

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

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J.S. McCarthy Company
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

area in excess of 3 acres but less than 7 acres of nonrevegetated land; or

Sec. 2. 38 MRSA §489-A, sub-§1, ¶E is enacted to read:

E. Sand, fill or gravel pit mining operations consisting of 5 or more acres.

Sec. 3. 38 MRSA §489-A, sub-§2, ¶D-1 is enacted to read:

D-1. Land use regulations have been adopted that regulate all sand, fill or gravel pit mining operations consisting of 5 or more acres. The regulations must be determined by the board to be at least as stringent as the criteria set forth in section 484;

Sec. 4. 38 MRSA §489-A, sub-§2, ¶E, as enacted by PL 1989, c. 207, §2, is amended to read:

~~E. A professional planning staff to provide professional planning assistance and advice to the municipal reviewing authority has been retained or the municipality has otherwise arranged to provide professional planning assistance to advise the municipal reviewing authority on project review. The municipality has adequate resources to administer and enforce the provisions of its ordinances;~~

See title page for effective date.

CHAPTER 762

H.P. 1671 - L.D. 2347

An Act to Amend the Radioactive Waste Laws

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

Sec. 1. 38 MRSA §1503, sub-§1-A is enacted to read:

1-A. Authority possession of low-level radioactive waste. “Authority possession of low-level radioactive waste” means the authority has received actual delivery of and has accepted the low-level radioactive waste at an authority facility.

Sec. 2. 38 MRSA §1540, sub-§1, as amended by PL 1989, c. 480, §17, is further amended to read:

1. Strict liability. Notwithstanding any provision of law to the contrary, except as otherwise expressly provided in section 1540-A, any person, including the authority, engaged in low-level radioactive waste disposal or storage activities provided in this chapter, ~~shall be is~~

subject to liability without fault for property damage, bodily injury or death resulting from those activities. Any defendant in an action under this subsection may be ~~jointly and severally~~ liable for actual damages only as provided in section 1540-A.

Sec. 3. 38 MRSA §1540, sub-§2, as enacted by PL 1987, c. 530, §4, is repealed.

Sec. 4. 38 MRSA §1540, sub-§3, as amended by PL 1989, c. 480, §17, is repealed.

Sec. 5. 38 MRSA §1540, sub-§4, as amended by PL 1989, c. 480, §17, is further amended to read:

4. Insurance. The authority shall purchase, or require any of its contractors to purchase, insurance or other financial protection, including establishing, by rule, a separate self-insurance fund established as a trust with assets that may not be commingled with other funds, against the site failure sufficient to cover any foreseeable problems during the life of the facility plus a reasonable reserve for unforeseen contingencies. The cost of insurance purchased by the authority ~~shall~~ must be included in the assessment and fees charged by the facility under sections 1535 and 1536. The authority shall monitor the size of any self-insurance fund established pursuant to this subsection. By July 1, 1993, the authority shall establish by rule a mechanism to refund on a prorated basis the full balance in any self-insurance fund in the event the authority no longer proposes to site a facility in the State and the authority has no continuing liability. The authority shall report to the joint standing committee of the Legislature having jurisdiction over radioactive waste matters by January 1, 1994 and biannually thereafter on the status and form of any self-insurance fund established under this subsection.

Sec. 6. 38 MRSA §1540-A is enacted to read:

§1540-A. Liability scheme

The liability imposed under section 1540 for damages caused by low-level radioactive waste is apportioned as follows.

1. Liability for low-level radioactive waste prior to authority possession. Prior to authority possession of low-level radioactive waste, each generator, owner or transporter of low-level radioactive waste is liable for actual damages caused by the low-level radioactive waste of that generator, owner or transporter.

2. Liability for low-level radioactive waste in authority possession. Following the authority taking possession of low-level radioactive waste, liability for actual damages caused by the low-level radioactive waste is apportioned in the following order.

A. The authority is strictly liable for any damages up to the level of insurance coverage secured by the authority as required under section 1540, subsection 4 and the level of any self-insurance fund established by the authority under section 1540, subsection 4 on the date of the filing of any action pursuant to section 1540, subsection 1.

B. Siting, design and construction contractors and site operators retained by the authority are liable for their own negligent acts or omissions proximately causing injury or damage to persons or property for damages not satisfied pursuant to paragraph A.

C. Generators or owners of low-level radioactive waste are strictly liable for damages not satisfied pursuant to paragraphs A and B in proportion to the volume and curie content, calculated in the same manner as user fees under section 1536, subsection 2, of the waste shipped to the low-level radioactive waste storage or disposal facility.

D. The authority is strictly liable for damages not satisfied pursuant to paragraphs A to C but only up to the level of the amount recoverable by the authority through supplemental fees under section 1542. The authority is not required to pay any amount under this paragraph until it actually collects that amount through supplemental fees under section 1542.

E. If damages remain unsatisfied after liability is imposed and apportioned under paragraphs A to D, the State accepts liability for any property damage, bodily injury or death resulting from the low-level radioactive waste disposal or storage activities provided in this chapter.

3. Right of contribution. Any person who has been assessed and has paid damages pursuant to subsection 1 or 2 may sue to recover those damages from any person whose negligent act or omission proximately caused those damages. The authority shall pursue any reasonable remedies, considering the cost-effectiveness of pursuing these remedies, that it has against any negligent party to recover damages paid out under subsection 2, paragraph A. All damages recovered under this subsection by the authority must be placed in the self-insurance fund established under section 1540 to the extent that the self-insurance fund was depleted to pay damages under subsection 2, paragraph A. Any further damages recovered by the authority under this subsection may be used to reimburse any commercial insurer of the authority for damages paid by that insurer under subsection 2, paragraph A, to the extent reimbursement is required by the policy of that insurer. All other damages recovered by the authority under this subsection must be placed in the self-insurance fund.

4. Out-of-state disposal. Notwithstanding section 1540, subsection 1, the liability scheme set forth in this chapter does not apply to the disposal of low-level radioactive waste at a facility located outside the State, even if the authority helped to negotiate an agreement or operated as a billing agent for the compact or contract payments.

Sec. 7. 38 MRSA §1542, as enacted by PL 1987, c. 530, §4, is amended to read:

§1542. Supplemental fee

Except for costs attributable to negligence by the authority or its contractors, if the cost costs of post-closure care, authority liability for actual damages under section 1540-A, including a contribution action under section 1540-A, subsection 3, and long-term institutional control, including mitigation of any environmental problems that may develop at the site, exceeds exceed the available funds available to the authority, including enforcement of a an existing judgment, federal assistance and the reserve for unforeseen contingencies provided in sections 1535 and 1536, the authority may assess generators of low-level radioactive waste a supplemental fee to cover that cost those costs, in proportion to the volume and radioactivity of the portion of the waste generated by each generator which remains in the waste stream curie content, calculated in the same manner as user fees under section 1536, subsection 2, of the waste shipped to the low-level radioactive waste storage or disposal facility. In the event that a generator has insufficient assets at that time, the owners of that generator shall be are jointly and severally liable for the supplemental fee of that generator. If any owner pays more than his the owner's proportional share of the costs under this subsection, that owner shall have has a cause of action to recover that excess from other owners who paid less than their share.

See title page for effective date.

CHAPTER 763

S.P. 837 - L.D. 2141

An Act to Amend Maine's Underground Oil Storage Tank Laws

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

Whereas, the orderly management of the State's underground oil storage tanks by the small and independent businesses that own these tanks demands immediate attention prior to the commencement of the construction season; and