

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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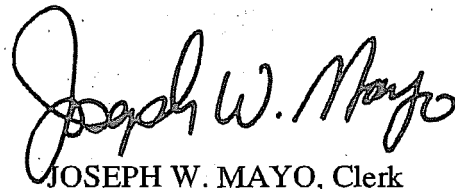
House of Representatives, May 13, 1993

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

(EMERGENCY)

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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.

  
JOSEPH W. MAYO, Clerk

Presented by Representative ANDERSON of Woodland.

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, there is a need to exempt certain oil terminal  
facilities from unnecessary licensing requirements; and

8           Whereas, it is necessary to resolve questions raised in a  
recent law court decision concerning procedural provisions of the  
10 3rd-party oil damage claims process in order to achieve  
efficiencies in the resolution of disputed claims; and

12           Whereas, it is important to exempt certain underground oil  
14 storage facilities from daily inventory and annual statistical  
inventory requirements in cases where they are not technically  
16 feasible; and

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

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

26           **Sec. 1. 37-B MRSA §797, sub-§§6 and 7,** as amended by PL 1989,  
c. 464, §3, are further amended to read:

28           **6. Information withholding.** An indication if the person is  
30 electing to withhold information from disclosure under section  
800; and

32           **7. Transportation.** A description of the manner in which  
34 the substance is shipped to the facility~~+-and~~ .

36           **Sec. 2. 37-B MRSA §797, sub-§8,** as enacted by PL 1989, c. 929,  
§3, is repealed.

38           **Sec. 3. 37-B MRSA §799,** as amended by PL 1989, c. 929, §4, is  
40 further amended to read:

42           **§799. Toxic chemical release forms**

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

2 of 1986, Public Law 99-499, Title III, Section 313, and 40 Code  
4 of Federal Regulations, Part 372. Those forms must be made  
6 available to the public by the commission and the local emergency  
8 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.~~

10 **Sec. 4. 38 MRSA §421**, as amended by PL 1991, c. 499, §15, is  
12 repealed.

14 **Sec. 5. 38 MRSA §542, sub-§3-A**, as enacted by PL 1991, c. 817,  
16 §9, is amended to read:

18 **3-A. Coastal waters.** "Coastal waters" means all waters of  
20 the State within the rise and fall of the tide and ~~within the  
marine limits of the jurisdiction of the State~~ to a distance of  
12 miles from the coastline of the State but does not include  
areas above any fishway or dam when the fishway or dam is the  
dividing line between tidewater and fresh water.

22 **Sec. 6. 38 MRSA §542, sub-§7**, as amended by PL 1991, c. 698,  
24 §4, is further amended to read:

26 **7. Oil terminal facility.** "Oil terminal facility" means  
28 any facility of any kind and related appurtenances, located in,  
30 on or under the surface of any land or water, including submerged  
32 lands, which is used or capable of being used for the purpose of  
34 transferring, processing or refining oil, or for the purpose of  
36 storing the same, but does not include any facility used or  
38 capable of being used to store no more than 500 1500 barrels or  
63,000 gallons, nor any facility not engaged in the transfer of  
oil to or from waters of the State. A vessel is considered an  
oil terminal facility only in the event of a ship-to-ship  
transfer of oil, but only that vessel going to or coming from the  
place of ship-to-ship transfer and a permanent or fixed oil  
terminal facility. The term does not include vessels engaged in  
oil spill response activities.

40 **Sec. 7. 38 MRSA §544, sub-§1**, as affected by PL 1989, c. 890,  
42 Pt. A, §40 and amended by Pt. B, §109, is further amended to read:

44 **1. Jurisdiction.** The rights, powers and duties of  
46 conferred on the department and other persons under this  
subchapter shall extend ~~to the areas described in section 543 and~~  
to a distance of 12 miles from the coastline of the State.

2           **Sec. 8. 38 MRSA §545, sub-§1**, as affected by PL 1989, c. 890,  
Pt. A, §40 and amended by Pt. B, §110, is further amended to read:

4           **1. Expiration of license.** Licenses shall--be are issued  
upon application and shall--be are for a period of not less than  
6           12 months to expire no later than 24 60 months after the date of  
issuance. The department may issue a temporary license for a  
8           shorter period of time if it finds that the applicant has  
substantially complied but has failed to comply with one or more  
10           provisions of existing rules. Licenses shall--be are issued  
subject to such terms and conditions determined by the department  
12           as necessary to carry out the purposes of this subchapter.

14           **Sec. 9. 38 MRSA §545, sub-§3, ¶A**, as enacted by PL 1969, c.  
572, §1, is amended to read:

16           A. Persons engaged in the business of servicing the fuel  
18           requirements of pleasure craft, fishing boats and other  
commercial vessels, where the purchaser and the consumer are  
20           the same entity and the serviced vessel is 75 200 feet or  
less in overall length.

22           **Sec. 10. 38 MRSA §551**, as corrected by RR 1991, c. 2, §147,  
24           is amended by adding after the first paragraph a new paragraph to  
read:

26           Buildings or portions of buildings constructed with funds  
28           from the Maine Coastal and Island Surface Oil Clean-up Fund are  
the property of the department.

30           **Sec. 11. 38 MRSA §551, sub-§2**, as amended by PL 1991, c. 817,  
32           §11, is further amended by amending the first paragraph to read:

34           **2. Third-party damages.** Any person claiming to have  
suffered property damage or actual economic damages, including,  
36           but not limited to, loss of income and medical expenses arising  
from physical bodily injury, directly or indirectly as a result  
38           of a discharge of oil prohibited by section 543 including all  
discharges of oil from interstate pipelines, in this subsection  
40           called the claimant, may apply within 12 months after the  
occurrence of a discharge to coastal waters and for other surface  
42           discharges within 2 years after the occurrence or discovery of  
the injury or damage, whichever date is later, to the  
44           commissioner stating the amount of damage alleged to have been  
suffered as a result of that discharge. The commissioner shall  
46           prescribe appropriate forms and details for the applications.  
The commissioner may contract with insurance professionals to  
48           process claims. The commissioner may, upon petition and for good

2 cause shown, waive the time limitation for filing damage claims.  
3 All 3rd-party damage claims for which no determination of award  
4 has been made or that have not been referred to a board of  
5 arbitration must be processed in accordance with the substantive  
6 and procedural provisions of this section.

8 **Sec. 12. 38 MRSA §551, sub-§2, ¶¶A and B,** as amended by PL  
1991, c. 817, §11, are further amended to read:

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

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

44 **Sec. 13. 38 MRSA §551, sub-§3-A, ¶¶A and D,** as enacted by PL  
1991, c. 817, §14, are amended to read:

46 A. An independent hearing examiner appointed by the  
47 commissioner shall hear and determine any disputed 3rd-party  
48 damage claims. When a responsible party is known, the  
49 commissioner shall send by certified mail to the responsible

2 party a copy of the 3rd-party damage claim and written  
3 notice of the right to join the hearing before the hearing  
4 examiner as an interested party. A responsible party shall  
5 provide written notification to the department of the  
6 responsible party's intent to join as an interested party  
7 within 10 working days of receipt of this notice. If the  
8 responsible party joins as an interested party, any  
9 determination of the amount of the claim and award by the  
10 independent hearing examiner is binding on the interested  
11 party in any subsequent action for reimbursement to the  
12 fund. The parties to the hearing are the commissioner, the  
13 interested party, if any, and the claimant.

