

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2114

H.P. 1502

House of Representatives, January 7, 1992

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

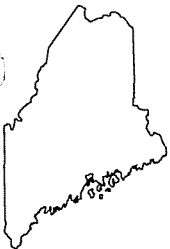
Presented by Representative LORD of Waterboro.
Cosponsored by Senator LUDWIG of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

**An Act to Amend Certain Laws Pertaining to the Department of
Environmental Protection's Bureau of Hazardous Materials and Solid
Waste Control.**

(EMERGENCY)



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

4
6 Whereas, serious inequities exist between the Coastal and
Inland Surface Oil Clean-up Fund and the Ground Water Oil
Clean-up Fund statutes as a result of emergency legislation
8 effective April 1990, which preclude the department from dealing
equitably with claimants with respect to medical expenses,
10 drinking water and other issues; and

12 Whereas, it is necessary that these inequities be resolved
in order to prevent any injustice or hardship to the citizens of
14 Maine; and

16 Whereas, there is a need to facilitate reimbursements to the
Maine Hazardous Waste Fund to ensure adequate resources for the
18 operation of hazardous waste management and response programs; and

20 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
22 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
24 safety; now, therefore,

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

28 **Sec. 1. 38 MRSA §551, sub-§2, as affected by PL 1989, c. 890,**
Pt. A, §40 and amended by Pt. B, §117, is further amended to read:

30
32 2. **Third-party damages.** Any person, claiming to have
suffered actual economic damages, including, but not limited to,
34 real-estate-or-personal property damage or, loss of income and
medical expenses, but exclusive of expenditures for the
36 preparation of the damage claim such as legal fees or real estate
appraisal fees, directly or indirectly as a result of a discharge
of oil, prohibited by section 543, including all discharges of
38 oil from interstate pipelines, ~~hereinafter~~ in this subsection
called the claimant, may apply within ~~6-months~~ 2 years after the
40 occurrence ~~of--such--discharge~~ or discovery of the injury or
damage, whichever date is later, to the commissioner stating the
42 amount of damage alleged to be suffered as a result of such that
discharge. The commissioner shall prescribe appropriate forms and
44 details for the applications. The commissioner may contract with
insurance professionals to process claims. The ~~board~~ commissioner
46 may, upon petition and for good cause shown, waive the ~~6-months'~~
2-year limitation for filing damage claims.

2 A. ~~If the claimant, the commissioner and the person causing~~
3 ~~the discharge can agree to the damage claim, or in the case~~
4 ~~where the person causing the discharge is not known after~~
5 ~~the commissioner has exercised reasonable efforts to~~
6 ~~ascertain the discharger, if the claimant and the~~
7 ~~commissioner can agree to the damage claim, the commissioner~~
8 ~~shall certify the amount of the claim and the name of the~~
9 ~~claimant to the Treasurer of State and the Treasurer of~~
10 ~~State shall pay the same from the Maine Coastal and Inland~~
11 ~~Surface Oil Clean-up Fund. When a responsible party is~~
12 ~~known, the commissioner must send by certified mail to the~~
13 ~~responsible party notice of claim and written notice of~~
14 ~~right to join as an interested party. A responsible party~~
15 ~~shall provide written notification to the department of the~~
16 ~~responsible party's intent to join within 10 days of receipt~~
17 ~~of this notice. If the responsible party joins as an~~
18 ~~interested party, determination of value of claim and award~~
19 ~~is binding in any subsequent action for reimbursement to the~~
20 ~~fund. If a claimant is not compensated for 3rd-party~~
21 ~~damages by the responsible party and the claimant, the~~
22 ~~responsible party and the commissioner agree as to the~~
23 ~~amount of the damage claim, or if the responsible party does~~
24 ~~not join as an interested party or in the case where the~~
25 ~~responsible party is not known after the commissioner has~~
26 ~~exercised reasonable efforts to ascertain the responsible~~
27 ~~party and the claimant and the commissioner agree as to the~~
28 ~~amount of the damage claim, the commissioner shall certify~~
29 ~~the amount of the claim and the name of the claimant to the~~
30 ~~Treasurer of State and the Treasurer of State shall pay the~~
31 ~~amount of the claim from the Coastal and Inland Surface Oil~~
32 ~~Clean-up Fund.~~

