

MAINE STATE LEGISLATURE

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L.D. 1509

(Filing No. H- 572)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1113, L.D. 1509, Bill, "An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection's Bureau of Hazardous Materials and Solid Waste Control"

Amend the bill by striking out all of sections 1 to 4 and inserting in their place the following:

Sec. 1. 37-B MRSA §797, first ¶, as enacted by PL 1989, c. 464, §3, is amended to read:

Any A person required to submit a facility emergency response plan, material safety data sheet or list of hazardous chemicals and extremely hazardous substances must submit a Maine chemical inventory reporting form to the commission, the Department of Environmental Protection, the local emergency planning committee and the local fire department with jurisdiction over the facility, by March 1st annually. ~~This form shall require information~~ Information on the inventory of extremely hazardous substances and hazardous chemicals for the previous calendar year is required on the form. These forms shall must state, at a minimum:

Sec. 2. 37-B MRSA 799, as amended by PL 1989, c. 929, §4, is further amended to read:

§799. Toxic chemical release forms

Under this section, the owner or operator of every facility with 10 or more employees and within Standard Industrial Classification Codes 20-39 must file toxic chemical release forms for routine releases with the United States Environmental Protection Agency, the Department of Environmental Protection, the commission and the local emergency planning committee by October 1, 1989, and annually thereafter consistent with the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499,

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Title III, Section 313, and 40 Code of Federal Regulations, Part 372. Those forms must be made available to the public by the commission and the local emergency planning committee. The owner or operator of every facility required to report under this section must also submit a report on the progress made by the facility toward meeting the toxics release reduction goals established in Title 38, section 2303.

Sec. 3. 38 MRSa §342, sub-§15 is enacted to read:

15. Technical services. The commissioner shall establish a technical services unit within the department to assist any person involved in a real estate transaction in determining whether real property that is the subject of the transaction has been the site of a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products.

The commissioner may also assist in or supervise the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, review and approval of a requester's investigation plans, site assessments and reports, voluntary response action plans and implementation of those plans.

The person requesting assistance under this subsection shall pay the department an initial nonrefundable fee of up to \$500 to be determined by the Commissioner. The person shall also pay the department for its actual direct and indirect costs of providing assistance, which must be determined by the commissioner but which must not on an hourly basis exceed \$50 per hour per person. Money received by the department for assistance under this subsection must be deposited in the Uncontrolled Sites Fund.

Sec. 4. 38 MRSa §342-B is enacted to read:

§342-B. Liability of fiduciaries and lenders

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. The following must be considered in determining whether a secured lender is "acting diligently to sell or otherwise divest" or as "evidence of diligent efforts to sell or divest:"

(1) Use of the property during the period;

(2) Market conditions;

2 (3) Marketability of the site; or

4 (4) Legal constraints on the sale or divestment.

6 If the lender holds the property for longer than the 5-year
8 period but meets the conditions in subsection 4, paragraph
 C, subparagraph (4) and the requirements enumerated in this
 paragraph, then liability is not imposed on the lender.

10 B. "Assets of the estate or trust" means assets of the
12 estate or trust of which the site is a part; assets that
14 subsequent to knowledge of the release are placed by the
16 fiduciary or the grantor in an estate or trust over which
18 the fiduciary has control if the grantor is or was an owner
20 or operator of the release site at the time of the transfer;
 and assets that are transferred by the fiduciary upon or
 subsequent to knowledge of the release for less than full
 and fair consideration, to the extent of the amount that the
 fair market value exceeded the consideration received by the
 estate or trust.

22 C. "Participates in management" means, while the borrower
24 is in possession of the facility, executing decision-making
26 control over the borrower's management of oil or hazardous
 materials or exercising control over substantially all of
 the operational aspects of the borrower's enterprise, but
 does not include the following:

28 (1) Conducting or requiring site assessments of the
30 property;

32 (2) Engaging in periodic or regular monitoring of the
34 business;

36 (3) Financing conditioned on compliance with
 environmental laws;

38 (4) Providing general business or financial advice,
40 excluding management of hazardous materials and oil;

42 (5) Providing general advice with respect to site
 management;

44 (6) Policing the security interest or loan;

46 (7) Engaging in work-out activities prior to
48 foreclosure; or

50 (8) Participating in foreclosure proceedings.

