

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**  
AS PASSED BY THE

**ONE HUNDRED AND TENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
December 3, 1980 to June 19, 1981

**AND AT THE**

**FIRST SPECIAL SESSION**  
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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

1981

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## CHAPTER 430

### H. P. 1527 — L. D. 1640

#### AN ACT to Amend the Hazardous Waste Statute to Meet Certain Requirements for Delegation of the Federal Program and to Provide Internal Consistency.

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

Sec. 1. 38 MRSA § 1303, sub-§ 9-A is enacted to read:

9-A. **Site.** "Site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided that the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered site property.

Sec. 2. 38 MRSA § 1303, sub-§ 12, as amended by PL 1979, c. 699, § 7, is further amended to read:

12. **Transport.** "Transport" means the movement of hazardous or solid waste, sludge or septage from the point of generation to any intermediate points and finally to the point of ultimate ~~storage or disposal~~ disposition. Movement of hazardous waste ~~within a licensed waste facility on the site where it is generated or on the site of a licensed waste facility for hazardous waste~~ is not "transport."

Sec. 3. 38 MRSA § 1303, sub-§ 14, as amended by PL 1979, c. 663, § 235 and as repealed and replaced by PL 1979, c. 699, § 8, is repealed and the following enacted in its place:

14. **Waste facility.** "Waste facility" means any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous or solid waste, sludge or septage. A land area or structure does not become a waste facility solely because:

- A. It is used by its owner for disposing of septage from his residence; or
- B. It is used to store for 90 days or less hazardous wastes generated on the same premises.

Sec. 4. 38 MRSA § 1303, sub-§ 15, as repealed and replaced by PL 1979, c. 699, § 8, is amended to read:

15. **Waste management.** "Waste management" means purposeful, systematic and unified control of the handling and ~~transporting~~ transportation of hazardous or solid waste, sludge or septage.

Sec. 5. 38 MRSA § 1303, sub-§ 16 is enacted to read:

16. Waste resulting from agricultural activities. "Waste resulting from agricultural activities" means wastes which result from agricultural activities defined in section 361-A, subsection 1-B, which are returned to the soils as fertilizers and includes waste pesticides when generated by a farmer in his own use, provided that he triple rinses each emptied pesticide container in accordance with departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label.

Sec. 6. 38 MRSA § 1303-A, as enacted by PL 1979, c. 699, § 9, is repealed and the following enacted in its place:

§ 1303-A. Hazardous waste; additional rule-making authority

1. Hazardous wastes may be identified as follows.

A. The board may adopt rules identifying hazardous wastes. These rules may identify any substance as a hazardous waste if that substance is identified as hazardous by a particular substance, by characteristics, by chemical class or as waste products or specific industrial activities in proposed or final rules of the United States Environmental Protection Agency, unless the United States Environmental Protection Agency, by rule, no longer identifies the substance as hazardous.

B. The board may identify other substances as hazardous wastes under the following conditions:

(1) The substance exhibits hazardous characteristics included in proposed or final United States Environmental Protection Agency rules; and

(2) The substance is identified by a particular substance, by chemical class or as waste products of specific industrial activities.

C. Rules identifying hazardous wastes under paragraph B shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review. These rules shall remain in effect until 90 days after the adjournment of the next regular session of the Legislature, unless these rules are approved by Joint Resolution.

2. Handling of hazardous wastes. The board may adopt rules relating to the handling of hazardous wastes, including, but not limited to:

A. Containerization and labeling of hazardous wastes, consistent with applicable rules of other federal and state agencies;

B. Reporting of handling of hazardous wastes; and

C. Wastes which are not compatible.

**3. Transportation of hazardous wastes.** The board may adopt rules relating to transportation of hazardous wastes, including, but not limited to:

**A. Licensing of transporters of hazardous wastes, conveyances used for the transportation of hazardous wastes and the operators of these conveyances; and**

**B. A manifest system for hazardous wastes which takes into consideration the requirements of the United States Resource Conservation and Recovery Act of 1976, Public Law 94-580, and this subchapter. The manifest system shall provide a means by which hazardous waste is accounted for, from its point of generation through all intermediate points to its point of ultimate disposition, shall allocate responsibilities and liabilities at each point among generators, transporters and handlers of the hazardous waste and shall require record keeping and regular reporting to the department at each point.**

