

MAINE STATE LEGISLATURE

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L.D. 1626

DATE: 6-1-99

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MAJORITY
NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1141, L.D. 1626, Bill, "An Act to Establish the Waste Motor Oil Disposal Site Remediation Program"

Amend the bill by striking out the title and substituting the following:

'An Act to Assist in the Cleanup of the Town of Wells Maine Waste Oil Site'

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

Sec. 1. 5 MRSA §1513, sub-§1-L is enacted to read:

1-L. Transfer from Maine Rainy Day Fund; Wells Waste Oil Cleanup Fund. Notwithstanding subsection 2 and section 1585, \$3,100,000 must be transferred by the State Controller from the available balance in the Maine Rainy Day Fund to the Wells Waste Oil Cleanup Fund established in Title 10, section 1023-L no later than September 30, 1999.

Sec. 2. 10 MRSA §963-A, sub-§42-C is enacted to read:

42-C. Orphan share. "Orphan share" means the percentage of the total response costs payable by parties who are bankrupt, dissolved, insolvent or no longer in business or whose current identity or location can not be determined.

COMMITTEE AMENDMENT

2 **Sec. 3. 10 MRSA §963-A, sub-§47-A** is enacted to read:

4 **47-A. Responsible party.** "Responsible party" has the same
6 meaning as set forth in Title 38, section 1362, subsection 2 and
8 has the same meaning as the term "potentially responsible party"
 as defined in 40 Code of Federal Regulations, Section 304-12(m).

10 **Sec. 4. 10 MRSA §963-A, sub-§49-G** is enacted to read:

12 **49-G. Total response costs.** "Total response costs" means
14 the total costs that have been or will be paid in association
16 with the Portland-Bangor Waste Oil Services Site in Wells.
18 "Total response costs" includes any payments that either have
20 been made or will be made to the Department of Environmental
22 Protection or any payments that either have been made or will be
 made as a total or partial settlement with any entity that
 assumes that person's liability at that site. "Total response
 costs" includes costs incurred by the Department of Environmental
 Protection or 3rd parties in connection with the investigatory,
 removal or remedial activities regarding the Portland-Bangor
 Waste Oil Services Site in Wells.

24 **Sec. 5. 10 MRSA §963-A, sub-§§51-B and 51-C** are enacted to
26 read:

28 **51-B. Waste oil.** "Waste oil" means a petroleum-based oil
30 that, through use or handling, has become unsuitable for its
32 original purpose due to the presence of impurities or loss of
 original properties. "Waste oil" includes mixtures of waste oil
 and water.

34 **51-C. Waste oil disposal site.** "Waste oil disposal site"
36 means the Portland-Bangor Waste Oil Services Site in Wells
 designated by the Department of Environmental Protection as an
 uncontrolled hazardous substance site.

38 **Sec. 6. 10 MRSA §1023-D, sub-§2,** as amended by PL 1995, c.
40 399, §1 and affected by §21, is further amended to read:

42 **2. Sources of money.** There must be paid into the fund the
 following:

44 A. All money appropriated for inclusion in the fund or
46 appropriated to the authority for use in providing financial
 assistance to owners of underground oil storage facilities
48 or tanks, subject to any restrictions applicable to the
 appropriation;

B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money of the fund;

C. Subject to any pledge, contract or other obligations, any money the authority receives in repayment of advances from the fund; and

D. Any other money available to the authority and directed by the authority to be paid into the fund.

Without limiting the generality of any other power or authority given to or conferred upon the authority in anticipation of the appropriation or transfer of any money for inclusion in the fund, ~~including but not limited to the assessment or transfer of fees under Title 38, section 569-A, subsection 6,~~ the authority may borrow funds for application to the fund. All funds borrowed pursuant to this authorization, including interest on the borrowed funds, must be repaid from such fees or by other appropriation.

Sec. 7. 10 MRSA §1023-L is enacted to read:

§1023-L. Wells Waste Oil Cleanup Fund

1. Fund established. The Wells Waste Oil Cleanup Fund, referred to in this section as the "fund," is established under the jurisdiction and control of the authority.

2. Sources of money. The following money must be paid into the fund:

A. All money appropriated for inclusion in the fund or appropriated to the authority for use in providing financial assistance to responsible parties as defined in section 963-A, subsection 47-A, subject to any restrictions applicable to the appropriation;

B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money of the fund;

C. Subject to any pledge, contract or other obligation any money the authority receives in repayment of advances from the fund;

D. Money transferred from the available balance in the Underground Oil Storage Replacement Fund, subject to the limitations of section 1024-A;

2 E. Money transferred from the available balance in the
3 Maine Rainy Day Fund pursuant to Title 5, section 1513,
4 subsection 1-L; and