14 D. Determinations made by the hearing examiner are final  
15 and binding on the parties and those determinations may be  
16 subject to review by ~~a Justice of the Superior Court, but~~  
17 ~~only as to matters related to abuse of discretion by the~~  
18 hearing examiner, pursuant to the Maine Administrative  
19 Procedure Act, Title 5, chapter 375, subchapter VII. The  
20 commissioner or a claimant party seeking review of a hearing  
21 examiner's determination must file an appeal in the Superior  
22 Court within 30 days of the determination. Determinations  
23 made by the hearing examiner must be accorded a presumption  
24 of regularity and validity in a subsequent reimbursement  
25 action, but this presumption may be rebutted by responsible  
26 parties who do not become interested parties.

27 **Sec. 14. 38 MRS.A §551, sub-§6,** as repealed and replaced by PL  
28 1991, c. 454, §12, is amended by amending the first paragraph to  
29 read:  
30

31 **6. Reimbursements to Maine Coastal and Inland Surface Oil**  
32 **Clean-up Fund.** For the use of the fund, the commissioner shall  
33 may seek recovery of all disbursements from the fund for the  
34 following purposes, including overdrafts and interest computed at  
35 15% a year from the date of expenditure, unless the department  
36 finds the amount involved too small or the likelihood of success  
37 too uncertain, provided that recoveries resulting from damage due  
38 to an oil pollution disaster declared by the Governor pursuant to  
39 section 547 must be apportioned between the Maine Coastal and  
40 Inland Surface Oil Clean-up Fund and the General Fund so as to  
41 repay the full costs to the General Fund of any bonds issued as a  
42 result of the disaster:

43 **Sec. 15. 38 MRS.A §562-A, sub-§2,** as enacted by PL 1989, c.  
44 865, §2, is amended to read:  
45

46 **2. Applicant.** "Applicant" means the owner or operator of  
47 an underground oil storage facility ~~that may have a discharge of~~  
48 oil at the time the oil discharge is discovered and who is  
49  
50

2 seeking coverage of eligible clean-up costs and 3rd-party damage  
claims from the fund.

4 **Sec. 16. 38 MRSA §562-A, sub-§10-A** is enacted to read:

6 **10-A. General fuel storage tank.** "Generator fuel storage  
8 tank" means an underground oil storage tank that supplies oil to  
fuel an electric power generator.

10 **Sec. 17. 38 MRSA §564, sub-§2-A, ¶¶A and B,** as enacted by PL  
12 1991, c. 66, Pt. B, §5, are amended to read:

14 A. Collection of inventory data for each day that oil is  
16 being added to or withdrawn from the facility or tank,  
18 reconciliation of the data, with monthly summaries, and  
20 retention of records containing all such data for a period  
of at least 3 years either at the facility or at the  
22 facility owner's place of business. Daily inventory data is  
not required for facilities with secondary containment and  
continuous interstitial space monitoring or for generator  
fuel storage tanks;

24 B. Annual statistical inventory analysis, the results of  
26 which must be reported to the commissioner. Annual  
28 statistical inventory analysis is not required for  
double-walled tanks equipped with interstitial space  
30 monitors. facilities with secondary containment and  
continuous interstitial space monitoring or generator fuel  
storage tanks;

32 **Sec. 18. 38 MRSA §564, sub-§2-A, ¶H,** as amended by PL 1991, c.  
763, §5, is further amended by amended subparagraph (1) to read:

34 (1) Unexplained differences in daily inventory  
36 reconciliation values that, over a 30-day period, exceed +5%  
1.0% of the product delivered;

38 **Sec. 19. 38 MRSA §568-A, sub-§1, ¶B,** as amended by PL 1991, c.  
40 494, §10, is further amended by amending subparagraph (4) to read:

42 (4) For motor fuel storage and marketing and retail  
facilities, the following requirements:

44 (a) Applicable design and installation  
46 requirements in effect at the time of the  
installation or retrofitting requirements for leak  
48 detection as covered by section 564, subsections 1  
and 1-A;



- 2 (b) Section 564, subsection 1-B, overfill and
- 4 spill prevention equipment, and any rules adopted
- 6 pursuant to that subsection;
- 8 (c) Section 564, subsection 2-A, paragraphs B to
- 10 I, not including paragraph G, and any rules
- 12 adopted pursuant to that subsection; and
- 14 (d) Payment of any fees required under section
- 16 569, subsection 4-A, paragraph C; and
- 18 (e) Submission of a site assessment for the
- 20 presence of discharges of oil as required under
- 22 section 566-A, subsection 4, and any rules adopted
- 24 pursuant to that subsection.

18 **Sec. 20. 38 MRS §568-A, sub-§5,** as amended by PL 1991, c.  
 20 817, §24, is repealed.

22 **Sec. 21. 38 MRS §569-A, 4th ¶,** as enacted by PL 1991, c. 817,  
 24 §26, is repealed.

26 **Sec. 22. 38 MRS §569-A, sub-§2,** as enacted by PL 1991, c.  
 28 817, §26, is amended by amending the first paragraph to read:

28 **2. Third-party damages.** Any person claiming to have  
 30 suffered property damage or actual economic damages, including,  
 32 but not limited to, loss of income and medical expenses directly  
 34 or indirectly as a result of a discharge of oil to ground water  
 36 prohibited by section 543, in this subsection called the  
 38 "claimant," may apply to the commissioner within 2 years after  
 40 the occurrence or discovery of the injury or damage, whichever  
 42 date is later, stating the amount of damage alleged to have been  
 44 suffered as a result of that discharge. The commissioner shall  
 46 prescribe appropriate forms and details for the applications.  
 The commissioner may contract with insurance professionals to  
 process claims. The commissioner, upon petition and for good  
 cause shown, may waive the 2-year limitation for filing damage  
 claims. ~~For claims made on discharges eligible for coverage by  
 the 3rd party commercial risk pool account, the commissioner  
 shall pay the first \$100,000 per claimant out of the 3rd party  
 commercial risk pool account as long as funds are available. The  
 commissioner shall pay any claims that exceed \$100,000 or  
 available money in the 3rd party commercial risk pool account  
 from the fund.~~

48 All 3rd-party damage claims for which no determination of award  
 has been made or that have not been referred to a board of

2 arbitration must be processed in accordance with the substantive  
3 and procedural provisions of this section.

4 **Sec. 23. 38 MRSA §569-A, sub-§2, ¶¶A and B,** as enacted by PL  
5 1991, c. 817, §26, are amended to read:

6  
7 A. ~~When a responsible party is known, the commissioner~~  
8 ~~shall send by certified mail to the responsible party notice~~  
9 ~~of claim and written notice of the right to join the claims~~  
10 ~~proceeding as an interested party. A responsible party~~  
11 ~~shall provide written notification of intent to join to the~~  
12 ~~department within 10 working days of receipt of this~~  
13 ~~notice. If the responsible party joins as an interested~~  
14 ~~party and formally agrees in writing to the amount of the~~  
15 ~~damage claim, any determination of the amount of the claim~~  
16 ~~and award is binding in any subsequent action for~~  
17 ~~reimbursements to the fund. If a claimant is not~~  
18 ~~compensated for 3rd-party damages by the responsible party~~  
19 ~~or the expenses are above the applicant's deductible and the~~  
20 ~~claimant, the responsible party and the commissioner agree~~  
21 ~~as to the amount of the damage claim, or if the responsible~~  
22 ~~party does not join as an interested party or when the~~  
23 ~~responsible party is not known after the commissioner has~~  
24 ~~exercised reasonable efforts to ascertain the responsible~~  
25 ~~party, and the claimant and the commissioner agree as to the~~  
26 ~~amount of the damage claim, the commissioner shall certify~~  
27 ~~the amount of the claim and the name of the claimant to the~~  
28 ~~Treasurer of State and the Treasurer of State shall pay the~~  
29 ~~amount of the claim from the fund.~~

30  
31 B. If the claimant, ~~the responsible party~~ and the  
32 commissioner are not able to agree as to the amount of the  
33 damage claim, ~~or if the responsible party does not join as~~  
34 ~~an interested party in a timely manner or when the~~  
35 ~~responsible party is not known after the commissioner has~~  
36 ~~exercised reasonable efforts to ascertain the responsible~~  
37 ~~party, and the claimant and the commissioner are not able to~~  
38 ~~agree as to the amount of the damage claim, the claim is~~  
39 ~~subject to subsection 4.~~

40 **Sec. 24. 38 MRSA §569-A, sub-§4, ¶¶A and D,** as enacted by PL  
41 1991, c. 817, §26, are amended to read:

42  
43 A. An independent hearing examiner appointed by the  
44 commissioner shall hear and determine any disputed 3rd-party  
45 damage claims. When a responsible party is known, the  
46 commissioner shall send by certified mail to the responsible  
47 party a copy of the 3rd-party damage claim and written  
48 notice of the right to join the hearing before the hearing  
49 examiner as an interested party. A responsible party shall

2 provide written notification to the department of the  
3 responsible party's intent to join as an interested party  
4 within 10 working days of receipt of this notice. If the  
5 responsible party joins as an interested party, any  
6 determination of the amount of the claim and award by the  
7 independent hearing examiner is binding on the interested  
8 party in any subsequent action for reimbursement to the  
9 fund. The parties to the hearing are the commissioner, the  
10 interested party, if any, and the claimant.

11 D. Determinations made by the hearing examiner are final  
12 and binding on the parties and those determinations may be  
13 subject to review by ~~a Justice of the Superior Court,~~ but  
14 ~~only as to matters related to abuse of discretion by the~~  
15 ~~hearing examiner,~~ pursuant to the Maine Administrative  
16 Procedure Act, Title 5, chapter 375, subchapter VII. A  
17 claimant party seeking review of a hearing examiner  
18 determination shall file an appeal in the Superior Court  
19 within 30 days of the determination. Determinations made by  
20 the hearing examiner must be accorded a presumption of  
21 regularity and validity in a subsequent reimbursement  
22 action, but this resumption may be rebutted by responsible  
23 parties who do not become interested parties.

24 **Sec. 25. 38 MRSA §569-A, sub-§5, ¶C**, as enacted by PL 1991, c.  
25 817, §26, is amended to read:

26 C. The owner or operator of an underground oil storage  
27 facility that stores motor fuel or is used in the marketing  
28 and distribution of oil shall pay an annual fee of \$130 per  
29 tank not constructed of fiberglass, cathodically protected  
30 steel or other noncorrosive material. ~~These funds must be~~  
31 ~~deposited in the 3rd party commercial risk pool account.~~ If  
32 the funds in the account fund are inadequate to pay the  
33 claims, costs and expenses for which payment from the  
34 account fund is authorized, the board may increase the per  
35 tank assessment up to \$500 per tank. ~~Any shortfall in the~~  
36 ~~account occurring after the maximum assessment has been~~  
37 ~~levied must be paid out of the fund.~~ Upon payment of the  
38 annual fee, the commissioner shall issue a certificate of  
39 coverage for the tank.

40 **Sec. 26. 38 MRSA §569-A, sub-§8, ¶A**, as enacted by PL 1991, c.  
41 817, §26, is amended to read:

42 A. Administrative expenses, personnel expenses and  
43 equipment costs of the department related to the  
44 administration and enforcement of this subchapter and any  
45 loans to the Maine Coastal and Inland Surface Oil Clean-up  
46 Fund made pursuant to this section. Administrative

2 expenses, personnel expenses and equipment costs may not  
3 exceed \$1,734,000 per fiscal year. Capital expenditures for  
4 the acquisition of property needed to conduct remedial  
5 actions or for equipment used in the cleanup and remediation  
6 of sites are not included in the limitation of \$1,734,000  
7 per fiscal year;

8 **Sec. 27. 38 MRSA §569-A, sub-§8, ¶F,** as enacted by PL 1991, c.  
9 817, §26, is repealed.

10 **Sec. 28. 38 MRSA §569-A, sub-§12,** as enacted by PL 1991, c.  
11 817, §26, is repealed.

12 **Sec. 29. 38 MRSA §570, 2nd ¶,** as repealed and replaced by PL  
13 1987, c. 735, §72, is amended to read:

14 In any suit filed under this section, the State need not  
15 prove negligence in any form or matter by a defendant. The State  
16 need only prove the fact of the prohibited discharge and that a  
17 defendant is a responsible party, as defined in section 562 562-A.

18 **Sec. 30. 38 MRSA §570-A,** as amended by PL 1991, c. 817, §31,  
19 is further amended to read:

20 **§570-A. Budget approval**

21 The commissioner shall submit budget recommendations for  
22 disbursements from the fund in accordance with section 569-A,  
23 subsection 8, paragraphs A, C, G, H and I for each biennium. The  
24 budget must be submitted in accordance with Title 5, sections  
25 1663 to 1666. The State Controller shall authorize expenditures  
26 from the fund as approved by the commissioner. Expenditures  
27 pursuant to section 569-A, subsection 8, paragraphs B, D, E, F  
28 and J may be made as authorized by the State Controller following  
29 approval by the commissioner.

30 This section is repealed December 31, 1999.

31 **Sec. 31. 38 MRSA §1271, first ¶,** as enacted by PL 1987, c. 448,  
32 §1-C, is amended to read:

33 The Legislature finds that the presence of friable and  
34 potentially friable asbestos in public and private buildings is a  
35 public health hazard; that State Government and local government  
36 agencies are conducting major abatement programs; that it is  
37 critical to the safe conduct of all asbestos abatement activities  
38 such as monitoring, design, analysis, training, identification,  
39 encapsulation, removal, handling and disposal activities that  
40 trained and qualified personnel from the public and private  
41 sectors be employed; and that work practice standards for

2 asbestos abatement activities must be established and enforced to  
3 ensure protection of the public health.

4 **Sec. 32. 38 MRS §1272, sub-§2**, as amended by PL 1991, c. 473,  
5 §2, is further amended to read:

6  
7 **2. Asbestos abatement activity.** "Asbestos abatement  
8 activity" means activity involving the removal, demolition,  
9 enclosure, repair, encapsulation, handling, transportation or  
10 disposal of friable asbestos-containing materials in an amount  
11 greater than 3 square feet or 3 linear feet. "Asbestos abatement  
12 activity" includes the associated activities such as design,  
13 monitoring, analysis and inspection of any friable  
14 asbestos-containing material in an amount greater than 3 square  
15 feet or 3 linear feet, and conducting training for persons  
16 seeking a state certificate or license.

17 **Sec. 33. 38 MRS §1272, sub-§4**, as enacted by PL 1987, c. 448,  
18 §1-C, is amended to read:

19  
20 **4. Asbestos abatement design consultant.** "Asbestos  
21 abatement design consultant" means a ~~person~~ an individual engaged  
22 in preparing and supervising the implementation of facility plans  
23 for the removal or abatement of asbestos. These activities  
24 include, but are not limited to, the performance of air quality  
25 and bulk sampling; advising building owners, contractors and  
26 project supervisors on health impacts of asbestos abatement  
27 activities; and supervising the conduct of training courses.  
28 This category of specialists includes, but is not limited to,  
29 engineers, architects, health professionals, industrial  
30 hygienists, private consultants or other individuals involved in  
31 asbestos risk assessment or regulatory activities.

32  
33 **Sec. 34. 38 MRS §1272, sub-§5**, as amended by PL 1989, c. 630,  
34 §1, is further amended to read:

35  
36 **5. Asbestos abatement project supervisor.** "Asbestos  
37 abatement project supervisor" means a ~~person~~ an individual with  
38 responsibility for the supervision of asbestos abatement  
39 activities. Those persons include, but are not limited to,  
40 abatement project supervisors employed by contractors, in-house  
41 asbestos abatement units, employees of governmental or public  
42 entities who coordinate or directly supervise asbestos abatement  
43 activities performed by public schools, governmental or other  
44 public employees in a school district, governmental or other  
45 public buildings and project supervisors employed as consultants  
46 to monitor and direct abatement contractors.

47  
48 **Sec. 35. 38 MRS §1272, sub-§6**, as amended by PL 1989, c. 325,  
49 §2, is further amended to read:

2           **6. Asbestos abatement worker.** "Asbestos abatement worker"  
means ~~any--worker--performing~~ an individual engaging in any  
4 asbestos abatement activity for any employer.

6           **Sec. 36. 38 MRSA §1272, sub-§6-B,** as enacted by PL 1991, c.  
473, §4, is amended to read:

8           **6-B. Asbestos analytical laboratory.** "Asbestos analytical  
10 laboratory" means a public or private business entity that  
scientifically analyzes samples of solids, liquids or gases to  
12 determine the presence and concentration of asbestos fibers.

14           **Sec. 37. 38 MRSA §1272, sub-§§6-C and 6-D** are enacted to read:

16           **6-C. Asbestos air analyst.** "Asbestos air analyst" means an  
individual engaging in the analysis of air samples for fiber  
18 count including, but not limited to asbestos fibers.

20           **6-D. Asbestos bulk analyst.** "Asbestos bulk analyst" means  
an individual engaging in the analysis of bulk samples for  
22 asbestos or other material composition.

24           **Sec. 38. 38 MRSA §1272, sub-§§8-A, 8-B and 8-C,** as enacted by  
PL 1991, c. 473, §7, are amended to read:

26           **8-A. Asbestos consultant.** "Asbestos consultant" means a  
28 business entity that engages in, or intends to engage in, the  
design, inspection or monitoring of asbestos abatement activities.

30           **8-B. Asbestos inspector.** "Asbestos inspector" means a  
32 person an individual whose activities include, but are not  
limited to, collecting bulk samples and assessing the potential  
34 for exposure associated with the presence of asbestos-containing  
material.

36           **8-C. Asbestos professional.** "Asbestos professional" means  
38 a ~~person licensed and~~ an individual certified by the commissioner  
to ~~work~~ engage in the asbestos abatement field activities,  
40 including, but not limited to, an asbestos abatement worker, an  
asbestos abatement project supervisor, an asbestos air monitor,  
42 an asbestos inspector, and an asbestos abatement design  
consultant, an asbestos air analyst, an asbestos bulk analyst and  
44 an asbestos management planner.

46           **Sec. 39. 38 MRSA §1272, sub-§8-D** is enacted to read:

48           **8-D. Asbestos management planner.** "Asbestos management  
planner" means a person who assesses hazards associated with the

2 presence and condition of asbestos-containing materials in  
3 schools and who develops a response action plan based upon the  
4 assessment.

5 **Sec. 40. 38 MRSA §1272, sub-§10**, as amended by PL 1991, c.  
6 473, §8, is further amended to read:

7 **10. Certificate.** "Certificate" means a document issued to  
8 an individual by the commissioner affirming that an individual  
9 has successfully completed the training and other requirements  
10 set forth in this chapter to qualify as an asbestos professional  
11 abatement--design--consultant,--an--asbestos--abatement--project  
12 supervisor,--an--asbestos--abatement--worker,--an--asbestos--air--monitor  
13 or--an--asbestos--inspector,--whether--held--by--an--individual,--business  
14 or--public--entity.

15 **Sec. 41. 38 MRSA §1272, sub-§12**, as enacted by PL 1987, c.  
16 448, §1-C, is amended to read:

17 **12. Employee.** "Employee" means ~~every person~~ an individual  
18 who may be permitted, required or directed by an employer in  
19 consideration of direct or indirect gain or profit, to engage in  
20 any employment.

21 **Sec. 42. 38 MRSA §1272, sub-§13**, as repealed and replaced by  
22 PL 1991, c. 473, §9, is amended to read:

23 **13. Friable.** "Friable" means materials that, when dry,  
24 have the potential to readily release asbestos fibers when  
25 crumbled, pulverized, handled, deteriorated or subjected to  
26 mechanical, physical or chemical processes. It also means  
27 ~~previously--nonfriable~~ potentially friable material that has  
28 deteriorated or has been or will be processed to the extent that,  
29 when dry, it may readily release asbestos fibers.

30 **Sec. 43. 38 MRSA §1272, sub-§15**, as affected by PL 1989, c.  
31 890, Pt. A, §40 and amended by Pt. B, § 218, is further amended  
32 to read:

33 **15. License.** "License" means a document issued by the  
34 ~~Commissioner--of--Environmental--Protection~~ commissioner to a  
35 business entity or public entity affirming that the entity has  
36 met the requirements set forth in this chapter to engage in  
37 asbestos abatement activities ~~as--an~~ including, but not limited  
38 to, asbestos abatement contractor, or in-house asbestos abatement  
39 unit, asbestos consultant, asbestos analytical laboratory and  
40 training provider.

41 **Sec. 44. 38 MRSA §1272, sub-§15-A**, as enacted by PL 1991, c.  
42 473, §10 is amended to read:

2           **15-A. Owner or operator.** "Owner or operator" means any a  
3 person who owns, leases, operates, controls or supervises any an  
4 asbestos abatement activity within a building, structure or  
5 facility having-asbestos-containing-materials.

6  
7           **Sec. 45. 38 MRSA §1272, sub-§18** is enacted to read:

8  
9           **18. Training provider.** "Training provider" means a person  
10 providing training that is necessary to fulfill certification or  
11 licensing requirements under this chapter.

12  
13           **Sec. 46. 38 MRSA §1273, sub-§1**, as enacted by PL 1987, c. 448,  
14 §1-C, is amended to read:

15           **1. License or certificate required.** No person or owner or  
16 operator may engage in any asbestos abatement activities in the  
17 State, unless licensed or certified pursuant to this chapter; and

18  
19           **Sec. 47. 38 MRSA §1273, sub-§2**, as amended by PL 1991, c. 473,  
20 §11, is further amended to read:

21  
22           **2. Notification required.** A person or owner or operator  
23 may not engage in any planned asbestos abatement ~~project~~ activity  
24 over 3 linear feet or 3 square feet of friable  
25 asbestos-containing material unless that person or owner or  
26 operator notifies the commissioner in writing at least 10  
27 calendar days before beginning any on-site work, including  
28 on-site preparation work, that has the potential to release  
29 asbestos fibers. Asbestos abatement activities greater than 160  
30 square feet or 260 linear feet, excluding residential dwellings  
31 of fewer than 5 units, require a notification period of 10  
32 working days.

33  
34           **Sec. 48. 38 MRSA §1274-A**, as enacted by PL 1991, c. 473, §14,  
35 is amended to read:

36  
37           **§1274-A. Certification and licensing requirements**

38  
39           The board may adopt and amend rules necessary to govern the  
40 ~~certification and licensing of asbestos abatement contractors,~~  
41 ~~asbestos abatement design consultants, asbestos inspectors,~~  
42 ~~asbestos air monitors, asbestos abatement project supervisors,~~  
43 ~~asbestos abatement workers, asbestos consultants, asbestos~~  
44 ~~analytical laboratories and other persons undertaking asbestos~~  
45 ~~abatement activities~~ licensing of business or public entities  
46 including but not limited to asbestos abatement contractors,  
47 in-house asbestos abatement units, asbestos consultants, asbestos  
48 analytical laboratory and training providers; and the



2 certification of asbestos professionals undertaking asbestos  
3 abatement activities.

4 **Sec. 49. 38 MRSA §1275**, as amended by PL 1991, c. 473, §15,  
5 is further amended to read:

6 **§1275. Approval of training courses**

7  
8  
9  
10 The board, after consultation with the Commissioner of  
11 Administration Administrative and Financial Services and the  
12 Commissioner of Labor, shall develop rules establishing criteria  
13 and procedures for the certification approval of training courses  
14 and examinations ~~which shall~~ that ensure the qualifications of  
15 applicants for certification as required in this chapter. The  
16 board shall ~~promulgate~~ adopt these rules in accordance with Title  
17 5, chapter 375, subchapter II.

18 1. **Course requirements.** To qualify for certification  
19 approval, a training course shall must contain a combination of  
20 class instruction, practical application and public health  
21 procedures of a length and content ~~which~~ that, to the  
22 satisfaction of the commissioner, ~~shall~~ must ensure adequate  
23 training for the level and type of responsibility for each named  
24 certification category.

25 2. **Instructors.** All courses certified under this section  
26 shall must be conducted by instructors whose training and  
27 experience is determined by the commissioner to be appropriate  
28 for the subject matter being taught and the level of  
29 certification category for which the course is designed. All  
30 courses shall must be designed and conducted under the guidance  
31 of an asbestos abatement design consultant.

32 3. **Transition.** Training courses conducted by, and  
33 instructors employed by, a firm with in-house asbestos abatement  
34 units contracting for asbestos removal with the Federal  
35 Government are considered certified under this section pending  
36 review for certification if the firm has submitted to the  
37 commissioner by March 1, 1990, a training course that meets  
38 training requirements set forth in this chapter.

39  
40  
41 **Sec. 50. 38 MRSA §1278, sub-§1, ¶A**, as amended by PL 1991, c.  
42 473, §18, is further amended to read:

43 A. The fees are:

44  
45 (1) Asbestos abatement contractor: \$250;

46  
47 (1-A) In-house asbestos abatement unit: \$250;

48  
49  
50

- 2                   (2)--Asbestos-abatement-design-consultant:--\$50;
- 4                   (2-A)--Asbestos-inspector:--\$50;
- 6                   (3)--Asbestos-air-monitor:--\$50;
- 8                   (4)--Asbestos-abatement-project-supervisor:--\$50;-
- 10                  (5)--Asbestos-abatement-worker:--\$25;
- 12                  (6) Asbestos consultant: \$250;
- 14                  (7) Asbestos analytical laboratory: \$250;
- 16                  (8) Asbestos--abatement--training Training provider:  
\$500 or the equivalent value of training of department  
18                  personnel; and
- 20                  (9) ~~Other-categories~~ Categories of asbestos abatement  
professionals: \$50.

22                  **Sec. 51. 38 MRSA §1278, sub-§2**, as amended by PL 1989, c. 630,  
§9, is further amended to read:

24                  **2. Notification fees.** Notification of a-planned asbestos  
26                  abatement ~~project~~ activities pursuant to section 1273, subsection  
28                  2, must be accompanied by a notification fee unless the activity  
occurs in single-unit residential buildings.

30                  A. The fees are:

- 32                   (1) Projects involving more than 100 square feet or  
34                   100 linear feet, but less than 1,000 square feet or  
5,000 linear feet: \$100; and
- 36                   (2) Projects involving more than 1,000 square feet or  
38                   5,000 linear feet: \$200.

40                  **Sec. 52. 38 MRSA §1280**, as amended by PL 1991, c. 473, §§19  
and 20, is further amended to read:

42                  **§1280. Standard of acceptable work practice**

44                  The board shall adopt rules that establish criteria and  
46                  procedures of acceptable work practices for licensees and  
certificate holders and persons exempt from licensing and  
48                  certification requirements under section 1273, subsection 4  
engaged in the following asbestos hazard abatement activities.

1. **Removal; demolition; encapsulation; enclosure; repair; handling; transportation; analysis; disposal; storage; design; monitoring; or inspection.** For any asbestos activity that involves more than 3 linear feet or 3 square feet of friable asbestos-containing material, the board shall consider the following:

A. Proper work practices for the removal of asbestos-containing materials;

B. Proper work practices for the encapsulation of asbestos-containing materials;

C. Proper work practices for enclosure of asbestos-containing materials;

D. Proper work practices for the demolition of a structure or position of a structure which contains structural members or components of or covered by asbestos-containing materials;

E. Proper work practices for the storage, transport and disposal of asbestos-containing materials;

F. Administrative penalties and cessation of operations to ensure compliance with this subsection;

G. Air monitoring, bulk and air sample analysis and criteria governing public access to sites where asbestos abatement activity has occurred; and

H. Asbestos abatement, monitoring, inspection, design and analysis activities.

In adopting these rules, the board shall consider cost-effective methods and alternatives that do not sacrifice public or worker health or safety.

**Sec. 53. 38 MRSA §1303-C, sub-§12**, as amended by PL 1991, c. 72, §1, is further amended to read:

**12. Disposal.** "Disposal" means the discharge, deposit, dumping, ~~incineration~~, spilling, leaking or placing of any hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage into or on any land, air or water and the incineration of any solid waste, refuse-derived fuel, sludge or septage so that the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

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

4           **39. Treatment.** "Treatment" means any process, including,  
6           but not limited to, incineration designed to change the character  
or composition of any hazardous waste, waste oil or biomedical  
8           waste so as to render the waste less hazardous or infectious.

10           **Sec. 55. 38 MRSA §1304, sub-§11**, as affected by PL 1989, c.  
890, Pt. A, §40 and amended by Pt. B, §228, is repealed.

12           **Sec. 56. 38 MRSA §1310-F, sub-§2**, as amended by PL 1991, c.  
519, §10, is further amended to read:

14           **2. Eligibility.** Any municipality that owns, rents or  
16           leases a solid waste landfill for which a remediation or closure  
plan has been adopted is eligible for grants. A municipality  
18           that has acted to close its solid waste landfill or to remedy  
environmental and public health hazards posed by the landfill  
20           prior to the adoption of a closure or remediation plan under this  
subchapter or that closed a landfill or remediated environmental  
22           or public health hazards posed by a landfill, is also eligible  
for reimbursement of closure or remediation costs incurred after  
24           February 1, 1976, as long as the closure or remediation actions  
were in conformance with all applicable laws or rules in effect  
26           at the time. Costs incurred by closure or remediation actions  
taken after the adoption of a closure or remediation plan under  
28           this subchapter are eligible for reimbursement only if those  
actions conform to that plan. Grant payments may not be made to  
30           any municipality for any portion of payments to settle civil or  
criminal judgments against that municipality for damages or  
32           injuries caused by the landfill. In addition, for landfills in  
operation prior to January 1, 1993, grant payments may not be  
34           made to a municipality for remediation to mitigate any threat  
posed by that landfill to structures built, or permitted by the  
36           municipality to be built after January 1, 1994 unless the  
commissioner determines that the municipality could not have  
38           reasonably anticipated these threats. Any interest paid by a  
municipality prior to reimbursement on a municipal bond issued to  
40           raise funds for remediation and closure activities during this  
period is a cost eligible for reimbursement under this section.  
42           The commissioner shall use at least 1/3 of the available funds  
for municipalities eligible for reimbursement of closure and  
44           remediation costs under this subsection until all those  
municipalities have been reimbursed. A landfill that is  
46           privately owned and privately operated is not eligible for  
reimbursement under this subchapter.

48           A. The commissioner may act to abate public health, safety  
50           and environmental threats at sites identified as

2 uncontrolled hazardous substance sites under section 1362,  
3 subsection 3 or at federally declared Superfund sites.  
4 Notwithstanding any other provision of this article, the  
5 commissioner shall determine the amount of funds expended at  
6 such sites.

7 B. The commissioner may enter into contracts with the Maine  
8 Municipal Bond Bank to manage bonds issued under this  
9 article, as long as the management fee structure does not  
10 allow dilution of the bond principal.

11 **Sec. 57. 38 MRSA §1310-G, sub-§2**, as affected by PL 1989, c.  
12 890, Pt. A, §40 and amended by Pt. B, §239, is repealed.

13 **Sec. 58. 38 MRSA §1310-I**, as affected by PL 1989, c. 890, Pt.  
14 A, §40 and amended by Pt. B, §241, is repealed.

15 **Sec. 59. 38 MRSA §1310-P, first ¶**, as affected by PL 1989, c.  
16 890, Pt. A, §40 and amended by Pt. B, §243, is further amended to  
17 read:

18 The department shall apply this section to every license for  
19 a new or expanded solid waste disposal facility and to the  
20 license of every existing solid waste disposal facility at the  
21 time of relicensing or by April 9, 1994, whichever date occurs  
22 first.

23 **Sec. 60. 38 MRSA §1310-P, sub-§1**, as enacted by PL 1987, c.  
24 517, §25, is amended to read:

25 **I. Escrow account.** The owner or operator of every solid  
26 waste disposal facility shall accrue an amount sufficient to  
27 satisfy the estimated costs of closure and post-closure care and  
28 maintenance. The owner or operator of every municipal solid  
29 waste landfill shall accrue an amount or provide other financial  
30 assurance sufficient to satisfy the estimated cost of corrective  
31 action for known releases from the landfill. The owner or  
32 operator shall deposit the amount or provide financial assurance  
33 according to rules adopted by the board pursuant to subsection  
34 3. The account established pursuant to this subsection shall  
35 constitute constitutes an escrow account for the closure and  
36 post-closure care and maintenance of that solid waste disposal  
37 facility or financial assurance for corrective action of the  
38 municipal solid waste landfill. No withdrawals from the escrow  
39 account may be made without written approval of the commissioner  
40 or as otherwise authorized by the commissioner.

41 **Sec. 61. 38 MRSA §1310-P, sub-§5**, as enacted by PL 1987, c.  
42 517, §25, is repealed.

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2           **Sec. 62. 38 MRSA §1310-X**, as amended by PL 1991, c. 382, is  
further amended to read:

4           **§1310-X. Future commercial waste disposal facilities**

6           **1. New facilities.** Notwithstanding Title 1, section 302,  
the department may not approve an application for a new  
8 commercial solid waste disposal or biomedical waste disposal or  
treatment facility after September 30, 1989, including any  
10 applications pending before the department on or after September  
30, 1989.

12           **2. Relicense or transfer of license.** The department may  
14 relicense or approve a transfer of license for a commercial solid  
waste disposal or biomedical waste disposal or treatment facility  
16 after September 30, 1989, if the facility had been previously  
licensed by the department prior to October 6, 1989, and all  
18 other provisions of law have been satisfied.

20           **3. Expansion of facilities.** The department may license an  
expansion of a commercial solid waste disposal or biomedical  
22 waste disposal or treatment facility after September 30, 1989 if:

24           A. The department has previously licensed the facility  
prior to October 6, 1989;

26           B. The department determines that the proposed expansion is  
28 contiguous with the existing facility and is located on  
property owned by the licensee on September 30, 1989; and

30           C. For a commercial solid waste disposal facility and prior  
32 to the adoption of the state plan and siting criteria under  
chapter 24, the department determines that the proposed  
34 expansion is consistent with the provisions of section  
1310-R, subsection 3, paragraph A-1 or, after the adoption  
36 of the state plan and siting criteria under chapter 24, the  
agency determines that the provisions of section 2157 are  
38 met.

40           **4. Exemption.** A commercial biomedical waste disposal or  
treatment facility is exempt from the prohibitions of this  
42 section if at least 51% of the facility is owned by a hospital or  
hospitals as defined in Title 22, section 382, subsection 7 or an  
44 affiliated interest or interests as defined in Title 22, section  
396-L, subsection 1, paragraph A.

46           **Sec. 63. 38 MRSA §1318-C, sub-§1, ¶A**, as enacted by PL 1991,  
48 c. 208, §3, is amended to read:

2 A. The hazardous matter and substances covered including  
the reportable quantity for each hazardous matter and  
4 mixture measured in pounds or if a solid and in pounds and  
gallons if a liquid;

6 **Sec. 64. 38 MRSA §1319-E, sub-§1**, as amended by PL 1991, c.  
499, §23, is further amended to read:

8  
10 **1. Money disbursed.** Money in the Maine Hazardous Waste Fund  
may be disbursed by the commissioner for the following purposes,  
but for no other:

12  
14 A. Costs incurred in the removal or abatement of an  
unlicensed discharge or threatened discharge of hazardous  
16 waste or, waste oil or biomedical waste. Whenever practical,  
the commissioner shall may offer the responsible party the  
opportunity to remove or abate the discharge or threatened  
18 discharge;

20 C. Costs incurred for the purchase of necessary hazardous  
waste, and waste oil and biomedical waste testing, response,  
22 inspection and monitoring equipment and supplies, response  
and compliance personnel and training of personnel in  
24 accordance with an allocation approved by the Legislature;

26 D. Amounts necessary to reimburse municipalities as  
required by section 1319-R, subsection 3;

28  
30 E. Costs incurred in the inspection or supervision of  
hazardous waste, waste oil and biomedical waste activities  
and hazardous-waste handlers; and

32  
34 F. A one-time allocation of \$100,000 to the department and  
the Maine Land Use Regulation Commission to develop mining  
rules pursuant to section 349-A. This allocation must be  
36 repaid by any preapplication fees assessed pursuant to  
section 352, subsection 4-A; and

38  
40 G. Costs incurred in the administration of chapter 26 or  
the provision of technical assistance under the toxics use,  
toxics release and hazardous waste reduction program  
42 established in chapter 26.

44 **Sec. 65. 38 MRSA §1319-Q, sub-§2**, as reallocated by PL 1987,  
c. 517, §13, is amended to read:

46  
48 **2. Report to the board.** The commissioner shall annually  
biennially, prior to May 1st, prepare a report to the board  
covering the prior 2 calendar year-~~which shall~~ years that must  
50 include the following data:

- 2           A. The amount of hazardous waste by type that is generated,  
4           handled or transported within the State;
- 6           B. The amount of hazardous waste by type that is handled at  
8           commercial hazardous waste facilities within the State;
- 10          C. The number of hazardous waste facility permits by type  
12          currently active and the number granted and revoked in the  
14          year;
- 16          D. The amount of hazardous waste by type generated outside  
18          the State that was handled at permitted facilities within  
20          the State, and the amount of hazardous waste generated  
22          within the State that was handled at facilities located  
24          outside the State;
- 26          E. A list of hazardous waste facilities located within the  
28          State and those located outside the State which are  
30          available for use by generators in the State; and
- 32          F. A list of known firms that provide testing, consulting,  
34          brokerage, waste exchange, transport or other services to  
36          hazardous waste generators.

38           **Sec. 66. 38 MRSA §1319-Q, sub-§3,** as affected by PL 1989, c.  
40           890, Pt. A, §40 and amended by Pt. B, §262, is repealed.

42           **Sec. 67. 38 MRSA §1319-Q, sub-§4,** as affected by PL 1989, c.  
44           890, Pt. A, §40 and amended by Pt. B, §262, is further amended to  
46           read:

48           **4. Legislative recommendations.** The commissioner shall make  
50           an-annual a biennial status report to the Legislature concerning  
hazardous waste management, including any recommendations of the  
board for legislative action to develop and establish needed  
hazardous waste facilities. These recommendations may include tax  
and other financial incentives or recommendations to directly, or  
through an instrumentality, acquire suitable sites for hazardous  
waste facilities, or to construct and operate hazardous waste  
facilities. Recommendations in the annual biennial status report  
must be based solely on the information and plans prepared  
pursuant to this section and information obtained at public  
hearings.

52           **Sec. 68. 38 MRSA §1362, sub-§§4 and 5,** are enacted to read:

54           **4. Environmental site assessment.** "Environmental site  
56           assessment" means an environmental investigation of a site that  
58           involves intrusive research such as sampling, drilling and



2 test-pitting and includes monitoring information and analytical  
3 data to determine if hazardous substances have been discharged  
4 into the environment.

5 5. Site. "Site" means a licensed or unlicensed area or  
6 location where hazardous substances are handled or were handled  
7 or otherwise came to be located. "Site" includes all structures,  
8 appurtenances, improvements, equipment, machinery, containers,  
9 tanks and conveyances on the site.

10 Sec. 69. 38 MRSA §1363-A is enacted to read:

11 §1363-A. Reporting

12 A person responsible for conducting an environmental site  
13 assessment who discovers evidence that hazardous substances have  
14 been released at the site is responsible for submitting the  
15 assessment report to the commissioner within 30 days of discovery  
16 of the evidence.

17 Sec. 70. 38 MRSA §1364, sub-§2, as amended by PL 1985, c. 746,  
18 §33, is further amended to read:

19 2. Rules. The board may adopt rules related to the  
20 handling of hazardous substances; the investigation, abatement,  
21 mitigation and cleanup of spills of hazardous substances; and the  
22 investigation, designation and mitigation of uncontrolled  
23 hazardous substance sites. The board may provide by rule that any  
24 person who knows or has reason to believe that any hazardous  
25 substance is present in ground water or soils beneath a site  
26 which-is-owned-or-operated-by-that-person provide notice of that  
27 condition to the department if the concentration of the hazardous  
28 substance in ground water exceeds state or federal recommended  
29 contaminant levels for drinking water or the concentration in  
30 soils exceeds contaminant levels established by the board.

31 Sec. 71. 38 MRSA §1365, sub-§6 is enacted to read:

32 6. Enforcement; penalties; punitive damages. Any  
33 responsible party who fails without sufficient cause to undertake  
34 removal or remedial action promptly in accordance with an order  
35 issued pursuant to section 1304, subsection 12 and section 1367  
36 may be liable to the State for punitive damages in an amount at  
37 least equal to, and not more than 3 times, the amount expended by  
38 the commissioner as a result of such failure to take proper  
39 action.

40 The Attorney General is authorized to commence a civil action  
41 against any such responsible party to recover the punitive  
42 damages, which are in addition to any fines and penalties  
43

2 established pursuant to section 349. Any money received by the  
3 commissioner pursuant to this subsection must be deposited in the  
4 Uncontrolled Sites Fund.

6 **Sec. 72. 38 MRSA §2174, sub-§§1, 3 and 4,** as affected by PL  
7 1989, c. 890, Pt. A, §40 and amended by Pt. B, §292, are repealed.

8 **Sec. 73. 38 MRSA §2304, sub-§1, ¶B,** as repealed and replaced  
9 by PL 1991, c. 520, §13, is amended to read:

10 B. The following facilities are exempt from the planning  
11 and reporting requirements for toxics use:

- 12 (1) ~~Water~~ Drinking water supply treatment facilities;  
13 and  
14 (2) Municipal wastewater treatment facilities; and  
15  
16 (3) Wholesale distributors of chemicals.  
17

18 **Sec. 74. 38 MRSA §2304, sub-§2, ¶B,** as repealed and replaced  
19 by PL 1991, c. 520, §13, is amended by amending subparagraph (1)  
20 to read:

21 (1) The following facilities are exempt from the planning  
22 and reduction requirements for toxics release:

- 23 (a) ~~Water~~ Drinking water supply treatment facilities;  
24 (b) Municipal wastewater treatment facilities;  
25 (c) Retail and wholesale motor fuel and heating oil  
26 distributors; and  
27 (d) Agricultural activities.  
28

29 **Sec. 75. 38 MRSA §2307, sub-§1,** as enacted by PL 1989, c. 929,  
30 §7, is amended to read:

31 **1. Toxics use reduction reports.** ~~As set forth in Title~~  
32 ~~37-B, section 797, toxics~~ Toxics users must report their progress  
33 toward meeting the toxics use reduction goals ~~as part of their~~  
34 ~~reporting requirements to the State Emergency Response Commission~~  
35 annually to the commissioner on forms developed by the department.

36 **Sec. 76. 38 MRSA §2307, sub-§2,** as amended by PL 1991, c. 520,  
37 §16, is further amended to read:

38 **2. Toxics release reduction reports.** ~~As set forth in Title~~  
39 ~~37-B, section 799, toxics~~ Toxics releasers must report their  
40

2 progress toward meeting the toxics release reduction goals as  
3 ~~part--of--their--reporting--requirements--to--the--State--Emergency~~  
4 ~~Response--Commission~~ annually to the commissioner on forms  
5 developed by the department. After January 1, 1994, the  
6 commissioner may require a toxics releaser to submit a summary of  
7 the toxics release reduction plan required under section 2305  
8 within 60 days when:

9  
10 A. A facility has not made sufficient progress in reducing  
11 toxics release as evidenced by failure to meet the toxics  
12 release reduction goals;

13  
14 B. A facility has received an exemption under section 2304,  
15 subsection 2, paragraph B, subparagraph (2), and has not  
16 made sufficient progress toward meeting the alternate toxics  
17 release reduction goals established by the commissioner in  
18 section 2304, subsection 2, paragraph B, subparagraph (2); or

19  
20 C. A new facility has toxics release rates that are  
21 significantly greater per unit of product than in similar  
22 facilities within the same standard industrial code category.

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

25  
26  
27 **STATEMENT OF FACT**

28  
29 This bill amends the Maine Revised Statutes, Title 37-B,  
30 sections 797 and 799 to eliminate the requirement to report  
31 toxics reductions to the State Emergency Response Commission.  
32 Amendments to Title 38, section 2307 require that toxics  
33 reductions be reported to the Commissioner of Environmental  
34 Protection. Title 38, section 2304 is amended to clarify that  
35 the exemption for water supply treatment facilities from the  
36 requirement to report progress toward meeting reduction goals  
37 applies only to drinking water and provides an exemption for  
38 wholesale distributors of chemicals.

39  
40 The bill amends the definition of an oil terminal facility  
41 to exclude certain vessels from licensing requirements and extend  
42 the maximum period of a license from 2 to 5 years.

43  
44 The bill amends the statutes pertaining to 3rd-party damage  
45 claims made to the Maine Coastal and Inland Surface Oil Clean-up  
46 Fund and the Ground Water Oil Clean-up Fund to clarify that  
47 claims that have not been settled or referred to arbitration are  
48 to be processed in accordance with existing statute as opposed to  
49 the statute in effect at the time the application for a claim was  
50 filed. The bill removes the responsible party from the 3rd-party

2 damage claims process unless the responsible party agrees to  
3 become an interested party who is bound by the results of that  
4 process for purposes of a subsequent reimbursement action.  
5 Interested parties are entitled to participate in hearings before  
6 independent hearing examiners and to appeal their decisions. The  
7 decisions of independent hearing examiners are granted a  
8 presumption of regularity in subsequent reimbursement actions  
9 that may be rebutted by responsible parties who do not become  
10 interested parties.

11 The bill amends the underground oil storage facilities and  
12 ground water protection laws to: exempt certain tanks from daily  
13 inventory and annual statistical inventory requirements; change  
14 the daily product inventory trigger for reporting evidence of a  
15 leak; clarify that certain capital expenditures are not included  
16 in the spending limitation of \$1,743,000 per fiscal year; and  
17 eliminate the commercial risk pool account.

18 The bill amends the definitions of disposal and treatment to  
19 identify incineration of hazardous waste, waste oil and  
20 biomedical waste as treatment, not disposal. Title 38, section  
21 1310-X is amended to reflect the change in the definitions of  
22 disposal and treatment in order to preserve the intent of section  
23 1310-X.

24 The bill amends the solid waste facility siting provisions  
25 by repealing the exemption for solid waste disposal facilities  
26 that are owned by municipalities from the escrow closure account  
27 requirements of state law. This exemption conflicted with United  
28 States Environmental Protection Agency regulations that require  
29 all municipal solid waste landfill owners and operators to  
30 demonstrate financial assurance sufficient to meet the costs of  
31 closure, post-closure care and corrective action for known  
32 releases. Recently adopted federal regulations established  
33 requirements for state solid waste permit programs. This bill  
34 removes a barrier to United States Environmental Protection  
35 Agency authorization of the state program.

36 The bill amends the hazardous matter control laws to require  
37 that spill prevention control and clean-up plans report  
38 quantities of hazardous matter in pounds if a solid and in pounds  
39 and gallons if a liquid.

40 The bill amends the uncontrolled sites law to include a  
41 definition of "site" to require the reporting of the discovery of  
42 hazardous substances at a site, to expand rule-making authority  
43 and to enact an enforcement and penalty provision.

44 The bill repeals the 300-foot boundary law.  
45  
46  
47  
48  
49  
50

2 The changes to section 542, subsection 3-A and section 544  
3 clarify the extent of claims allowed to the Maine Coastal and  
4 Inland Surface Oil Clean-up Fund for damages to real estate or  
5 personal property or loss of income as the result of a discharge  
6 of oil. Persons suffering damages within 12 miles of the Maine  
7 coastline as the result of an oil spill may file a claim.

8 The bill amends the Maine Coastal and Inland Surface Oil  
9 Clean-up Fund to ensure that buildings constructed with fees from  
10 the fund remain under the control of the department.

12 The bill amends the Ground Water Oil Clean-up Fund coverage  
13 requirements to: clarify that there must be evidence of a  
14 discharge, require the submission of the site assessment and  
15 repeal a time requirement related to uncompensated 3rd-party  
16 damage claims that are in conflict with other laws.

18 The bill amends section 1271 through section 1280 to define  
19 terms and clarify changes made to the asbestos laws by Public Law  
20 1991, chapter 473.

22 This bill amends section 1310-F to prohibit grant payments  
23 to municipalities for civil or criminal judgments against them or  
24 for rehabilitation of some structures constructed in the  
25 municipality after January 1, 1994.

26 The bill repeals the following reporting requirements:  
27 imported waste report, closure and remediation program progress  
28 report and the hazardous waste facility needs plan. The  
29 hazardous waste management status report to the Legislature is  
30 changed from an annual to a biennial report.

32 The amendments to section 1319-E clarify the costs allowable  
33 under the Maine Hazardous Waste Fund.

36 The bill amends section 1362 to include a definition of  
37 environmental site assessment.

38 The amendments to Title 38 of the Maine Revised Statutes,  
39 section 2174 repeal the requirement that the commissioner  
40 establish a host municipality solid waste facility inspector  
41 training and certification program. Corresponding order and  
42 inspection provisions also are repealed.