52 2. Exemption from liability. Subject to the provisions of
 this section, a person may not be deemed a responsible party and

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2 that person is not subject to department orders or other
3 enforcement proceedings, liable or otherwise responsible under
4 sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to
5 1367; and 1371 for discharges, releases or threats of releases of
6 a hazardous substance, hazardous waste, hazardous matter, special
7 waste, pollutant or contaminant or a petroleum product or
8 by-product if that person is:

9 A. A fiduciary, as defined in section 1362, subsection 1-D,
10 but that exclusion does not apply to an estate or trust of
11 which the site is a part; or

12 B. A lender, as defined in section 1362, subsection 1-B,
13 who, without participating in management of a site, holds
14 indicia of ownership primarily to protect a security
15 interest in the site.

16 3. Exclusion from exemption for fiduciaries. The exemption
17 from liability provided by subsection 2 does not apply if:

18 A. The fiduciary causes, contributes to or exacerbates the
19 discharge, release or threat of release; or

20 B. After acquiring title to or commencing control or
21 management of the site, the fiduciary does not:

22 (1) Notify the department within a reasonable time
23 after obtaining knowledge of a release or threat of
24 release;

25 (2) Provide reasonable access to the site to the
26 department and its authorized representatives so that
27 necessary response actions may be conducted; and

28 (3) Undertake reasonable steps to control access and
29 prevent imminent threats to public health and the
30 environment.

31 4. Exclusion from exemption for lenders. The exemption
32 from liability for lenders provided in subsection 2 does not
33 apply if:

34 A. The secured lender causes, contributes to or exacerbates
35 the discharge, release or threat of release;

36 B. The secured lender participates in management of the
37 site prior to acquiring ownership of the site; or

38 C. After acquiring ownership of the site and upon obtaining
39 knowledge of a release or threat of release, the secured
40 lender does not:

41

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2 (1) Notify the department within a reasonable time
after obtaining knowledge of a release or threat of
release;

4 (2) Provide reasonable access to the department and
its authorized representatives so that necessary
response actions may be conducted;

8 (3) Undertake reasonable steps to control access and
prevent imminent threats to public health and the
environment; and

12 (4) Act diligently to sell or otherwise divest the
property within a limited time period of up to 5 years
from the earlier of the lender's possession or
ownership. There is a rebuttable presumption that the
2nd lender is acting diligently to sell or otherwise
divest the property during the first 18 months after
taking possession. The secured lender must demonstrate
by a preponderance of the evidence diligent efforts to
sell or divest the property during the next 42 months.

22 When a lender has ownership or possession of a site pursuant to a
security interest in the site, the term "owner" or "operator"
means a person who owned or operated the site immediately prior
to that secured lender obtaining ownership or possession of the
site.

28 5. Relationship to ground water fund claims. The exemption
provided in subsection 2, paragraph B from liability under
section 570 does not exempt lenders who apply to the Ground Water
Oil Clean-up Fund for coverage pursuant to section 568-A from the
obligation to pay the full amount of deductible determined by the
commissioner.

30 6. Exempt person as party. Notwithstanding the exemption
from liability provided by this section, a fiduciary may be named
as a party in an administrative enforcement proceeding or civil
action brought by the State pursuant to this Title for purposes
of requiring the submission of information or documents relating
to an uncontrolled hazardous substance site, for purposes of
proceeding against the assets of the estate or trust for
reimbursement, fines or penalties or for purposes of compelling
the expenditure of assets of the estate or trust by the fiduciary
to abate, clean up or mitigate threats or hazards posed by a
discharge or release, or to comply with state environmental laws
and regulations or the terms of a department order of enforcement
proceeding. This subsection does not require the fiduciary to
expend its own funds or to make the fiduciary personally liable
for compliance pursuant to an order or enforcement proceeding
except as provided in section 568, section 4, paragraph B or
section 1365, subsection 6.

