

MAINE STATE LEGISLATURE

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(EMERGENCY)
(New Draft of S.P. 565, L.D. 1638)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No. 1751

S.P. 617 In Senate, June 9, 1983

Reported by Senator Kany of Kennebec from the Committee on Energy and Natural Resources and printed under Joint Rule 2.
Original bill presented by Senator Diamond of Cumberland. Cosponsored by Representative Carroll of Gray, Representative Mitchell of Freeport and Representative Davis of Monmouth.

JOY J. O'BRIEN, Secretary of the Senate

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

1 and problems associated with these sites have
2 occurred in the past, are occurring now and present
3 future threats to the public health, safety or wel-
4 fare and to the environment of potentially grave pro-
5 portions; and

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

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

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

16 38 MRSA c. 13-B is enacted to read:

17 CHAPTER 13-B

18 UNCONTROLLED HAZARDOUS SUBSTANCE SITES

19 §1361. Findings and purpose

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

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

32 The Legislature further finds that it is in the
33 public interest of the State and its citizens to pro-
34 vide the capacity for prompt and effective planning
35 and implementation of plans to abate, clean up or
36 mitigate threats posed or potentially posed by uncon-

1 trolled sites. This paramount state interest
2 outweighs any burden, economic or otherwise, imposed
3 by this chapter.

4 §1362. Definitions

5 As used in this chapter, unless the context indi-
6 cates otherwise, the following terms have the follow-
7 ing meanings.

8 1. Hazardous substance. "Hazardous substance"
9 means:

10 A. Any substance identified by the board under
11 section 1303-A;

12 B. Any substance identified by the board under
13 section 1319;

14 C. Any substance designated pursuant to the Fed-
15 eral Comprehensive Environmental Response, Com-
16 ensation and Liability Act of 1980, Public Law
17 96-510, Section 102 (Superfund);

18 D. Any toxic pollutant listed under the United
19 States Federal Water Pollution Control Act,
20 Section 307(a);

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

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

28 2. Responsible party. "Responsible party" means
29 any one or more of the following persons:

30 A. The owner or operator of the uncontrolled
31 site;

32 B. Any person who owned or operated the uncon-
33 trolled site from the time any hazardous sub-
34 stance arrived there;

1 C. Any person who arranged for the transport or
2 handling of a hazardous substance, provided that
3 the substance arrived at the uncontrolled site;
4 and

5 D. Any person who accepted a hazardous substance
6 for transport, provided that the substance
7 arrived at the uncontrolled site.

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

23 §1363. Prohibited acts

24 No person may handle hazardous substances at an
25 uncontrolled hazardous substance site in violation of
26 any order issued under this chapter.

27 §1364. Powers and duties of the department

28 1. Technical services. The commissioner shall
29 establish a technical services capability within the
30 department to assist in the identification, evalu-
31 ation and mitigation of uncontrolled hazardous sub-
32 stance sites.

33 2. Rules. The board may adopt rules related to
34 the handling of hazardous substances and the designa-
35 tion and mitigation of uncontrolled hazardous sub-
36 stance sites.

37 3. Investigation and evaluation. The department
38 may investigate and sample sites where hazardous sub-
39 stances are stored or handled to identify uncon-
40 trolled hazardous substance sites.

1 4. Designation. In accordance with section
2 1365, the commissioner may declare a site to be an
3 uncontrolled hazardous substance site.

4 5. Mitigation. The department may take whatever
5 action is deemed necessary to abate, clean up or
6 mitigate the threats or hazards posed or potentially
7 posed by an uncontrolled site or to protect the
8 public health, safety or welfare or the environment,
9 including administering or carrying out measures to
10 abate, clean up or mitigate the threats or hazards,
11 and implementing remedies to remove, store, treat,
12 dispose of or otherwise handle hazardous substances
13 located in, on or over an uncontrolled site, includ-
14 ing soil and water contaminated by hazardous sub-
15 stances.

16 6. Accept funds. The department may accept any
17 public or private funds which may be available for
18 carrying out the purposes of this chapter.

19 §1365. Designation of uncontrolled hazardous sub-
20 stance sites

21 1. Investigation. If the commissioner finds,
22 after investigation, that any location at which
23 hazardous substances are or were handled or otherwise
24 came to be located may create a danger to public
25 health or safety of any person or to the environment,
26 he may designate that location as an uncontrolled
27 hazardous substance site. He may order any responsi-
28 ble party dealing with the hazardous substances to
29 cease immediately or to prevent that activity and to
30 take an action necessary to terminate or mitigate the
31 danger or likelihood of danger. He may also order
32 any person contributing to the danger or likelihood
33 of danger to cease or prevent that contribution.

34 2. Orders. Any order issued under this section
35 shall contain findings of fact describing, insofar as
36 possible, the hazardous substances, the site of the
37 activity and the danger to the public health or
38 safety.

39 3. Service. Service of the commissioner's find-
40 ings and an order shall be made pursuant to the Maine
41 Rules of Civil Procedure.

1 4. Compliance, appeal. The person to whom the
2 order is directed shall comply immediately. A person
3 to whom it is directed may apply to the board for a
4 hearing on the order. The hearing shall be held by
5 the board within 3 days after receipt of application.
6 Within 7 days after the hearing, the board shall make
7 findings of fact and continue, revoke or modify the
8 order. The decision of the board may be appealed to
9 the Superior Court in accordance with the Maine
10 Administrative Procedure Act, Title 5, chapter 375,
11 subchapter VII.