**4. Waste facilities for hazardous wastes.** The board may adopt rules relating to the interim and final licensing and operation of waste facilities for hazardous wastes, including, but not limited to:

**A. Standards for the safe operation and maintenance of the waste facilities, including, but not limited to, record keeping, monitoring before and during operation of the facility and after its termination of use or closure, inspections and contingency plans to minimize potential damage from hazardous waste;**

**B. The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities;**

**C. The termination, closing and potential future uses of the waste facilities; and**

**D. Rules equivalent to rules of the United States Environmental Protection Agency which provide for licensing or permitting by rule.**

**5. Evidence of financial capacity.** The board may adopt rules relating to evidence of financial capacity of hazardous waste facilities' owners or operators, and of those who transport hazardous waste, to protect public health, safety and welfare and the environment, including, but not limited to:

**A. Liability insurance;**

**B. Bonding; and**

**C. Financial ability to comply with statutory and regulatory requirements or conditions.**

**Sec. 7.** 38 MRSA § 1304, sub-§ 4-A, first sentence as enacted by PL 1979, c. 383, § 6, is amended to read:

For the purposes of enforcing any provision of this Act or of developing or

enforcing any rule authorized by this Act, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

**Sec. 8.** 38 MRSA § 1304, sub-§ 4-A, ¶ A, as enacted by PL 1979, c. 383, § 6, is repealed and the following enacted in its place:

**A. Enter any establishment or other place which is not a residence, or any conveyance, where or in which hazardous or solid waste, sludge or septage is generated, handled or transported;**

**Sec. 9.** 38 MRSA § 1304, sub-§ 4-A, ¶ B, as enacted by PL 1979, c. 383, § 6, is amended to read:

**B. Inspect and obtain samples of any hazardous or solid waste, sludge or septage, including samples from any vehicle conveyance in which hazardous or solid waste, sludge or septage are is being or has been transported, as well as samples of any containers or labels; and**

**Sec. 10.** 38 MRSA § 1304, sub-§ 8, ¶ D, as repealed and replaced by PL 1979, c. 699, § 12, is repealed and the following enacted in its place:

**D. Interim licenses shall expire on the earliest of the following dates:**

- (1) The date of the final administrative disposition of the application for a hazardous waste facility license;**
- (2) The date of a finding of the board that the disposition referred to in subsection 1 has not been made because of the applicant's failure to furnish information reasonably required or requested to process the application;**
- (3) The date of expiration of the license issued under section 414 or 591; or**
- (4) The date on which the application for a hazardous waste facility license is due and the person operating under the interim license has failed to apply for the hazardous waste facility license.**

**Sec. 11.** 38 MRSA § 1304, sub-§ 9 is enacted to read:

**9. Legislative review.** Rules adopted by the board under this section and section 1303-A which impose standards or requirements more stringent than final regulations of the United States Environmental Protection Agency shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review.

**Sec. 12.** 38 MRSA § 1306, as amended by PL 1979, c. 663, § 237, and as repealed by PL 1979, c. 699, § 13, is repealed and the following enacted in its place:

**§ 1306. Prohibition**

It shall be unlawful for any person to establish, construct, alter or operate any waste facility without a permit issued by the board.

Sec. 13. 38 MRSA § 1306-A, as enacted by PL 1979, c. 699, § 14, is amended by adding before sub-§ 1 a new paragraph to read:

In addition to being subject to civil penalties as provided by section 349, subsection 2 and to criminal penalties as provided in section 349, subsection 3, conduct described in subsections 1 and 2 shall be subject to criminal penalties as follows:

Sec. 14. 38 MRSA § 1306-A, sub-§ 1, ¶ C, as enacted by PL 1979, c. 699, § 14, is amended to read:

C. ~~Treats, stores or disposes of~~ **Handles** any such substance or material without, in fact, having obtained a proper license or permit to do so as may be required under this subchapter; or

Sec. 15. 38 MRSA § 1306-A, sub-§ 1, ¶ D, as enacted by PL 1979, c. 699, § 14, is amended to read:

D. ~~Treats, stores or disposes of~~ **Handles** any such substance or material at any location knowing or consciously disregarding a risk that such location does not have a proper license or permit as may be required under this subchapter for such treatment, storage or disposal;

Sec. 16. 38 MRSA § 1306-A, sub-§ 2, ¶ C, as enacted by PL 1979, c. 699, § 14, is amended to read:

C. ~~Transfers~~ **Gives custody or possession of** any such substance or material to any other person whom he knows or has reason to believe:

(1) Does not have a license or permit to **transport or** handle such substance or material as may be required under this subchapter; or

(2) Will **transport or** handle such substance or material in violation of this subchapter or rules adopted under it.

