

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

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
1993

up-grade of hardware and software to improve liquor license tracking.

See title page for effective date.

CHAPTER 731

H.P. 1323 - L.D. 1785

An Act Concerning Alewives

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

Sec. 1. 12 MRSA §6131, sub-§3, as repealed and replaced by PL 1981, c. 433, §3, is amended to read:

3. Closed period in rivers and streams not under lease agreement. In any river or stream not managed under a lease agreement, there is a ~~24 hour~~ 72-hour closed period on the taking of alewives and obstruction of the watercourse to allow the free passage of fish from 6 a.m. on ~~Saturday~~ Thursday to 6 a.m. the following Sunday.

See title page for effective date.

CHAPTER 732

H.P. 1302 - L.D. 1757

An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection, Bureau of Hazardous Materials and Solid Waste Control

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

Whereas, this legislation amends the municipal landfill closure and remediation program; and

Whereas, the changes will improve the use of landfill closure money and will give municipalities a better understanding of their obligations and enable them to more readily complete those obligations; and

Whereas, the amendment makes numerous changes in solid and hazardous waste management programs, which would be of benefit to the people of the State if effective immediately; 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:

PART A

Sec. A-1. 38 MRSA §348, sub-§4 is enacted to read:

4. Settlement. A person who has resolved that person's liability to the State in an administrative or judicially approved settlement and is implementing or has fully implemented that settlement pursuant to its terms is not liable for claims by other potentially liable persons regarding response actions, response costs or damages, including without limitation natural resource damages, addressed in the settlement. The settlement does not discharge any other potentially liable persons unless its terms so provide. The protection afforded by this subsection includes protection against contribution claims and all other types of claims under state law that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another potentially liable person, if those actions, costs or damages are addressed in the settlement, but does not include protection against claims based on contractual indemnification or other express contractual agreements to pay the costs or damages. A potentially liable person who commences an action against a person who is protected from suits under this subsection is liable to the person against whom the claim is brought for all reasonable costs of defending against the claim, including all reasonable attorney's and expert witness fees. This section is not intended to create a right to contribution or other cause of action or to make a person liable to pay a portion of another person's response costs, damages or civil penalties.

Sec. A-2. 38 MRSA §564, sub-§2-A, ¶H, as amended by PL 1993, c. 355, §14, is further amended to read:

H. Reporting to the commissioner any of the following indications of a possible leak or discharge of oil:

- (1) Unexplained differences in daily inventory reconciliation values that, over a 30-day period, exceed 1.0% of the product ~~delivered~~ throughput;
- (2) Unexplained losses detected through statistical analysis of inventory records;
- (3) Detection of product in a monitoring well or by other leak detection methods;

- (4) Failure of a tank or piping precision test, hydrostatic test or other tank or piping tightness test approved by the department; and
- (5) Discovery of oil off site on or under abutting properties, including nearby utility conduits, sewer lines, buildings, drinking water supplies and soil.

The rules may not require the reporting of ~~any~~ a leak or discharge of oil above ground of 10 gallons or less that occurs on the premises, including, but not limited to, spills, overfills and leaks, when those leaks or discharges do not reach ground water or surface waters of the State and are cleaned up within 24 hours of discovery, ~~provided that~~ if a written log is maintained at the facility or the owner's place of business in this State. For each discharge the log must record the date of discovery, its source, the general location of the discharge at the facility, the date and method of cleanup and the signature of the facility owner or operator certifying the accuracy of the log;

Sec. A-3. 38 MRSA §564, sub-§2-A, as amended by PL 1993, c. 355, §14, is further amended by adding at the end the following:

The requirements in paragraphs A and B do not apply to the following tanks provided the associated piping has secondary containment or a suction pump product delivery system or another leak detection system approved by the commissioner and provided that the tank and associated piping have been installed and are operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter: tanks providing product to a generator; double-walled tanks with continuous interstitial space monitoring; and existing tanks constructed of fiberglass, cathodically protected steel or another commissioner-approved noncorrosive material that are monitored continuously for a leak by a method able to detect a product loss or gain of 0.1 gallons or less per hour.

