

38 §1304. DEPARTMENT; POWERS AND DUTIES

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1. Rules. Subject to the Maine Administrative Procedure Act, Title 5, chapter 375, the board may adopt, amend and enforce rules as it deems necessary to govern waste management, including the location, establishment, construction and alteration of waste facilities as the facility affects the public health and welfare or the natural resources of the State. The rules shall be designed to minimize pollution of the State's air, land and surface and ground water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety. In adopting these rules, the board shall also consider economic impact, technical feasibility and such differences as are created by population, hazardous or solid waste, sludge or septage volume and geographic location.

[1989, c. 585, Pt. E, §5 (AMD) .]

1-A. Rules; transportation. The board shall adopt rules relating to the transportation of solid waste, including, without limitation:

A. Licensing categories of transporters of septage, used motor vehicle tires and construction or demolition debris, conveyances used for the transportation of septage, used motor vehicle tires and construction or demolition debris and the operators of these conveyances as the board finds necessary to effect sound waste management; [1999, c. 385, §3 (AMD) .]

B. Establishment of transporter licensing and conveyance registration fees that are sufficient to recover all costs of administering, monitoring compliance with and enforcing the provisions of this subsection and which fees must be paid to the Maine Environmental Protection Fund; [1991, c. 824, Pt. A, §87 (AMD) .]

C. A manifest system for categories of solid waste that must provide a means to account for septage, used motor vehicle tires and construction or demolition debris handled, transported and disposed of in the State; and [1999, c. 385, §3 (AMD) .]

D. Evidence of financial capacity of transporters to protect public health, safety and welfare and the environment, including, without limitation:

(1) Liability insurance;

(2) Performance bonding; and

(3) Financial ability to comply with statutory and regulatory requirements or conditions. [1987, c. 517, §9 (NEW) .]

[1999, c. 385, §3 (AMD) .]

1-B. Handling of special waste. The board may adopt rules relating to the handling of special waste, including, without limitation:

A. Containerization and labeling of special waste; [1987, c. 517, §9 (NEW) .]

B. Reporting on handling of special waste; [1987, c. 517, §9 (NEW) .]

C. Waste which is not compatible; and [1987, c. 517, §9 (NEW) .]

D. A marking system, by categories of waste, to clearly identify vehicles transporting solid waste. [1987, c. 517, §9 (NEW) .]

[1987, c. 517, §9 (NEW) .]

1-C. Rules; agronomic utilization of sludge. Rules adopted by the board relating to the agronomic utilization of sludge are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. This subsection takes effect January 1, 2000.

[1999, c. 393, §2 (NEW) .]

2. Site location.

[1993, c. 383, §35 (RP) .]

3. Municipal status reports.

[1989, c. 585, Pt. E, §6 (RP) .]

4. Technical assistance. The commissioner is authorized to establish guidelines for effective waste management, to provide technical assistance to persons planning, constructing or operating waste facilities, and to conduct applied research activities in the field of waste management, disposal technology and environmental effects, including methods of recycling hazardous or solid waste, sludge or septage. The commissioner shall cooperate with the office in the design and delivery of this assistance.

[1995, c. 656, Pt. A, §22 (AMD) .]

4-A. Right of entry. For the purposes of enforcing any provision of this Act or of developing or enforcing any rule authorized by this Act, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

A. Enter any establishment or other place which is not a residence, or any conveyance, where or in which hazardous or solid waste, sludge or septage is generated, handled or transported; [1981, c. 430, §8 (RPR) .]

B. Inspect and obtain samples of any hazardous or solid waste, sludge or septage, including samples from any conveyance in which hazardous or solid waste, sludge or septage is being or has been transported, as well as samples of any containers or labels; and [1981, c. 430, §9 (AMD) .]

C. Inspect and copy any records, reports, information or test results relating to hazardous or solid waste, sludge or septage. [1979, c. 383, §6 (NEW) .]

[1981, c. 430, §§7-9 (AMD) .]

5. Planning grants.

[1989, c. 585, Pt. E, §8 (RP) .]

