

# MAINE STATE LEGISLATURE

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(Governor's Bill)  
SECOND REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1902**

H. P. 1780

House of Representatives, January 25, 1980

Referred to the Committee on Energy and Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Tierney of Lisbon.

Cosponsors: Mr. Brenerman of Portland, Mr. Wood of Sanford and Mr. Paul of Sanford.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

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**AN ACT to Enable the State to Protect the People of Maine and its Natural Environment from Damages Resulting from the Discharge of Hazardous Matter.**

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

**Sec. 1.** 17 MRSA § 2253, as amended by PL 1975, c. 739, § 2, is repealed.

**Sec. 2.** 25 MRSA § 2108, as enacted by PL 1977, c. 622, is repealed.

**Sec. 3.** 38 MRSA c. 13-B is enacted to read:

**CHAPTER 13-B**

**HAZARDOUS MATTER DISCHARGE PREVENTION AND CONTROL**

**§ 1401. Funding and purpose**

The Legislature finds and declares that discharges of hazardous matter have occurred in the past, are occurring now and that these discharges pose a threat and present the potential of catastrophic harm to the people of Maine and its natural environment.

The Legislature further declares that it is the purpose of this chapter to protect the people of Maine and the environment of the State from both short-term and

long-range consequences of discharges of hazardous matter by providing authority and funding to prevent these discharges.

The Legislature finds and declares that the interest of the people of Maine in the quality of their lives and their environment and in the maintenance of a broad range of public and private uses dependent on a relatively unspoiled environment overrides and outweighs any economic burdens imposed by the operation of this chapter upon those who handle hazardous matter. The Legislature further finds and declares that the protection of these interests of the people of Maine and the preservation of public uses referred to in this chapter are of grave public interest and concern to the State in promoting the general welfare and providing for the public safety, and that the state's interest in this protection and preservation outweighs any burdens of absolute liability imposed by the Legislature upon handlers of hazardous matter.

The Legislature intends by the enactment of this chapter to exercise the police power of the State through the Board of Environmental Protection by conferring upon the board the power to deal with the hazards and threats of danger and damage posed by the handling of hazardous matter, to require the prompt containment and removal of discharges of hazardous matter and of pollution occasioned thereby and to utilize the fund created in this chapter for those purposes.

The Legislature, by this chapter, establishes a fund to be known as the Maine Hazardous Matter Discharge Prevention and Control Fund, to be used as directed in this chapter, for the purpose of removal of discharges of hazardous matter and for the purpose of planning, constructing and operating one or more disposal facilities for materials used in or resulting from the removal of a discharge. The Legislature finds that it is necessary to establish and levy upon handlers of hazardous matter fees based upon hazardous matter received by or in the custody or control of handlers and that these fees are not unreasonably disproportionate to the activities and risks faced by the people of Maine and its natural resources.

#### § 1402. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. **Board.** "Board" means the Board of Environmental Protection.
2. **Categorize; category.** "Categorize" means the grouping by the board of hazardous matter according to degree of hazard. "Category" means such a group so established. In establishing these categories, the board shall be guided by categories established by the United States Environmental Protection Agency in regulations proposed or finally promulgated under the United States Water Pollution Control Act, United States Code, Title 33, section 1151, et seq. The board is not limited to these categories, but may, in its reasonable judgment, add or eliminate categories and may add or eliminate hazardous matter within categories.

3. Discharge. "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping onto the land or into the water or ambient air.

4. Disposal. "Disposal" includes but is not limited to treating, separating, processing, salvaging, reducing, storing, incinerating or disposing and includes analysis, separation, shipment and reshipment to other in-state or out-of-state facilities capable of further disposal or reuse, of substances, materials and equipment used in, collected in or resulting from the removal of a discharge of hazardous matter.

5. Disposal facility. "Disposal facility" means any land area or structure or combination of land area and structures and any equipment and processes for the disposal of substances, materials and equipment used in, collected in or resulting from the removal of a discharge of hazardous matter.