Sec. A-4. 38 MRSA §568-A, sub-§2, as amended by PL 1993, c. 363, §10 and affected by §21, is further amended to read:

2. Deductibles. Applicants Except as provided in subsection 2-A, applicants eligible for coverage by the fund under subsection 1 shall pay up to the deductible amount for expenses resulting from cleaning up and compensating eligible 3rd-party damages from a discharge prohibited under section 543 on a per occurrence basis according to the following schedule:

Number of facilities owned by facility owner	Costs paid by applicant
1	\$2,500
2 to 5	5,000
6 to 10	10,000
11 to 20	25,000
21 to 30	40,000
over 30	62,500

The commissioner shall pay any eligible additional costs up to \$1,000,000 associated with activities under section 569-A, subsection 8, paragraphs B, D and J resulting from a discharge from the fund. The commissioner shall pay the expenses directly, unless the applicant chooses to pay the expenses and seek reimbursement from the fund. The commissioner may pay any costs eligible for coverage by the fund above \$1,000,000 from the fund but the commissioner shall recover these expenditures from the responsible party pursuant to section 569-A.

Sec. A-5. 38 MRSA §568-A, sub-§2-A is enacted to read:

2-A. Limit on deductible. The maximum deductible payable by an applicant with respect to an aboveground oil storage tank that is located outside any building or facility and that serves only the dwelling unit occupied by the owner of that unit is \$1 per gallon of capacity of the tank.

Sec. A-6. 38 MRSA §1310-C, sub-§6, as enacted by PL 1989, c. 870, §2, is amended 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 or in compliance with the procedures and standards established in section 1310-E-1 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.

Sec. A-7. 38 MRSA §1303-C, sub-§12, as amended by PL 1993, c. 424, §1 and affected by §3, is further amended to read:

12. Disposal. "Disposal" means the discharge, deposit, dumping, spilling, leaking or placing of ~~any~~ hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage into or on ~~any~~ land, air or water and the incineration of ~~any hazardous~~ ~~or~~ solid waste, refuse-derived fuel, sludge or septage so that the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage or ~~any~~ a constituent ~~thereof of the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage~~ may enter the environment or be emitted into the air, or discharged into ~~any~~ waters, including ground waters.

Sec. A-8. 38 MRSA §1303-C, sub-§39, as amended by PL 1993, c. 424, §2 and affected by §3, is further amended to read:

39. Treatment. "Treatment" means any process, including but not limited to incineration, designed to change the character or composition of any hazardous waste, waste oil or biomedical waste so as to render the waste less hazardous or infectious.

Sec. A-9. 38 MRSA §1319-U, sub-§5, as reallocated by PL 1987, c. 517, §20, is amended to read:

5. Civil liability. A person who disposes of or treats hazardous waste, when that disposal or treatment, in fact, endangers the health, safety or welfare of another, is liable in a civil suit for all resulting damages. It is not necessary to prove negligence.

For the purposes of this section, damages ~~shall be~~ are limited to damages to real estate or personal property or loss of income directly or indirectly as a result of a disposal or treatment of hazardous wastes. Damages awarded may be mitigated if the disposal or treatment is the result of an act of war or an act of God.

Sec. A-10. 38 MRSA §1362, sub-§2, ¶D, as amended by PL 1991, c. 811, §2, is further amended to read:

D. ~~Any~~ A person who accepted a hazardous substance for transport, ~~provided that the~~ if substance arrived at the uncontrolled site. After April 1, 1992, ~~any~~ a person who accepts a hazardous substance for transport and delivers that substance to a licensed hazardous waste storage, treatment or disposal facility according to the manifest signed by the generator is not a responsible party.

Sec. A-11. 38 MRSA §1367-A, as enacted by PL 1991, c. 811, §4 and affected by §7, is repealed.

Sec. A-12. 38 MRSA §2302, sub-§3, ¶D, as amended by PL 1991, c. 520, §10, is further amended to read:

D. Treatment, other than incineration, of hazardous waste to reduce volume or toxicity or both.

Sec. A-13. 38 MRSA §2311, sub-§2, as amended by PL 1993, c. 309, §1, is further amended to read:

2. Toxics user. All toxics users ~~must~~ except owners and operators of commercial agricultural operations shall submit \$50 per extremely hazardous substance reported by the facility under SARA, Title III, Section 312 in addition to fees assessed under Title 37-B, section 801. Fees assessed under this subsection must be submitted annually by April 15th to the department.