33 B. If the claimant, the responsible party and the
34 commissioner ~~and the person causing the discharge can~~ are
35 ~~not able to~~ agree as to the amount of the damage claim, or
36 ~~if the responsible party does not join as an interested~~
37 ~~party or in the case where the person causing the discharge~~
38 ~~responsible party is not known after the commissioner has~~
39 ~~exercised reasonable efforts to ascertain the discharger, if~~
40 ~~responsible party and the claimant and the commissioner can~~
41 ~~are not able to~~ agree as to the amount of the damage claim,
42 ~~the claim shall forthwith be transmitted for action to the~~
43 ~~Board of Arbitration as provided in this subchapter is~~
44 ~~subject to subsection 3-A.~~

45 C. ~~Third-party~~ Third-party damage claims shall must be
46 stated in their entirety in one application. Damages omitted
47 from any claim at the time the award is made shall ~~be deemed~~
48 are waived.

49 D. ~~Damage claims arising under this subchapter shall be~~

2 recoverable--only--in--the--manner--provided--under--this
subchapter,--it--being--the--intent--of--the--Legislature--that--the
remedies--provided--in--this--subchapter--are--exclusive.

4
6 E. Awards from the fund on damage claims shall do not
include any amount which the claimant has recovered, on
8 account of the same damage, by way of settlement with the
responsible party or the responsible party's representatives
10 or judgment of the--federal--courts a court of competent
jurisdiction against the person causing or otherwise
12 responsible for the discharge to the extent these amounts
are duplicative.

14 F. A claimant shall take all reasonable measures to prevent
and minimize damages suffered by the claimant as a result of
16 a discharge of oil. Reasonable measures include title
searches and site assessments for the acquisition of
18 commercial or industrial properties.

20 G. It is the intent of the Legislature that the remedies
provided for 3rd-party damage claims compensated under this
22 subchapter are nonexclusive. A court awarding damages to a
claimant as a result of a discharge of oil to surface waters
24 prohibited by section 543 shall reduce damages awarded by
any amounts received from the fund to the extent these
26 amounts are duplicative.

28 H. Payments from the fund for 3rd-party damage claims may
not exceed \$200,000 per claimant.

30
32 I. A 3rd-party damage claim for damages to real estate may
not include the devaluation of the real estate associated
34 with the loss of a water supply if the commissioner finds
under section 568, subsection 2 that a public or private
36 water supply is available and best meets the criteria of
that subsection and the property owner did not agree to be
38 served by that public or private water supply.

40 J. A responsible party, as defined in section 562-A, is not
eligible for compensation through the 3rd-party damage claim
42 process for costs, expenses or damages related to the
specific discharge for which the responsible party is
44 determined responsible.

46 K. Prior to taking any position with regard to a 3rd-party
damage claim, the commissioner may require that the claim be
48 finalized with respect to the amount claimed.

50 **Sec. 2. 38 MRS.A §551, sub-§3, as amended by PL 1985, c. 496,**
Pt. A, §13, is repealed.

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Sec. 3. 38 MRSA §551, sub-§3-A is enacted to read:

3-A. Determination of disputed 3rd-party damage claims.

The commissioner shall establish a claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims.

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner.

C. Hearings before the hearing examiner are informal and the rules of evidence applicable to judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination.

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters relating to abuse of discretion by the hearing examiner. A claimant seeking review of a hearing examiner's determination shall file an appeal in the Superior Court within 30 days of the determination.

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner, and shall certify the name of the claimant to the Treasurer of State.