6. Fund. "Fund" means the Maine Hazardous Matter Discharge Prevention and Control Fund.

7. Handler. "Handler" means any person who is a manufacturer, commercial or industrial user, wholesaler, distributor or warehouse, including, but not limited to, cooperatives, and who in the course of business or business-related activity, or in commerce, receives in a calendar year, for use, storage, shipment or reshipment, sale or distribution, whether to wholesale or retail outlets, or who has custody or control of in a calendar year, more than the following amounts of hazardous matter, categorized according to subsection 2:

- A. 100 pounds of any one matter in the most hazardous category;
- B. 1,000 pounds of any one matter in the 2nd most hazardous category;
- C. 10,000 pounds of any one matter in the 3rd most hazardous category;
- D. 100,000 pounds of any one matter in the 4th most hazardous category; or
- E. 500,000 pounds of any one matter in the 5th most hazardous category.

Other amounts may be specified by the board for other categories as may be established under subsection 2.

For the first 12 months of operation of the program established by this chapter, status as a handler shall be determined by the amount of hazardous matter received by or in the custody or control of a person or entity as set forth in this subsection during the 12 months immediately prior to the commencement of the operation of the program. Thereafter, status as a handler shall be determined as provided by rule by the board.

8. Hazardous matter. "Hazardous matter" means such elements, compounds and materials, singly or in combination, as may be identified by the board as presenting danger, imminent, present or delayed, to the people of the State or to its natural environment when discharged into, upon or within the waters, surface or subsurface, air or land of the State. Substances or materials for which a fee is

charged under chapter 3, subchapter II-A, are not hazardous matter for the purposes of this chapter.

9. **Remove or removal.** “Remove” or “removal” means the elimination by cleanup, treatment or other means of a discharge of hazardous matter or of the effects or results of such a discharge or the taking of such action as will substantially minimize danger or damage from such a discharge to the health, welfare or safety of the people of Maine or its natural environment.

10. **Water.** “Water” means waters of the State, as defined by section 361-A, subsection 7, and includes ground water, as defined by section 361-A, subsection 2-A.

#### § 1403. Prohibition

1. **Discharge prohibited.** The discharge of hazardous matter into or upon any waters of the State, including, but not limited to, coastal waters, estuaries, tidal flats, rivers, streams, lakes, ponds, sewers, surface water drains, ground water or into or upon any land within the state’s territorial boundaries, including, but not limited to, waters and lands within a distance of 12 miles from the coastline of the State, or into the ambient air, as defined by section 582, subsection 5, is prohibited unless licensed or permitted by the board under other law.

2. **Exception.** Where application of an element, compound or material to land or water or its introduction into the air, would, but for this subsection, constitute a discharge prohibited under this section, it shall not constitute such a discharge where applied in quantities or concentrations, or by type or method of application, determined by the board not to present danger, imminent, present or delayed, to the people of the State or to its natural environment.

#### § 1404. Powers and duties of the Department of Environmental Protection

The powers and duties established by this chapter shall be exercised by the Department of Environmental Protection and shall be deemed to be an essential governmental function in the exercise of the police power of the State.

The powers and duties of the Department of Environmental Protection and the Board of Environmental Protection shall extend to the areas set forth in section 1403.

#### § 1405. Regulatory powers

1. **Power.** The board shall have the power to adopt rules as reasonably necessary to carry out the purposes of this chapter, including, but not limited to:

A. Requirements and procedures for reporting and payment of fees by handlers, including the use of estimates and adjustments of fees and including, but not limited to, the information to be supplied and records to be kept;

B. Identification and categorization of hazardous matter;

C. Procedures and methods of reporting discharges and other occurrences

prohibited by this chapter;

D. Procedures, methods, means and equipment to be used in the removal of discharges of hazardous matter;

E. Development and implementation of criteria and plans to prevent and meet hazardous matter discharges and occurrences of various degrees and kinds; and

F. Such rules and regulations as the exigencies of any condition may require or as may be reasonably necessary to carry out the intent of this chapter.

#### § 1406. Emergency powers

1. Proclamation. Whenever any disaster or catastrophe exists or appears imminent arising from a discharge or threatened discharge of hazardous matter, the Governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the State. If the Governor is temporarily absent from the State or is otherwise unavailable, the next person in the State who would act as Governor if the office of the Governor were vacant shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the State. The proclamation shall be published in such manner and places as the Governor, or person acting in that capacity, deems appropriate and a copy shall be filed with the Secretary of State. The Governor shall have general direction and control of the Board of Environmental Protection and shall be responsible for carrying out the purposes of this chapter.

2. Cooperation with others. In performing his duties under this chapter, the Governor is authorized and directed to cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries, and the political subdivisions thereof, and with private agencies in all matters pertaining to a disaster or catastrophe.

3. Additional authority of Governor. In performing his duties under this chapter, the Governor is further authorized and empowered:

A. To make, amend and rescind the necessary orders, rules and regulations to carry out this chapter within the limits of the authority conferred upon him and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions; and

B. To delegate any authority vested in him under this chapter and to provide for the subdelegation of any such authority.

4. Termination. Whenever the Governor is satisfied that an emergency no longer exists, he shall terminate the proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. The proclamation shall be published in such manner and places as the Governor, or the person acting in that capacity, deems appropriate and a copy shall be filed with the Secretary of State.

5. Civil defense. The provisions of Title 37-A, chapter 3, as they shall apply to eminent domain and compensation, mutual aid, immunity, aid in emergency, right of way, enforcement and compensation shall apply to disaster or catastrophes proclaimed by the Governor under this chapter.

§ 1407. Response to discharges; removal of discharges

1. Report. When a discharge or threatened discharge of hazardous matter occurs, it shall be reported immediately to the Department of Public Safety, which shall immediately notify the Department of Environmental Protection. If so reported by the person who was the handler of the hazardous matter at the time of the discharge or threatened discharge, the reporting may be considered in mitigation of any fines or penalties assessed under this chapter.

2. Department of Public Safety to coordinate. In the event of a discharge or threatened discharge, the Department of Public Safety shall have the authority and responsibility for preservation of public order and safety. The department, with the support and cooperation of the Bureau of Civil Emergency Preparedness, shall serve as the coordinating agency for planning and implementation of procedures for response by state and local governmental agencies and private entities to these discharges. All such agencies and entities shall cooperate fully with the Department in this planning and implementation.

3. Department of Environmental Protection to direct removal. The Department of Environmental Protection shall have authority and responsibility to plan, implement and, with the cooperation of the Department of Public Safety, direct that part of the response to a discharge of hazardous matter which involves removal of the discharge.

4. Removal. The removal of hazardous discharge shall be conducted according to this subsection.

A. Any person who discharges hazardous matter in violation of section 1403 shall undertake immediately to remove the discharge to the satisfaction of the Department of Environmental Protection.

B. Notwithstanding paragraph A, the Department of Environmental Protection may undertake the removal of this discharge and may retain agents and make contracts for these purposes.

C. Any unexplained discharge of hazardous matter occurring within state jurisdiction or on land or in water or air beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the board.

D. Any expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting the discharge or by the board itself or through its agents or contractors, shall be paid in the first instance from the fund as established and provided in this chapter and any reimbursements due the fund shall be collected in accordance with section 1411.

**§ 1408. Personnel and equipment**

The board shall establish and maintain at such places within the State as it shall determine such employees and equipment as in its judgement may be necessary to carry out this chapter. The commissioner, subject to the Personnel Law, may employ such personnel as may be necessary to carry out the purposes of this chapter and shall prescribe the duties of the personnel.

The salaries and expenses of the personnel and the costs of the equipment shall be paid from the Maine Hazardous Discharge Prevention and Control Fund established by this chapter. Inspection and enforcement employees of the board in the line of their duty under this chapter shall have the powers of a constable.

**§ 1409. Penalties**

1. Failure to pay fees. A handler who fails to pay fees in accordance with section 1411 and regulations promulgated under this chapter is liable for civil and criminal penalties as provided in section 349.

2. Discharge violation. Any person who causes or is responsible for a discharge of hazardous matter in violation of section 1403 shall not be subject to any fines or civil penalties if the person promptly reports and removes the discharge in accordance with the rules and orders of the board. Where a discharge is not removable or no action can be taken to remove it, the person responsible for the discharge is liable for civil and criminal penalties in accordance with section 349.

**§ 1410. Liabilities of handlers**

1. Handlers liable. A handler is liable for all acts and omissions of its servants and agents.

2. State need not plead or prove negligence. Because it is the intent of this chapter to provide the means for rapid and effective cleanup and to minimize direct damages as well as indirect damages, any person who permits or causes a prohibited discharge or other polluting condition to take place is liable to the State for all disbursements made by it pursuant to this chapter or other damage incurred by the State. In any suit to enforce claims of the State under this chapter, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred while the hazardous matter was in the custody or control of the person causing or responsible for the discharge or was attributable to agents, servants or others for whom that person is responsible.

**§ 1411. Maine Hazardous Matter Discharge Prevention and Control Fund**

1. Fund established. The Maine Hazardous Matter Disclosure Prevention and Control Fund is established to be used by the board as a nonlapsing, revolving fund for carrying out the purposes of this chapter.



The fund is limited to \$2,000,000, except that the limitation shall be increased to the extent necessary to permit any moneys earned as interest to be paid into the fund, and the board shall collect fees in accordance with the procedures set forth in this section and related regulations. To this fund shall be credited all fees, penalties and other fees and charges related to this chapter and to this fund shall be charged any and all expenses of the board and department related to this chapter.

Moneys in the fund, not needed currently to meet the obligations of the board in the exercise of its responsibility under this chapter, shall be deposited with the Treasurer of State to the credit of this fund and may be invested in such a manner as is provided for by statute. Interest received by this investment shall be credited to the fund.

2. Loans. Whenever the balance in the fund has reached the limit provided under this chapter, handlers' fees as established by the board shall be proportionally reduced to cover only administrative expenses and removal expenses, provided that, during such time as any loans from the Maine Coastal Protection Fund are outstanding, these fees may not be reduced but rather shall be doubled until such time as the principal and interest are repaid and the fund restored to its maximum limit as provided in this subsection.

A. Whenever the moneys in the Maine Hazardous Matter Discharge Prevention and Control Fund are depleted or have the potential to be depleted to less than 10% of the amount not reserved for administrative expenses, the board may borrow from the Maine Coastal Protection fund moneys up to the amount established as the limitation on the fund established by this chapter. These borrowed moneys shall be repaid as promptly as possible, with interest at the average rate that investments of the Maine Coastal Protection Fund moneys not so loaned earned during the period that the loan was outstanding.

B. Whenever a disaster or catastrophe is proclaimed in accordance with section 1406, the board may borrow up to eight million \$ from the Maine Coastal Protection Fund. These borrowed funds shall be repaid as promptly as possible, with interest at the average rate that investments of the Maine Coastal Protection Fund moneys not so loaned earned during the period that the loan was outstanding.

C. In order to commence immediate operation of the program set forth in this chapter, the board may borrow up to \$2,000,000 from the Maine Coast Protection Fund. When the fund reaches the maximum limit set forth in this section, these borrowed funds shall be repaid as promptly as possible with interest at the average rate that investments of Maine Coastal Protection Fund moneys not so loaned earned during the period that the loan was outstanding. The repaying of moneys borrowed for this purpose shall not occasion the increase in fees otherwise required while loans to the fund from the Maine Coastal Protection Fund are outstanding.

3. Funding. Handlers of hazardous matter shall pay to the department fees

which shall be determined by the board and which shall relate directly to the degree of hazard as reflected in categories established by the board under section 1402, subsection 2. These fees shall be paid quarterly by the handler on the amount of hazardous matter received or in the custody or control of the handler during the quarter, as shown in records certified by the handler to the department according to such requirements and procedures for the payment of fees as the board may establish by rule. No more than 1¢ per pound shall be established as the fee for hazardous matter in the most hazardous category. Fees for categories of less hazardous matter shall be proportionately lower. Fees required by this section shall be paid by the handler who first comes into possession of the hazardous matter in the State.

4. Disbursements from the fund. Moneys in the fund may be disbursed for the following purposes:

- A. Administrative expenses, personnel expenses and equipment costs related to the enforcement and administration of this chapter;
- B. All costs involved in the removal of discharges of hazardous matter;
- C. Extraordinary costs of a public safety agency;
- D. Payment of loans, interest and principal;
- E. Training of personnel of state and local public safety agencies;
- F. Costs of planning, developing, constructing, operating, maintaining and closing, including post-closure maintenance and monitoring, of one or more disposal facilities as defined in this chapter; and
- G. Other reasonable costs and expenses related to the administration and enforcement of this chapter.