6 F. Any other money available to the authority and directed
7 by the authority to be paid into the fund.

8 **3. Eligibility to participate in loan program.** The
9 authority may use money in the fund to carry out any power of the
10 authority under this section or under section 1026-O, including,
11 but not limited to, the pledge or transfer and deposit of money
12 in the fund as security for and the application of money in the
13 fund in payment of principal, interest and other amounts due on
14 insured loans. Money in the fund may be used for direct loans or
15 deferred loans for all or part of the waste oil disposal site
16 cleanup project when the authority determines that:

18 A. The applicant is determined to be a responsible party
19 with respect to the waste oil disposal site and the
20 applicant is domiciled or has a principal place of business
21 in the State;

22 B. If the applicant is not a unit of local government, the
23 applicant demonstrates financial need for the assistance;

24 C. There is a reasonable likelihood that the applicant will
25 be able to repay the loan; and

26 D. An agreement has been reached with an entity that has
27 assumed liability for total response costs at the Wells
28 waste oil disposal site.

29 The authority, pursuant to Title 5, chapter 375, subchapter II,
30 shall adopt rules for determining eligibility, feasibility,
31 terms, conditions, security and fees for the loans, including
32 deferred loans. The authority may not issue deferred loans for
33 eligible parties who have received payments under subsection 8.
34 The authority shall adopt rules that provide for a simplified
35 loan application process for loan requests of under \$2000. Rules
36 adopted pursuant to this subsection are routine technical rules
37 as defined in Title 5, chapter 375, subchapter II-A. The
38 authority may charge an interest rate as low as 0% or up to a
39 maximum rate equal to the prime rate of interest as published in
40 The Wall Street Journal, depending on the financial ability of
41 the applicant to pay as determined by the authority. The maximum
42 the authority may loan, or issue as a deferred loan, to any one
43 borrower, including related entities as determined by the
44 authority, is \$50,000. Money in the fund not needed currently to
45 meet the obligations of the authority as provided in this section
46 may be invested as permitted by law. Any costs incurred by the
47 authority may be paid from the fund.

2 authority in administering this fund may be taken from interest
3 from all sources of the fund.

4 4. Accounts within fund. The authority may divide the fund
5 into separate accounts as it determines necessary or convenient
6 for carrying out this section, including, but not limited to,
7 accounts reserved for direct loan funds for waste oil cleanup.

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10 5. Payments on loans from fund; proceeds from mortgage or
11 security interests. All proceeds of loans and proceeds from
12 mortgage or security interests from the fund must be applied by
13 the authority to the Underground Oil Storage Replacement Fund.

14 6. Lapse to Ground Water Oil Clean-up Fund upon cleanup of
15 waste oil disposal site. Within 30 days after the Department of
16 Environmental Protection notifies the authority that the waste
17 oil disposal site has been remediated and the total response
18 costs have been paid, the authority shall transfer all amounts
19 remaining in the fund to the Ground Water Oil Clean-up Fund.

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22 7. Direct payment program. The direct payment program is
23 managed as follows.

24 A. The authority shall pay to each person, eligible under
25 subsection 3, \$2,000 upon presentation by the person to the
26 authority of a canceled check or other evidence determined
27 sufficient by the authority to demonstrate payment of the
28 person's share of total response costs at the waste oil
29 disposal site, unless the authority determines that the
30 payment made by the person at that site was in an amount
31 less than \$2,000, in which case the authority shall pay to
32 that person an amount equal to the amount that person paid
33 in relation to the site. All payments made under this
34 subsection must be from funds transferred from the Maine
35 Rainy Day Fund.

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38 B. Any person eligible under subsection 3 who presents an
39 invoice for that person's share of total response costs at
40 the site, but who has not yet paid the invoice, receives a
41 negotiable instrument from the authority made payable
42 jointly to that person and any entity identified by the
43 Department of Environmental Protection as assuming liability
44 for total response costs at the site. The negotiable
45 instrument must be in the amount of \$2,000, unless the
46 authority determines that the payment to be made by the
47 person at the site will be in an amount less than \$2,000, in
48 which case the authority shall pay to the person an amount
49 equal to the amount the person is to pay in relation to the
50 site. All payments made under this subsection must be from
51 funds transferred from the Maine Rainy Day Fund.

2 C. After the payments authorized in paragraphs A and B have
3 been made, additional payments must be made from the
4 available balance from funds transferred from the Maine
5 Rainy Day Fund to all persons who received funds under
6 paragraphs A and B who have paid their settlement share of
7 total response costs, and whose total liability at the site
8 exceeds the amount the persons received under paragraph A or
9 B. Distributions under this paragraph are proportionate to
10 the amount each person paid as the person's share of total
11 response costs at the site. Payments made pursuant to this
12 subsection may not exceed the person's settlement share of
13 total response costs attributable to eligible persons as
14 defined in this subsection multiplied by the total orphan
15 share percentage at the waste oil disposal site. The
16 authority may not issue deferred loans for eligible persons
17 who have received payments pursuant to this subsection.
18 This distribution must occur on April 1, 2000. Any
19 remaining funds in the fund must be transferred to the
20 Groundwater Oil Clean-up Fund.