12 5. Civil action. The Attorney General may file
13 suit in Superior Court to compel any responsible
14 party to abate, clean up or mitigate threats or haz-
15 ards posed or potentially posed by an uncontrolled
16 site.

17 §1366. Abatement, clean up and mitigation costs

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

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

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

34 2. Sites owned by state or political subdivi-
35 sion. In the case of a site which was owned at the
36 time of disposal of any hazardous substances by the
37 state or a political subdivision thereof, for the
38 state's share of response costs.

39 In the case of a site at which federal resources
40 are not used, the commissioner shall so notify the

1 Governor in writing. The Governor may authorize the
2 department to proceed under the provisions of this
3 chapter without those resources. In the event the
4 State proceeds at its own expense with work eligible
5 for federal funding, the Commissioner of Environ-
6 mental Protection shall present the United States
7 Environmental Protection Agency with a demand for
8 reimbursement.

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

17 §1367. Liability; recovery by the State for abate-
18 ment, clean up or mitigation costs and for
19 damages

20 Each responsible party is jointly and severally
21 liable for all costs incurred by the State for the
22 abatement, clean up or mitigation of the threats or
23 hazards posed or potentially posed by an uncontrolled
24 site and for damages for injury to, destruction of or
25 loss of natural resources of the State resulting from
26 hazardous substances at the site or from the acts or
27 omissions of a responsible party with respect to
28 those hazardous substances. The commissioner shall
29 demand reimbursement of costs and payment of damages
30 to be recovered under this section and payment shall
31 be made promptly by the responsible party or parties
32 upon whom the demand is made. If payment is not
33 received by the State within 30 days of the demand,
34 the Attorney General may file suit in the Superior
35 Court and, in addition to relief provided by other
36 law, may seek punitive damages. Notwithstanding the
37 time limits stated in this paragraph, neither a
38 demand nor other recovery efforts against one respon-
39 sible party may relieve any other responsible party
40 of liability.

41 In any suit filed under this section, the State
42 need not prove negligence in any form or matter by a
43 defendant. The State need only prove that a defen-

1 dant is a responsible party, as defined in section
2 1362, and the site poses or posed or potentially
3 poses or posed a threat or hazard to the health,
4 safety or welfare of any citizen of the State or the
5 environment of the State, to which the acts or omis-
6 sions of the defendant are or were causally related.

7 A person who would otherwise be a responsible
8 party shall not be subject to liability under this
9 section, if he can establish by a preponderance of
10 the evidence that threats or hazards posed or poten-
11 tially posed by an uncontrolled site, for which
12 threats or hazards he would otherwise be responsible,
13 were caused solely by:

14 1. Act of God. An act of God;

15 2. Act of war. An act of war;

16 3. Act or omission. An act or omission of a 3rd
17 party who is not his employee or agent. A person
18 seeking relief from liability for the acts or omis-
19 sions of a 3rd party shall also demonstrate by a pre-
20 ponderance of the evidence that he exercised due care
21 with respect to the hazardous substance and uncon-
22 trolled site concerned, taking into consideration the
23 characteristics of that substance and site, in light
24 of all relevant facts and circumstances and that he
25 took precautions against foreseeable acts or omis-
26 sions of any such 3rd party and the consequences that
27 could foreseeably result from such acts or omissions;
28 or

29 4. Combination. Any combination of the forego-
30 ing subsections.

31 Funds recovered under this section shall be
32 deposited into the account from which the funds were
33 expended and shall be used by the department to carry
34 out the purposes of this chapter.

35 §1368. Emergency

36 Whenever the commissioner determines that an
37 emergency exists as the result of a threat or hazard
38 posed by an uncontrolled site, the commissioner shall
39 immediately notify the Governor. The Governor may

1 declare an emergency and, in addition to whatever ac-
2 tion is necessary and available to him under law, may
3 authorize the Commissioner of Environmental Protec-
4 tion in conjunction with the Commissioner of Public
5 Safety to:

6 1. Take control. Take control of the uncon-
7 trolled site and threatened adjacent areas;

8 2. Secure. Secure the uncontrolled site;

9 3. Eject. Eject all persons from the uncon-
10 trolled site;

11 4. Dispose, treat, store or handle. Dispose,
12 treat, store or otherwise handle all hazardous sub-
13 stances located on the uncontrolled site, including
14 soil and water contaminated by hazardous substances;
15 and

16 5. Take action. Take whatever other action is
17 deemed necessary to abate, clean up or mitigate the
18 threat or hazard posed by the uncontrolled site.

19 §1369. Immunity

20 Notwithstanding the provisions of Title 14, chap-
21 ter 741, neither the State nor any agency or employee
22 thereof engaged in any abatement, clean up or miti-
23 gation activity, while complying with or attempting
24 to comply with this chapter, or with any rule promul-
25 gated or directive issued in the implementation of
26 this chapter, may be liable for the death of or
27 injury to persons, or damage to property, as a result
28 of that activity. This section shall not affect the
29 right of any person to receive benefits to which he
30 would otherwise be entitled under the workers' com-
31 ensation law or any other pension law, nor the right
32 of any person to receive benefits or compensation
33 under any act of Congress.

34 §1370. Property forfeited

35 The following property shall be subject to for-
36 feiture to the State in accordance with the proce-
37 dures set forth in section 1306-C and all property
38 rights therein shall be in the State:

1 sions of the bill to property or assets directly
2 involved in violations of uncontrolled hazardous sub-
3 stance provisions.

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