

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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
2002

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-Y, as amended by PL 2001, c. 315, §4, is further amended to read:

§1310-Y. Financial assurance

An owner or operator of a solid waste disposal facility licensed under section 1310-N shall provide the department assurance of its financial ability to satisfy the estimated cost of corrective action for known releases from the facility and its financial capacity to satisfy the estimated cost of closure and postclosure care and maintenance at the facility for a period of at least 30 years after closure. The board may adopt rules that increase or decrease that postclosure care period, as long as those rules are consistent with applicable federal rules. The department may consider the use of more than one acceptable form of financial assurance per facility to satisfy the financial assurance requirement of this section. This section applies to all privately owned solid waste disposal facilities licensed by the department, including facilities licensed by the department before June 16, 1993. This section does not apply to a municipally owned or operated solid waste disposal facility that accepts exclusively special waste, construction and demolition debris, land-clearing debris or any combination of those types of waste or to a municipally owned or operated solid waste disposal facility licensed before June 16, 1993.

1. Acceptable forms of financial assurance.

Acceptable forms of financial assurance are:

- A. A letter of credit;
- B. A surety bond;
- C. An escrow account;
- D. A reserve account calculated in a manner consistent with the United States Internal Revenue Code;
- E. An irrevocable trust account; or
- F. In the case of a municipal solid waste disposal facility, any of the allowable financial assurance mechanisms set forth in applicable federal rules.

1-A. Substitute requirements. The department may substitute part of the acceptable forms of financial assurance under subsection 1 with one or more of the following requirements:

A. A current rating for its senior unsubordinated debt of AAA, AA, A or BBB as issued by Standard and Poor's Corporation or Aaa, Aa, A or Baa as issued by Moody's Investors Services, Inc.;

B. A ratio of less than 1.5 comparing total liabilities to net worth; or

C. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10,000,000, to total liabilities.

2. Report. An owner or operator of a solid waste disposal facility shall annually prepare a report containing a sworn statement providing the year-end balance of any escrow, trust or reserve account established under this section. That report must be submitted to the commissioner by March 31st of each year or such other date as the commissioner may designate.

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

Effective March 28, 2002.

CHAPTER 576

H.P. 1439 - L.D. 1936

An Act to Regulate Lead Smart Renovators and Lead Sampling Technicians

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

Sec. 1. 38 MRSA §1296, first ¶, as enacted by PL 1997, c. 375, §14, is amended to read:

A person engaged in any renovation, remodeling, maintenance or repair project involving lead-based paint not subject to the licensing and certification requirements of this chapter shall take reasonable precautions to prevent the release of lead to the environment, including the cleanup, removal and appropriate disposal of all visible lead-based paint debris generated by the project. Activities that may result in the release of lead to the environment include, but are not limited to, removal of lead paint by using open-flame burning or torching, machine sanding or grinding without high-efficiency particulate exhaust control, uncontained hydro blasting or high-pressure washing, abrasive blasting or sandblasting without containment and high-efficiency particulate exhaust control and using heat guns operated above 1,100 degrees Fahrenheit. If the commissioner finds, after

investigation, that any location at which lead dust, lead chips or other lead-contaminated wastes are or were handled or otherwise came to be located may create a danger to public health or the safety of any person or to the environment, the commissioner may order the person responsible for the lead dust, lead chips or lead-contaminated waste to cease the activity immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger. The commissioner may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution.

See title page for effective date.

CHAPTER 577

H.P. 1520 - L.D. 2024

An Act to Improve the Safety Provided by the Underground Facilities Protection Law

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

Whereas, the underground facilities protection law affects activities that take place primarily during the building season, which occurs during spring, summer and autumn; and

Whereas, enactment without emergency designation will result in revisions becoming effective after a significant portion of the building season is over; and

Whereas, the Public Utilities Commission is in receipt of a grant to educate the public regarding the requirements of the law and will do so most effectively if the education occurs in the early months of the building season; 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. 23 MRSA §3360-A, sub-§1, ¶C, as amended by PL 1997, c. 631, §1, is further amended to read:

C. "Excavation" means any operation in which earth, rock or other material below the ground is moved or otherwise displaced, by means of

power tools, power equipment or explosives and including grading, trenching, digging, ditching, drilling, augering, tunneling, scraping and cable or pipe driving, except tilling of soil and gardening or displacement of earth, rock or other material for agricultural purposes, ~~and except installation and maintenance of signs performed by the Department of Transportation.~~

Sec. 2. 23 MRSA §3360-A, sub-§1, ¶D-1 is enacted to read:

D-1. "Shoulder-grading activity" means highway maintenance work that involves the use of a motorgrader or other suitable construction equipment with a blade on the shoulder of a road to remove accumulated sand, gravel, sod or other material to establish drainage away from the traveled portion of the highway.

Sec. 3. 23 MRSA §3360-A, sub-§1, ¶F, as enacted by PL 1991, c. 437, §1 and affected by §12, is amended to read:

F. "Underground facility operator" means the owner or operator of any underground facility, other than an underground oil storage facility as defined in Title 38, section 562-A, subsection 21 or an airport aviation fuel hydrant piping system, used in furnishing electric, telephone, telegraph, gas, petroleum transportation or cable television service. "Underground facility operator" does not include a municipality or a public utility with fewer than 5 full-time employees or fewer than 300 customers or a person that owns underground facilities on its own property for commercial or residential purposes.

Sec. 4. 23 MRSA §3360-A, sub-§2, as enacted by PL 1979, c. 362, §2, is repealed.

Sec. 5. 23 MRSA §3360-A, sub-§3, ¶F is enacted to read:

F. In the case of an excavation involving subcontractors or other arrangements in which more than one entity qualifies as the excavator under this section, the excavator directly responsible for performing the excavation shall ascertain that all notifications required by this subsection and subsections 5, 5-A and 10 are performed.

Sec. 6. 23 MRSA §3360-A, sub-§4, as amended by PL 1999, c. 718, §3, is further amended to read:

4. Operator response to notice locating facilities. An underground facility operator shall, upon receipt of the notice provided for in subsection 3-A, advise the excavator of the location and size of the operator's underground facilities and all underground