

MAINE STATE LEGISLATURE

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(EMERGENCY)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1638

S.P. 565

In Senate, May 17, 1983

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Diamond of Cumberland.

Cosponsors: Representative Carroll of Gray, Representative Mitchell of Freeport and Representative Davis of Monmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Establish a Program to Abate,
Clean up and Mitigate Threats to Public
Health and the Environment from
Uncontrolled Hazardous Substance Sites.

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

Whereas, the Legislature deems it necessary to alleviate the threat or potential threat to the public health, safety or welfare of all the people of the State, to prevent the contamination of ground and surface waters and air of the State, and to preserve land and other resources; and

Whereas, uncontrolled hazardous substance sites in the State pose a threat to the people of the State and problems associated with these sites have occurred in the past, are occurring now and present

1 future threats to the public health, safety or wel-
2 fare and to the environment of potentially grave pro-
3 portions; and

4 Whereas, these threats are inimical to the para-
5 mount interests of the State; and

6 Whereas, in the judgment of the Legislature,
7 these facts create an emergency within the meaning of
8 the Constitution of Maine and require the following
9 legislation as immediately necessary for the preser-
10 vation of the public peace, health and safety; now,
11 therefore,

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

14 Sec. 1. 38 MRSA c. 13-B is enacted to read:

15 CHAPTER 13-B

16 UNCONTROLLED HAZARDOUS SUBSTANCE SITES

17 §1361. Findings and purpose

18 The Legislature finds and declares that uncon-
19 trolled hazardous substance sites within the juris-
20 isdiction of the State present a hazard to all the
21 people of the State and that hazard poses a threat or
22 potential threat to the public health, safety or wel-
23 fare, to the environment of the State and to owners
24 and users of property near or adjacent to uncon-
25 trolled sites.

26 The Legislature further finds that adequate mea-
27 sures must be taken to ensure that the threats posed
28 by uncontrolled hazardous substance sites are abated,
29 cleaned up or mitigated promptly.

30 The Legislature further finds that it is in the
31 public interest of the State and its citizens to pro-
32 vide the capacity for prompt and effective planning
33 and implementation of plans to abate, clean up or
34 mitigate threats posed or potentially posed by uncon-
35 trolled sites. This paramount state interest
36 outweighs any burden, economic or otherwise, imposed
37 by this chapter.

1 §1362. Definitions

2 As used in this chapter, unless the context indi-
3 icates otherwise, the following terms have the follow-
4 ing meanings.

5 1. Hazardous substance. "Hazardous substance"
6 means:

7 A. Any substance identified by the board under
8 section 1303-A;

9 B. Any substance identified by the board under
10 section 1319;

11 C. Any substance designated pursuant to the Fed-
12 eral Comprehensive Environmental Response, Com-
13 ensation and Liability Act of 1980, Public Law
14 96-510, Section 102 (Superfund);

15 D. Any toxic pollutant listed under the United
16 States Federal Water Pollution Control Act,
17 Section 307(a);

18 E. Any hazardous air pollutant listed under the
19 United States Clean Air Act, Section 112; and

20 F. Any imminently hazardous chemical substance
21 or mixture with respect to which the Administra-
22 tor of the United States Environmental Protection
23 Agency has taken action pursuant to the United
24 States Toxic Substances Control Act, Section 7.

25 2. Responsible party. "Responsible party" means
26 any one or more of the following persons:

27 A. The owner or operator of the uncontrolled
28 site;

29 B. Any person who owned or operated the uncon-
30 trolled site from the time any hazardous sub-
31 stance arrived there;

32 C. Any person who arranged for the transport or
33 handling of a hazardous substance, provided that
34 the substance arrived at the uncontrolled site;
35 and

1 D. Any person who accepted a hazardous substance
2 for transport, provided that the substance
3 arrived at the uncontrolled site.