6. Study.

[1981, c. 478, §3 (RP) .]

7. Hazardous waste plan.

[1981, c. 478, §3 (RP) .]

8. Licenses for waste facilities.

[1987, c. 517, §10 (RP) .]

9.

[1983, c. 432, §5 (RP) .]

10. Legislative review. Rules adopted by the board under this section and section 1319-O, subsection 1 which impose standards or requirements more stringent than final regulations of the United States Environmental Protection Agency shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review. Any rules adopted by the board under this section shall be submitted to the legislative committee having jurisdiction over energy and natural resources for review pursuant to Title 5, section 8053-A.

[1987, c. 517, §11 (AMD) .]

11. Imported waste report.

[1993, c. 355, §48 (RP) .]

12. Compliance orders. The commissioner may issue compliance orders subject to the provisions of this subsection.

A. Whenever, after investigation, the commissioner determines that there is or has been an unauthorized discharge of hazardous waste, constituents of hazardous waste, or waste oil into the environment where there is a reasonable basis to believe that the discharge is endangering or causing damage to public health or the environment or that any person has violated or is in violation of any requirement of this subchapter, including rules adopted thereunder, relating to hazardous waste or waste oil activities, he may issue an order requiring compliance immediately or within a specified time period or requiring corrective action or other response measures as necessary to protect the public health and safety or the environment.

The commissioner may require assurance of financial ability for completing corrective action and may require, where necessary, that corrective action be taken beyond a facility or site to remove the danger to the public health or the environment unless the person to whom the order is directed demonstrates to the commissioner that, despite that person's best efforts, he was unable to obtain the necessary permission to undertake such actions. [1987, c. 192, §25 (AMD) .]

B. Any order issued under this subsection may be directed to any person who causes or caused or contributes or contributed to the discharge or violation. Such order shall contain findings of fact describing, insofar as possible, and with reasonable specificity, the nature of the discharge or violation, the wastes involved, the nature of the cause or contribution of the person with respect to the discharge or violation, the site of the activity, the required action, the time period for compliance and the danger to public health or safety of the environment. [1985, c. 746, §29 (NEW) .]

C. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §26 (AMD) .]

D. The person to whom the order is directed shall comply immediately or within a specified time period. That person may apply to the board within 10 working days after receipt of the order for a hearing on the order. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first

establish the basis for the order and for naming the person to whom the order is directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §27 (AMD).]

[2005, c. 330, §§26, 27 (AMD) .]

13. Innovative disposal and utilization. Recognizing that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource, the commissioner may investigate and implement with the approval of the board innovative programs for managing, utilizing and disposing of solid waste. Innovative programs may include agricultural and forest land spreading of wood-derived ash, utilization of ash resulting from combustion of municipal solid waste, paper mill sludges, municipal waste water treatment plant sludges and the composting of yard wastes. The office shall first determine that the proposed innovative disposal and waste management programs are consistent with the state plan. The commissioner shall review proposed innovative programs for each waste category and shall apply all controls necessary to ensure the protection of the environment and public health consistent with this chapter. The board may adopt application review procedures designed to review individual applications and their individual waste sources with prior approval of classes of disposal or utilization sites. The board shall adopt provisions for municipal notification prior to use of individual utilization sites.

[1995, c. 656, Pt. A, §23 (AMD) .]

13-A. Pulp and paper mill sludge; land spreading. The provisions of this section apply only to land spreading and related storage of sludge generated at industrial facilities utilizing kraft wood pulping processes.

A. Subject to Title 5, section 9051-A, the board shall adopt provisions for public notification prior to use of individual utilization sites and storage sites. Notice to individuals shall be made by certified mail. [1989, c. 299, (NEW).]

B. The board shall establish, by rule, requirements for the siting, preparation of the site and operation of facilities, including stockpiles, used for the storage of sludge for a period of more than 30 days. The board shall incorporate the following provisions:

(1) The maximum storage period at facilities without impervious liners and leachate collection and treatment is 6 months. The department may waive this requirement on a case-by-case basis for a maximum of 2 additional months when the applicant has demonstrated that the storage facility is inaccessible or that utilization of the stored material would be in violation of any prohibition of land spreading on frozen, snow-covered or saturated ground.