Sec. 17. 38 MRSA § 1306-B, as enacted by PL 1979, c. 699, § 15, is repealed.

Sec. 18. 38 MRSA § 1306-C is enacted to read:

#### § 1306-C. Forfeiture; civil liability

1. **Property forfeited.** The following property shall be subject to forfeiture to the State and all property rights therein shall be in the State:

A. All conveyances which are used or intended for use in handling or transporting hazardous waste in violation of this subchapter and all materials,



products and equipment used or intended for use in such handling or transportation or handled or transported shall be subject to forfeiture to the State; and

B. All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in any transaction involving a hazardous waste in violation of this subchapter, all proceeds traceable to such a transaction and all moneys, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of this subchapter.

2. Jurisdiction. Property subject to forfeiture may be declared forfeited by a court having jurisdiction over the property or having final jurisdiction over a related civil or criminal proceeding under this subchapter.

3. Exceptions. The court may order forfeiture of all property subject to forfeiture, except as follows.

A. No conveyance used by a common carrier in the transaction of business as a common carrier may be forfeited, unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of this subchapter.

B. No conveyance may be forfeited by reason of an act or omission established by the owner to have been committed or omitted by another person while the conveyance was unlawfully in the possession of another person in violation of the criminal laws of the United States or of any state.

C. No conveyance may be subject to forfeiture unless the owner knew or should have known that that conveyance was used in and for the handling of hazardous waste in violation of this subchapter. Proof that the conveyance was used on 3 or more occasions for the purpose of handling hazardous waste in violation of this subchapter shall be prima facie evidence that the owner knew thereof or should have known thereof.

D. No property subject to forfeiture under subsection 1, paragraph B may be forfeited, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

4. Procedure. The Attorney General may seek forfeiture of a conveyance according to the procedure set forth in Title 22, section 2387, subsections 4, 5 and 6 with the following exceptions.

A. A final order issued by the court under that procedure shall provide for disposition of the conveyance by the Department of Finance and Administration, including official use by a public agency or sale at public auction or by competitive bidding.

**B.** The proceeds of a sale shall be used to pay the reasonable expenses for the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and to pay any bona fide mortgage thereon, and the balance, if any, shall be deposited in the General Fund.

**C.** Records, required by Title 22, section 2387, subsection 5, shall be open to inspection by all federal and state officers charged with enforcement of federal and state laws relating to the handling of hazardous waste.

**5. Civil liability.** A person who disposes of hazardous waste, when that disposal, in fact, endangers the health, safety or welfare of another, is liable in a civil suit for all resulting damages. It is not necessary to prove negligence.

For the purposes of this action, damages shall be limited to damages to real estate or personal property or loss of income directly or indirectly as a result of a disposal of hazardous wastes. Damages awarded may be mitigated if the disposal is the result of an act of war or an act of God.

Nothing in this section shall preclude any action for damages which may be maintained under the common law or the laws of this State.

**Sec. 19.** 38 MRSA § 1310, first paragraph, as repealed and replaced by PL 1979, c. 699, § 16 is repealed and the following enacted in its place:

If the commissioner finds, after investigation, that any waste, whether or not hazardous waste, is being handled, transported or otherwise dealt with in a manner which may create a danger to public health or safety, he may order any person handling, transporting or otherwise dealing with the waste to immediately cease or prevent that activity and to take such action as may be necessary to terminate or mitigate the danger or likelihood of danger. He may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution.

Effective September 18, 1981

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## CHAPTER 431

H. P. 1530 — L. D. 1642

**AN ACT to Specify the Exemptions which will Apply in Bankruptcy Cases.**

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

**Sec. 1.** 14 MRSA c. 507, sub-c. II, Art. 6, as amended, is repealed.

**Sec. 2.** 14 MRSA c. 507, sub-c. II, Art. 7 is enacted to read: