

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
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1987

PUBLIC LAWS

OF THE

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1987

be similarly recovered by assessment, and the assessment shall bear interest at 1% per month from the date of payment until refunded.

1987-88 1988-89

§6213. Appeal

A denial in whole or in part of relief claimed under this chapter may be appealed in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

§6214. Disallowance of certain claims

A claim shall be disallowed, if the State Tax Assessor finds that the claimant received title to his homestead primarily for the purpose of receiving benefits under this chapter.

§6215. Extension of time for filing claims

In case of sickness, absence or other disability, or if, in his judgment, good cause exists, the State Tax Assessor may extend, for a period not to exceed 6 months, the time for filing a claim.

§6216. Protection from loss of benefits

It is the intent of the Legislature that any claim paid under this chapter shall supplement any benefits paid under aid to the aged, blind and disabled or any program which succeeds or supplants it. The Department of Human Services shall take any such action as may be necessary to assure that recipients of aid to the aged, blind and disabled shall continue to receive as high a percentage of their current assistance as may be possible. To carry out this legislative directive, the department shall utilize all the state funds expected to be saved by a reduction in benefits of recipients of aid to the aged, blind and disabled resulting from this chapter to raise the standards of aid to the aged, blind and disabled at a total cost in state funds equivalent to the savings in state funds which would be expected as a result of this chapter.

Benefits received under this chapter may not be included as income for purposes of any state or municipally administered public benefit program.

These benefits do not duplicate and shall not reduce the amount of any individual's payment under the Aid to Families with Dependent Children program because those payments are insufficient to meet the total amount of money determined to be needed for housing in accordance with the state standard of need under that program.

§6217. Sunset

Section 6207, subsection 1, paragraphs A and subsection 2, paragraphs A are repealed July 1, 1989.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

FINANCE, DEPARTMENT OF

Bureau of Taxation

Positions		(2.0)
Personal Services		\$49,000
All Other		86,600
Capital Expenditures	\$3,400	

Total ----- \$3,400 \$ 135,600

Elderly Householders' Tax Refund

All Other \$1,307,000

Low-income Tax Relief

All Other \$2,554,000

DEPARTMENT OF FINANCE

TOTAL ----- \$3,400 \$3,996,600

Sec. 5. Study sunset. The Joint Standing Committee on Taxation shall study the Household Tax and Rent Refund Program and report its findings to the Second Regular Session of the 113th Legislature. The committee shall recommend retention, repeal or revision of the program.

Sec. 6. Effective date. Sections 1 to 3 of this Act shall take effect July 1, 1988.

Effective September 29, 1987, unless otherwise indicated.

CHAPTER 517

H.P. 1360 — L.D. 1862

AN ACT to Ensure Safe Management, Recycling and Disposal of Solid Waste and to Reorganize the Solid Waste Law.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the proper management and disposal of solid waste is imperative to safeguard the public health and welfare and the environment; and

Whereas, large numbers of municipal landfills must be properly cleaned up and closed in a timely and effective manner to protect ground water quality; and

Whereas, local financial and technical resources necessary to accomplish this objective are not available and state assistance is required; and

Whereas, adequate waste disposal capacity is essential to the economic well-being of the citizens of the State; and

Whereas, sites suitable for environmentally sound waste disposal are in limited supply and must be conserved for maximum public benefit; and

Whereas, recycling and source reduction are effective means of reducing the solid waste stream and thus conserving limited waste disposal capacity; and

Whereas, a comprehensive and coordinated, statewide recycling and source reduction strategy is urgently needed to achieve the maximum benefit of these techniques; and

Whereas, a comprehensive waste management and disposal facility siting procedure is also necessary to conserve limited waste disposal capacity, to ensure the availability of adequate disposal capacity and the protection of the State's natural resources; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 5 MRSA §1812-A is enacted to read:

§1812-A. Report on purchase of recycled products

The State Purchasing Agent shall report on or before January 1, 1988, to the joint standing committee of the Legislature having jurisdiction over natural resources and to the same committee of the First Regular Session of each subsequent Legislature on or before January 1st on the State's efforts to purchase supplies and materials composed in whole or in part of recycled materials pursuant to section 1812. The State Purchasing Agent shall also report on any procurement policies, incentives, educational programs, promotional efforts or other activities undertaken by the Bureau of Purchases to encourage the purchase of those supplies and materials. The State Purchasing Agent shall include in the report any recommendations to increase or facilitate the purchase of those supplies and materials.

Sec. 2. 5 MRSA §12004, sub-§8, ¶A, sub-¶(8-A) is enacted to read:

(8-A)	<u>Environment /Natural Resources</u>	<u>Recycling Advisory Council</u>	<u>Legislative Per Diem</u>	<u>38 MRSA §1310-L</u>
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Sec. 3. 38 MRSA §349, sub-§1, as amended by PL 1985, c. 162, §2, is further amended to read:

1. Criminal penalties. Any person who violates any provisions of the laws administered by the department or the terms or conditions of any order, rule, license, permit, approval or decision of the board is guilty of a Class E crime and may be punished accordingly, except not-

withstanding Title 17-A, section 1301, subsection 1, paragraph C, or subsection 3, paragraph E, the fine for such a violation shall not exceed \$25,000 for each day of the violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section ~~1306-A~~ 1319-T.

Sec. 4. 38 MRSA c. 13, first 4 lines, as amended, are repealed and the following enacted in its place:

CHAPTER 13

WASTE MANAGEMENT

SUBCHAPTER I

GENERAL PROVISIONS

Sec. 5. 38 MRSA §1302, as amended by PL 1983, c. 342, §1, is repealed and the following enacted in its place:

§1302. Declaration of policy

The Legislature declares it to be the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent water, air and land pollution, that it shall encourage hazardous waste, septage and solid waste programs, public and private, which will reduce the volume of hazardous waste, septage and solid waste generation, increase the level of recycling of all waste, improve efforts to reuse and recover valuable resources currently being wasted and which will not adversely affect the public health, safety and welfare nor degrade the environment.

The Legislature also finds and declares that economic, efficient and environmentally sound methods of waste recycling and disposal are of the highest priority. Municipalities and other persons are generating increasing amounts of hazardous waste, septage and solid waste with no systematic or consistent methods being used to reduce the volume, recycle or soundly dispose of waste.

The Legislature finds that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource. At the same time, new technologies and industrial developments are making the recycling and reuse of waste an increasingly viable and economically attractive option, which carries minimal risk to the State and the environment and an option which allows the conservation of the State's limited safe disposal capacity. In addition, the Legislature finds that it is in the best interests of the State to maintain a broad diversity of waste reduction, waste recycling, reuse and disposal methods and that options with lower health and environmental risk should not be foreclosed by the State's commitment to any single option.

The Legislature further finds that failure to analyze

and plan properly for future hazardous waste, septage and solid waste disposal and recycling needs may reduce the options open to the State and may further deplete already taxed natural resources and aggravate environmental and public health problems resulting from current inadequate practices of resource recovery and conservation, recycling, waste storage and management, transportation, treatment and disposal.

The Legislature declares that a program to rigorously analyze and plan for the hazardous waste, septage and solid waste disposal requirements of the State is necessary to protect the public health, safety and welfare of the State.

The Legislature further finds that substantial quantities of waste oil are contaminated by hazardous waste and that waste oil, if not properly handled, is a threat to the public health, safety and welfare and to the environment and, therefore, must be controlled.

The Legislature finally declares that the provisions of this chapter shall be construed liberally to address the findings and to accomplish the policies established in this section.

Sec. 6. 38 MRSA §1303, sub-§10-B is enacted to read:

10-B. Special waste. "Special waste" means any non-hazardous waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, which may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

A. Oil, coal, wood and multifuel boiler and incinerator ash;

B. Industrial and industrial process waste;

C. Waste water treatment plant sludge, paper mill sludge and other sludge waste;

D. Debris and residuals from nonhazardous chemical spills and cleanup of those spills;

E. Contaminated soils and dredge spoils;

F. Asbestos and asbestos-containing waste;

G. Sand blast grit and nonliquid paint waste;

H. Medical and other potentially infectious or pathogenic waste;

I. High and low pH waste;

J. Spent filter media and residue; and

K. Other waste designated by the board, by rule.

Sec. 7. 38 MRSA §1303-A, as amended by PL 1985, c. 506, Pt. A, §81, is repealed.

Sec. 8. 38 MRSA §1303-B, as enacted by PL 1983, c. 342, §4, is repealed.

Sec. 9. 38 MRSA §1304, sub-§§1-A and 1-B are enacted to read:

1-A. Rules; transportation. The board shall adopt rules relating to the transportation of solid waste, including, without limitation:

A. Licensing categories of transporters of solid waste, conveyances used for the transportation of solid waste and the operators of these conveyances as the board finds necessary to effect sound waste management;

B. Establishment of transporter licensing and conveyance registration fees which, considering the criteria of subsection 14, paragraphs A to C, are sufficient to recover all costs of administering, monitoring compliance with and enforcing the provisions of this subsection and which fees shall be paid to the Maine Environmental Protection Fund;

C. A manifest system for categories of solid waste which shall provide a means to account for solid waste handled, transported and disposed of in the State; and

D. Evidence of financial capacity of transporters to protect public health, safety and welfare and the environment, including, without limitation:

(1) Liability insurance;

(2) Performance bonding; and

(3) Financial ability to comply with statutory and regulatory requirements or conditions.

1-B. Handling of special waste. The board may adopt rules relating to the handling of special waste, including, without limitation:

A. Containerization and labeling of special waste;

B. Reporting on handling of special waste;

C. Waste which is not compatible; and

D. A marking system, by categories of waste, to clearly identify vehicles transporting solid waste.

Sec. 10. 38 MRSA §1304, sub-§8, as amended by PL 1985, c. 822, §4, is repealed.

Sec. 11. 38 MRSA §1304, sub-§10, as reallocated by PL 1981, c. 698, §191, is amended to read:

10. Legislative review. Rules adopted by the board under this section and section 1303-A 1319-O, subsection 1 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. Any rules adopted by the board under this section shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review pursuant to Title 5, section 8053-A.

Sec. 12. 38 MRSA §1304, sub-§§13, 14 and 15 are enacted to read:

13. Innovative disposal and utilization. Recognizing that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource, the commissioner may investigate and implement with the approval of the board innovative programs for managing, utilizing and disposing of solid waste. Innovative programs may include agricultural and forest land spreading of wood-derived ash, paper mill sludges and municipal waste water treatment plant sludges. The board shall review proposed innovative programs for each waste category and shall apply all controls necessary to ensure the protection of the environment and public health consistent with this chapter. The board may adopt application review procedures designed to review individual applications and their individual waste sources with prior approval of classes of disposal or utilization sites. The board shall adopt provisions for municipal notification prior to use of individual utilization sites.

14. Disposal fees. To support the licensing, monitoring and enforcement activities of the department under this chapter, the board shall establish by rule a schedule of reasonable disposal fees on the disposal of solid waste. Fees received under this subsection shall be deposited in the Maine Environmental Protection Fund. The board may establish solid waste categories with different disposal fees. In adopting the fee schedule, the board shall consider the following criteria:

A. The level of environmental hazard posed by the waste;

B. The costs of administering, monitoring and enforcing compliance with the provisions of this chapter; and

C. The degree to which the general or other special revenues of the State or the State's municipalities are currently employed to manage and dispose of the waste or administer, monitor compliance with and enforce the provisions of this chapter with regard to a particular solid waste category.

15. Special services program. The department shall formulate a program to assist municipalities in the management and disposal of municipal solid waste for which environmentally sound and economically accept-

able disposal options do not currently exist, including, without limitation, discarded tires, white goods and demolition debris.

The plan shall be completed and submitted to the joint standing committee of the Legislature having jurisdiction over natural resources by January 1, 1989, and shall include:

A. A survey and assessment of current management and disposal practices for discarded tires, white goods, demolition and woody debris and any other portions of the municipal solid waste stream the department deems relevant; and

B. A proposal for a financial and technical assistance program directed to municipalities with a preference for the development of regional disposal solutions for the waste investigated pursuant to paragraph A.

Sec. 13. 38 MRSA §1304-A, as amended by PL 1985, c. 481, Pt. A, §97, is reallocated to 38 MRSA §1319-Q.

Sec. 14. 38 MRSA §1304-B, sub-§2, ¶¶A and B, as enacted by PL 1983, c. 380, §1, are amended to read:

A. Requiring segregation of waste; and

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

Sec. 15. 38 MRSA §1304-B, sub-§2, ¶C is enacted to read:

C. Designating certain materials as recyclable and exempt from the provisions of paragraph B.

Sec. 16. 38 MRSA §1304-B, sub-§3, as amended by PL 1983, c. 743, §16, is further amended to read:

3. Ordinances. This chapter shall not be construed as limiting the authority of any municipality to enact ordinances for the regulation of solid waste or septage disposal, provided that these ordinances are not less stringent than or inconsistent with section 1310-U or other provisions of this chapter or the regulations rules adopted under this chapter.

Sec. 17. 38 MRSA §1304-B, sub-§4-A is enacted to read:

4-A. Contract limitations. Any contract, including any contract in existence on the effective date of this subsection, for the provision of waste disposal, transportation or handling services to municipalities is subject to the following limitations.

A. No contract for waste disposal, transportation or handling services may prevent a municipality from recycling any portion of its solid waste, provided that any minimum BTU content level and minimum tonnage

level required by that contract is maintained by the municipality.

B. No contract for waste disposal, transportation or handling services may prevent a municipality from meeting its obligations to supply a minimum BTU content level and minimum tonnage level required by that contract using solid waste generated outside its borders, provided that:

(1) The municipality is or will be unable, as the direct result of recycling or source reduction efforts, to meet the obligations using solid waste generated within its jurisdiction; and

(2) The municipality is liable for any damages caused by any solid waste it relies upon to satisfy the provisions of its contract.

C. For those waste disposal, transportation or handling services contracts which do not principally rely upon requiring minimum BTU content level or minimum tonnage level to secure solid waste for the waste disposal facility, but which instead rely upon a requirement that the municipality provide all or most of its solid waste to the waste disposal facility, no such contract may prohibit a municipality during the term of the contract from recycling those materials which the municipality determines to be recyclable.

Sec. 18. 38 MRSA §1305-A, as amended by PL 1985, c. 737, Pt. A, §113, is repealed.

Sec. 19. 38 MRSA §1306-A, as amended by PL 1981, c. 430, §§13 to 16, is repealed.

Sec. 20. 38 MRSA §1306-C, as amended by PL 1985, c. 785, Pt. A, §113, is reallocated to 38 MRSA §1319-U.

Sec. 21. 38 MRSA §1308-A, as amended by PL 1983, c. 432, §8, is reallocated to 38 MRSA §1319-S.

Sec. 22. 38 MRSA §1309, as enacted by PL 1979, c. 383, §11, is amended to read:

§1309. Interstate cooperation

The Legislature encourages cooperative activities by the department with other states for the improved management of hazardous and solid waste; for improved, and so far as is practicable, uniform state laws relating to the management of hazardous and solid waste; and compacts between this and other states for the improved management of hazardous and solid waste.

Sec. 23. 38 MRSA §1310-A, as reallocated by PL 1979, c. 663, §238, is reallocated to 38 MRSA §1319-P.

Sec. 24. 38 MRSA §1310-B, sub-§1, as amended by PL 1981, c. 470, Pt. A, §172, is further amended to read:

1. Public records. Except as provided in subsections

2 and 3, information obtained by the department under this ~~subchapter~~ chapter shall be a public record as provided by Title 1, chapter 13, subchapter I.

Sec. 25. 38 MRSA c. 13, sub-c. I-A is enacted to read:

SUBCHAPTER I-A

SOLID WASTE

ARTICLE I

REMEDIATION AND CLOSURE

§1310-C. Program established

There is established within the Department of Environmental Protection a remediation and closure program for solid waste landfills.

1. Objectives. The program shall have the following objectives:

A. To accomplish the prompt closure of solid waste landfills which, through inappropriate siting, inadequate design and construction or improper operation, pose an actual or potential hazard to the environment and public health; and

B. To accomplish remedial activities to eliminate the existing hazards posed by those landfills.

2. Open and closed or abandoned landfills. The department shall organize the program into 2 components to address the problems created by:

A. Open-municipal solid waste landfills; and

B. Abandoned or improperly or inadequately closed, municipal or privately-owned solid waste landfills.

3. New facilities. The department shall ensure that the siting, design, operating and closure requirements imposed on new solid waste disposal facilities pursuant to this chapter and chapter 3, article 6, site location of development, are consistent with the provisions of this article.

4. Definitions. As used in this article, unless the context indicates otherwise, the following terms have the following meanings.

A. "Abandoned" means not handling solid waste on or after the effective date of this article when the cessation of handling operations has not been approved by the department.

B. "Closed" means not handling solid waste on or after the effective date of this article when the cessation of handling operations has occurred in accordance with the provisions of a permanent closure plan approved by the department.

C. "Municipal solid waste landfill" means a solid waste landfill owned by a municipality or group of municipalities.

D. "Open" means handling solid waste on or after the effective date of this article.

E. "Solid waste landfill" means a waste facility for the permanent disposal of solid waste on or in land. This term does not include land spreading sites used in programs approved by the department.

5. Coordination with uncontrolled sites program. Nothing in this article shall be construed to limit the authority of the department under any other provisions of law administered by the department. At any time prior to or following the evaluations conducted pursuant to section 1310-D, subsection 2, the department may proceed under chapter 13-B to properly close any landfill or mitigate any threats posed by the landfill to public health, safety or the environment.

§1310-D. Closure and remediation of open-municipal landfills

To accomplish the objectives of this article with regard to open-municipal solid waste landfills, the department shall undertake the following activities.

1. Initial ranking. On or before January 1, 1988, the board shall adopt by rule an initial ranking of all open-municipal solid waste landfills on the basis of the hazard each poses to the environment and public health. The ranking process shall be subject to the following provisions.

A. In assessing the hazard to public health, the department shall consult with the Bureau of Health and may consider epidemiological data and risk assessment information the bureau has developed.

B. In assessing the hazard to the environment, the department shall employ all existing hydrogeological and other scientific information, including, without limitation, geological information developed by the Maine Geological Survey and studies previously conducted by municipalities.

C. The department shall revise the ranking as necessary to reflect new information developed during the course of the program.

D. The ranking shall be adopted by rule, according to the provisions of Title 5, chapter 375, subchapter II.

2. Evaluation. In the order of the priorities established in the initial ranking and the objectives of paragraphs A to D, the department shall conduct and complete by January 1, 1993, environmental evaluations of each open-municipal solid waste landfill. The department may employ private consultants to avoid additions to departmental staff and to accomplish the evaluations

in a timely manner. The department may utilize existing analyses of facilities, subject to the provisions of this subsection. When the department has sufficient knowledge of existing hazards to the environment and public health posed by a specific site, it may take measures necessary to effect proper remediation and closure of the landfill, notwithstanding the site's listed priority. In those cases, the department shall ensure that the requirements of this subsection are substantially met. The department shall design each evaluation to achieve the following objectives:

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

B. To establish a ground water monitoring system, including monitoring wells and test borings sufficient to assure identification and monitoring of potential hazards;

C. When hazards are identified, to provide:

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

(2) An identification of pollutants in those waters;

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

(4) Any other information that the department deems necessary to prepare the closure or remediation recommendations pursuant to this subchapter;

D. To provide a recommended closure plan for the landfill and, when necessary, a recommended plan for the remediation of any hazards identified by the evaluation. Closure and remediation recommendations shall 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 shall also seek to achieve a level or standard of control of pollutants in ground water at least as stringent as the water quality criteria established under sections 465-C and 470, unless the board finds that meeting those standards is technically and economically infeasible and that other measures can be implemented to ensure protection of public health and safety; and

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

3. Plan adoption. The board may adopt the recommendations of the landfill evaluations subject to the following provisions.

A. Within 90 days of the receipt of a landfill evaluation, together with the recommendations for closure

and, if any, remediation actions, the commissioner shall issue a proposed plan for closure and remediation. Subject to the provisions of sections 1310-F and 1310-G, a timetable for implementation and all pertinent cost-sharing shall be included as part of the proposed plan. The board shall subsequently adopt the plan subject to the provisions of Title 5, chapter 375, subchapter IV.

B. Any person who is aggrieved by the board's action may appeal the adoption of the formal plan as provided in Title 5, chapter 375, subchapter IV.

4. Implementation. The municipality owning the landfill is the party responsible for the implementation of the plan adopted by the board.

§1310-E. Closure and remediation of closed or abandoned solid waste landfills

To accomplish the objectives of this article with regard to closed or abandoned solid waste landfills in both public and private ownership, the department shall undertake the following activities.

1. Initial ranking. On or before January 1, 1989, the board shall adopt, by rule, an initial ranking of closed or abandoned solid waste landfills on the basis of the hazard each poses to the environment and public health. The ranking process shall be subject to the following provisions.

A. In assessing the hazard to public health, the department shall consult with the Bureau of Health and may consider epidemiological data and risk assessment information the bureau has developed.

B. In assessing the hazard to the environment, the department shall employ all existing scientific information, including, without limitation, geological information developed by the Maine Geological Survey and studies previously conducted by municipalities.

C. The department shall revise the ranking as necessary to reflect new information developed during the course of the program.

D. Any person may request the department to include a closed or abandoned solid waste landfill site in its subsequent evaluations.

E. The department shall report on the ranking developed pursuant to this section, together with the department's recommendations for remediation and closure efforts and related costs necessary to protect the public health and the environment, to the joint standing committee of the Legislature having jurisdiction over natural resources. The department shall submit the report on or before January 1, 1989.

§1310-F. Cost sharing.

The department shall administer a closure and remediation grants program to assist municipalities in the implementation of the closure and remediation plans. The program is subject to the following provisions.

1. Cost-share fraction. Subject to the availability of funds, the department shall issue grants to eligible municipalities for 75% of the costs of closure and for 90% of the costs of remediation.

2. Eligibility. Any municipality owning a solid waste landfill for which a remediation or closure plan has been adopted is eligible for grants. A municipality, which has acted to close its solid waste landfill or to remedy environmental and public health hazards posed by the landfill prior to the award of a grant under this section, but after January 1, 1983, is also eligible for reimbursement of past and future costs consistent with the plan adopted under this subchapter. The board may apportion available funds in an equitable manner between municipalities eligible for grants under this subsection and those eligible for reimbursement of closure and remediation costs under this subsection.

§1310-G. Time schedules for closure of existing facilities

The board shall establish, as part of the proposed closure and remediation plan, reasonable time schedules for the implementation of the plan.

1. Criteria. In establishing the time schedule, the board shall consider the following criteria:

A. The level of environmental and public health hazard posed by the landfill in its current state;

B. The availability of reasonable, alternative disposal options available to the municipality following closure of the existing landfill; and

C. The period reasonably needed by the municipality to raise its share of plan costs.

2. Violation of schedule. A party responsible for closure or remediation under this article is not in violation of a time schedule, established under this section, if the party is eligible for a cost-sharing grant under section 1310-F and that grant is not currently available from the department, unless the board finds that the level of environmental hazard poses an immediate hazard to public health. When making a grant subsequent to such a delay, the department shall revise the time schedule to reflect the delay as long as there is no immediate hazard to public health and the environment.

§1310-H. Supervision and enforcement of schedules

The department shall monitor implementation of closure and remediation plans. In addition to any other remedy available to it by law, if the board determines, after opportunity for public hearing, that any party responsible for the implementation of a plan has failed

substantially to meet the established time schedule or has failed to execute the provisions of the plan, the board may:

1. Departmental implementation. Authorize the department or its agents to enter onto the site and complete the remaining provisions of the plan; and

2. Cost recovery. Initiate proceedings to recover any costs incurred by the department in implementing a plan from the party or parties responsible for implementation of the plan and, in the case of a municipal landfill, to recover from the municipality the full amount of any grants and loans made to it under this article in connection with closure and remediation of the landfill.

§1310-I. Report to the Legislature

The department shall report annually to the joint standing committee of the Legislature having jurisdiction over natural resources on the progress of the closure and remediation program. The department shall report on:

1. Environmental risks. The specific environmental and public health hazards, by landfill;

2. Priority ranking. The ranking of open, abandoned and closed landfills;

3. Costs. The estimated costs of implementation, together with any anticipated shortfalls in the cost-sharing portion of the program; and

4. Progress. Overall progress toward the objectives of the program, including, when appropriate, the status of the initial ranking efforts, completion of landfill evaluations, closure and remediation of landfills, any enforcement actions taken in connection with this program and any legislative recommendations the department deems necessary.

ARTICLE 2

RECYCLING AND SOURCE REDUCTION

§1310-J. Program established; goals

The Office of Waste Recycling and Reduction, referred to as "the office," is established in the State Development Office to develop a plan to encourage recycling of waste materials and the reduction of waste volumes generated within the State to the maximum extent possible in order to conserve the natural resources of the State, reduce the detrimental environmental effects of waste disposal, to safeguard the public health and welfare, reduce the disposal costs incurred by municipalities and waste generators and to reduce the amount of waste requiring incineration and landfilling.

§1310-K. State recycling plan

The office shall complete, on or before January 1, 1989, a plan, in consultation with the Recycling Advisory Council, municipalities, regional councils and the private sector, to identify and encourage recycling opportunities throughout the State. The office shall revise the plan or components of the plan as necessary, but in no case less than once every 5 years.

1. Assessment elements. The plan shall include investigation and assessment of the following elements:

A. The current level of public recycling efforts, including the quantities and categories of waste currently recycled;

B. The current market structure of the recycling industry in the State and in those areas receiving recycled materials from the State. This element shall include identification of the existing private and public recycling operations, recycling capacity and the quantities and categories of materials currently recycled;

C. The potential for recycling in various regions of the State, including estimates of the types and quantities of waste available for recycling and an analysis of the economic and institutional obstacles to increased recycling;

D. The categories of industrial waste which present opportunities for reuse; and

E. Opportunities to reduce waste quantities by reducing generation at the source.

2. Program elements. The plan shall also include the development of the following program elements which shall be in the form of specific recommendations, including, when necessary, additional legislative authority for implementation and estimated staff, operating and capital costs of the State's implementation of the plan.

A. The office shall design a program of public education in support of the state recycling plan to promote waste reduction, source separation and feasible recycling efforts at the individual, local, regional and state level.

B. The office shall design a market development strategy, consistent with the state recycling plan, which shall include, without limitation, the following elements:

(1) Methods of collecting and marketing of recyclable materials, including those with a direct state role, in order to achieve necessary economies of scale and product quality specifications. The strategy shall include a plan for source separation of recyclable materials at the household, municipal, regional or state level, as appropriate;

(2) An incentive program to encourage end-users of recyclable materials to locate or expand their operations within the State. The office shall consult with the Finance Authority of Maine in developing this element;

(3) A program for facilitating the marketing of recyclable materials consistent with this paragraph. The program may include a clearinghouse of information for municipalities and recycling businesses to improve the flow of recyclable materials in the market, as well as direct state involvement in marketing recyclable materials where private sector capacity is inadequate; and

(4) The establishment of an industrial materials exchange to promote the reuse of industrial waste which may be suitable raw materials for other processes. The office shall coordinate those efforts with other waste exchanges in the northeastern United States.

C. The office shall develop in coordination with the department a program of assistance for municipalities, groups of municipalities and regional councils. The office shall establish a preference for proposals which involve groups of municipalities or which are coordinated by regional councils. This program shall include without limitation:

(1) Technical assistance and grants to study the feasibility of local or regional recycling programs consistent with the state recycling plan; and

(2) Technical assistance and grants to implement the feasibility studies developed under this section when the proposed activities are consistent with the state recycling plan.

D. The office, after consulting with the Commissioner of Administration, shall assess the status of recycling efforts undertaken directly by the State for its own solid waste and shall develop a proposal for a program of recycling to reduce the generation of solid waste by the State. The program shall include, without limitation, recycling of office papers, cardboard, used motor oil, yard waste and other materials used by the State for which recycling markets exist or may be developed.

E. The office shall develop, after reviewing waste and source reduction programs in other countries and states, a recommended waste reduction strategy for this State.

3. Plan development. The office may contract with regional councils and municipalities to develop the initial assessment of recycling options and waste disposal problems in the various regions of the State. The office shall coordinate its efforts with the Department of Environmental Protection to ensure consistency with the disposal capacity needs analysis developed pursuant to

section 1310-O and to ensure compatibility with state and local environmental requirements. The Department of Environmental Protection shall provide the office with any information it possesses on the quantities of waste materials recycled and any other relevant information developed pursuant to section 1310-O. The office shall develop the recycling plan, including the interim progress report and any revisions to the plan with the advice of the Recycling Advisory Council. The final plan shall include regional components and shall seek to maximize reliance on private sector recycling capacity. In preparing the plan, the office shall examine the recycling plans and programs of other states to determine their efficacy and applicability to this State.

4. Research. The office shall conduct a program of research in support of the state recycling plan which may include, without limitation, the areas of innovative recycling technologies and markets, industrial waste exchanges and waste reduction strategies.

§1310-L. Recycling Advisory Council

There is established a Recycling Advisory Council to provide the office with information and advice concerning the recycling needs and opportunities of the State.

1. Membership; terms. The Governor shall appoint 13 members, with 2 members each representing municipal governments, statewide and local environmental organizations, the recycling industry and the waste disposal industry, one member representing industrial waste generators and 3 members from the general public. The Commissioner of Environmental Protection shall serve as an ex officio member. All members, except the commissioner, shall be appointed for a term of 3 years. For the initial appointments, 4 members shall be appointed for a term of one year; 4 members shall be appointed for a term of 2 years; and 4 members shall be appointed for a term of 3 years. A vacancy shall be filled for the unexpired portion of the term.

2. Compensation. Members shall be compensated according to Title 5, section 12004, subsection 8.

3. Quorum; actions. A quorum shall be a majority of the members of the council. An affirmative vote of the majority of the members present at a meeting shall be required for any action. No action may be considered unless a quorum is present.

4. Meetings. The council shall meet at least 4 times per year.

5. Annual report. The council shall report annually to the Governor and to the Legislature on the status of the State's recycling planning effort.

6. Staff support. The office shall provide the council with all necessary staff support.

§1310-M. Report to the Legislature

1. Progress report. The office shall submit an interim progress report to the joint standing committee of the Legislature having jurisdiction over natural resources on or before February 15, 1988. The report shall include any recommendations requiring legislative action to allow implementation of selected pilot-scale and regional program elements and to enable the office to complete its initial planning effort and to fulfill the objectives of this article.

2. Submission of plan; recommendations. The office shall report on its plan and proposed programs in market development, municipal assistance, state waste recycling, waste reduction and public education to the joint standing committee of the Legislature having jurisdiction over natural resources on or before January 1, 1989. In addition to the plan and programs proposed under section 1310-K, the report shall include recommendations for:

A. A proposed goal for the State's recycling program. The goal shall be expressed in terms of the proportion of specific waste streams that could be recycled based upon an assessment of current and reasonably attainable market conditions and the net economic benefits to the State;

B. Specific market development strategies for recycling of the following materials:

(1) Waste paper, including newsprint, corrugated cardboard, office papers and mixed papers;

(2) Glass, including deposit beverage containers and other glass containers; and

(3) Metal, including deposit beverage containers, white goods, automobile frames and motors and other scrap metals;

C. Model municipal ordinances to accomplish recycling objectives; and

D. All legislation necessary to implement the objectives of the proposed plan and related programs.

3. Legislative review. The joint standing committee of the Legislature having jurisdiction over natural resources may recommend to the Legislature approval of the plan by resolve or may introduce legislation as it deems necessary to clarify legislative intent regarding this article.

ARTICLE 3

SOLID WASTE FACILITY SITING

§1310-N. Site location license

No person may locate, establish, construct, expand disposal capacity or operate any solid waste facility unless approved by the board under the site location of develop-

ment laws, chapter 3, subchapter 1, article 6 and the provisions of this chapter.

1. Licenses. The board shall issue a license for a waste facility whenever it finds that:

A. The facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance;

B. In the case of a disposal facility, the facility provides a substantial public benefit; and

C. In the case of a disposal facility, the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal.

2. Finding of environmental suitability. The board shall issue a finding of environmental suitability when it determines that the applicant has satisfied the requirements of subsection 1, paragraph A, and the site location of development laws, chapter 3, subchapter 1, article 6. The board shall make this determination prior to making its determinations, pursuant to subsection 1, paragraphs B and C.

3. Public benefit determination. The board shall find that a facility provides a substantial public benefit when the applicant demonstrates that the proposed facility is consistent with and will serve to satisfy the capacity needs identified pursuant to section 1310-O. The board shall make this finding when it determines that the proposed facility is designed and located and will be operated so that it meets the needs identified in the capacity needs analysis.

4. Presumption of public benefit. A publicly owned waste disposal facility is presumed to have met the requirements of subsection 3 when it receives only waste generated within the municipality in which the facility is located or when it receives only waste generated within municipalities which are members of the facility.

5. Recycling and source reduction determination. The board shall find that the provisions of subsection 1, paragraph C, are satisfied when the applicant demonstrates that all requirements of this subsection have been satisfied.

A. The proposed solid waste disposal facility will accept solid waste which is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law.

(1) The board shall attach this requirement as a standard condition to the license of a solid waste disposal facility governing the future acceptance of solid waste at the proposed facility.

B. The applicant has shown consistency with the most

recent state recycling plan approved by the Legislature pursuant to section 1310-M, subsection 3.

6. Terms and compliance schedules. Licenses shall be issued under the terms and conditions as the board may prescribe, and for a term not to exceed 5 years. The board may establish reasonable time schedules for compliance with this article and rules promulgated by the board.

7. Criminal or civil record. The board may refuse to grant a license under this article if it finds that the applicant or, if the applicant is other than a natural person, any person having legal interest in the applicant has been found guilty of a criminal or civil violation of laws administered by the board or other laws of the State, other states, the United States or another country.

§1310-O. Capacity needs analysis

The board shall complete and adopt by rule an analysis of the solid waste disposal capacity needs of the State by January 1, 1989. The analysis shall be considered by the board in making its finding of consistency in facility siting decisions as provided in section 1310-N, subsection 1, paragraph B and section 1310-N, subsection 3. The analysis shall also serve as a guide for municipal and commercial entities interested in developing solid waste facilities to meet needs identified in this analysis. The board shall prepare the capacity needs analysis according to the following provisions.

1. Data collection. The board shall develop and maintain a comprehensive data base on solid waste generated or disposed of in the State. The types of data collected shall include:

A. The amount of solid waste generated, handled or transported within the State;

B. The source of the waste;

C. The type of waste;

D. The costs and types of treatment or disposal technologies currently employed, including, without limitation, recycling, composting, landspreading, incineration or landfilling;

E. The capacity of existing licensed solid waste treatment and disposal facilities receiving waste generated within the State;

F. The costs of transporting solid waste to disposal facilities; and

G. The extent to which the State relies on solid waste disposal capacity outside its jurisdiction.

2. Needs analysis. The board shall identify the need in the State for current and future expansions of solid waste treatment and disposal capacity by type of solid

waste. The analysis shall include, but not be limited to:

A. Identification of solid waste by type which are capable of being reused or recycled in an economical and environmentally sound manner and the preferred technologies to be utilized;

B. A survey of the solid waste generators and the recycling and disposal facilities they utilize;

C. Estimation of waste generation by region and waste type over the next 10-year and 20-year periods based on the best available forecasts of population growth, economic activity within the State, estimates provided by the solid waste generators and other available information;

D. Comparison of the projected waste generation levels with existing capacity, including consideration of expected facility closures under this chapter;

E. Identification of the regional availability of solid waste disposal capacity, including consideration of transportation costs; and

F. Assessment of the level of competition in the solid waste disposal industry.

3. Regional and local considerations. In developing the capacity needs analysis, the board shall consult with industrial waste generators, regional councils and municipal officials concerning the specific needs of their locale. The board shall identify areas of the State which are underserved with regard to waste treatment or disposal capacity or which have capacity in excess of regional needs. In determining regional needs, the board may consider economic criteria, including disposal and transportation costs, population densities, regional differences in current industrial mix and the potential for economic growth, the level of competition in the solid waste disposal industry and any other factors as the board deems relevant.

4. Revisions. The board shall revise the analysis at least every 2 years to incorporate changes in the waste generation trends, changes in waste disposal technologies, the development of new waste generating activities and other factors affecting solid waste management as the board finds appropriate. If the board finds that rapidly changing conditions necessitate more timely revisions of the analysis, it may make those revisions pursuant to the rule-making provisions of Title 5, chapter 375, subchapter II, including emergency rulemaking if necessary.

5. Coordination. The board shall coordinate development of the solid waste capacity needs analysis with the hazardous waste facility needs plan developed annually pursuant to section 1319-Q and with the state recycling plan developed pursuant to section 1310-K. The board may prepare recommendations to the Legislature, using the data developed under this chapter, to ensure

that suitable waste facilities are available for the State's solid and hazardous waste.

6. Report. The board shall submit the capacity needs analysis to the joint standing committee of the Legislature having jurisdiction over natural resources at the beginning of the first regular session of each Legislature for review. The committee may introduce legislation it deems necessary to clarify the legislative intent of this article.

§1310-P. Escrow closure accounts

The board shall apply this section to every license for a new or expanded solid waste disposal facility and to the license of every existing solid waste disposal facility at the time of relicensing.

1. Escrow account. The owner or operator of every solid waste disposal facility shall accrue an amount sufficient to satisfy the estimated costs of closure and post-closure care and maintenance. The owner or operator shall deposit the amount according to rules adopted by the board pursuant to subsection 3. The account established pursuant to this subsection shall constitute an escrow account for the closure and post-closure care and maintenance of that solid waste disposal facility. No withdrawals from the escrow account may be made without written approval of the commissioner or as otherwise authorized by the commissioner.

2. Annual report. Every owner or operator of a solid waste disposal facility shall file annually with the department a report containing a sworn statement providing the calendar year-end balance of the escrow account established for the closure of the facility pursuant to this section. The report shall be filed with the department no later than March 31st of each year or such other annual date as the commissioner may designate.

3. Rules. The board shall adopt rules prescribing the type of closure account, the minimum duration of the account by type of disposal facility, the amount to be deposited to the account, the manner in which account records shall be maintained and how a licensee shall make deposits to and withdrawals from the account and other matters considered necessary to administer this section.

4. Money remaining in account. No less than 20 years after the closure, except as otherwise provided by the board, any money remaining in the escrow account of any solid waste disposal facility after proper closure and completion of post-closure care and maintenance requirements, as determined by the department, shall be released to the owner, operator or its designated beneficiary.

5. Municipal exemption. A solid waste disposal facility owned by a municipality or group of municipalities is exempt from the provisions of this section.

§1310-Q. Transfer of license

No person may transfer a license issued pursuant to this Title without the transfer of the license being approved by the board prior to transfer of the ownership of the property, facility or structure which constitutes or is part of the solid waste disposal facility. The board, at its discretion, may require that the proposed new owner of the facility apply for a new license or may approve the transfer of the existing license upon a satisfactory showing that the new owner can abide its terms and conditions and will be able to comply with the provisions of this Title.

§1310-R. Transition provisions

1. General. Except as otherwise provided, the provisions of this article apply to any new, expanded or existing solid waste disposal facility licensed or relicensed after the effective date of this article.

2. Recycling. The recycling requirements shall apply as follows.

A. The board shall apply the provisions of section 1310-N, subsection 5, paragraph A, when relicensing any solid waste disposal facility, except that, to the extent that waste disposal contracts in effect on the effective date of this article are inconsistent with section 1310-N, subsection 5, paragraph A, in which case, those provisions shall apply at the expiration of the term of those contracts without consideration of any renewals or extensions of those contracts.

B. The board shall require an applicant for a new or expanded solid waste disposal facility or for a license renewal submitting a complete application prior to the approval by the Legislature of the first state recycling plan pursuant to section 1310-M, subsection 3, to demonstrate that the applicant has considered recycling alternatives that are reasonably within the applicant's control.

C. The provisions of section 1310-N, subsection 5, paragraph B, do not apply to the relicensing of any solid waste disposal facility licensed prior to the effective date of this article.

3. Public benefit. The public benefit requirements shall apply as follows.

A. The board shall require an applicant for a new or expanded solid waste disposal facility submitting a complete application prior to the initial adoption of the capacity needs analysis pursuant to section 1310-O to submit such information as the board requires to demonstrate that the proposed facility provides a substantial public benefit, including such information described in section 1310-O.

B. The provisions of section 1310-N, subsection 1, paragraph B, and section 1310-N, subsection 3, do not apply to the relicensing of a solid waste disposal facility licensed prior to the effective date of this article.

§1310-S. Public and local participation

In addition to provisions for public participation provided pursuant to Title 5, chapter 375, the following provisions shall apply to an application for a solid waste disposal facility.

1. Notification. A person applying for a license under this article or giving notice to the department pursuant to section 483, shall give, at the same time, written notice to the municipal officers of the municipality in which the proposed facility may be located and shall publish notice of the application in a newspaper of general circulation in the area.

2. Mandatory hearing. The board shall hold an adjudicatory public hearing within the municipality in which the facility may be located or in such other convenient location in the vicinity of the proposed facility as the municipal officers may agree.

3. Automatic municipal intervenor status. The board shall grant intervenor status to the municipal officers, or their designees, from the municipality in which the facility will be located. The intervenor status granted under this subsection shall apply in any proceeding for a license under this article. The board may grant this status only if requested by the municipal officers within 60 days of notification under subsection 1.

4. Financial assistance. The department shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under subsection 3, not to exceed \$50,000. The board shall adopt rules governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the board. Allowable expenses include, without limitation, hydrogeological studies, waste generation and recycling studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses otherwise eligible under this section which are incurred by the municipality after notification pursuant to subsection 1, shall be eligible for reimbursement under this subsection only if a completed application is accepted by the department. The board shall also establish rules governing:

A. The process by which an intervenor under subsection 3 may gain entry to the proposed facility site for purposes of reasonable inspection and site investigations under the auspices of the board; and

B. The reduction in the maximum level of reimbursable costs to the extent the municipality establishes by local ordinance any substantially similar financial requirements of the applicant.

§1310-T. Application fee

In addition to any fees imposed pursuant to section 352,

the applicant shall pay a fee of \$50,000 at the time of filing an application for a solid waste disposal facility. The fee shall be deposited in the Maine Environmental Protection Fund and shall be used only to make reimbursements and grants to the intervenor in the applicant's license proceedings pursuant to section 1310-S. Any portion of the fee not disbursed by the department for these purposes shall be reimbursed to the applicant, together with any interest that may have accrued on that portion.

§1310-U. Municipal ordinances

Municipalities are prohibited from enacting stricter standards than those contained in this chapter and in the solid waste management rules adopted pursuant to this chapter governing the hydrogeological criteria for siting or designing solid waste disposal facilities or governing the engineering criteria related to waste handling and disposal areas of a solid waste disposal facility.

Under the municipal home rule authority granted by the Constitution of Maine, Article VIII, Part Second and Title 30, section 1917, municipalities, except as provided in this section, may enact ordinances with respect to solid waste facilities which contain such standards as the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise which can be heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protection; and compatibility of the solid waste facility with local zoning and land use controls.

§1310-V. Moratorium

Prior to 91 days after the First Regular Session of the 113th Legislature adjourns, the department shall not process or act upon any application for, and the board shall not issue, a license for a new commercial landfill facility or the substantial expansion of a commercial landfill facility. In processing applications after the moratorium, priority shall be given to applications for commercial landfill facilities used for the disposal of solid waste which is generated by an energy recovery facility designed to reduce the volume or alter the physical characteristics of municipal solid waste and to produce electricity through incineration. Notwithstanding the provisions of Title 1, section 302, any application pending or filed after the effective date of this article shall be subject to departmental rules regarding solid waste adopted pursuant to section 1304 and the provisions of Private and Special Law 1987, chapter 28. Notwithstanding other provisions of this Title, the department shall not issue a license under this article until it has adopted rules pursuant to the provisions of Private and Special Law 1987, chapter 28.

Sec. 26. 38 MRSA §1319-E, sub-§1, ¶D, as amended by PL 1985, c. 162, §12, is further amended to read:

D. Amounts necessary to reimburse municipalities

as required by section ~~1305-A~~ 1319-R, subsection 3; and

Sec. 27. 38 MRSA §1319-I, sub-§9, as amended by PL 1983, c. 467, §2, is further amended to read:

9. Hazardous waste subject to fees. No hazardous waste may be subject to the fees established in this section unless the waste is identified under section ~~1303-A~~ 1319-O, subsection 1, provided that waste identified under section ~~1303-A~~ 1319-O, subsection 1, paragraph B, shall not be subject to the fees until 90 days after the next regular session of the Legislature.

Sec. 28. 38 MRSA c. 13, sub-c. V is enacted to read:

SUBCHAPTER V

HAZARDOUS WASTE AND WASTE OIL

§1319-O. Rule-making authority; hazardous waste and waste oil

1. Hazardous waste. Rulemaking for hazardous waste shall be as follows.

A. The board may adopt and amend rules identifying hazardous waste. It is the intent of the Legislature that the board shall identify as hazardous waste those substances which are identified by the United States Environmental Protection Agency in proposed or final regulations. The Legislature also intends that the board may identify as hazardous waste, in accordance with paragraph B, other substances in addition to those identified by the United States Environmental Protection Agency. Further, the Legislature intends that a substance which has been identified as a hazardous waste by the board shall be removed from identification only by further rulemaking by the board.

Hazardous waste may be identified as follows.

(1) The board may identify any substance as a hazardous waste if that substance is identified as hazardous by particular substance, by characteristic, by chemical class or as a waste product of a specific industrial activity in proposed or final rules of the United States Environmental Protection Agency.

(2) The board may identify any substance as a hazardous waste if the board, after evaluation based on existing data or data reasonably extrapolated from previously conducted studies using similar classes of substances or compounds under similar circumstances, has determined that the substance is an acute or chronic toxin causing significant potential adverse public health or environmental effects. An acute or chronic toxin may include the characteristics of:

(a) Carcinogenicity;

(b) Mutagenicity;

(c) Teratogenicity; or

(d) Infectiousness.

Rules adopted under this subparagraph shall be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review. These rules shall remain in effect until 90 days after adjournment of the next regular session of the Legislature unless adopted by legislative enactment.

(3) Whenever the board proposes to adopt or amend rules identifying hazardous waste or removing hazardous waste from identification, it shall hold a public hearing.

(4) In addition to hazardous waste identified under subparagraphs (1) and (2), the Legislature identifies the following chemicals, materials, substances or waste as being hazardous waste:

(a) Polychlorinated biphenyls and any substance containing polychlorinated biphenyls.

(b) Pathogenic and infectious waste, as defined by the department, by rule.

B. The board may adopt rules relating to the handling of hazardous waste, including, but not limited to:

(1) Containerization and labeling of hazardous waste, consistent with applicable rules of other federal and state agencies;

(2) Reporting of handling of hazardous waste; and

(3) Waste which is not compatible.

C. The board may adopt rules relating to transportation of hazardous waste, including, but not limited to:

(1) Licensing of transporters of hazardous waste, conveyances used for the transportation of hazardous waste and the operators of these conveyances; and licensing fees shall be paid to the Maine Hazardous Waste Fund; and

(2) A manifest system for hazardous waste which takes into consideration the requirements of the United States Resources Conservation and Recovery Act of 1976, Public Law 94-580, as amended, and this subchapter.

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

(1) 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;

(2) The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities;

(3) The termination, closing and potential future uses of the waste facilities; and

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

E. 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:

(1) Liability insurance;

(2) Bonding; and

(3) Financial ability to comply with statutory and regulatory requirements or conditions.

2. Waste oil. Rulemaking for waste oil shall be as follows:

A. The board may adopt rules relating to the transportation, collection and storage of waste oil by waste oil dealers to protect public health, safety and welfare and the environment. The rules may include, without limitation, rules requiring licenses for waste oil dealers and the location of waste oil storage sites which are operated by waste oil dealers, evidence of financial capability and manifest systems for waste oil. A person licensed by the board to transport or handle hazardous waste shall not be required to obtain a waste oil dealer's license, but his hazardous waste license must include any terms or conditions deemed necessary by the board relating to his transportation or handling of waste oil.

§1319-R. Facility siting

1. Licenses for hazardous waste facilities. The board shall issue a license for a hazardous waste facility whenever it finds it will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance. Licenses shall be issued under the terms and conditions as the board may prescribe and for a term not to exceed 5 years. The board may establish reasonable time schedules for compliance with this subchapter and regulations promulgated by the board.

