

MAINE STATE LEGISLATURE

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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
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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

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:

6. Contractor liability. Except as provided in subsection 7, a contractor that closes a municipal solid waste landfill in compliance with a closure plan approved by the department is not liable for the death of or injury to persons or for property damages resulting from contamination or a discharge of pollutants if:

A. The discharge is at or from the landfill site or the contamination resulted from a discharge at or from the landfill site; and

B. The contamination or discharge is related to on-site landfill closure activities.

7. Exceptions. Nothing in subsection 6 affects the liability of a contractor:

A. For its employees under Title 39; or

B. Under state and federal criminal laws.

Sec. 3. 38 MRSA §1310-D, sub-§5 is enacted to read:

5. Certification of completion. A municipality that engages a contractor to close a landfill under a plan approved by the department shall hire a licensed engineer independent of the contractor to, at a minimum, monitor, evaluate and report on all on-site landfill closure activities performed by the contractor. Upon completion of the closure work in compliance with the plan approved by the department, that engineer shall provide the department and municipality with a written report that certifies that the work performed by the contractor conforms with the plan approved by the department and all applicable laws and regulations. The cost to the municipality to engage the licensed engineer is a cost of closure under section 1310-F. No later than 60 days after receipt of the engineer's report, the department shall accept or reject the engineer's certification. If the department rejects the certification, the department shall identify and direct the municipality to undertake any measures necessary for completion of the closure in compliance with the plan.

Sec. 4. 38 MRSA §1310-F, sub-§3 is enacted to read:

3. Insurance. Notwithstanding subsection 1, the department may not issue a grant under this section to a municipality for the costs of closure unless the municipality demonstrates to the department that each person who will perform work to implement the closure plan is self-insured or is covered by a workers' compensation insurance policy in accordance with Title 39.

Sec. 5. Study; liability and insurance for landfill closures. The Joint Standing Committee on Legal Affairs shall study the following issues regarding the closure of municipal solid waste landfills under the Maine Revised Statutes, Title 38, chapter 13, subchapter I-A:

1. The liability of contractors under state and federal law for a release or discharge of pollutants from a landfill during closure activities and after closure is completed;

2. The availability and cost of insurance coverage for contractors that undertake closure activities;

3. State or municipal indemnification of contractors;

4. The ability of insurers to form a joint underwriting association to provide liability coverage to contractors;

5. The ability of municipalities to self-insure under Title 30-A, section 2253;

6. The ability of contractors, with the assistance of the Bureau of Insurance, to receive needed liability coverage pursuant to a market assistance plan;

7. Options under existing law for providing reimbursement for damages to persons and property harmed by contamination or discharge of pollutants;

8. The liability of the State and municipalities under state and federal law as a result of contamination or discharge of pollutants;

9. In cooperation with the Bureau of Insurance, the actual losses due to pollution liability experienced during the preceding 5 years by contractors in the State;

10. The experience of contractors and insurers in other states regarding liability for damages caused by closure of municipal landfills; and

11. Any other issue consideration of which the committee determines is necessary for an understanding of pertinent insurance and liability issues.

The committee shall conduct its study during the First Regular Session of the 115th Legislature and, by April 16, 1991, develop legislation necessary to facilitate prompt and environmentally sound closure of landfills under Title 38, chapter 13, subchapter I-A.

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

Effective April 19, 1990.

CHAPTER 871

S.P. 868 - L.D. 2228

An Act Concerning Technical Changes to the
Tax Laws