PART B

Sec. B-1. 38 MRSA §1310-N, sub-§1, ¶C, as enacted by PL 1987, c. 517, §25, is amended to read:

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. This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

Sec. B-2. 38 MRSA §1310-N, sub-§5, as amended by PL 1993, c. 383, §36, is further amended to read:

5. Recycling and source reduction determination. The department 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 that 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 department 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 recycling provisions of the state plan.

This subsection does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

Sec. B-3. 38 MRSA §2157, sub-§1, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

1. Requirement. After the adoption of the state plan, ~~no~~ a permit for a new or expanded solid waste disposal facility may not be issued unless the applicant demonstrates to the agency that the proposed facility:

A. ~~Will meet~~ Meets capacity needs identified in the state plan in addition to capacity that is under development by the office under section 2156 or by any other party approved by the office at the time of the application;

B. ~~Will be~~ Is consistent with the state plan, except that this paragraph does not apply to expansions of commercial solid waste disposal facilities that accept only special waste for landfilling; and

C. Meets the following requirements:

(1) The proposed facility is consistent with local, regional or state waste collection, storage, transportation, processing or disposal; and

(2) After the adoption of the siting criteria, the proposed facility meets the criteria in section 2153.

~~Proceedings~~ Except as otherwise provided in this section, proceedings under this subsection are subject to the provisions of Title 5, chapter 375, subchapter IV.

Proceedings under this section for the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling are not subject to the provisions of Title 5, chapter 375, subchapter IV.

In making the determination required under this section for the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, the agency shall consider the written information submitted in support of the application and any other written information the agency considers pertinent. In addition, the agency may hold a public meeting in the vicinity of the proposed expansion to take public comments and shall consider those comments in making the determination.

Sec. B-4. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302 and Title 38, section 344, subsection 1-A, this Part applies to applications pending before the Maine Waste Management Agency and the Department of Environmental Protection on or after January 1, 1994.

PART C

Sec. C-1. 38 MRSA §1310-C, sub-§2, ¶B, as enacted by PL 1987, c. 517, §25, is amended to read:

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

Sec. C-2. 38 MRSA §1310-C, sub-§4, ¶¶A and B, as amended by PL 1991, c. 519, §1, are further amended to read:

A. "Abandoned" with reference to a solid waste landfill means no longer handling solid waste on or after February 1, 1976 when the cessation of handling operations and the covering of the landfill has have not been approved by the department or otherwise accomplished in accordance with the procedures and standards established in this article.

B. "Closed" with reference to a solid waste landfill means no longer handling solid waste when the cessation of handling operations has occurred in accordance with the provisions of a ~~permanent~~ closure plan approved by the department or the closure of the landfill has occurred in accordance with the procedures established by this article.

Sec. C-3. 38 MRSA §1310-C, sub-§4, ¶B-1 is enacted to read:

B-1. "Closure" means the completion of those activities specified in this article or in rules adopted pursuant to this article or a department closing order as appropriate, including, but not limited to, the placement of a cover or cap as a barrier over a landfill in order to minimize the infiltration of precipitation into the waste contained in the landfill.

Sec. C-4. 38 MRSA §1310-C, sub-§4, ¶H, as enacted by PL 1989, c. 870, §1, is amended to read:

H. "Contamination," ~~as applied to ground water and surface water~~ with respect to subsection 6, 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.

Sec. C-5. 38 MRSA §1310-C, sub-§4, ¶J is enacted to read:

J. "Remediation" means those actions, other than closure activities, taken at or near a solid waste landfill to prevent or minimize public health impacts or environmental impacts and to prevent or minimize the release of pollutants beyond the boundary of the property on which the landfill is located. The term "remediation" includes but is not limited to installation of landfill leachate collection and treatment systems; vapor extraction systems; ground water collection and treatment; or slurry walls. Other measures such as property purchases and water supply replacements may be defined as remediation only if they are determined to be cost-effective and as protective of public health and the environment as measures defined above as "remediation".

Sec. C-6. 38 MRSA §1310-D, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and as amended by Pt. B, §235, is repealed and the following enacted in its place:

1. Landfill ranking. The department shall create and maintain a list of all open-municipal solid waste landfills ranked on the basis of the hazard each poses or potentially poses to the public health and environment. The list must establish no less than 2 categories of landfills: "high risk" landfills, which include those landfills that are known to pose a public health or environmental threat so immediate or substantial that corrective action must be taken without delay, and landfills that are not known to be "high risk." The department shall inform each affected municipality in writing whenever there are changes made to the priority list and publish the most current version of that list on or about February 1st of each year. All pertinent and related rules adopted by the department establishing standards governing landfill remediation and closure must be designed so that the costs of remediation and closure are coordinated with and reasonably proportionate to the relative public health risk and environmental risk indicated by the specific rank of the municipal landfill.

Sec. C-7. 38 MRSA §1310-D, sub-§2, as amended by PL 1991, c. 519, §4, is further amended by amending the first paragraph to read:

2. Evaluation. In response to the priorities established in the open-municipal solid waste landfill ranking and the objectives of paragraphs A to C, the commissioner shall conduct ~~and complete by January 1, 1993,~~ subject to the availability of funding, environmental evaluations of each open-municipal solid waste landfill. The commissioner may employ private consultants to avoid additions to departmental staff and to accomplish the evaluations in a timely manner. The commissioner may utilize existing analyses of facilities, subject to the provisions of this subsection. Municipalities shall cooperate with the efforts of the department by providing reasonably available and relevant material that the department may require with regard to the purposes of this section. When the commissioner has sufficient knowledge of existing hazards to the environment and public health posed by a specific site, the commissioner may designate the landfill as a high-risk landfill and take measures necessary to effect proper remediation and closure of the landfill, notwithstanding the site's listed priority. In those cases, the commissioner shall ensure that the requirements of this subsection are ~~substantially~~ met. The commissioner shall ensure that each evaluation achieves the following objectives:

Sec. C-8. 38 MRSA §1310-D, sub-§3, ¶A, as repealed and replaced by PL 1991, c. 759, §2, is amended to read:

A. Within 90 days of the Following receipt of a landfill evaluation, together with the recommendations for closure and, if any, remediation actions, the commissioner shall issue an order for closure and, if appropriate, remediation. This order must specify the use of compost or reclaimed soil materials for landfill cover to the maximum extent practical and consistent with sound environmental practices. Subject to sections 1310-F and 1310-G, a timetable time schedule for implementation and all pertinent cost sharing cost sharing must be included as part of the order.

Sec. C-9. 38 MRSA §1310-D, sub-§4, as enacted by PL 1987, c. 517, §25, is amended to read:

4. Implementation. The municipality owning or operating the landfill is the party responsible for the implementation of the plan ~~adopted~~ issued by the ~~board~~ commissioner.

Sec. C-10. 38 MRSA §1310-D, sub-§5, as amended by PL 1991, c. 519, §6, is further amended to read:

5. Certification of completion. A municipality that engages a contractor to close a landfill under an order issued by the department shall hire a licensed

engineer independent of the contractor or the municipality 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 order issued 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 order issued 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~~ Following receipt of the engineer's report, the department shall accept, conditionally accept or reject the engineer's certification. If the department either conditionally accepts or 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 order.

Sec. C-11. 38 MRSA §1310-E, as amended by PL 1991, c. 519, §7, is repealed.

Sec. C-12. 38 MRSA §1310-E-1 is enacted to read:

§1310-E-1. Closure of landfills

Notwithstanding closure schedules previously established by rule, unlicensed and licensed open-municipal solid waste landfills that have not been closed must be closed in accordance with the schedule established by federal law or rule; state law or rule; schedules of compliance; consent agreements; enforcement orders; or license conditions. Those landfills must be closed in accordance with one of the following procedures.

1. Regulation procedure. This procedure involves the submission of a closure plan and the implementation of the closure plan as approved by the department in accordance with landfill closure standards included in rules adopted pursuant to section 1304. This closure process is required of all licensed municipal solid waste landfills and may be otherwise initiated in one of 3 ways:

A. At the discretion of the municipality;

B. In response to an order issued by the department to close a landfill pursuant to section 1310-D, subsection 2 when the state cost share for the closure is immediately available. For the purposes of this section, "immediately available" means that the municipality is reimbursed the total eligible amount of the state cost share for the anticipated closure operation as ordered within 180 days of the municipality incurring the expense; or

C. In response to an order issued by the department to close a landfill pursuant to section 1310-D, subsection 2 in conjunction with a finding by the commissioner that the landfill poses a "high risk."

2. Reduced closure procedure. To achieve compliance with this section, a municipality has the option to close its landfill, in accordance with a reduced procedure as established by this subsection, except when:

A. The landfill is a licensed municipal solid waste landfill or the municipality has been ordered to close or remediate a landfill pursuant to section 1310-D, subsection 2 in which case the landfill must be closed in accordance with subsection 1;

B. The landfill meets one of the following criteria, in which case the landfill must close in accordance with subsection 3:

(1) A drinking water supply well is located within 1,000 feet of the solid waste boundary of the landfill;

(2) The public water supply well is located within 10,000 feet of the solid waste boundary of the landfill and in the same aquifer, for landfills located on a sand and gravel aquifer as mapped by the Maine Geological Survey;

(3) An enclosed building is located within 100 feet of the solid waste boundary of the landfill; or

(4) The landfill has received hazardous industrial wastes.

Those municipalities that are able to establish that their open-municipal landfill is not excluded from the closure option provided by this subsection may proceed with the option for a reduced closure procedure. This closure option is met if the closure complies with the landfill closure standards of 40 Code of Federal Regulations, Part 258, Section 258.60 (a). The municipal officers shall submit to the department a certification of completion of closure operations in accordance with the standards of this subsection no later than 60 days from the date of that completion.

3. Alternative closure procedure. A municipality that determines that it owns or operates a landfill that by the terms of subsection 2, paragraph B is not automatically eligible for the reduced closure option must notify the department in writing of that circumstance within 60 days of making the determination and the notification must be considered by the department as a request for permission to close the

landfill in accordance with the closure standards established by subsection 2. Upon receipt of the notification and after further evaluating the circumstances of the landfill as may be necessary, the department must notify the municipality in writing that permission is granted to close the landfill in accordance with the standards established in subsection 2, or that permission is granted to close the landfill in accordance with the standards of subsection 2 and any reasonable additional closure or remediation standards that the department may require that are related to the identified characteristics that cause the landfill to not be automatically eligible for the reduced closure option.

4. Subsequent landfill closure activity. Any municipality that closes a landfill pursuant to subsection 1, 2 or 3 is entitled to an assurance from the department that the municipality has met its closure obligations and that no further closure action is required of the municipality by the department with regard to that landfill unless one or more of the following circumstances arises:

A. The commissioner finds that the landfill, although closed, is nonetheless a high-risk landfill and orders further closure or remediation activities;

B. Additional closure or remediation activities are needed and the department's cost share of the additionally required activity is immediately available; or

C. Additional closure or remediation activities are required as a result of an existing or pending formal department enforcement action with respect to the violation of the license conditions under which a landfill was operated.

Nothing with regard to this assurance is construed to limit the department's authority to act using its own resources as that activity may be otherwise authorized by law.

5. Existing closure procedures. The closure procedures established in this section do not override or impair closure procedures established prior to the effective date of this section pursuant to a legally binding consent agreement, license condition, enforcement order or other form of contract between a municipality and that department that was executed prior to the effective date of this section.

Sec. C-13. 38 MRSA §1310-F, sub-§1, as amended by PL 1991, c. 519, §9, is repealed.

Sec. C-14. 38 MRSA §1310-F, sub-§§1-A and 1-B are enacted to read:

1-A. Remediation cost-share fraction. Subject to the availability of funds, the commissioner shall issue grants or payments to eligible municipalities for 90% of the planning and implementation costs of remediation.