5. Reimbursement to the fund. The board shall seek recovery to the use of the fund of all sums expended from the fund, except funds expended under subsection 4, paragraph F including overdrafts, unless the board finds the amount too small or the likelihood of success too uncertain.

In the case of a handler promptly reporting a discharge, as required by this chapter, reimbursement will be sought of disbursements from the fund in excess of \$10,000 for a single incident.

Requests for reimbursement to the fund, if not paid within 30 days of demand, shall be turned over to the Attorney General for collection. The board may waive this time period for good cause.

The board may file claims with appropriate federal agencies to recover appropriate federal moneys for use of the fund.

§ 1412. Interstate or regional cooperation and compacts; agency cooperation

The Governor is authorized and directed to cooperate and enter into agreements

**with any other state or states and with the United States for the purposes of implementing and carrying out the provisions and intent of this chapter.**

### **§ 1413. Construction**

**Being necessary for the general welfare, public health and public safety of this State and its inhabitants, this chapter shall be liberally construed to effect the purposes set forth. No rule or order of the board may be stayed pending appeal under this chapter.**

### STATEMENT OF FACT

The bill repeals a ban on the importation of wastes for disposal purposes in the State in accordance with Environmental Protection Agency directives. Such statutory bans in other states have been declared unconstitutional by the United States Supreme Court.

Most importantly, Maine's cooperation may be necessary in order to ensure reciprocity for the export of these wastes from Maine to other states.

This bill also establishes a program and a means for funding a program that will allow the State to be ready and to take action when a spill of hazardous matter enters the environment and presents a danger to the people of the State and its natural resources. The proposed program is patterned after the existing oil conveyance program and has many of its successful features.

The success of any program of this type is directly dependent on having funds to provide effective action and a trained cadre immediately available to respond when called. This trained cadre needs to be able to offer advice, know where equipment and technical expertise is available, instate and out-of-state, be able to train others and be able to enter into contracts with private parties that will be able to assist in an emergency. There can be no delays while parties are trying to determine who is at fault, who will remove spilled matter or who will pay the bills. These issues should not be relevant until the danger posed by the spill has been satisfactorily eliminated.

The Department of Public Safety is charged with the responsibility of seeing that public order and safety are maintained. This is in keeping with their recognized and accepted role. The Department of Environmental Protection is charged with the responsibility of seeing that the dangerous spill is removed or mitigated. Funds provided by fees from "handlers" can be used for extraordinary costs incurred by public safety agencies - state and local, as well as for removal of the dangerous spill. Funds can also be used for training state and local personnel.

The parties required to pay fees are instate manufacturers of hazardous matter, central wholesale distributors who bring in hazardous matter from out-of-state for resale or redistribution and large users who purchase directly from out-of-state distributors and manufacturers. The fee will be collected on a quarterly basis from one of these handlers. The collection process will be much like other procedures which rely on voluntary reporting and systematic audits.

The exact number of emergency spills that will be covered by this program is unknown. There are no known detailed records of past incidents, hence projections of total funds needed, number of personnel needed and other resources are based on geographic needs rather than unquestionable data. The proposed budget allows for the hiring of 3 people to be scattered in regional offices. One person would serve northern and eastern Maine, the 2nd would serve central and western Maine and the 3rd southern and southwestern Maine. These people would be specifically trained in handling hazardous incidents and would in turn train others. These people would also be responsible for maintaining equipment and more importantly knowing where to get technical assistance to solve a specific problem. It is the intention of the Department of Environmental Protection, whenever practical, to supplement this Department of Environmental Protection resources, such as laboratory, engineering and field investigations.

The fee will be based on a list of chemicals developed by the Board of Environmental Protection after a public hearing. The list will be divided into a number of categories. The fee for the most hazardous category will be no more than 1¢ per pound. The fee for other categories will be less than 1¢ per pound. All fees will be reduced, when the fund reaches its maximum amount, to cover operating expenses. This mechanism used in the oil conveyance fee system with satisfactory results.