(2) Sludge storage sites may not be located within 300 feet of a year-round river, stream, brook or pond nor within 75 feet of any intermittent stream or brook or any natural drainage way, including gullies, swales and ravines.

(3) Storage facilities without impervious liners and leachate collection systems may be used only once in any 10-year period. [1989, c. 299, (NEW); 1989, c. 890, Pt. B, §230 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

[1989, c. 299, (NEW); 1989, c. 890, Pt. B, §230 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

13-B. Municipal solid waste incinerator ash; rulemaking. The board shall adopt rules establishing requirements for the use of municipal solid waste incinerator ash, referred to in this subsection as "ash." In developing these rules, the board shall consult with the Department of Transportation and the Maine Turnpike Authority on those issues relating to the use of ash in or on roads. In developing these rules, the board shall consider, but is not limited to considering, the following issues:

A. The feasibility and comparative health risk of using bottom ash versus using combined bottom ash and fly ash; [1997, c. 418, §1 (NEW).]

B. The risk to human health and the environment from toxic constituents of ash, including dioxin and heavy metals; [1997, c. 418, §1 (NEW).]

C. Site-specific restrictions and prohibitions on the use of ash, particularly on uses that might expose sensitive populations or sensitive natural resources to health or environmental risks; [1997, c. 418, §1 (NEW).]

D. Methods of tracking the physical location of ash in all initial and subsequent uses, and whether uses should be restricted to those that can be tracked; [1997, c. 418, §1 (NEW).]

E. Methods of state and municipal notification of activities involving the use of ash, which may include individual notice or permits for specific projects as needed; and [1997, c. 418, §1 (NEW).]

F. State and municipal liability in the case of a release or threat of release of a hazardous substance, hazardous waste, hazardous matter, special waste or contaminant into the environment resulting from the use of ash. [1997, c. 418, §1 (NEW).]

Rules adopted pursuant to this subsection must require that any risk assessment performed as part of an application for a license to use ash use the most current available data and methods and be reviewed by the Department of Health and Human Services, Bureau of Health in consultation with the department.

Except as specified in subsection 13-C, a person may not use ash without a license from the department issued pursuant to this subsection. The department may not process or act upon an application for a license under this subsection until rules are finally adopted by the board pursuant to this subsection. For purposes of this subsection, the term "use" includes, but is not limited to, the following: use in a manufacturing process, use as aggregate for asphalt or concrete products, use in the construction industry, use as final landfill closure material and the use of a product manufactured from ash. The term "use" does not include transport, storage or disposal in a landfill licensed to accept ash.

Rules adopted pursuant to this subsection are major substantive rules under Title 5, chapter 375, subchapter II-A.

[1997, c. 418, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

13-C. Use of treated ash in secure landfills. Subject to the requirements of other applicable laws, a person may do the following without a license issued pursuant to subsection 13-B:

A. Process municipal solid waste incinerator ash to remove noncombusted materials, size the ash and reduce the solubility of metals contained within the ash; and [1997, c. 418, §1 (NEW).]

B. Use municipal solid waste incinerator ash processed in the manner specified in paragraph A as follows:

- (1) As landfill daily cover material in a secure landfill;
- (2) As construction material in a secure landfill; and
- (3) In pilot projects in a secure landfill. [1997, c. 418, §1 (NEW).]

The use of municipal solid waste incinerator ash pursuant to this subsection is limited to the lined areas within a secure landfill and each use must receive case-by-case approval from the department. Prior to approving the use of municipal solid waste incinerator ash in a secure landfill, the department shall ensure that the use provides adequate protection of human health and the environment.

For purposes of this subsection, the term "secure landfill" means a landfill that utilizes a liner system, a leachate collection and treatment system and a final cover system to minimize discharges of waste or leachate and control the release of gas to the environment.

[1997, c. 418, §1 (NEW) .]

13-D. Use of fish scales as crop nutrient supplements. A person may use fish scales as a crop nutrient supplement without a license issued pursuant to this chapter as long as:

A. The department has reviewed the process by which the waste fish scales are generated and has approved the use of the scales as a soil amendment on crop farms; [1999, c. 283, §1 (NEW).]

B. The farm using fish scales as a supplement has developed and implemented a nutrient management plan in accordance with the provisions of Title 7, chapter 747 and in accordance with the Department of Agriculture, Food and Rural Resources' rules concerning nutrient management planning; and [1999, c. 283, §1 (NEW).]

C. The person supplying the fish scales provides the following information to the department within 7 days of shipping the fish scales with respect to each person receiving the scales:

- (1) The name of the person receiving the fish scales;
- (2) The location or locations where the fish scales will be used; and
- (3) The quantity of fish scales shipped. [1999, c. 283, §1 (NEW).]

[1999, c. 283, §1 (NEW) .]

14. Disposal fees.

[1989, c. 585, Pt. E, §11 (RP) .]

15. Special services program.

[1989, c. 585, Pt. E, §11 (RP) .]

16. Wood yard debris. The provisions of this chapter do not apply to soil containing incidental bark or woody material generated during the transport, handling or storage of logs prior to processing. For the purposes of this section, "processing" is defined to include the debarking, chipping and sawing of wood.

[1991, c. 643, §1 (NEW) .]

17. Sludge and septage guidance. The commissioner shall develop guidance to municipalities regarding the regulation of septage and sludge land application by municipalities. The guidance must include information regarding site location restrictions, testing and enforcement actions that may be undertaken by a municipality and municipal roles and responsibilities under section 1310-U.

[2001, c. 247, §2 (NEW) .]

18. Use of residuals containing human pathogens. The department may not license the utilization and distribution of residuals containing human pathogens, such as municipal treatment plant sludge, under permit-by-rule provisions established by the department pursuant to the provisions of section 344, subsection 7.

[2003, c. 231, §1 (NEW) .]

19. Interested parties notice for distribution of composted sludge. The department shall establish and maintain a list of interested parties, including a statewide organization that represents municipalities in this State, to whom notice of license applications and applications to modify existing licenses for the distribution in this State of composted sludge must be provided. In addition, the department shall electronically mail the notice to each municipality in the State that is equipped to receive electronic mail. Notice must be provided upon the department's finding that the application is complete for processing.

[2003, c. 231, §1 (NEW) .]

SECTION HISTORY

1973, c. 387, (NEW). 1975, c. 577, (AMD). 1977, c. 300, §§52,53 (AMD). 1979, c. 383, §§3-8 (AMD). 1979, c. 472, §16 (AMD). 1979, c. 663, §236 (AMD). 1979, c. 699, §§10-12 (AMD). 1981, c. 303, §1 (AMD). 1981, c. 430, §§7-11 (AMD). 1981, c. 470, §A171 (AMD). 1981, c. 478, §§3,4 (AMD). 1981, c. 698, §191 (AMD). 1983, c. 432, §5 (AMD). 1985, c. 157, (AMD). 1985, c. 746, §29 (AMD). 1985, c. 822, §4 (AMD). 1987, c. 192, §§25,26 (AMD). 1987, c. 517, §§9-12 (AMD). 1987, c. 883, §1 (AMD). 1989, c. 299, (AMD). 1989, c. 585, §§E5-11 (AMD). 1989, c. 890, §§A40,B226, 227, (AMD). 1991, c. 72, §3 (AMD). 1991, c. 643, §1 (AMD). 1991, c. 824, §A87 (AMD). 1993, c. 355, §48 (AMD). 1993, c. 383, §35 (AMD). 1995, c. 656, §§A22,23 (AMD). 1997, c. 418, §1 (AMD). 1999, c. 283, §1 (AMD). 1999, c. 385, §3 (AMD). 1999, c. 393, §2 (AMD). 2001, c. 247, §2 (AMD). 2003, c. 231, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 330, §§26,27 (AMD).

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