1-B. Closure cost-share fraction. Subject to the availability of funds, the commission shall issue grants or payments to eligible municipalities for the following percentages of planning and implementation costs of closure.

A. Notwithstanding paragraph B, the state cost share is 75% for the following:

(1) Costs incurred by a municipality prior to July 1, 1994;

(2) Costs incurred at any time by a municipality pursuant to a written landfill closure agreement between the municipality and the department executed prior to July 1, 1994;

(3) Costs incurred pursuant to licensure requirements for landfills licensed by the department to operate after July 1, 1994;

(4) Costs other than those described in paragraph B if approved in writing by the department; and

(5) Costs incurred by a municipality for a landfill closure not required to occur by October 9, 1994 by federal or state law, rule or regulation.

B. Until January 1, 1996, the state cost share is 50%, and for closure costs incurred after that date, the State's cost share is 30% for the following:

(1) The cost of materials and the cost of placement of materials associated with the physical construction of that portion of a cover over a landfill that meets the minimum landfill cover permeability of 1×10^{-5} cm/sec. and the thickness standards of 40 Code of Federal Regulations, Part 258, Section 258.60(a).

Sec. C-15. 38 MRSA §1310-F, sub-§2, as amended by PL 1993, c. 355, §49, is repealed and the following enacted in its place:

2. Eligibility. A municipality that owns, rents or leases a solid waste landfill for which obligations are required or permitted by this chapter or rules adopted under this chapter is eligible for cost-sharing grants or reimbursement payments. In order to receive reimbursement pursuant to this section, the

municipality must, at a minimum, provide such reasonable proof of municipal expenditures as the department may require, as well as certification signed by the municipal officers that to the best of their knowledge and the knowledge of all the pertinent municipal officials, the closure activities were performed in accordance with the applicable standards established by section 1310-E-1. A municipality that has spent funds to close its solid waste landfill or to remedy environmental and public health hazards posed by the landfill prior to the adoption of a closure or remediation plan under this subchapter or that closed a landfill or remediated environmental or public health hazards posed by a landfill is also eligible for reimbursement of closure or remediation costs incurred after February 1, 1976, as long as the closure or remediation actions were in conformance with all applicable laws or rules in effect at the time. Costs incurred by closure or remediation actions taken after the adoption of a closure or remediation plan under this subchapter are eligible for reimbursement only if those actions conform to that plan. Grant or reimbursement payments may not be made to a municipality for a portion of payments to settle civil or criminal judgments against that municipality for damages or injuries caused by the landfill. In addition, for landfills in operation prior to January 1, 1993, grant payments may not be made to a municipality for remediation to mitigate a threat posed by that landfill to structures built after January 1, 1994 by that municipality, the county in which that municipality is located, a school administrative unit as defined in Title 20-A, section 1, a quasi-municipal corporation as defined in Title 30-A, section 2351 or a special district as defined in Title 30-A, section 5704 that includes any portion of the municipality unless the commissioner determines that the municipality could not have reasonably anticipated the threat. Any interest paid by a municipality prior to reimbursement on a municipal bond or commercial bank note issued to raise funds for remediation and closure activities is a cost eligible for reimbursement under this section. Unless otherwise directed by the terms of a bond issue approved by the voters, the commissioner shall use at least 1/3 of the funds approved by the voters for municipalities eligible for reimbursement of closure and remediation costs eligible under this subsection until all those municipalities have been reimbursed. The remainder of the available funds must be allocated in an equitable manner so that, at a minimum, an adequate cap is constructed over all identified high-risk landfills subject to closure. The department shall issue, upon the request of a municipality, a notice in writing that projects to a date certain the availability of cost-sharing funds for which the municipality is eligible. The inability or failure of the department to issue a written projection to a date certain means that the cost-sharing funds are not available for the foresee-

able future. A landfill that is privately owned and operated is not eligible for reimbursement under this subchapter.

A. The commissioner may act to abate public health, safety and environmental threats at sites identified as uncontrolled hazardous substance sites under section 1362, subsection 3 or at federally declared Superfund sites. Notwithstanding any other provision of this article, the commissioner shall determine the amount of funds expended at those sites.