4 3. Uncontrolled hazardous substance site.
5 "Uncontrolled hazardous substance site" or "uncon-
6 trolled site" means an area or location, whether or
7 not licensed, at which hazardous substances are or
8 were handled or otherwise came to be located, if it
9 is concluded by the commissioner that the site poses
10 a threat or hazard to the health, safety or welfare
11 of any person or to the natural environment and that
12 action under this chapter is necessary to abate,
13 clean up or mitigate that threat or hazard. The term
14 includes all contiguous land under the same ownership
15 or control and includes without limitation all struc-
16 tures, appurtenances, improvements, equipment,
17 machinery, containers, tanks and conveyances on the
18 site.

19 §1363. Technical services

20 The commissioner shall create a technical ser-
21 vices unit within the Bureau of Oil and Hazardous
22 Materials Control. This unit shall be staffed by
23 individuals with training and experience in remedial
24 response, hydrogeology, engineering, chemistry and
25 related fields. The department may:

26 1. Conduct investigations; uncontrolled sites.
27 Conduct investigations, as necessary, to identify
28 uncontrolled sites;

29 2. Conduct site evaluations; threat or hazard.
30 Conduct site evaluations of uncontrolled sites to
31 determine if a site poses or potentially poses a
32 threat or hazard to the health, safety or welfare of
33 the citizens of the State or the natural environment
34 of the State;

35 3. Conduct investigations; threat or hazard.
36 Conduct investigations to determine the threat or
37 hazard posed or potentially posed by an uncontrolled
38 site;

39 4. Conduct evaluations; contamination. Conduct
40 evaluations to determine the degree of contamination

1 caused or potentially caused by an uncontrolled site;

2 5. Preliminary studies. Conduct preliminary
3 studies and prepare plans to abate, clean up or miti-
4 gate threats or hazards posed or potentially posed by
5 an uncontrolled site;

6 6. Abate; clean up. Administer or carry out
7 measures to abate, clean up or mitigate the threats
8 or hazards posed or potentially posed by an uncon-
9 trolled site;

10 7. Remedies. Formulate and implement remedies
11 to remove, store, treat, dispose of or otherwise
12 handle hazardous substances located in, on or over an
13 uncontrolled site, including soil and water contami-
14 nated by hazardous substances; and

15 8. Action. Take whatever other action is deemed
16 necessary to abate, clean up or mitigate the threats
17 or hazards posed or potentially posed by an uncon-
18 trolled site or to protect the public health, safety
19 or welfare or the environment.

20 §1364. Abatement, clean up and mitigation costs

21 Whenever possible and practical, the department
22 shall make use of resources available under the
23 Superfund program or other federal programs to evalu-
24 ate and investigate uncontrolled sites and to abate,
25 clean up or mitigate threats or hazards posed or
26 potentially posed by uncontrolled sites.

27 In the case of a site at which federal resources
28 may be or are being used, proceeds from the sale of
29 bonds for the evaluation and investigation of sites
30 and for implementation of plans to abate, clean up or
31 mitigate hazards or threats posed or potentially
32 posed by an uncontrolled site may be used:

33 1. Privately owned sites. In the case of a site
34 that was privately owned at the time of disposal of
35 any hazardous substances, for the state's share of
36 remedial action costs; and

37 2. Sites owned by State or political subdivi-
38 sion. In the case of the site which was owned at the

1 time of disposal of any hazardous substances by the
2 State or a political subdivision thereof, for the
3 state's share of response costs.

4 In the case of a site at which federal resources
5 are not used, the commissioner shall so notify the
6 Governor in writing. The Governor may authorize the
7 department to proceed under the provisions of this
8 chapter without those resources. In the event the
9 State proceeds at its own expense with work eligible
10 for federal funding, the Commissioner of Environ-
11 mental Protection shall present the United States
12 Environmental Protection Agency with a demand for
13 reimbursement.

14 All funds, from whatever source, available for
15 site evaluation and investigation and for the imple-
16 mentation of plans to abate, clean up or mitigate
17 threats or hazards to the public health, safety or
18 welfare and to the environment are to be expended
19 under the direction and supervision of the commis-
20 sioner and shall be segregated, apportioned and
21 expended as provided by the Legislature.

22 §1365. Acceptance of funds

23 The department may accept any public or private
24 funds which may be available for carrying out the
25 purposes of this chapter.

26 §1366. Liability; recovery by the State for abate-
27 ment, clean up or mitigation costs and for
28 damages

29 Each responsible party is jointly and severally
30 liable for all costs incurred by the State for the
31 abatement, clean up or mitigation of the threats or
32 hazards posed or potentially posed by an uncontrolled
33 site and for damages for injury to, destruction of or
34 loss of natural resources of the State resulting from
35 hazardous substances at the site or from the acts or
36 omissions of a responsible party with respect to
37 those hazardous substances. The commissioner shall
38 demand reimbursement of costs and payment of damages
39 to be recovered under this section and payment shall
40 be made promptly by the responsible party or parties
41 upon whom the demand is made. If payment is not

1 received by the State within 30 days of the demand,
2 the Attorney General may file suit in the Superior
3 Court and, in addition to relief provided by other
4 law, may seek punitive damages. Notwithstanding the
5 time limits stated in this paragraph, neither a
6 demand nor other recovery efforts against one respon-
7 sible party may relieve any other responsible party
8 of liability.

9 In any suit filed under this section, the State
10 need not prove negligence in any form or matter by a
11 defendant. The State need only prove that a defend-
12 ant is a responsible party, as defined in section
13 1362, and that the site posed or potentially posed a
14 threat or hazard to the health, safety or welfare of
15 any citizen of the State or the environment of the
16 State.

17 Funds recovered under this section shall be
18 deposited into the account from which the funds were
19 expended and shall be used by the department to carry
20 out the purposes of this chapter.

21 §1367. Emergency

22 Whenever the commissioner determines that an
23 emergency exists as the result of a threat or hazard
24 posed by an uncontrolled site, the commissioner shall
25 immediately notify the Governor. The Governor may
26 declare an emergency and, in addition to whatever ac-
27 tion is necessary and available to him under law, may
28 authorize the Commissioner of Environmental Protec-
29 tion in conjunction with the Commissioner of Public
30 Safety to:

31 1. Take control. Take control of the uncon-
32 trolled site and threatened adjacent areas;

33 2. Secure. Secure the uncontrolled site;

34 3. Evict. Evict all persons from the uncon-
35 trolled site;

36 4. Dispose, treat, store or handle. Dispose,
37 treat, store or otherwise handle all hazardous sub-
38 stances located on the uncontrolled site, including
39 soil and water contaminated by hazardous substances;
40 and

1 5. Take action. Take whatever other action is
2 deemed necessary to abate, clean up or mitigate the
3 threat or hazard posed by the uncontrolled site.

4 §1368. Immunity

5 Notwithstanding the provisions of Title 14, chap-
6 ter 741, neither the State nor any agency or employee
7 thereof engaged in any abatement, clean up or miti-
8 gation activity, while complying with or attempting
9 to comply with this chapter, or with any rule promul-
10 gated or directive issued in the implementation of
11 this chapter, may be liable for the death of or
12 injury to persons, or damage to property, as a result
13 of that activity. This section shall not affect the
14 right of any person to receive benefits to which he
15 would otherwise be entitled under the workers' com-
16 penetration law or any other pension law, nor the right
17 of any person to receive benefits or compensation
18 under any act of Congress.

19 §1369. Property forfeited

20 Property shall be subject to forfeiture as fol-
21 lows.

22 1. Forfeiture; property rights. The following
23 property shall be subject to forfeiture to the State
24 and all property rights therein shall be in the
25 State:

26 A. All real estate, structures, appurtenances,
27 improvements, equipment, machinery, containers,
28 tanks and conveyances used or intended to be used
29 in, on or in connection with an uncontrolled site
30 subject to this section, and all products, mate-
31 rials and supplies used or intended to be used
32 in, on or in connection with an uncontrolled site
33 subject to this section; and

34 B. All moneys, negotiable instruments, securi-
35 ties or other things of value furnished or
36 intended to be furnished by any person in any
37 transaction involving an uncontrolled site sub-
38 ject to this section, all proceeds traceable to
39 such a transaction and all moneys, negotiable
40 instruments, securities or other things of value

1 used or intended to be used to facilitate any ac-
2 tivities related to an uncontrolled site subject
3 to this section.

4 2. Jurisdiction. Property subject to forfeiture
5 may be declared forfeited by a court having jurisdic-
6 tion over the property or having final jurisdiction
7 over a related civil or criminal proceeding regarding
8 an uncontrolled site.

9 3. Exceptions. The court may order forfeiture
10 of all property subject to forfeiture except as fol-
11 lows.

12 A. No conveyance used by a common carrier in the
13 transaction of business as a common carrier may
14 be forfeited, unless it appears that the owner or
15 other person in charge of the conveyance was a
16 responsible party, a consenting party, privy or
17 otherwise had an interest in an uncontrolled site
18 subject to this section.

19 B. No conveyance may be forfeited by reason of
20 an act or omission established by the owner to
21 have been committed or omitted by another person
22 while the conveyance was unlawfully in the pos-
23 session of another person in violation of the
24 criminal laws of the United States or any state.

25 C. No conveyance may be subject to forfeiture
26 unless the owner knew or should have known that
27 that conveyance was used in, on or in connection
28 with an uncontrolled site subject to this
29 section. Proof that the conveyance was used on 3
30 or more occasions in, on or in connection with an
31 uncontrolled site shall be prima facie evidence
32 that the owner knew or should have known thereof.

33 D. No property subject to forfeiture under sub-
34 section 1, paragraph B, may be forfeited, to the
35 extent of the interest of an owner, by reason of
36 any act or omission established by that owner to
37 have been committed or omitted without the knowl-
38 edge or consent of that owner.

39 4. Procedure. The Attorney General may seek
40 forfeiture of a conveyance according to the procedure

1 set forth in Title 22, section 2387, subsections 4, 5
2 and 6 with the following exceptions.

3 A. A final order issued by the court under that
4 procedure shall provide for disposition of the
5 conveyance by the Department of Finance and
6 Administration, including official use by a
7 public agency or sale at public auction or by
8 competitive bidding.

9 B. The proceeds of a sale shall be used to pay
10 the reasonable expenses for the forfeiture pro-
11 ceedings, seizure, storage, maintenance of cus-
12 tody, advertising and notice, and to pay any bona
13 fide mortgage thereon, and the balance, if any,
14 shall be deposited in the Hazardous Waste Fund
15 for use in the uncontrolled site program.

16 C. Records, required by Title 22, section 2387,
17 subsection 5, shall be open to inspection by all
18 federal and state officers charged with enforce-
19 ment of federal and state laws relating to the
20 uncontrolled sites.

21 **2. Appropriation.** The following funds are
22 appropriated from the General Fund to carry out the
23 purposes of this Act.

	<u>1983-84</u>	<u>1984-85</u>
24		
25	<u>ENVIRONMENTAL PROTECTION,</u>	
26	<u>DEPARTMENT OF</u>	
27	Uncontrolled site program	
28	Positions	(4 1/2)
29	Personal Services	\$103,923
30	All Other	<u>21,077</u>
31	Total	\$125,000

32 **Emergency clause.** In view of the emergency cited
33 in the preamble, this Act shall take effect when
34 approved.

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STATEMENT OF FACT

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The problem of uncontrolled sites where hazardous substances are or have been improperly handled is one that concerns all states. Maine has many uncontrolled sites, some of which require immediate investigation in order to ensure that no health or environmental threat is posed by them.

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This bill establishes a mechanism to ensure that uncontrolled sites will be investigated and remedied in a consistent, efficient, cost-effective way.

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Experience has indicated that obtaining and using federal superfund grants in Maine will require a significant obligation by Maine staff. Such work includes initial site listing, cooperative agreement writing, defining state interests and acceptable risk and clean up, etc. A state program will also enable the State to request bids from Maine concerns for investigations and implementation of remedies.

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Finally, experience has indicated that some state needs in the uncontrolled site program may not be practically resolved by the federal superfund program. This bill is necessary to assure that uncontrolled sites can be identified, evaluated and remedied where other state or federal assistance is not available, or is not readily available.

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