LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

SECOND REGULAR SESSION

of the

ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

	1989-90	1990-91
LEGISLATURE		
Commission to Study Maine's Oil Spill Clean-up Preparedness		
Personal Services	$770	$3,850
All Other	89,380	6,000
Provides funds for the per diem, travel, consultants and related expenses of the Commission to Study Maine's Oil Spill Clean-up Preparedness. Any unexpended funds lapse to the Maine Coastal and Inland Surface Oil Clean-up Fund upon completion of the study.		
LEGISLATURE TOTAL	$90,150	$9,850
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Maine Coastal and Inland Surface Oil Clean-up Fund		
Capital Expenditures	$40,000	$320,000
Provides funds for a replacement containment boom budgeted in fiscal year 1990-91 and needed in fiscal year 1989-90 and other necessary capital equipment.		
DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	$40,000	$320,000
TOTAL ALLOCATIONS	$130,150	$329,850

Sec. 19. Effective date; repeal. Sections 4 and 5 of this Act take effect August 1, 1990, and are repealed February 1, 1991.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective April 19, 1990, unless otherwise indicated.

CHAPTER 869

H.P. 1705 - L.D. 2354

An Act to Correct Errors and Facilitate Implementation of the Solid Waste Laws

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

PART A

Sec. A-1. 32 MRSA §1868, sub-§1, as amended by PL 1989, c. 585, Pt. D, §§8 and 11, is further amended to read:

1. Flip tops. In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener, except that nothing in this subsection prohibits the sale of a container, the only detachable part of which is a piece of adhesive-backed tape;

Sec. A-2. 38 MRSA §342, sub-§6, as amended by PL 1983, c. 536, is repealed.

Sec. A-3. 38 MRSA §1303-C, sub-§1-A is enacted to read:

1-A. Biomedical waste. "Biomedical waste" means waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible human host could result in disease or that may contain cytotoxic chemicals used in medical treatment.

Sec. A-4. 38 MRSA §1303-C, sub-§7, ¶E, as enacted by PL 1989, c. 585, Pt. E, §4, is amended to read:

E. The person generating the solid waste disposed of at the facility, except that the facility may accept, on a nonprofit basis, no more than 15% of all solid waste accepted on an annual average that is not generated by the owner. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel ~~derived from municipal solid waste~~ is not exempt from this subsection solely by operation of this paragraph.

Sec. A-5. 38 MRSA §1303-C, sub-§§24, 25, 29, 30, 31, 34 and 40, as enacted by PL 1989, c. 585, Pt. E, §4, are amended to read:

24. Regional association. "Regional association" means 2 or more municipalities that have formed a relationship to manage the solid waste generated within the participating municipalities and for which those municipalities are responsible. The relationship must be formed by one or more of the following methods: ~~a refuse disposal district under chapter 17 or a public waste disposal corporation under section 1304-B or that have entered into a joint exercise of powers agreement under Title 30-A, chapter 115, in order to manage the solid waste generated within the participating municipalities and for which those municipalities are responsible.~~

A. Creation of a refuse disposal district under chapter 17;

B. Creation of a nonprofit corporation that consists exclusively of municipalities and is organized under Title 13, chapter 81 or Title 13-B, for the purpose, among other permissible purposes, of owning, con-

structing or operating a solid waste disposal facility, including a public waste disposal corporation under section 1304-B;

C. Creation of a joint exercise of powers agreement under Title 30-A, chapter 115; or

D. Contractual commitment.

25. Residue. ~~"Residual waste"~~ "Residue" means waste ~~resulting from~~ remaining after the handling, processing, ~~disposal~~ incineration or recycling of solid waste including, without limitation, front end waste and ash from incineration facilities.

29. Solid waste. "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material and landscape refuse, but does not include hazardous waste, biomedical waste, septic tank sludge or agricultural wastes. The fact that a solid waste or constituent of the waste may have value or other use or may be sold or exchanged does not exclude it from this definition.

30. Solid waste disposal facility. "Solid waste disposal facility" means a solid waste facility for the ~~disposal~~ incineration or landfilling of solid waste ~~except that the following facilities are not included:~~ or refuse-derived fuel.

~~A. A waste facility that employs controlled combustion to dispose of waste generated exclusively by an institutional, commercial or industrial establishment that owns the facility; and~~

~~B. Lime kilns; wood chip, bark and hogged fuel boilers; kraft recovery boilers and sulfite process recovery boilers, which combust solid waste generated exclusively at the facility.~~

31. Solid waste facility. "Solid waste facility" means a waste facility used for the handling of solid waste~~.~~ , except that the following facilities are not included:

A. A waste facility that employs controlled combustion to dispose of waste generated exclusively by an institutional, commercial or industrial establishment that owns the facility; and

B. Lime kilns; wood chip, bark and hogged fuel boilers; kraft recovery boilers and sulfite process recovery boilers, which combust solid waste generated exclusively at the facility.

34. Special waste. "Special waste" means any ~~nonhazardous~~ solid 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~~ that 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 biological waste not identified under section 1319-O, subsection 1, paragraph A, subparagraph (4);~~

I. High and low pH waste;

J. Spent filter media and residue; and

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

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

A. It is used by its owner for disposing of septage from the owner's residence;

B. It is used to store for 90 days or less hazardous wastes generated on the same premises;

C. It is used by individual homeowners or lessees to open burn leaves, brush, deadwood and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted under section 599, subsection 3; or

D. It is used by its residential owner to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted under section 599, subsection 3.

Sec. A-6. 38 MRSA §1310-F, first ¶, as enacted by PL 1987, c. 517, §25, is amended to read:

The department shall administer a closure and remediation grants program to assist municipalities and other public entities as provided in subsection 3 in the

implementation of the closure and remediation plans. The program is subject to the following provisions.

Sec. A-7. 38 MRSA §1310-F, sub-§3 is enacted to read:

3. Sanitary and refuse disposal districts. Any of the following public entities owning a solid waste landfill for which a remediation or closure plan has been adopted is eligible for grants under this section:

A. A sanitary district created under chapter 11 or by special act of the Legislature; or

B. A regional association as defined in section 1303-C, subsection 24.

Sec. A-8. 38 MRSA §1310-U, 2nd ¶, as repealed and replaced by PL 1989, c. 585, Pt. E, §33, is amended to read:

Under the municipal home rule authority granted by the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, 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 that 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, provided, however, that the standards are not more strict than those contained in this chapter and in chapter 3, subchapter I, articles 5-A and 6 and the rules adopted thereunder. Municipal ordinances ~~shall~~ must use definitions consistent with those adopted by the department.

Sec. A-9. 38 MRSA §1310-X, as enacted by PL 1989, c. 585, Pt. E, §34, is repealed and the following enacted in its place:

§1310-X. Future commercial landfills

1. New facilities. Notwithstanding the provisions of Title 1, section 302, the board may not approve an application for a new commercial solid waste or biomedical waste disposal facility after September 30, 1989, including any applications pending before the board on or after September 30, 1989.

2. Relicense or transfer of license. The board may relicense or approve a transfer of license for commercial solid waste disposal facilities or biomedical waste disposal facilities after September 30, 1989, if those facilities had been previously licensed by the board prior to September 30, 1989, and all other provisions of law have been satisfied.

3. Expansion of facilities. The board may license expansions of commercial solid waste disposal facilities or biomedical waste disposal facilities after September 30, 1989, if:

A. The board has previously licensed the facility prior to September 30, 1989;

B. The board determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on September 30, 1989; and

C. For commercial solid waste disposal facilities and prior to the adoption of the state plan and siting criteria under chapter 24, the board determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1 or, after the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

Sec. A-10. 38 MRSA §1319-O, sub-§1, ¶A, as amended by PL 1989, c. 124, §2, is further amended to read:

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~~ that 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~~ that has been identified as a hazardous waste by the board ~~shall~~ must 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~~ must 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~~; and~~ .

~~(e) Pathogenic and infectious waste. For the purposes of this section, "pathogenic and infectious waste" means any material containing microorganisms or viruses capable of causing human disease.~~

Sec. A-11. 38 MRSA §1319-O, sub-§3, as enacted by PL 1989, c. 124, §3, is amended to read:

3. Handling and disposal of biomedical waste. ~~On or before January 1, 1990, the~~ The board shall adopt rules relating to the packaging, labeling, handling, storage, collection, transportation, treatment and disposal of biomedical waste, including infectious and pathogenic waste, to protect public health, safety and welfare and the environment.

A. The rules ~~shall~~ must include, without limitation:

(1) Registration of biomedical waste generators;

(2) Handling of biomedical waste by generators;

(3) Licensing of biomedical waste transporters and the conveyances used for the transportation of biomedical waste;

(4) Implementation of a biomedical waste tracking or manifest system; ~~and~~

(5) Establishment of treatment and disposal standards; ; and

(6) Categories of biomedical waste subject to regulation under this subsection, consistent with the provisions of section 1303-C, subsection 1-A.

B. The board shall adopt rules governing the siting, licensing, operational and ~~record-keeping~~ record-keeping requirements for biomedical waste treatment, storage and disposal facilities.

C. The board shall require evidence of financial capacity.

D. The board may assess licensing fees sufficient to pay for the department's administrative costs in regulating biomedical waste.

~~The board shall submit the rules to the joint standing committee of Legislature with jurisdiction over natural resources for review on or before January 1, 1990.~~

Sec. A-12. 38 MRSA §2171, sub-§1, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

1. Membership. The committee ~~shall~~ must be comprised of citizens from each affected municipality, appointed by the municipal officers, including, but not limited to: a municipal health officer; a municipal officer; and at least 3 additional residents of the municipality, including abutting property owners and residents potentially affected by pollution from the proposed facility. In addition, each committee may include members representing any of the following interests: environmental and community groups; labor groups; professionals with expertise relating to landfills or incinerators; experts in the areas of chemistry, epidemiology, hydrogeology and biology; and legal experts.

Sec. A-13. 38 MRSA §2203, as enacted by PL 1989, c. 585, Pt. A, §7, is repealed and the following enacted in its place:

§2203. Fee on special waste

1. Commercial landfills. Fees are imposed in the following amounts to be levied for special waste that is disposed of at commercial landfills.

Asbestos	$6 per cubic yard
Oil spill debris	$25 per ton
Residuals from soil decontamination	$6 per ton
Waste water facility sludge	$2 per ton
Ash, coal and oil	$6 per ton
Paper mill sludge	$6 per ton
Industrial waste	$6 per ton

Sandblast grit	$6 per ton
Miscellaneous special waste	$6 per ton
Municipal solid waste ash	$2 per ton

2. Municipal and regional association landfills. Fees are imposed in the following amounts to be levied for special waste that is disposed of at a municipal landfill or a regional association landfill.

Asbestos	$2 per cubic yard
Oil spill debris	$25 per ton
All other special waste	$2 per ton

Sec. A-14. 38 MRSA §2204, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2204. Municipal disposal surcharge

The agency shall impose a disposal surcharge of $4 per ton on any municipal solid waste ~~delivered to~~ disposed of at a commercial landfill facility ~~or solid waste landfill owned by the agency or a regional association~~. The agency shall impose an additional $1.50 per ton on any solid waste delivered to a commercial solid waste disposal facility or solid waste disposal facility owned by the agency or a regional association from a municipality that does not meet the requirements of section 2133, subsection 5, paragraph B.

Sec. A-15. 38 MRSA §2212, sub-§7, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

7. Acquisition and disposal of property. Acquire or enable ~~a user~~ an applicant to acquire, upon reasonable terms from funds provided under this article, the lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands under water and riparian rights, ~~which~~ that are located within the State and considered necessary or convenient for the construction or operation of any eligible waste project, and dispose of them;

Sec. A-16. 38 MRSA §2213, sub-§1, ¶B, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

B. A notice of the intent of the agency to issue the securities is published at least once in a newspaper of general circulation in the region in which the project is to be located:

(1) No later than 14 days after the date on which the ~~certification is issued~~ agency decides to issue revenue obligation securities under this subchapter;

(2) Describing the general purpose or purposes for which the securities are to be issued;

(3) Stating the maximum principal amount of the proposed securities; and

(4) Including a statement as to the time within which any petition to contest the issuance of the securities must be commenced.

Sec. A-17. 38 MRSA §2221, sub-§7, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

7. Obligations and securities outstanding. The agency ~~shall~~ may not have at any one time outstanding obligations or revenue obligation securities to which subsection 6 is stated in any agreement or the trust agreement or other document to apply in principal amount exceeding an amount equal to $50,000,000. This subsection constitutes specific legislative approval to issue up to $50,000,000 in tax-exempt revenue obligation securities ~~obligations~~. The amount of revenue obligation securities issued to refund securities previously issued ~~shall~~ may not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the agency ~~which~~ that may at any time be outstanding for any purpose, the amount of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments shall be valued as of any date of calculation at their then current accreted value rather than their face value.

Sec. A-18. PL 1989, c. 585, Pt. F, §1, under the caption "FINANCE, DEPARTMENT OF," 3rd line is amended to read:

Positions	(3.0)	~~(3.0)~~	(8.0)

Sec. A-19. PL 1989, c. 585, Pt. F, §2, under the caption "TOTAL ALLOCATIONS," in the first line, is amended to read:

TOTAL ALLOCATIONS	$1,808,590	~~$5,919,452~~ $5,594,452

Sec. A-20. Transition. To the extent that the Maine Waste Management Agency or a municipality has collected from a generator any special waste disposal fees under the Maine Revised Statutes, Title 38, section 2203, prior to the effective date of this Act, in excess of the amount that would have been due had that section, as amended by this Act, been in force, the agency shall credit all excess amounts toward future payments paid by that generator.

To the extent that the Maine Waste Management Agency has collected from a regional association any fees under Title 38, section 2204, prior to the effective date of this Act, in excess of the amount that would have been due had that section, as amended by this Act, been in force, the agency shall refund to the regional association all excess amounts.

Sec. A-21. Retroactivity. Those portions of this Act that amend the Maine Revised Statutes, Title 38, section 1303-C, subsections 29, 34 and 40 and section 1319-O, subsections 1 and 3 and that enact Title 38, section 1303-C, subsection 1-A apply retroactively to February 1, 1990.

Sec. A-22. Report. The Maine Waste Management Agency shall report, on or before March 1, 1991, to the Joint Standing Committee on Energy and Natural Resources and the Office of the Executive Director of the Legislative Council on the expenditure of all funds from the Maine Solid Waste Management Fund since the inception from the fund. The report must include identification and purpose of all personal services and agency consultants costs, grants made to municipalities and any other parties, transfers of funds to other agencies, transfers to the General Fund for whatever purpose and any other areas of expenditure relevant to the duties of the agency.

PART B

Sec. B-1. 38 MRSA §1705, sub-§1-A is enacted to read:

1-A. Agency. "Agency" means the Maine Waste Management Agency.

Sec. B-2. 38 MRSA §1721, sub-§§1 to 6, as enacted by PL 1983, c. 820, §2, are amended to read:

1. Application by municipal officers. The municipal officers of the municipality or municipalities that desire to form a disposal district shall file an application with the ~~Board of Environmental Protection~~ agency, after notice and hearing in each municipality, on a form or forms ~~to be~~ prepared by ~~that board~~ the agency, setting forth the name or names of the municipality or municipalities; and ~~the municipal officers shall furnish~~ furnishing such other data as the ~~board may determine~~ agency determines necessary and proper. The application ~~shall~~ must contain, but ~~shall~~ is not ~~be~~ limited to, a description of the territory of the proposed district, the name proposed for the district, which ~~shall~~ must include the words "disposal district," a statement showing the existence in that territory of the conditions requisite for the creation of a disposal district, as prescribed in section 1702, and other documents and materials ~~as may be~~ required by the ~~Board of Environmental Protection~~ agency. The ~~Board of Environmental Protection~~ agency may ~~make~~ adopt rules under this chapter.

2. Public hearing. Upon receipt of the application, the ~~board~~ agency shall cause a public hearing to be held on the application within 60 days of the date of receipt of the application, at some convenient place within the boundaries of the proposed district. At least 14 days prior to the date of the hearing, the ~~board~~ agency shall cause notice of the hearing to be published at least once in a newspaper of general circulation in the area encompassed by the proposed district.

3. Approval of application. After the public hearing, on consideration of the evidence received, the ~~board~~ agency shall, in accordance with section 1702, make findings of fact and conclusions and a determination of record whether or not the conditions requisite for the creation of a disposal district exist in the territory described in the application. If the ~~board~~ agency finds that the conditions do exist, it shall issue an order approving the proposed district as conforming to the requirements of this chapter and designating the name of the proposed district. The ~~board~~ agency shall give notice to the municipal officers within the municipality or municipalities involved, of a date, time and place of a meeting of the representative of the municipality or municipalities involved. The municipal officers shall elect a representative to attend the meeting who may represent the municipality in all matters relating to the formation of the district. A return receipt properly endorsed ~~shall be~~ is evidence of the receipt of notice. The notice ~~shall~~ must be mailed at least 10 days prior to the date set for the meeting.

4. Denial of application. If the ~~board~~ agency determines that the creation of a disposal district in the territory described in the application is not warranted for any reason, it shall make findings of fact and conclusions and enter an order denying its approval. The ~~board~~ agency shall give notice of the denial by mailing certified copies of the decision and order to the municipal officers of the municipality or municipalities involved. No application for the creation of a disposal district, consisting of exactly the same territory, may be entertained within one year after the date of the issuance of an order denying approval of the formation of that disposal district, but this provision ~~shall~~ does not preclude action on an application for the creation of a disposal district embracing all or part of the territory described in the original application, provided that another municipality or fewer municipalities are involved.

5. Joint meeting. The persons selected by the municipal officers, to whom the notice described in subsection 3 is directed, shall meet at the time and place appointed. ~~Where~~ When more than one municipality is involved, they shall organize by electing a ~~chairman~~ chair and a secretary. No action may be taken at any such meeting unless, at the time of convening, there are present at least a majority of the total number of municipal representatives eligible to attend and participate at the meeting, other than to report to the ~~Board of Environmental Protection~~ agency that a quorum was not present and to request the ~~board~~ agency to issue a new notice for another meeting. A quorum ~~shall be~~ is a simple majority of representatives eligible to attend the meeting. The purpose of the meeting ~~shall be~~ is to determine the number of directors, subject to section 1724, to be appointed by and to represent each participating municipality and to determine the duration of terms to be served by the initial directors so that, in ensuing years, 1/3 of the directors and their alternates ~~shall be~~ are appointed or reappointed each year, to serve until their respective successors are duly appointed and qualified. Subject to section 1724, the number of directors to represent each municipality ~~shall be~~ is a subject for negotiation among

the municipal representatives. When a decision has been reached on the number of directors and the number to represent each municipality and the initial terms of the directors, subject to the limitations provided, this decision ~~shall~~ must be reduced to writing by the secretary and must be approved by a 2/3 vote of those present. The vote so reduced to writing and the record of the meeting ~~shall~~ must be signed by the ~~chairman~~ chair, attested by the secretary and filed with the ~~board~~ agency. Any agreements among the municipal representatives ~~which~~ that are considered essential prerequisites to the formation of the district, whether concerning payments in lieu of taxes to a municipality in which a waste facility is to be located, or any other matter, ~~shall~~ must be in writing and included in the record filed with the ~~Board of Environmental Protection~~ agency. Subsequent to district formation, the board of directors of the district shall execute any and all documents necessary to give full effect to the agreements reached by the municipal representatives and filed with the ~~Board of Environmental Protection~~ agency. ~~Where~~ When a single municipality is involved, a copy of the vote of the municipal officers, duly attested by the clerk of the municipality, ~~shall~~ must be filed with the ~~board~~ agency.

6. Submission. When the record of the municipality, or the record of the joint meeting, where municipalities are involved, has been received by the ~~board~~ agency and found by it to be in order, the ~~board~~ agency shall order the question of the formation of the proposed disposal district and other questions relating to the formation to be submitted to the legal voters residing within the municipalities, except as provided in subsection 7, in which case the municipal officers may determine the questions. The order ~~shall~~ must be directed to the municipal officers of the municipality or municipalities ~~which~~ that propose to form the disposal district, directing them to call, within 60 days of the date of the order, town meetings or city elections, as the case may be, for the purpose of voting in favor of or in opposition to each of the following articles or questions, as they may apply, in substantially the following form:

A. To see if the town (or city) of (name of town or city) will vote to incorporate as a disposal district to be called (name) Disposal District;

B. To see if the residents of (name of town or city) will vote to join with the residents of the (name of town or city) to incorporate as a disposal district to be called (name) Disposal District: (legal description of the bounds of the proposed disposal district). At a minimum, the district ~~shall~~ must consist of (names of essential municipalities); and

C. To see if the residents of (name of town or city) will vote to approve the total number of directors and the allocation of representation among the municipalities on the board of directors, as determined by the municipal officers and listed as follows: Total number of directors ~~shall be~~ is and the residents of (town or city) ~~shall be~~ are entitled to directors. (The number of directors to which each municipality is entitled ~~shall~~ must be listed.)

Directors ~~shall~~ must be chosen to represent municipalities in the manner provided in section 1725.

Sec. B-3. 38 MRSA §1722, as enacted by PL 1983, c. 820, §2, is amended to read:

§1722. Approval and organization

When the residents of the municipality, or each municipality where more than one is involved, or the municipal officers, as the case may be, have voted upon the formation of a proposed disposal district and all of the other questions submitted, the clerk of each of the municipalities shall make a return to the ~~Board of Environmental Protection~~ agency in such form as the ~~board~~ agency may determine. If the ~~board~~ agency finds from the returns that each of the municipalities involved, ~~and~~, voting on each of the articles and questions submitted to them, ~~have~~ has voted in the affirmative, and that they have appointed the necessary directors, and listed the names ~~thereof~~, of the directors to represent each municipality, and that all other steps in the formation of the proposed disposal district are in order and in conformity with law, the ~~board~~ agency shall make a finding to that effect and record the finding upon its records. Where 3 or more municipalities are concerned in the voting, and at least 2 have voted to approve each of the articles and questions submitted to them and have appointed the necessary directors, and listed the names ~~thereof~~, of the directors to represent each municipality, rejection of the proposed disposal district by one or more ~~shall~~ does not defeat the creation of a district composed of the municipalities voting affirmatively on the question, if the ~~board~~ agency determines that it is feasible or practical to constitute the district as a geographic unit composed of the municipalities voting affirmatively, unless the vote submitted to the municipalities provided that specific participants or a minimum number of participants ~~shall~~ must approve the formation of the district.

The ~~board~~ agency shall, immediately after making its findings, issue a certificate of organization in the name of the disposal district in such form as the ~~board may determine~~ agency determines. The original certificate ~~shall~~ must be delivered to the directors on the day that they are directed to organize and a copy of the certificate duly attested by the ~~Commissioner~~ executive director of ~~Environmental Protection shall~~ the agency must be filed and recorded in the office of the Secretary of State. The issuance of the certificate by the ~~board shall be~~ agency is conclusive evidence of the lawful organization of the disposal district. The disposal district ~~shall~~ is not ~~be~~ operative until the date set by the directors under section 1726.

Sec. B-4. 38 MRSA §1725, first ¶, as enacted by PL 1983, c. 820, §2, is amended to read:

Directors ~~shall be~~ are appointed by the municipal officers of the municipality which they are to represent. Alternate directors may be appointed by the municipal officers to act in the absence of a director. To the extent possible, the board of directors shall include a mix of

individuals with sufficient managerial, technical, financial or business experience to execute their duties efficiently and effectively. Appointments ~~shall~~ must be by vote of the municipal officers, attested to by the municipal clerk and presented to the clerk of the district. The municipal officers, by majority vote, may remove their appointed representatives during their term for stated reasons, but no directors ~~shall~~ may be removed except for neglect of duty, misconduct or other acts ~~which~~ that indicate an unfitness to serve. Upon receipt of the names of all the directors, the ~~Board of Environmental Protection~~ agency shall set a time, place and date for the first meeting of the directors, notice thereof to be given to the directors by certified or registered mail, return receipt requested, mailed at least 10 days prior to the date set for the meeting.

Sec. B-5. 38 MRSA §1727, as enacted by PL 1983, c. 820, §2, is amended to read:

§1727. Admission of new member municipalities

The board of directors may authorize the inclusion of additional member municipalities in the district upon the terms and conditions as the board, in its sole discretion, ~~shall deem~~ determines to be fair, reasonable and in the best interest of the district, except that on proper application any municipality ~~which~~ that is host to a waste facility of the district shall be admitted on equal terms with existing members, provided that the new member municipality assumes or becomes responsible for a proportionate share of liabilities of the district in a manner similar to that of existing municipalities. The legislative body of any nonmember municipality ~~which~~ that desires to be admitted to the district shall make application for admission to the board of directors of the district. The directors shall determine the effects and impacts ~~which~~ that are likely to occur if the municipality is admitted and shall either grant or deny authority for admission of the petitioning municipality. If the directors grant the authority, they shall also specify any terms and conditions, including, but not limited to, financial obligations upon which the admission is predicated. The petitioning municipality shall comply with the voting procedures specified in section 1721. The vote, if in the affirmative, ~~shall~~ must be certified by the clerk of that municipality to the board of directors and to the ~~Board of Environmental Protection~~ agency. Upon satisfactory performance of the terms and conditions of admission, the municipality shall by resolution of the board of directors become and thereafter be a member municipality of the district. The clerk of the district shall promptly certify to the ~~board~~ agency and the Secretary of State that the municipality has become a member of the district. The certification ~~shall become~~ becomes conclusive evidence that the municipality is a lawful member of the district. Upon admission of a municipality to a district, the provisions of section 1724 ~~shall~~ determine the number of votes ~~which shall~~ to be cast by the director or directors representing that municipality.

PART C

Sec. C-1. 7 MRSA §18 is enacted to read:

§18. Connectors

After July 1, 1991, no person may sell or offer to sell products in containers connected to each other by plastic rings or other plastic holding devices.

Sec. C-2. 32 MRSA §1863, as repealed and replaced by PL 1989, c. 585, Pt. D, §§5 and 11, is amended to read:

§1863. Refund value

Every beverage container sold or offered for sale to a consumer in this State shall have a deposit and refund value. The deposit and refund value shall be~~:~~ determined according to the provisions of this section.

1. Refillable containers. For refillable beverage containers, except wine and spirits containers, the manufacturer shall determine the deposit and refund value ~~shall be determined by the manufacturer~~ according to the type, kind and size of the beverage container~~, but shall not be~~. The deposit and refund value must not be less than 5¢~~;~~.

~~**2. Nonrefillable containers.** For nonrefillable beverage containers, except wine and spirits containers, the deposit and refund value shall be determined and initiated by the distributor according to the type, kind and size of the beverage container, but shall not be less than 5¢; and~~

2-A. Nonrefillable containers; exclusive distributorships. For nonrefillable beverage containers, except wine and spirits containers, sold through geographically exclusive distributorships, the distributor shall determine and initiate the deposit and refund value according to the type, kind and size of the beverage container. The deposit and refund value must not be less than 5¢.

2-B. Nonrefillable containers; nonexclusive distributorships. For nonrefillable beverage containers, except wine and spirits containers, not sold through geographically exclusive distributorships, the deposit and refund value must not be less than 5¢.

3. Wine and spirits containers. For wine and spirits containers of greater than 50 milliliters, the refund value ~~shall~~ must not be less than 15¢. On January 1, 1992, the department shall issue a finding on the percentages of wine containers and spirits containers returned for deposit. If the department finds the return rate of wine containers was less than 60% during 1991, then, on July 1, 1992, the refund value on wine containers ~~shall~~ must not be less than 25¢. If the department finds the return rate of spirits containers was less than 60% during 1991, then on July 1, 1992, the refund value of spirits containers ~~shall~~ must not be less than 25¢.

Sec. C-3. 32 MRSA §1865, sub-§2, as amended by PL 1989, c. 427, §2, is further amended to read:

2. Brand name. ~~Glass~~ Refillable glass beverage containers of carbonated beverages, for which the deposit is initiated under section 1863, subsection 1, having a refund value of not less than 5¢ and having a brand name permanently marked thereon, ~~shall~~ are not ~~be~~ required to comply with the provisions of subsection 1.

Sec. C-4. 32 MRSA §1866, sub-§4, as amended by PL 1989, c. 585, Pt. D, §§6 and 11, is repealed and the following enacted in its place:

4. Reimbursement of handling costs. Reimbursement of handling costs is governed by this subsection.

A. In addition to the payment of the refund value, the initiator of the deposit under section 1863, subsections 1, 2-A and 3 shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863, in an amount that equals at least 3¢ per returned container.

B. In addition to the payment of the refund value, the initiator of the deposit under section 1863, subsection 2-B shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863 in an amount that equals at least 3¢ per returned container. The initiator of the deposit may reimburse the dealer or local redemption center directly or indirectly through a contracted agent.

Sec. C-5. 32 MRSA §1866, sub-§5, as enacted by PL 1987, c. 722, is repealed and the following enacted in its place:

5. Obligation to pick up containers. The obligation to pick up beverage containers subject to this chapter is determined as follows.

A. A distributor that initiates the deposit under section 1863, subsection 2-A or 3 has the obligation to pick up any empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the distributor from dealers to whom that distributor has sold those beverages and from licensed redemption centers designated to serve those dealers pursuant to an order entered under section 1867. A distributor that, within this State, sells beverages under a particular label exclusively to one dealer, which dealer offers those labeled beverages for sale at retail exclusively at the dealer's establishment, shall pick up any empty, unbroken and reasonably clean beverage containers of the kind, size and brand sold by the distributor to the dealer only from those licensed redemption centers that serve the various establishments of the dealer, under an order entered under section 1867. A dealer that manufactures its own beverages for exclusive sale by that dealer at retail has the obligation of a distributor under this section. The commissioner may establish by rule, in accordance with the Maine Administrative Procedure Act, criteria prescribing the manner in which distributors shall fulfill the obligations imposed by this paragraph. The rules may establish a minimum number or value of containers below which a distributor is not required to respond to a request to pick up empty containers. Any rules promulgated under this paragraph must allocate the burdens associated with the handling, storage and transportation of empty containers to prevent unreasonable financial or other hardship.

B. The initiator of the deposit under section 1863, subsection 2-B has the obligation to pick up any empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the initiator from dealers to whom a distributor has sold those beverages and from licensed redemption centers designated to serve those dealers pursuant to an order entered under section 1867. The obligation may be fulfilled by the initiator directly or indirectly through a contracted agent.

Sec. C-6. 32 MRSA §1868, sub-§4, as enacted by PL 1989, c. 585, Pt. D, §§8 and 11, is repealed and the following enacted in its place:

4. Aseptic and composite material beverage containers. In a container composed, in whole or in part, of aluminum and plastic or of aluminum and paper in combination where those materials are for practical reasons inseparable.

Sec. C-7. 32 MRSA §1872, sub-§4 is enacted to read:

4. Exempt facilities. The department may, by rule, adopt procedures for designating certain transportation activities and storage or production facilities or portions of facilities as exempt from this section. Any exemption granted under this subsection must be based on a showing by the person owning or operating the facility or undertaking the activity that:

A. The beverage containers stored or transported are intended solely for retail sale outside of the State;

B. The beverage containers are being transported to and stored in a facility licensed under Title 28-A, section 1371, subsection 1 prior to labeling and subsequent retail sale within the State; or

C. The person is licensed under Title 28-A, section 1401 to import malt liquor and wine into the State, the beverage containers contain malt liquor or wine and these containers are being transported or stored prior to labeling and subsequent retail sale within the State.

The department may require reporting of the numbers of beverage containers imported into and exported from the State under the terms of this subsection.

Sec. C-8. 38 MRSA §606-A is enacted to read:

§606-A. Tire-derived fuel

Any physical or operational change of an industrial power boiler that does not result in an increase in permitted emissions and that is undertaken for the purpose of allowing the source to burn tire-derived fuel is not a modification of the source or emissions unit pursuant to regulations implementing section 590.

Sec. C-9. 38 MRSA §608-A, as enacted by PL 1989, c. 546, §13, is amended to read:

§608-A. Soil decontamination

Any rotary drum mix asphalt plant may process up to ~~5,000~~ 500 cubic yards of soil contaminated by gasoline or #2 fuel oil per year. The ~~5,000~~ 500 cubic yards per year limit may be exceeded with written authorization from the Department of Environmental Protection based on air emissions testing results for volatile organic compounds and particulates. The plant owner or operator shall notify the department at least 24 hours prior to processing the contaminated soil and specify the contaminating fuel and quantity, origin of the soil and fuel and the disposition of the contaminated soil. The owner or operator shall maintain records of these activities for 6 years.

Sec. C-10. 38 MRSA §1304-B, sub-§5, as amended by PL 1987, c. 737, Pt. C, §§95 and 106; PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

5. Public waste disposal corporations. Notwithstanding any law, charter, ordinance provision or limitation to the contrary, pursuant to any interlocal agreement entered into in accordance with Title 30-A, chapter 115, any 2 or more municipalities may organize or cause to be organized or may participate in one or more corporations organized as nonprofit corporations under Title 13, chapter 81, or Title 13-B for the purpose, among other permissible purposes, of owning or operating any one or more waste facilities described in subsection 4, paragraph A, and a subscribing municipality may agree in any such interlocal agreement to pay fees, assessments or other payments as described in subsection 4, paragraph B, for such term of years and on such other terms as the interlocal agreement may provide and may pledge the full faith and credit of the municipality to the same extent provided in subsection 4, paragraph C. The applicable interlocal agreement or the articles of incorporation or bylaws of the corporation ~~shall~~ must provide that:

A. The corporation shall be organized and continuously thereafter operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person;

B. The directors of the corporation shall be elected by the municipal officers of the municipalities participating in the corporation; and

C. Upon dissolution or liquidation of the corporation, title to all of its property shall vest in one or more of the municipalities participating in the corporation.

Any interlocal agreement complying with the requirements of this subsection and subsection 6 ~~shall~~ must be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection. Any corporation organized in a manner ~~which~~ that satisfies the requirements set forth in this subsection and subsection 6, whether organized prior to or after the effective date of this subsection, shall be deemed for all purposes as organized pursuant to this subsection. If so provided in the applicable interlocal agreement, any such corporation shall have the power, in addition to any other powers ~~which~~ that may be delegated under Title 30-A, chapter 115, to issue, on behalf of one or more of the municipalities participating in the corporation, in order to finance the facilities, revenue obligation securities issued in accordance with Title 10, chapter 110, subchapter IV, and any other bonds, notes or debt obligations which municipalities are authorized to issue by applicable law. For these purposes, the term "municipal officers" as used in Title 10, chapter 110, subchapter IV, means the board of directors of any corporation described in this subsection. Title 10, section 1064, subsection 6, ~~shall~~ may not be construed to prohibit the assignment or pledge as collateral security of any contract of a municipality authorized by this section or of any or all of the payments under this section, regardless of whether the provisions of subsection 4, paragraph C, are applicable to the contract or payments. The provisions of Title 10, sections 1063 and 1064, subsection 1, paragraph A and paragraph C, subparagraph (4) do not apply to revenue obligation securities issued by any public waste disposal corporation described in this subsection.

Sec. C-11. 38 MRSA §2157, first ¶, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

Subsequent to the adoption of the state plan, the Board of Environmental Protection shall not approve an application of a new or expanded solid waste disposal facility requiring review under this section until the agency has approved the proposed facility under this section. An expansion of a solid waste disposal facility owned by a municipality or a regional association or a sanitary district created under chapter 11 or by special act of the Legislature is not subject to paragraph C, subparagraph (2), if the facility was licensed and in existence as of October 1, 1989, and at the time of application for the expansion.

Sec. C-12. PL 1989, c. 585, Pt. D, §11 is amended to read:

Sec. 11. Effective date. Sections 2 to 5 ~~and section 8~~ of this Part ~~shall~~ take effect ~~September 1,~~ December 31, 1990, except that any provisions in those sections applicable to implementation of a refund value for spirits containers ~~shall~~ take effect January 1, 1990 and any provisions in those sections applicable to implementation of a refund value for wine containers take effect September 1, 1990. Section 8 of this Part takes effect September 1, 1990. Sections 6 and 9 of this Part ~~shall~~ take effect January 1, 1990. Sections 1 to 7 of this Part ~~shall~~ take effect 90 days after adjournment of the First Regular Session of the 114th Legislature.

Sec. C-13. P&SL 1989, c. 81, §6 is amended to read:

Sec. 6. Allocations from General Fund bond issue; remediation and closure of solid waste landfills. The proceeds of the sale of bonds shall be expended as designated in the following schedule.

	1989-90
ENVIRONMENTAL PROTECTION, DEPARTMENT OF	
Site Evaluation and Planning Program	
All Other	$2,000,000
Municipal Implementation Grants Program	
All Other	~~$6,000,000~~ $4,000,000

Sec. C-14. Rulemaking for implementation of the expanded beverage container deposit system. The Department of Agriculture, Food and Rural Resources may adopt rules to implement the provisions of Public Law 1989, chapter 585, Part D.

Sec. C-15. Effective date. Sections C-2 to C-5 of this amendment take effect on September 1, 1990.

Effective April 19, 1990, unless otherwise indicated.

CHAPTER 870

H.P. 1712 - L.D. 2363

An Act to Amend the Solid Waste Landfill Remediation and Closure Laws Administered by the Department of Environmental Protection

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

Whereas, large numbers of municipal landfills must be properly cleaned up in a timely and effective manner to protect public health and the environment; and

Whereas, municipalities and contractors wishing to engage in landfill closure activities are unable to engage in such work, due to the difficulty with and long-term costs of liability insurance coverage; 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. 38 MRSA §1310-C, sub-§4, ¶¶F, G, H and I are enacted to read:

F. "Contractor" means a business entity that engages in, or intends to engage in, landfill closure activities as a business service on property that it does not own.

G. "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping of pollutants onto the land or into the water or ambient air.

H. "Contamination," as applied to ground water and surface water, means exceeding water quality standards, attributable to the solid waste facility, specified in:

(1) Primary drinking water standards adopted under Title 22, section 2611;

(2) Maximum exposure guidelines adopted under Title 22, section 2602-A; or

(3) A statistically significant increase in concentration of measured parameters above an established baseline, whether or not the existing concentration already exceeds the maximum concentration levels specified in this section, using the 95% confidence interval when the student's t-test is applied. The use of other statistical tests and confidence intervals must be approved by the department.

I. "Pollutant" means dredged spoils, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind, or any constituent thereof.

Sec. 2. 38 MRSA §1310-C, sub-§§6 and 7 are enacted to read: