

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 1-452

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
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J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

to guarantee a steady supply of solid waste to specific waste facilities.

2. Flow control. Municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and effect of such an ordinance is to gain management control over solid waste and enable the reclamation of resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

A. Requiring segregation of wastes; and

B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility.

3. Ordinances. This chapter shall not be construed as limiting the authority of any municipality to enact ordinances for the regulation of solid waste disposal, provided that these ordinances are not less stringent than or inconsistent with this chapter or the regulations adopted under this chapter.

4. Contracts. Municipalities may contract with any person for the collection, transportation, storage, processing, salvaging or disposal of wastes.

Sec. 2. 38 MRSA §1305, sub-§2, as amended by PL 1979, c. 541, Pt. A, §277, is repealed.

Sec. 3. 38 MRSA §1305, sub-§3, as enacted by PL 1973, c. 387, is repealed.

Effective September 23, 1983.

CHAPTER 381

S.P. 564 - L.D. 1631

AN ACT to Create the Nuclear Activity Consent Law.

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

Sec. 1. 1 MRSA §15-A, as enacted by PL 1979, c. 519, §1, is repealed.

Sec. 2. 10 MRSA c. 3, sub-c. III-A, as amended,

is repealed.

Sec. 3. 10 MRSA c. 3, sub-c. III-B, first 2 lines, as enacted by PL 1981, c. 439, §9, are repealed.

Sec. 4. 10 MRSA §§171 to 174, as enacted by PL 1981, c. 439, §9, are repealed.

Sec. 5. 10 MRSA §175, as amended by PL 1983, c. 88, §2, is reallocated to 38 MRSA §1476.

Sec. 6. 10 MRSA §176, as amended by PL 1983, c. 88, §3, is reallocated to 38 MRSA §1477.

Sec. 7. 35 MRSA §3366 is enacted to read:

§3366. On-site storage of spent fuel assemblies; limitations

After July 1, 1992, no nuclear fission thermal power plant licensee may store or maintain in on-site spent fuel element pools or other on-site temporary storage facilities any spent nuclear fuel which was removed from the nuclear reactor core more than 3 years previously.

Sec. 8. 38 MRSA §361-D, as enacted by PL 1979, c. 519, §2, is repealed.

Sec. 9. 38 MRSA c. 14-A is enacted to read:

CHAPTER 14-A

NUCLEAR WASTE ACTIVITY

SUBCHAPTER I

GENERAL PROVISIONS

§1451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Area studies, for high-level radioactive waste. "Area studies," for high-level radioactive waste, means the study of areas with potentially acceptable sites using available geophysical, geologic, geochemical, hydrologic and other information; and additional geological reconnaissance and field work, including geophysical testing, preliminary borings and excavation as necessary to assess whether site characterization should be undertaken for any sites within the area. Area studies also include

socioeconomic and environmental studies and preparation of any environmental assessment relating to the suitability of the site for nomination for site characterization.

2. By-product material. "By-product material" means:

A. Any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing nuclear material; and

B. The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

3. Closure or site closure. "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site, following termination of licensed operation.

4. Decommissioning a nuclear power plant. "Decommissioning a nuclear power plant" means the series of activities undertaken, beginning at the time of closing of a nuclear power plant, to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant.

5. Environmental impact statement. "Environmental impact statement" means any document prepared pursuant to or in compliance with the requirements of the United States National Environmental Policy Act of 1969, Section 102(2)(c), 83 Stat. 852, 1981.

6. High-level radioactive waste. "High-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive

material that the United States Nuclear Regulatory Commission, consistent with existing law, determines by rule to require permanent isolation.

7. High-level radioactive waste disposal. "High-level radioactive waste disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel or other highly radioactive material with no foreseeable intent of recovery, whether or not that emplacement permits the recovery of that waste.

8. High-level radioactive waste repository or repository. "High-level radioactive waste repository" or "repository" means any system licensed by the United States Nuclear Regulatory Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not the system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in the system. This term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

9. High-level radioactive waste storage. "High-level radioactive waste storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover that waste or fuel for subsequent use, processing or disposal.

10. License. "License" means a federal or state license, issued to a named person upon application to use, manufacture, produce, transfer, receive, acquire or possess quantities of, or devices or equipment utilizing, radioactive material.

11. Low-level radioactive waste. "Low-level radioactive waste" means radioactive material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste or by-product material, as defined in the United States Code, Title 42, Section 2014(e)(2), the Atomic Energy Act of 1954, Section 11(e)(2); and that the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste.

12. Low-level radioactive waste disposal facility. "Low-level radioactive waste disposal facility" means a facility for the isolation of low-level radioactive waste from the biosphere inhabited by people and their food chains.

13. Low-level radioactive waste generator. "Low-level radioactive waste generator" means a

person who produces or processes low-level radioactive waste, whether or not that waste is shipped off site.

14. Low-level radioactive waste licensee or low-level waste licensee. "Low-level radioactive waste licensee" or "low-level waste licensee" means any person licensed by the State or Federal Government to generate, treat, store or dispose of low-level radioactive waste.

15. Low-level radioactive waste storage facility. "Low-level radioactive waste storage facility" means any facility for storage of low-level radioactive waste, except for temporary on-site storage prior to disposal.

16. Radioactive material. "Radioactive material" means any material which emits ionizing radiation spontaneously. It includes accelerator-produced, by-product, naturally occurring, source and special nuclear materials.

17. Site characterization, for high-level radioactive waste. "Site characterization," for high-level radioactive waste, means:

A. Siting research facilities with respect to a test and evaluation facility at a candidate site; and

B. Activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in site testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

18. Source material. "Source material" means:

A. Uranium or thorium, or any combination thereof, in any physical or chemical form; or

B. Ores which contain by weight 1/20th of 1%, 0.05% or more of uranium, thorium or any combination thereof. Source material does not include special nuclear material.

19. Source material mill tailings. "Source material mill tailings" means the tailings or waste produced by the extraction or concentration of ura-

nium or thorium from any ore processed primarily for its source material content, including discrete surface waste resulting from underground solution extraction processes, but not including underground ore bodies depleted by those solution extraction processes.

20. Special nuclear material. "Special nuclear material" means:

A. Plutonium, uranium 233 and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material; or

B. Any material artificially enriched by any of the material listed in paragraph A, but does not include source material.

21. Spent nuclear fuel. "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

22. Transuranic waste. "Transuranic waste" means radioactive waste containing alpha-emitting transuranic elements with radioactive half-lives greater than 5 years, in excess of 10 nanocuries per gram.

§1452. Consent of Legislature for federal radioactive waste storage facilities

Notwithstanding any other provision of law, this State does not consent to the acquisition by the Federal Government, by purchase, condemnation, lease, easement or by any other means; of any land, building or other structure, above or below ground, in or under the waters of the State for use in storing, depositing or treating high-level or low-level radioactive waste materials, except by prior affirmative vote of the Legislature.

SUBCHAPTER II

HIGH-LEVEL RADIOACTIVE WASTE

§1461. Intent

It is the intent of the Legislature to cooperate fully with the Federal Government to manage safely and effectively high-level radioactive waste, provided that the Federal Government financially assists the State in this participation. It is further the intent of the Legislature to participate to the maxi-

mum extent in the federal process for siting high-level radioactive waste repositories.

§1462. Limitation

No state department or agency may accept any funds related to siting high-level radioactive waste repositories, nor may any state agency participate in these efforts, unless the applicable requirements of this subchapter have been fulfilled.

§1463. Area studies

1. Plan. Prior to initiation of area studies, the commissioner shall submit a plan for these studies to the Legislature for approval, including, by reference, any federal plan for those studies. This plan shall include procedures for the establishment of a state review group to review the conduct of area studies and report the findings of those studies. This review group shall include representatives of the scientific community, the Legislature and the general public. The review group may be established and may conduct its activities before other elements of the plan are approved.

2. Exploration. No person may explore geological formations within this State for the purpose of siting a high-level radioactive waste repository without a written permit from the State Geologist. The State Geologist shall approve requests for these exploration permits, if the proposed activity is consistent with the plan required by subsection 1 and with the General Guidelines for Recommendation of Sites for Nuclear Waste Repositories promulgated in final form by the United States Department of Energy, in accordance with the United States Nuclear Waste Policy Act of 1982, Public Law 97-425.

3. Public hearings. No plan for area studies may be approved unless it contains provision for public hearings in the State within 12 months after commencement of the studies to receive comments on:

A. The technical feasibility of the proposed waste management technology;

B. The environmental impact of a waste repository in the area of study;

C. The social impact of a waste repository in the area of study;

D. The economic impact of a waste repository in the area of study;

E. Whether the proposed facility will be subject

to section 413, waste discharge licenses; section 483, site location of development; section 590, air emission licensing; section 1304, licenses for waste facilities; and any other laws administered by the department that may be applicable;

F. Conformance of the plan with the federal guidelines cited in subsection 2; and

G. A reasonable comparative evaluation of the suitability of sites in the study area compared with sites in other areas.

4. Approval of plan required. No agent of the State may participate in area studies after the end of the session of the Legislature at which the plan was submitted, until the Legislature has approved a plan for these studies.

No person may conduct borings or excavations relating to area studies, unless the Legislature has approved a plan for the studies, including those borings or excavations.

5. Reports. The commissioner shall keep the Governor and the Legislature fully and currently informed about the conduct of any area studies and, immediately upon completion of those studies, shall review their findings and report them, together with his comments to the Governor and the Legislature.