Sec. 4. 38 MRSA §569, sub-§2-A, as amended by PL 1991, c. 494, §13, is further amended to read:

2-A. Third-party damages. Any person claiming to have suffered actual economic damages, including, but not limited to, property damage, loss of income and medical expenses, but exclusive of expenditures for the preparation of the damage claim such as legal fees or real estate appraisal fees, directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the claimant, may apply within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to be

2 suffered as a result of that discharge. The commissioner shall
3 prescribe appropriate forms and details for the applications.
4 The commissioner may contract with insurance professionals to
5 process claims. The ~~board~~ commissioner, upon petition and for
6 good cause shown, may waive the 2-year limitation for filing
7 damage claims. For claims made on discharges eligible for
8 coverage by the 3rd-party commercial risk pool account, the
9 commissioner shall pay the first \$100,000 per claimant out of the
10 3rd-party commercial risk pool account as long as funds are
11 available. The commissioner shall pay any claims that exceed
12 \$100,000 or available money in the 3rd-party commercial risk pool
13 account from the fund.

14 A. When a responsible party is known, the commissioner must
15 send by certified mail to the responsible party notice of
16 claim and written notice of right to join as an interested
17 party. A responsible party shall provide written
18 notification of intent to join to the department within 10
19 days of receipt of this notice. If the responsible party
20 joins as an interested party, determination of value of
21 claim and award is binding in any subsequent action for
22 reimbursements to the fund. If a claimant is not
23 compensated for 3rd-party damages by the responsible party
24 or the expenses are above the applicant's deductible and the
25 claimant, the responsible party and the commissioner agree
26 as to the amount of the damage claim, or if the responsible
27 party does not join as an interested party or in the case
28 where the responsible party is not known after the
29 commissioner has exercised reasonable efforts to ascertain
30 the responsible party, and the claimant and the commissioner
31 agree as to the amount of the damage claim, the commissioner
32 shall certify the amount of the claim and the name of the
33 claimant to the Treasurer of State and the Treasurer of
34 State shall pay the amount of the claim from the Ground
35 Water Oil Clean-up Fund.

36 B. If the claimant, the responsible party and the
37 commissioner are not able to agree as to the amount of the
38 damage claim, or if the responsible party does not join as
39 an interested party or in the case where the responsible
40 party is not known after the commissioner has exercised
41 reasonable efforts to ascertain the responsible party, and
42 the claimant and the commissioner are not able to agree as
43 to the amount of the damage claim, the claim is subject to
44 subsection 3-A.

45 C. A claimant shall take all reasonable measures to prevent
46 and minimize damages suffered by the claimant as a result of
47 a discharge of oil. Reasonable measures include title
48 searches and site assessments for the acquisition of
49 commercial or industrial properties.
50

2 D. Third-party damage claims must be stated in their
4 entirety in one application. Damages omitted from any claim
at the time the award is made are deemed waived.

6 F. Awards from the fund on damage claims may not include
8 any amount the claimant has recovered, on account of the
same damage, by way of settlement with the responsible party
10 or the responsible party's representative or judgment of a
court of competent jurisdiction against the person causing
12 or otherwise responsible for the discharge.

14 G. It is the intent of the Legislature that the remedies
provided for 3rd-party damage claims compensated under this
16 subchapter are nonexclusive. A court awarding damages to a
claimant as a result of a discharge of oil to ground water
18 prohibited by section 543 shall reduce damages awarded by
any amounts received from the fund to the extent these
20 amounts are duplicative.

22 H. Payments from the fund for 3rd-party damage claims may
not exceed \$200,000 per claimant.

24 I. A 3rd-party damage claim for damages to real estate may
26 not include the devaluation of the real estate associated
with the loss of a water supply if the commissioner finds
28 under section 568, subsection 2 that a public or private
water supply is available and best meets the criteria of
30 that subsection and the property owner did not agree to be
served by that public or private water supply.

32 J. A responsible party, as defined in section 562-A, is not
34 eligible for compensation through the 3rd-party damage claim
process for costs, expenses or damages related to the
36 specific discharge for which the responsible party is deemed
responsible except in those instances where fund coverage
38 eligibility is established.

40 K. Prior to taking any position with regard to a 3rd-party
damage claim, the commissioner may require that the claim be
42 finalized with respect to the amount claimed.

44 This subsection is repealed December 31, 1999.

46 **Sec. 5. 38 MRSA §569, sub-§3-A, ¶E, as amended by PL 1989, c.**
865, §16 and affected by §§24 and 25, is further amended to read:

48 E. The commissioner shall certify the amount of the damage

2 award, if any, after determination by the hearing examiner,
and shall certify the name of the claimant to the Treasurer
of State, ~~unless the commissioner has determined that the~~
4 ~~claimant is a responsible party, in which case the~~
~~commissioner shall withhold certification until all claims~~
6 ~~that the commissioner has against the responsible party with~~
~~respect to the discharge have been satisfied.~~

8
10 **Sec. 6. 38 MRSA §608-A**, as repealed and replaced by PL 1991,
c. 66, Pt. A, §34 and c. 499, §20, is repealed and the following
enacted in its place:

12 **§608-A. Soil decontamination**

14
16 Any rotary drum mix asphalt plant may process up to 10,000
cubic yards of soil contaminated by gasoline or #2 fuel oil per
18 year. The 10,000 cubic yards per year without an air emissions
permit pursuant to section 590 limit may be exceeded with written
20 authorization from the commissioner. The plant owner or operator
shall notify the commissioner at least 24 hours prior to
22 processing the contaminated soil and specify the contaminating
fuel and quantity, origin of the soil and fuel and the
24 disposition of the contaminated soil. The owner or operator
shall maintain records of these activities for 6 years.

26 **Sec. 7. 38 MRSA §1318-A, sub-§2**, as amended by PL 1989, c.
317, §1, is further amended to read:

28
30 **2. State and municipalities to recover for expenditures for**
removal. Any person who permits, causes or is responsible for a
32 prohibited discharge shall reimburse the State and municipalities
for all costs incurred, including personnel costs, in removing
34 the discharge, including costs for ensuring public safety. Funds
recovered under this section shall must be deposited to the
36 account from which they were expended. Requests for
reimbursement, if not paid within 30 days of demand, shall may be
38 submitted to a collection agency or agent or an attorney retained
by the department with the approval of the Attorney General
40 pursuant to Title 5, section 191, or, for municipal cost, to the
District Attorney for collection.

42
44 **Sec. 8. 38 MRSA §1319-G, sub-§1**, as affected by PL 1989, c.
890, Pt. A, §40 and amended by Pt. B, §258, is further amended to
read:

46
48 **1. Recovery.** The commissioner shall seek recovery to the
use of the Maine Hazardous Waste Fund all sums expended therefrom
50 from the fund, including overdrafts, for disbursements made from
the fund under section 1319-E, subsection 1, paragraphs A, B and

2 C, including interest computed at 10% a year from the date of
3 expenditure, unless the commissioner finds the amount too small
4 or the likelihood of recovery too uncertain. Requests for
5 reimbursement ~~must--be--referred--to--the--Attorney--General--for~~
6 collection to the Maine Hazardous Waste Fund, if not paid within
7 30 days of demand, may be turned over to the Attorney General for
8 collection or may be submitted to a collection agency or agent or
9 an attorney retained by the department with the approval of the
10 Attorney General pursuant to Title 5, section 191.

11 The commissioner may file a claim with or otherwise seek money
12 from federal agencies to recover to the use of the fund all
13 disbursements from the fund.

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

18 STATEMENT OF FACT

19
20 The bill amends the 3rd-party damage claims process for the
21 Coastal and Inland Surface Oil Clean-up Fund to make it
22 consistent with the process under the Ground Water Oil Clean-up
23 Fund. It amends the time for filing, claimable items, amount
24 that may be awarded and the procedure for resolving disputed
25 claims. It also amends the authority of the Department of
26 Environmental Protection to dismiss claims.

27
28 The bill also amends the Ground Water Oil Clean-up Fund
29 3rd-party damage claim process to provide an element of due
30 process for the responsible party.

31
32 The bill also amends the hazardous matter control laws and
33 the hazardous waste fund laws to provide for a collection agency
34 or agent or an attorney retained by the department with the
35 approval of the Attorney General to seek reimbursement of
36 expenditures made from the Maine Hazardous Waste Fund.

37
38 The bill removes the restriction on the use of rotary drum
39 mix asphalt batch plants located in ozone nonattainment areas
40 with respect to the processing of oil-contaminated soil.