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22 For purposes of this subsection, "person" means any natural
23 person domiciled in this State; a corporation or partnership in
24 the State; the State; any agency, authority, department,
25 commission, municipality, quasi-municipal corporation,
26 special-purpose district or other instrumentality of the State; a
27 political subdivision of the State, including but not limited to
28 those defined in Title 14, chapter 741 and Title 30-A, chapter
29 225; any other entity identified as a responsible party at the
30 waste oil disposal site; or an entity whose waste oil is
31 identified as delivered to the waste oil disposal site and picked
32 up from an address or location within the State in the records
33 compiled by the Department of Environmental Protection or the
34 United States Environmental Protection Agency or their agents,
35 provided that neither the Federal Government nor any of its
36 agencies, authorities, departments, boards, commissions or
37 instrumentalities are eligible to have any share of their
38 obligation for response costs paid by the fund.

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40 8. Determinations regarding eligibility. The authority
41 shall establish a registry of all persons who qualify under
42 subsection 7 to have a portion of their share of total response
43 costs paid pursuant to this section. The authority shall adopt
44 rules relating to eligibility, including the calculation of an
45 eligible person's proportionate share, procedures to ensure that
46 money paid pursuant to this section is used to settle an eligible
47 person's liabilities related to the waste oil disposal site and
48 repayment of any amounts in excess of that person's share. Rules
49 adopted pursuant to this subsection are routine technical rules
50 as defined in Title 5, chapter 375, subchapter II-A.

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COMMITTEE AMENDMENT "A" to H.P. 1141, L.D. 1626

2 D. To monitor income and disbursements from the Ground
4 Water Oil Clean-up Fund under section 569-A and adjust fees
6 pursuant to section 569-A, subsection 5, paragraph E, as
required to avoid a shortfall in the fund; and

8 **Sec. 11. 38 MRSA §568-B, sub-§2, ¶E** is enacted to read:

10 E. To consult with the Finance Authority of Maine at such
12 times as are necessary, but no less than annually, to review
14 income and disbursements from the Wells Waste Oil Cleanup
16 Fund under Title 10, section 1023-L. The board, at such
times and in such amounts as it determines necessary, and in
consultation with the Finance Authority of Maine, shall
direct the transfer of funds from the Underground Oil
Storage Replacement Fund to the Groundwater Oil Cleanup Fund.

18 **Sec. 12. 38 MRSA §569-A, sub-§5, ¶A**, as amended by PL 1997, c.
20 374, §6, is further amended to read:

22 A. Until December 31, 2005, a fee is assessed of 44¢ ~~38¢~~
24 per barrel of gasoline; 25¢ ~~19¢~~ per barrel of refined
26 petroleum products and their by-products other than
of gasoline, liquid asphalt and #6 fuel oil, including #2 fuel
oil, kerosene, jet fuel and diesel fuel; and 4¢ per barrel
of #6 fuel oil. The fee is assessed on the first transfer
of those products by oil terminal facility licensees, as
defined in section 542, subsection 7, and on a person
required to register with the commissioner under section
545-B who first transports oil into the State. The fee is
not assessed on petroleum products that are exported from
this State. These fees must be paid monthly on the basis of
records certified to the commissioner. This subsection does
not apply to waste oil transported into the State in any
motor vehicle that has a valid license issued by the
department for the transportation of waste oil pursuant to
section 1319-O and is subject to fees established under
section 1319-I.

40 **Sec. 13. 38 MRSA §569-A, sub-§6**, as amended by PL 1995, c.
42 399, §12 and affected by §21, is repealed.

44 **Sec. 14. 38 MRSA §570-H, sub-§2**, as amended by PL 1995, c.
399, §20 and affected by §21, is further amended to read:

46 2. **Adequacy of fund.** On or before February 15th of each
48 year, the Fund Insurance Review Board, with the cooperation of
the commissioner, shall report to the joint standing committee of
the Legislature with jurisdiction over energy--and natural

resources matters on the department's and the board's experience administering the fund, clean-up activities and 3rd-party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report must also include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Wells Waste Oil Cleanup Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this section, the board may order an independent audit of disbursements from the fund Ground Water Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the Wells Waste Oil Cleanup Fund.

Sec. 15. Transfer of funds to the Wells Waste Oil Cleanup Fund. On the effective date of this Act, \$4,000,000 is transferred from the Underground Oil Storage Replacement Fund to the Wells Waste Oil Cleanup Fund. Funds transferred under this Act may only be used for the loan program pursuant to the Maine Revised Statutes, Title 10, section 1023-L.

Sec. 16. Transfer to the Wells Waste Oil Cleanup Fund. After the State Controller closes the financial accounts of the State for the fiscal year ending June 30, 1999, an amount not to exceed \$3,100,000 must be transferred by the State Controller to the Wells Waste Oil Cleanup Fund established in the Maine Revised Statutes, Title 10, section 1023-L from the available balance in the General Fund as the next priority after the State Contingent Account established in Title 5, section 1507 is replenished, to be made available by financial order upon the recommendation of the State Budget Officer and approval of the Governor.

Sec. 17. Report. The Department of Environmental Protection shall evaluate the status of the Wells Waste Oil Cleanup Fund and remediation of the Portland-Bangor Waste Oil Services Site in Wells, designated by the Department of Environmental Protection as an uncontrolled hazardous substance site. The department shall evaluate and report on the amounts disbursed under the Wells Waste Oil Cleanup Fund, and whether the Wells Waste Oil Cleanup Fund should be extended to other uncontrolled hazardous substance sites or federal superfund sites in the State. The department shall evaluate the components and substances at uncontrolled hazardous substance sites, including sites where waste oil constitutes more than 50% by volume of the substances delivered to the site. The department shall evaluate the need and the amount of any adjustment to the maximum balance in the Ground Water Oil Clean-up Fund. The department shall submit a report to the Joint Standing Committee on Natural Resources by December 31, 1999. Following the receipt of this report, the

Joint Standing Committee on Natural Resources may introduce legislation to the Second Regular Session of the 119th Legislature.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The bill establishes the Wells Waste Oil Cleanup Fund, to be administered by the Finance Authority of Maine to provide loans, deferred loans, direct payments and guarantees for costs related to the cleanup and remediation of a site in Wells.

The fund receives its capital from two sources. First, the bill requires the transfer of \$4,000,000 from balances available in the Underground Oil Storage Replacement Fund to the new fund. While this transfer will reduce the amount of funds available for loans for the removal of underground oil tanks, the demand for loans under that program has decreased such that no negative impact is expected. Second, the bill requires a transfer to the fund of \$3,100,000 from the Maine Rainy Day Fund by September 30, 1999. When the balance of the Maine Rainy Day Fund is at its statutory limit, which is currently the case, interest earnings on the balances in the fund accrue to the General Fund. The additional period of time when the Maine Rainy Day Fund is not at its cap, which will result from the transfer in the bill, and the resulting reduction of General Fund revenue from interest earnings, can not be determined at this time.

The bill also allows the authority to utilize up to \$1,000,000 of existing mortgage insurance authority to guarantee loans for the cleanup projects. Whether the guarantee of these new loans will increase the exposure of the moral obligation of the State can not be determined.

The Finance Authority of Maine will incur additional costs to adopt rules and administer the loan, direct payment and guarantee programs. No additional General Fund appropriations will be required for these costs.

The Department of Environmental Protection will incur some minor additional costs to submit a required report to the Legislature. These costs can be absorbed within the department's existing budgeted resources.'

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SUMMARY

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6 This amendment replaces the bill and creates the Wells Waste
Oil Cleanup Fund under the jurisdiction and control of the
Finance Authority of Maine. The fund provides low or zero
8 interest loans and loan guarantees of up to \$50,000 to eligible
Maine residents and businesses who have been identified as
10 responsible parties at the Portland-Bangor Waste Oil Services
Site in Wells and who have demonstrated financial need. The fund
12 also provides for assistance to municipalities identified as
responsible parties at the Wells site. In addition, the Finance
14 Authority of Maine may issue deferred loans, which may be
converted to a grant. The loan program is funded through a
16 one-time \$4,000,000 transfer from the Underground Oil Storage
Replacement Fund. Any remaining balance of the fund reverts to
18 the Ground Water Oil Clean-up Fund after the Department of
Environmental Protection determines that the Wells waste oil site
20 has been finally cleaned up.

22 This amendment also provides for payments of up to \$2,000
for each Maine responsible party that makes a claim for this
24 payment, with additional reimbursements to Maine responsible
parties up to maximum of the person's share of the total response
26 costs multiplied by the total orphan share percentage at the
Wells site. This direct payment program is funded by a
28 \$3,100,000 transfer from the Maine Rainy Day Fund.

30 The amendment requires the Fund Insurance Review Board and
the Finance Authority of Maine to review and make necessary
32 adjustments from the Underground Oil Storage Replacement Fund to
the Ground Water Oil Clean-up Fund. Finally, the amendment
34 requires the Department of Environmental Protection to report to
the Joint Standing Committee on Natural Resources on the
36 appropriate balance of the Ground Water Oil Clean-up Fund, and
the status of the cleanup and remediation of the Portland-Bangor
38 Waste Oil Services Site in Wells.