B. The commissioner may enter into contracts with the Maine Municipal Bond Bank to manage bonds issued under this article, as long as the management fee structure does not allow dilution of the bond principal.

C. In a circumstance where the department finds that further closure or remediation activities are required for a landfill because the landfill was not closed in accordance with the standards of closure that the municipal officers certified to the department pursuant to this subsection and further finds that the certification was a negligent misrepresentation of a material fact results in the ineligibility of the municipality for cost sharing for the additional activities that may be required as a result of the nonperformance of the previously certified activities.

D. A municipality that is eligible or authorized by the department to use the closing procedure established in section 1310-E-1, subsection 1, 2 or 3 is not eligible for reimbursement of costs associated with closing activities that are more stringent than the minimum required by that section unless those additional activities are approved in writing by the department.

Sec. C-16. 38 MRSA §1310-F, sub-§4, as amended by PL 1991, c. 885, Pt. E, §46 and as affected by §47, is further amended to read:

4. Insurance. Notwithstanding subsection ~~1-B~~, the commissioner may not issue a grant or reimbursement payment under this section to a municipality for the costs of closure unless the municipality demonstrates to the commissioner that each person who performs work to implement the closure plan is self-insured or is covered by a workers' compensation insurance policy in accordance with Title 39-A.

Sec. C-17. 38 MRSA §1310-F, sub-§5, as enacted by PL 1991, c. 519, §12, is amended to read:

5. Audit. A municipality or other public entity receiving grants or reimbursement ~~of interest payments~~ shall include the remediation or closure project in its annual independent audit to provide assurance

of the proper expenditure of state funds. A copy of this audit must be provided in a timely manner to the solid waste closure and remediation program of the Department of Environmental Protection.

Sec. C-18. 38 MRSA §1310-G, as amended by PL 1993, c. 355, §50, is further amended to read:

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

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

1. Criteria. In establishing the time schedule, the ~~board~~ department 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; and
- D. The availability of state cost-share funds for the project.

Sec. C-19. 38 MRSA §1310-N, sub-§6-E is enacted to read:

6-E. Unlicensed wood-waste, construction and demolition debris landfills. An unlicensed municipal solid waste landfill accepting waste consisting exclusively of wood, landscape refuse or construction and demolition debris and operating as of the effective date of this subsection, may:

- A. Continue to operate until April 9, 1994; and
- B. Continue to operate until December 31, 1995 if:
 - (1) The landfill was operating as of December 31, 1993; and
 - (2) The landfill is a separate and discrete disposal unit that does not overlie or overlap a municipal solid waste landfill that accepts or has accepted "household waste" as defined in 40 Code of Federal Regulations, Part 288, Section 258.2.

Municipalities continuing to operate unlicensed wood-waste, construction and demolition debris landfills under paragraph B shall submit a progress report to the department on or before January 31,

1995. The report must include a description of the alternative handling and disposal method that the town plans to implement prior to December 31, 1995 and an implementation schedule.

Notwithstanding this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

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

Effective April 20, 1994.

CHAPTER 733

H.P. 1254 - L.D. 1681

**An Act to Encourage the
Establishment or Expansion of
Certain Residency Programs Relating
to Emergency Medicine Physicians**

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

Sec. 1. 22 MRSA §396-F, sub-§3, ¶A, as repealed and replaced by PL 1993, c. 458, §2, is amended to read:

A. Any amounts that the commission finds have been paid by the Medicare program for the following activities, to the extent that the activities have been approved under section 396-R or 396-S, unless any costs of the activities have been added to a hospital's financial requirements:

- (1) The expansion of a family practice residency program after June 30, 1992; ~~and~~
- (2) The provision of spaces in a residency program in internal medicine, pediatrics or obstetrics and gynecology, in any given year, for the number of first-year residents that is greater than the number of first-year residents in that program at the same hospital prior to June 30, 1992; and
- (3) The establishment or expansion of an emergency physician residency program after June 30, 1993; and

Sec. 2. 22 MRSA §396-S is enacted to read: