriculture, Food and Rural Resources pursuant to Joint Rule 204.

Received by the Clerk of the House on December 18, 2007. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LUNDEEN of Mars Hill.
Cosponsored by Senator SHERMAN of Aroostook and
Representatives: CARTER of Bethel, CRAY of Palmyra, MAREAN of Hollis, PIEH of
Bremen.

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

2 **Sec. 1. 7 MRSA §1007-A**, as amended by PL 2005, c. 512, §43, is further
3 amended to read:

4 **§1007-A. Improperly maintaining potato cull piles; public nuisance**

5 **1. Declaration of public nuisance.** The Legislature declares that the A2 strain of
6 late blight and other potato diseases constitute a clear and present danger to the potato
7 industry in the State, which is a significant part of the State's economy. Control of the A2
8 strain of potato blight and other potato diseases requires the proper disposal of potato cull
9 piles. The Legislature finds it necessary to exercise the police power of the State to
10 require proper disposal of cull potatoes and potato cull piles and to provide procedures for
11 the disposal of these potatoes by the department when the owner or lessee of the property
12 on which the potatoes were found or any other person responsible for the potatoes fails to
13 comply with the requirements of this section. In addition to constituting a civil violation
14 as prescribed in this section, potato cull piles that are not managed and disposed of in
15 accordance with these requirements are considered a public nuisance and are punishable
16 under Title 17, section 2805.

17 **1-A. Definitions.** As used in this section, the following terms have the following
18 meanings.

19 A. "Cull potatoes" means:

20 (1) Potatoes that are not marketable or usable for human consumption or as seed
21 potatoes;

22 (2) Potatoes that are used for animal feed;

23 (3) The residue potatoes left in the field from commercial or seed potato
24 production the preceding year; and

25 (4) Potatoes that spoil while in storage.

26 B. "Potato cull pile" means a pile of cull potatoes.

27 **2. Disposal requirements.** ~~The owner or lessee of any real property on which~~
28 ~~potatoes are grown, or on which potato cull piles are maintained or disposed of, the~~
29 ~~property on which cull potatoes were found or any other person responsible for the~~
30 ~~potatoes shall properly dispose of potato culls cull potatoes and potato cull piles in order~~
31 ~~to destroy the A2 strain of potato blight and other potato diseases. Proper disposal must~~
32 ~~occur on or before June 10th of each year. Except as provided in subsection 2-A or~~
33 ~~pursuant to emergency rule adopted pursuant to subsection 3, potato cull piles may not be~~
34 ~~maintained between June 10th and October 1st of each year. The commissioner shall~~
35 ~~adopt rules in accordance with subsection 3 to prescribe the proper disposal of potato~~
36 ~~culls cull potatoes and potato cull piles. Rules adopted pursuant to this section are routine~~
37 ~~technical rules as defined in Title 5, chapter 375, subchapter II A. Proper disposal must~~
38 ~~occur on or before June 10th of each year. No cull piles may be maintained between June~~
39 ~~10th and October 1st of each year. By emergency or other rule-making procedures, the~~
40 ~~commissioner may vary these dates when the type of disposal method or other~~

1 ~~circumstances require that cull piles be destroyed in order to prevent the spread of~~
2 ~~significant disease.~~

3 2-A. Management requirements. The commissioner may establish best
4 management practices for managing potato cull piles between October 1st each calendar
5 year and June 10th of the following year. In addition, the commissioner may establish
6 best management practices for managing potato cull piles in the event that having a
7 potato cull pile is unavoidable between June 10th and October 1st. The owner or lessee
8 of the property on which cull potatoes were found or any other person responsible for the
9 potatoes shall properly manage the cull potatoes and potato cull piles according to the
10 prescribed best management practices. The commissioner shall adopt rules in accordance
11 with subsection 3 to prescribe the proper management of cull potatoes and potato cull
12 piles.

13 **3. Rules.** The commissioner ~~may~~ shall adopt any rules necessary to implement this
14 section in accordance with the Maine Administrative Procedure Act, except that the
15 commissioner may shorten or suspend the notice and hearing requirements as necessary
16 to respond to any threat of disease. By emergency or other rule-making procedures, the
17 commissioner may vary the dates set out in subsections 2 and 2-A when the type of
18 disposal method or other circumstances require that potato cull piles be destroyed in order
19 to prevent the spread of significant disease. Prior to adopting any rules under this section,
20 the commissioner shall consult with the Maine Potato Board except in an emergency. ~~In~~
21 ~~addition, the commissioner may determine best management practices for the handling of~~
22 ~~cull potatoes and cull piles in accordance with Title 17, section 2805.~~ Rules adopted
23 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
24 subchapter 2-A.

25 **4. Department action.** The commissioner may take action to properly dispose of
26 ~~potato culls~~ or manage cull potatoes and potato cull piles that violate the requirements of
27 this section or any rules of the commissioner adopted to implement this section. The
28 commissioner or the commissioner's designee is authorized to enter any property to
29 inspect potato cull piles and to take any action required to secure their proper disposal or
30 management. Designated representatives of the commissioner may, without search
31 warrant, enter at reasonable times any real property, other than a building, where potatoes
32 are grown, stored, packed, loaded for shipment or handled, and may enter any building,
33 either with the consent of the owner, lessee, occupant or agent or pursuant to an
34 administrative search warrant. Notwithstanding the Maine Rules of Civil Procedure,
35 Rule 80E, paragraph (b), the commissioner or the commissioner's designee may obtain an
36 administrative search warrant pursuant to this section by describing the premises to be
37 entered and the purpose of the inspection or other authorized action and by demonstrating
38 that the entry is necessary in order to inspect potato cull piles or otherwise carry out the
39 requirements of this section. This demonstration is deemed to be a demonstration of
40 probable cause.

41 The costs incurred by the department in removing and properly disposing of or managing
42 cull potatoes and potato cull piles must be reimbursed by the owner or lessee of the
43 property on which the potatoes were found or any other person responsible for the
44 potatoes, each of whom is jointly and severally liable for those costs to the department.

1 The department, its employees and agents and any person acting on behalf of the
2 department are not liable for any action taken pursuant to this section.

3 **5. Potato Cull Removal Fund.** The Potato Cull Removal Fund is established to be
4 used by the department to administer and enforce the provisions of this section and to pay
5 any expenses of potato cull management, removal ~~and~~ or disposal. The commissioner
6 may receive funds from any source to be deposited into this fund, which does not lapse.
7 If at any time the balance of the fund falls below \$15,000, any penalties collected under
8 this section must be deposited into the fund. Otherwise, penalties collected must be
9 deposited into the General Fund.

10 **6. Civil penalties.** Any person who violates any of the requirements of this section
11 or any rules adopted under this section commits a civil violation for which a fine of not
12 more than \$1,000 for each violation, together with not more than \$1,000 for each
13 succeeding day of a continuing violation, may be adjudged.

14

SUMMARY

15 This bill strengthens the laws pertaining to potato cull piles and establishes
16 requirements for the management of potato cull piles. The bill expands responsibility for
17 disposal and management of cull potatoes and potato cull piles beyond landowners to
18 lessees and other persons responsible for the potatoes. The bill authorizes the
19 Commissioner of Agriculture, Food and Rural Resources to establish best management
20 practices for managing potato culls and potato cull piles.