A. The board shall also find that:

(1) The applicant presents evidence of sufficient financial capacity, including projections of utilization of the facility by hazardous waste generators, to justify granting the license;

(2) Issuing the license is consistent with the applicable standards, requirements and procedures of this chapter; and

(3) In the case of a disposal facility, the volume of the waste and the risks related to its handling have been reduced to the maximum practical extent by treatment and volume reduction prior to disposal.

B. The board shall issue an interim license for a waste facility for hazardous waste or shall deem the facility to be so licensed if:

(1) The waste facility is in existence on April 1, 1980;

(2) The owner or operator has:

(a) Notified the department of its location;

(b) Provided a detailed description of the operation of the facility;

(c) Identified the hazardous waste it handles; and

(d) Applied for a license to handle hazardous waste;

(3) The waste facility is not altered or operated except in accordance with the board's rules; and

(4) If the waste facility has a discharge or emission license under sections 414 or 591, and the facility is operated in accordance with that license.

C. 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.

2. Municipal ordinances. Municipalities may enact

necessary police power ordinances dealing with commercial hazardous waste facilities, provided that they are not more stringent than or duplicative of the hazardous waste provisions of this chapter or rules and orders promulgated by the board. The board shall incorporate all applicable local requirements to the fullest extent practicable.

3. Site review. All persons who make application for a license to construct, operate or substantially expand a commercial hazardous waste facility, at the same time, shall give written notice to the municipal officers of the municipality in which the proposed facility will be located. The municipality through its municipal officers shall be granted intervenor status in any proceeding for site review of a commercial hazardous waste facility. The department shall reimburse the municipalities' direct costs, not to exceed \$5,000, for participation in the proceedings.

The Governor may appoint a person to facilitate communications between the applicant and the municipality and between the department and the municipality.

The State may accept public and private funds from any source for the purpose of carrying out responsibilities under this section.

The board shall hold at least one public hearing within the municipality in which the facility will be located.

During any proceeding for site review of a commercial hazardous waste facility, the legislative body of the municipality in which the facility is to be located may appoint 4 representatives to the board. If the facility is proposed to be located within an unorganized township, the county commissioners of that county may appoint 4 representatives. These representatives may vote on board decisions related to the proposed commercial hazardous waste facility. All representatives appointed under this subsection shall participate on the board only for that site review, until final disposition of the application, including any administrative or judicial appeals. The municipal members shall receive the same pay for each day and expenses as regular board members during the period of their service, to be paid by the department.

4. Municipal fees authorized. A municipality, by ordinance, may levy a fee on a commercial hazardous waste facility located in the municipality. These fees shall be applied as a percentage of the annual billings of the facility to its customers. No fee so levied may exceed 2% of the annual billings. The department may audit the accounts of a facility to determine the amount of the fee owed to the municipality.

5. Application. Except for substantial expansion, this section does not apply to any facility which has been granted an interim or final license prior to September 18, 1981.

§1319-T Criminal provisions

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.

1. Penalty provisions. Any person is guilty of a Class E crime and may be punished accordingly if that person, with respect to any substance or material which has been identified as hazardous waste by the board and which such person believes may be harmful to human health or knows or has reason to know has been so identified, knowingly:

A. Transports any such substance or material without, in fact, having a proper license or permit as may be required under this subchapter;

B. Transports any such substance or material to a waste facility knowing or consciously disregarding a risk that such facility does not have a proper license or permit as may be required under this subchapter;

C. 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

D. 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.

Notwithstanding Title 17-A, section 1301, subsection 1, paragraph A-1, or subsection 3, paragraph C, the fine for such violation shall not exceed \$50,000 for each day of such violation. In a prosecution under paragraph B or paragraph D, the conscious disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

2. Class D crimes. A person is guilty of a Class D crime if, with respect to any substance or material which, in fact, has been identified as hazardous waste by the board and which such person knows or has reason to believe has been so identified or may be harmful to human health, that person knowingly:

A. Establishes, constructs, alters or operates any waste facility for any such substance or material without, in fact, having obtained a proper license or permit as may be required under this subchapter;

B. Handles or transports any such substance or material in any manner which, in fact, violates the terms of any condition, order, regulation, license, per-

mit, approval or decision of the board or order of the commissioner with respect to the handling or transporting of such substance or material; or

C. 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.

A person who violates the provisions of this subsection may be punished accordingly, except that, notwithstanding Title 17-A, section 1301, subsection 1, paragraph B, or Title 17-A, subsection 3, paragraph E, the fine for such violation may not exceed \$25,000 for each day of the violation.

Sec. 29. 38 MRSA §1362, sub-§1, ¶A, as enacted by PL 1983, c. 569, §1, is amended to read:

A. Any substance identified by the board under section ~~1303-A~~ 1319-O;

Sec. 30. 38 MRSA §1370, first ¶, as enacted by PL 1983, c. 569, §1, is amended to read:

The following property shall be subject to forfeiture to the State in accordance with the procedures set forth in section ~~1306-C~~ 1319-U and all property rights therein shall be in the State:

Sec. 31. Allocation. The following funds are allocated from the Maine Environmental Protection Fund to carry out the purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
<u>ENVIRONMENTAL PROTECTION, DEPARTMENT OF</u>		
Maine Environmental Protection Fund		
Positions	(3)	(9)
Personal Services	\$60,590	\$221,245
All Other	24,900	90,000
Capital Expenditures	9,400	5,400
Total	<u>\$94,890</u>	<u>\$316,645</u>

Provides funds for the enforcement, monitoring and licensing of the solid and special waste programs. Program elements include waste transportation and special waste handling.

Maine Environmental Protection Fund		
Position	(2)	(2)
Personal Services	\$ 49,800	\$ 65,100
All Other	76,600	60,000

Capital Expenditures	1,150	
Total	<u>\$127,550</u>	<u>\$125,100</u>

Provides funds for administering new elements of the facility siting program; involves public benefit determinations and recycling plan consistency findings; includes mandatory public hearings and costs.

Maine Environmental Protection Fund

All Other	\$75,000
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Provides funds for development of the initial state capacity — needs analysis needed for licensing solid waste disposal facilities.

TOTAL	<u>\$297,440</u>	<u>\$441,745</u>
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Sec. 32. Allocation. The following funds are allocated from the Maine Environmental Protection Fund to carry out the purposes of this Act.

1988-89

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Maine Environmental Protection Fund

Positions	(4)
Personal Services	\$ 96,000
All Other	40,000
Capital Expenditures	25,700

Total	<u>\$161,700</u>
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Provides funds for monitoring and compliance in the remediation and closure program upon approval by the voters of the related bond issue.

Sec. 33. Effective date. The allocations contained in section 32 of the new draft are effective when the Governor certifies that the voters have approved the bond issue needed to provide state grants for implementation of the remediation and closure program. The remainder of the new draft is effective when approved.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 29, 1987, unless otherwise indicated.

CHAPTER 518

H.P. 1372 — L.D. 1874

AN ACT to Remove a Certain Sunset Provision in the Judiciary Laws.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and