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2 Sec. 5. 38 MRSA §§343-E and 343-F are enacted to read:

4 §343-E. Voluntary response action program

6 1. Liability protection for complete cleanup. Subject to
8 the provisions of this section, a person may not be deemed a
10 responsible party and that person is not subject to department
12 orders or other enforcement proceedings or otherwise responsible
14 under sections 568, 570, 1304, subsection 12, 1318-A, 1319-J,
16 1361 to 1367 or 1371 for, or as a result of, a discharge, release
18 or threatened release of a hazardous substance, hazardous waste,
20 hazardous matter, special waste, pollutant or contaminant,
including petroleum products or by-products, if the person
investigates the discharge, release or threatened release and
undertakes and completes response actions to remove or remedy all
known discharges, releases and threatened releases at an
identified area of real property in accordance with a voluntary
response action plan approved by the commissioner.

22 2. Liability protection for partial cleanup. The
24 commissioner may approve a voluntary response action plan
26 submitted under this section that does not require removal or
28 remedy of all discharges, releases and threatened releases at an
identified area of real property conditioned upon any or all of
the terms identified in subsection 3 and based on consideration
of the following:

30 A. If reuse or development of the property is proposed, the
32 voluntary response action plan provides for all response
34 actions required to carry out the proposed reuse or
development in a manner that protects public health and the
environment;

36 B. The response actions and the activities associated with
38 any reuse or development proposed for the property will not
40 cause, contribute or exacerbate discharges, releases or
42 threatened releases that are not required to be removed or
remedied under the voluntary response action plan and will
not interfere with or substantially increase the cost of
response actions to address the remaining discharges,
releases or threatened releases; and

44 C. The owner of the property that is the subject of the
46 partial voluntary response action plan agrees to cooperate
48 with the commissioner, the requestor or the commissioner's
authorized representatives to avoid any action that
interferes with the response actions.

50 3. Conditions for protection. The commissioner may
condition the protection from liability provided by this section

2 on the requestor's agreement to any or all of the following terms
3 that the commissioner may determine to be necessary:

4 A. To provide access to the property to the commissioner and
5 the commissioner's authorized representatives;

6
7 B. To allow the commissioner or the commissioner's
8 authorized representatives to undertake activities at the
9 property including placement of borings, wells, equipment,
10 and structures on the property; and

11 C. To the extent the requestor has title to the property,
12 to grant easements or other interests in the property to the
13 department for any of the purposes provided in paragraph A
14 or B. An agreement under this subsection must apply to and
15 be binding upon the successors and assigns of the owner. To
16 the extent the requestor has title to the property, the
17 requestor shall record the agreement or a memorandum
18 approved by the commissioner that summarizes the agreement
19 in the registry of deeds for the county where the property
20 is located.

21
22 4. Investigation report. A voluntary response action plan
23 submitted for approval of the commissioner must include an
24 investigation report prepared by an appropriate professional that
25 identifies and describes the nature and extent of the discharges,
26 releases and threatened releases at the identified area of real
27 property, methods of investigation, the analytical results and
28 the professional's evaluation of this information.

29
30 5. Approval of plan. When the commissioner approves a
31 voluntary response action plan pursuant to subsection 1 or 2, the
32 commissioner shall include in the approval a no-action assurance
33 pursuant to subsection 9, acknowledging that so long as the plan
34 is implemented pursuant to its terms and with the exercise of due
35 care, the person submitting the plan and those persons identified
36 in subsection 6 will receive the protection from liability
37 provided under this section. Upon completion of the voluntary
38 response action plan, the parties implementing the voluntary
39 response action plan shall notify the commissioner who shall
40 issue a certificate of completion upon demonstration by the
41 parties that the response action is complete. In addition, a
42 person who has submitted and received department approval of a
43 voluntary response action plan and is implementing or has
44 implemented that plan pursuant to its terms is not liable for
45 claims for contribution regarding the site.

46
47 6. Additional persons protected from liability. In
48 addition to the person who undertakes and completes a voluntary
49 response action pursuant to an approved voluntary response action
50 plan, the liability protection provided by this section applies
51 to the following persons:
52

2 A. An owner or operator who is a responsible party or who
4 is subject to department orders or other enforcement
6 proceedings or otherwise responsible under sections 568,
8 570, 1304, subsection 12, 1318-A, 1319-J, 1361 to 1367 and
10 1371 for a discharge, release or threat of release and who
12 undertakes and completes a voluntary response action plan
14 that fully remediates all known discharges, releases or
 threatened releases. The liability protection is limited to
 protection from further clean-up requirements and does not
 include protection from liability for penalties, fines or
 natural resource damages, to the extent applicable, unless a
 no-action assurance issued pursuant to subsection 9 so
 provides;

16 B. A person providing financing to the person who
18 undertakes and completes the response actions or who
 acquires or develops the identified property;

20 C. A lender or fiduciary as defined in section 1362 who
22 arranges for the undertaking and completion of response
 actions;

24 D. A person who seeks to acquire or develop the identified
26 property and who arranges for the undertaking and completion
 of response actions;

28 E. A successor or assign of a person to whom the liability
30 protection applies; and

32 F. A person acting in compliance with a voluntary response
34 action program approved by the commissioner who, while
36 implementing the voluntary response action plan and
 exercising due care in implementation, causes, contributes
 or exacerbates a discharge or release, provided that the
 discharge or release is removed or remediated to the
 satisfaction of the commissioner.

38 7. Persons ineligible for protection from liability. The
40 protection from liability provided by this section does not apply
42 to:

44 A. A person who causes, contributes or exacerbates a
46 discharge, release or threatened release that was not
 remedied under an approved voluntary response action plan;

48 B. For partial voluntary response action plans that do not
50 require removal or remediation of all known releases, a
52 person who was responsible under sections 568, 570, 1304,
 subsection 12, 1318-A, 1319-J, 1361 to 1367 and 1371 for a
 discharge, release or threatened release; or

of \$

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2 C. A person who obtains approval of a voluntary response
4 action plan for purposes of this section by fraud or
6 intentional misrepresentation, or by knowingly failing to
8 disclose material information, or a successor or assign of
the person who obtained approval if that successor or assign
had knowledge that the approval was obtained by fraud or
intentional misrepresentation or by knowingly failing to
disclose material information.

10 8. Effect of protection from liability. This section does
12 not affect the authority of the commissioner to exercise the
14 powers or duties under law with respect to a discharge, release
or threatened release, or the right of the commissioner or any
other person to seek relief available, against a party who is not
subject to the liability protection provided under this section.

16 9. No-action assurance. The commissioner shall issue a
18 written determination or enter into an agreement pursuant to
20 subsections 1 or 2 to take no action under sections 568, 570,
22 1304, subsection 12, 1318-A, 1319-J, 1361 to 1367 and 1371
against a person afforded protection for undertaking a voluntary
response action plan pursuant to subsection 6 when the
commissioner approves a voluntary response action plan pursuant
to subsections 1 and 2. For partial voluntary response action
plans approved under subsection 2, the commissioner's written
determination or agreement to take no action may be limited to
the matters addressed by the terms of the voluntary response
action plan.

30 A. A determination issued or agreement entered into under
32 this subsection may be conditioned upon those terms
identified in subsection 3 and upon any other reasonable
conditions determined necessary by the commissioner.

34 B. A determination issued or agreement entered into under
36 this subsection may extend to the successors and assigns of
the person to whom it originally applies if the successors
and assigns are bound by the conditions in the determination
or agreements.

40 C. Issuance of a determination or execution of an agreement
42 under this subsection does not affect the authority of the
commissioner to expend funds, to take response action with
respect to the discharge or release subject to the
determination or agreement, or to take administrative or
judicial action with respect to persons not bound by the
determination or agreement.

48 **§343-F. Reporting and disclosure requirements**

50 An environmental professional who obtains analytical
52 information indicating a discharge or release of a hazardous

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2 substance, hazardous waste, hazardous matter, special waste,
4 pollutant or contaminant, including petroleum products or
6 by-products at a site, at levels that, in that professional's
8 best professional judgment, require removal or remedial action to
10 prevent significant threats to public health or the environment
12 shall advise that professional's client of that information.

8 If the client of the environmental professional is not the
10 owner or operator of the site, the client shall disclose the
12 analytical information to the owner or operator of the site.
14 Upon receipt of that information, the owner or operator shall
16 submit this information to the commissioner within a reasonable
18 time period unless the time period is otherwise prescribed by
20 law. This section does not affect the legal protections
22 afforded to confidential business information or other
24 privileges, if any, that may be applicable. If the client makes
26 a disclosure and the owner or operator does not submit this
28 information to the commissioner, the client and the environmental
30 professional may not be held liable for the owner's or the
32 operator's failure to disclose.'

22 Further amend by bill by striking out all of section 10.

24 Further amend the bill by striking out all of sections 12,
26 13, 14, 15, 16 and 17 and inserting in their place the following:

28 'Sec. 12. 38 MRSA §551, sub-§3-A, ¶D, as enacted by PL 1991,
c. 817, §14, is amended to read:

30 D. Determinations made by the hearing examiner are final
32 and those determinations may be subject to review by a
34 Justice of the Superior Court, but only as to matters
36 related to abuse of discretion by the hearing examiner. The
38 ~~commissioner-or-a-claimant party~~ seeking review of a hearing
40 examiner's determination must file an appeal in the Superior
Court within 30 days of the determination. Determinations
made by the hearing examiner must be accorded a presumption
of regularity and validity in a subsequent reimbursement
action, but this presumption may be rebutted by responsible
parties.

42 Sec. 13. 38 MRSA §551, sub-§6, as repealed and replaced by PL
44 1991, c. 454, §12, is amended to read:

46 6. Reimbursements to Maine Coastal and Inland Surface Oil
48 Clean-up Fund. For the use of the fund, the commissioner shall
50 seek recovery of all disbursements from the fund for the
52 following purposes, including overdrafts and interest computed at
15% a year from the date of expenditure, unless the department
finds the amount involved too small or, the likelihood of success
too uncertain or that recovery of costs is unlikely due to the
inability of the responsible party to pay those costs, provided

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2 that recoveries resulting from damage due to an oil pollution
4 disaster declared by the Governor pursuant to section 547 must be
6 apportioned between the Maine Coastal and Inland Surface Oil
Clean-up Fund and the General Fund so as to repay the full costs
to the General Fund of any bonds issued as a result of the
disaster:

8 A. All disbursements made by the fund pursuant to
10 subsection 5, paragraphs B, D, E, H and I in connection with
a prohibited discharge; and

12 B. In the case of a licensee promptly reporting a discharge
14 as required by this subchapter, disbursements made by the
16 fund pursuant to subsection 5, paragraphs B, D and E in
18 connection with any single prohibited discharge including
3rd-party claims in excess of \$15,000, except to the extent
that the costs are covered by payments received under any
federal program.

20 Requests for reimbursement to the fund, if not paid within 30
22 days of demand, may be turned over to the Attorney General for
24 collection or may be submitted to a collection agency or agent or
an attorney retained by the department with the approval of the
Attorney General in conformance with Title 5, section 191. The
26 commissioner may file claims with appropriate federal agencies to
recover for the use of the fund all disbursements from the fund
in connection with a prohibited discharge.

28 Requests for reimbursement to the fund for disbursements pursuant
30 to subsection 5, paragraph B, if not paid within 60 days of
32 demand, are subject to a penalty not to exceed twice the total
34 amount of reimbursement requested. This penalty is in addition
to the reimbursement requested and any other fines or civil
penalties authorized by this Title.'

36 Further amend the bill by striking out all of section 19.

38 Further amend the bill by striking out all of sections 23,
24, 25 and 26 and inserting in their place the following:

40 'Sec. 23. 38 MRSA §569-A, sub-§4, ¶D, as enacted by PL 1991,
42 c. 817, §26, is amended to read:

44 D. Determinations made by the hearing examiner are final
46 and those determinations may be subject to review by a
Justice of the Superior Court, but only as to matters
48 related to abuse of discretion by the hearing examiner. A
claimant party seeking review of a hearing examiner
50 determination shall file an appeal in the Superior Court
within 30 days of the determination. Determinations made by
52 the hearing examiner must be accorded a presumption of
regularity and validity in a subsequent reimbursement

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2 action, but this presumption may be rebutted by responsible
3 parties who do not become interested parties.

4 **Sec. 24. 38 MRSA §569-A, sub-§5, ¶C,** as enacted by PL 1991, c.
5 817, §26, is amended to read:

6
7 C. The owner or operator of an underground oil storage
8 facility that stores motor fuel or is used in the marketing
9 and distribution of oil shall pay an annual fee of \$130 per
10 tank not constructed of fiberglass, cathodically protected
11 steel or other noncorrosive material. ~~These funds must be~~
12 ~~deposited in the 3rd party commercial risk pool account. If~~
13 ~~the funds in the account are inadequate to pay the claims,~~
14 ~~costs and expenses for which payment from the account is~~
15 ~~authorized, the board may increase the per tank assessment~~
16 ~~up to \$500 per tank. Any shortfall in the account occurring~~
17 ~~after the maximum assessment has been levied must be paid~~
18 ~~out of the fund. Upon payment of the annual fee, the~~
19 ~~commissioner shall issue a certificate of coverage for the~~
20 ~~tank.~~

21
22 **Sec. 25. 38 MRSA §569-A, sub-§8, ¶A,** as enacted by PL 1991, c.
23 817, §26, is amended to read:

24
25 A. Administrative expenses, personnel expenses and
26 equipment costs of the department related to the
27 administration and enforcement of this subchapter and any
28 loans to the Maine Coastal and Inland Surface Oil Clean-up
29 Fund made pursuant to this section. Administrative Except
30 for disbursements for capital costs related to paragraph B
31 or C, administrative expenses, personnel expenses and
32 equipment costs may not exceed \$1,734,000 per fiscal year.'

33 Further amend the bill by striking out all of section 36.

34
35 Further amend the bill by striking out all of section 47 and
36 inserting in its place the following:

37
38 **'Sec. 47. 38 MRSA §1273, sub-§2,** as amended by PL 1991, c.
39 473, §11, is further amended to read:

40
41 **2. Notification required.** A person ~~ex,~~ owner or operator
42 may not engage in any planned asbestos abatement ~~project~~ activity
43 over 3 linear feet or 3 square feet of friable
44 asbestos-containing material unless that person ~~ex,~~ owner or
45 operator notifies the commissioner in writing at least 10
46 calendar days before beginning any on-site work, including
47 on-site preparation work, that has the potential to release
48 asbestos fibers.'
49
50

Further amend the bill by striking out all of section 50 and inserting in its place the following:

'Sec. 50. 38 MRSA §1278, sub-§1, ¶A, as amended by PL 1991, c. 473, §18, is further amended to read:

A. The fees are:

- (1) Asbestos abatement contractor: \$250;
- (1-A) In-house asbestos abatement unit: \$250;
- ~~(2) Asbestos abatement design consultant: \$50;~~
- ~~(2-A) Asbestos inspector: \$50;~~
- ~~(3) Asbestos air monitor: \$50;~~
- ~~(4) Asbestos abatement project supervisor: \$50;~~
- (5) Asbestos abatement worker: \$25;
- (6) Asbestos consultant: \$250;
- (7) Asbestos analytical laboratory: \$250;
- (8) Asbestos abatement training Training provider: \$500 or the equivalent value of training of department personnel; and
- (9) Other categories of asbestos abatement professionals except asbestos abatement workers: \$50.'

Further amend the bill by striking out all of section 54 and inserting in its place the following:

'Sec. 54. 38 MRSA §1303-C, sub-§39, as enacted by PL 1989, c. 585, Pt. E, §4, is amended to read:

39. Treatment. "Treatment" means any process including but not limited to incineration designed to change the character or composition of any hazardous waste or waste oil, as defined in rules adopted under section 1319-O, subsection 2, so as to render the waste less hazardous.'

Further amend the bill by striking out all of sections 59, 60 and 61.

Further amend the bill by striking out all of sections 68 and 69 and inserting in their place the following:

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2 'Sec. 68. 38 MRSA §1362, sub-§1-B, as enacted by PL 1991, c:
811, §1 and as affected by §7, is amended to read:

4 1-B. Lender. "Lender" means a financial institution or
6 credit union authorized to do business in this State, as defined
in Title 9-B, section 131, subsections 12-A and 17-A, a financial
8 institution that is acting through a service corporation pursuant
to Title 9-B, section 445, subsection 5 or any federal or state
10 banking or lending agency that provides loans, guarantees or
other financial assistance. For the purpose of this subsection
12 and ~~section 1367-A~~ the phrase "acting through" includes the
assignment or transfer of an interest in real property acquired
in satisfaction of a debt.

14 Sec. 69. 38 MRSA §1362, sub-§§1-D and 1-E are enacted to read:

16 1-D. Fiduciary. "Fiduciary" means a person who is:

18 A. Acting in any of the following capacities: a personal
20 representative as defined in Title 18-A, section 1-201; a
22 voluntary executor or administrator; a guardian; a
24 conservator; a trustee under a will or intervivos instrument
26 creating a trust of a donative type associated with probate
28 practice where the trustee takes title to, otherwise
30 controls or manages, property for the purpose of protecting
or conserving that property; a trustee pursuant to an
32 indenture agreement or similar financing agreement; a
34 court-appointed receiver; a trustee appointed in proceedings
36 under federal bankruptcy laws; and an assignee or trustee
38 acting under an assignment made for the benefit of
creditors; and

B. Holding legal title to, controlling or managing, directly
34 or indirectly, any site as a fiduciary for purposes of
36 administering an estate or trust of which the site is a part.

38 "Fiduciary" does not include the real or personal property held
by an estate or trust administered by a fiduciary.

40 1-E. Site. "Site" means a licensed or unlicensed area or
42 location where hazardous substances are handled or were handled
or otherwise came to be located. "Site" includes all structures,
44 appurtenances, improvements, equipment, machinery, containers,
tanks and conveyances on the site.'

46 Further amend the bill in section 70 in subsection 2 in the
5th line from the end (page 23, line 31 in L.D.) by striking out
48 the stricken out language: "~~which is owned or operated by that~~
person" and inserting in its place the following: 'which is owned
50 or operated by that person'

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2 Further amend the bill in section 71 in subsection 6 in the
4 4th line (page 23, line 42 in L.D.) by striking out the
6 following: "section 1367" and inserting in its place the
8 following: 'this section'

Further amend the bill by striking out all of section 72 and
inserting in its place the following:

10 'Sec. 72. 38 MRSA §2174, sub-§§1 and 3, as affected by PL 1989,
12 c. 890, Pt. A, §40 and amended by Pt. B, §292, are repealed.'

Further amend the bill by striking out all of sections 75
and 76 and inserting in their place the following:

16 'Sec. 75. State property. The warehouse located on the grounds
18 of the Southern Maine Technical College in South Portland that
20 was constructed by the Department of Environmental Protection
22 with funds from the Maine Coastal and Inland Surface Oil Clean-up
24 Fund is the property of the Department of Environmental
Protection. The warehouse is a beige, steel-walled structure
measuring 80 feet by 80 feet and was completed in 1985 as an
addition to a previously existing heating and air conditioning
building.

26 Sec. 76. Allocation. The following funds are allocated from
28 Other Special Revenues to carry out the purposes of this Act.

| | 1993-94 | 1994-95 |
|--|-----------|-----------|
| 30 ENVIRONMENTAL PROTECTION, | | |
| 32 DEPARTMENT OF | | |
| 34 Oil and Hazardous Materials Control | | |
| 36 Positions | (3.0) | (3.0) |
| 38 Personal Services | \$122,583 | \$133,142 |
| All Other | 16,089 | 24,355 |

40 Provides for the allocation
42 of funds for one Manager of
44 Environmental Studies and
46 Permits position, one
48 Environmental Specialist III
50 position, one Oil and
Hazardous Materials
Specialist III position and
operational support costs for
review and approval of
voluntary remedial

COMMITTEE AMENDMENT

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1113, L.D. 1509

2 investigation and cleanup
plans for polluted property.

4 DEPARTMENT OF ENVIRONMENTAL
PROTECTION

6 TOTAL \$138,672 \$157,497

8 Further amend the bill by renumbering the sections to read
consecutively.

10 Further amend the bill by inserting at the end before the
12 statement of fact the following:

14 FISCAL NOTE
16 1993-94 1994-95

18 APPROPRIATIONS/ALLOCATIONS

20 Other Funds \$138,672 \$157,497

22 REVENUES

24 Other Funds \$148,672 \$167,497

26 The Department of Environmental Protection will require
28 additional other special revenue allocations of \$138,672 and
30 \$157,497 in fiscal years 1993-94 and 1994-95, respectively, for
voluntary investigation and response plan review.

32 Voluntary revenues from the technical assistance program and
34 changes to asbestos license fees will increase other special
revenue collections. The estimated increases of dedicated
36 revenues to the Department of Environmental Protection are
\$148,672 and \$167,497 in fiscal years 1993-94 and 1994-95,
38 respectively.

40 Clarifying that the state's jurisdiction over coastal waters
includes a distance of 12 miles from the coastline may increase
42 payments from the Maine Coastal and Inland Surface Oil Clean-up
Fund. The amounts can not be determined at this time.

44 Exempting the state from having to pay certain grants to
46 those municipalities that own landfills with outstanding
violations may result in savings to the General Fund. The
amounts can not be determined at this time.

48 The exemption of small oil terminals from certain licensing
50 requirements will result in insignificant reductions of dedicated
revenues to the Department of Environmental Protection.

52

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1113, L.D. 1509

2 Changes in certain reporting requirements and the
3 elimination of a required training program will result in minor
4 administrative cost savings to the Department of Environmental
5 Protection.

6 Elimination of an auditing requirement for the former 3rd
7 party commercial risk pool of the Ground Water Oil Clean-up Fund
8 will result in minor savings to the Department of Audit.'

10

12 STATEMENT OF FACT

14 This amendment deletes provisions in the bill pertaining to
15 the role of the responsible party in 3rd-party damage claims but
16 retains that provision according a rebuttable presumption of
17 regularity and validity to determinations made by a hearing
18 examiner. The amendment also clarifies that the Commissioner of
19 Environmental Protection is not required to seek recovery of
20 damages from responsible parties that are unable to pay those
21 claims.

22

23 The amendment also strikes sections in the bill pertaining
24 to exemptions from daily inventory requirements and requirements
25 that a site assessment be submitted at the time an application is
26 filed for coverage under the Ground Water Oil Clean-up Fund.

27 The amendment also caps the annual fee for underground oil
28 storage facility fee at \$130 per year and clarifies that the cap
29 on expenses from the Ground Water Oil Clean-up Fund does not
30 apply to capital costs associated with abatement or remediation.

32

33 The amendment also makes several technical corrections to
34 the bill, clarifies hazardous waste reporting requirements and
35 adds a section clarifying that a warehouse constructed by the
36 Department of Environmental Protection at the Southern Maine
37 Technical College is the property of the department.

38

39 The amendment establishes a technical services program in
40 the department under which persons involved in real estate
41 transactions may seek assistance in determining how to assess and
42 clean up hazardous waste problems on real estate involved in the
43 transaction. The person who requests assistance under the
44 program would pay the department's costs in providing
45 assistance. The amendment also establishes a voluntary response
46 program under which a person may participate in investigation and
47 remediation of a hazardous waste site for which they are not
48 otherwise responsible without incurring liability under state
49 environmental laws. The exemption from liability applies only if
50 the investigation and cleanup is undertaken in compliance with an
51 agreement with the department.

52

COMMITTEE AMENDMENT

R. 012

COMMITTEE AMENDMENT "A" to H.P. 1113, L.D. 1509

2 The amendment also requires an environmental professional
who discovers hazardous waste contamination on the site to notify
4 the professional's client and requires the client to report the
contamination to the department.

6 The amendment protects fiduciaries and trustees from
liability under various strict liability environmental statutes
8 under certain circumstances, but does not protect the assets of
the estate or trust governed by the fiduciary or trustee. These
10 portions of the amendment also update current state laws
regarding lender liability for environmental contamination to
12 make them consistent with federal rules recently adopted under
the federal Superfund program.

14 Finally, the amendment adds a fiscal note to the bill.

Reported by the Committee on Energy and Natural Resources
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