§1464. Site characterization and selection

1. Limitation. No agent of the State may participate in site characterization or selection efforts, unless the Federal Government agrees that the site characterization or selection process includes:

A. Compliance with the United States National Environmental Policy Act of 1969, Public Law 91-190, including preparation of a specific environmental impact statement; and

B. Compliance with all applicable state and local laws.

2. Legislative findings. No agent of the State may participate in site selection or construction of a high-level radioactive waste repository, unless the Legislature finds that all of the issues in section 1463, subsection 3, have been adequately addressed.

No person may excavate any exploratory shaft for site characterization, selection or construction, unless the Legislature has approved that activity.

3. Reports. The commissioner shall keep the Governor and the Legislature fully and currently informed about the conduct of any site characterization and, immediately upon completion of that effort, shall review the findings and report them, together with his comments to the Governor and the Legislature.

§1465. Notice of disapproval

1. Departmental review and report. In the event the Secretary of the United States Department of Energy notifies the State, in accordance with the United States Nuclear Waste Policy Act of 1982, Public Law 97-425, Section 114(a) or any other provision of law, that the Secretary has decided to recommend to the President of the United States approval of a site within the State for a high-level radioactive waste repository, the Department of Environmental Protection shall review that recommendation with special attention to the issues identified in section 1463, subsection 3. In connection with this review, the department shall hold a public hearing in the vicinity of the proposed site and such other public hearings as may be necessary to obtain adequate public input. Any person who resides within the State shall be entitled to be heard. The department shall report its findings to the Governor and the Legislature within 30 days after the date of the notice from the United States Department of Energy.

2. Resolve of disapproval. In the event the Secretary of the United States Department of Energy submits to the President a recommendation that the President approve a site within the State for application for development of a repository, in accordance with the United States Nuclear Waste Policy Act of 1982, Public Law 97-425, the Governor and the Legislature shall review that recommendation and consider a resolve with text as follows:

"The State of Maine hereby disapproves the site at _____ for a high-level radioactive waste repository."

The blank space shall be filled with the name of the geographic location of the proposed site of the repository.

The resolve shall be referred to the joint standing committee of the Legislature having jurisdiction over natural resources for public hearing and committee action, and the committee shall make its report within 30 days of the Secretary's recommendation. If the Legislature is not in session when the committee report is filed, a special session shall be called in

a timely fashion to consider the resolve. Final action by the Legislature shall be taken within 45 days of the Secretary's recommendation.

3. Notification. If a resolve of disapproval is enacted by the Legislature and approved by the Governor, then the Governor shall immediately transmit notification of that disapproval to the President and the Congress.

§1466. Other facilities

Except for on-site storage of spent fuel from a nuclear power plant, any facility for storage or processing of high-level radioactive waste which is not a repository is subject to the requirements in this section. Except for storage in existing licensed capacity, on-site storage of spent fuel from a nuclear power plant shall be subject to subsections 1 and 2.

1. Notification. Any person planning to construct a facility covered by this section shall notify the Department of Environmental Protection. The department shall, by rule, specify the form, content and timing of that notice.

2. Departmental review. Upon receipt of notice under subsection 1, the department shall review the proposed facility, as closely as possible in accordance with section 1463 and report its findings and recommendations within 90 days to the Governor and the Legislature.

3. Legislative approval of facilities required. No high-level radioactive waste disposal or storage facility covered by this section may be constructed or operated in the State, unless the Legislature has expressly approved the construction or operation of that facility. This approval does not replace any other license or permit that may be required by law or rule.

SUBCHAPTER III

LOW-LEVEL RADIOACTIVE WASTE

§1471. Purpose

In accordance with the United States Low-level Radioactive Waste Policy Act of 1980, Public Law 96-573, the Legislature accepts its responsibility for providing for the capacity for the disposal of low-level radioactive waste generated within this State. It is the purpose of this subchapter to establish a program for the safe management of

low-level radioactive waste, and to provide capacity for its disposal either within this State or in regional facilities.

§1472. Reporting

Each low-level radioactive waste generator shall annually report, by March 31st, the volume and radioactivity of low-level waste generated and the volume and radioactivity of low-level waste shipped to commercial disposal facilities. This report shall be submitted to the commissioner, and shall include information on the specific radioactive materials handled.

§1473. Geological characterization

The State Geologist shall advise the Governor and the Legislature on the suitability of areas of the State for low-level waste disposal. In determining suitability, the State Geologist shall consider final rules for facility siting under 10 Code of Federal Regulations, Part 61, and other rules, as appropriate.

§1474. Regional compacts

The Governor may negotiate on behalf of the State, with other states and the Federal Government with respect to the siting, licensing, operation and use of low-level waste disposal facilities within and outside this State. The Governor may recommend regional compacts with states that have identified their annual low-level radioactive waste generation, and identified areas within their state that meet preliminary site criteria.

Effective September 23, 1983.

CHAPTER 382

H.P. 699 - L.D. 888

AN ACT Relating to Prison Visits.

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

34 MRSA §34 is enacted to read: