

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

R.O.S.

L.D. 1408

DATE: 5-17-01

(Filing No. H-496)

NATURAL RESOURCES

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
120TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1408, Bill, "An Act to Pay for Cleanup of Contamination at a Waste Oil Disposal Site in Plymouth"

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

**Sec. 1. 5 MRSA §1513, sub-§1-P**, as reallocated by RR 1999, c. 1, §2, is amended to read:

**1-P. Transfer from Maine Rainy Day Fund; Waste Oil Clean-up 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 Clean-up Fund established in Title 10, section 1023-L no later than September 30, 1999.

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

**42-F. Past cost settlement.** "Past cost settlement" means the settlement between the potentially responsible parties, the United States and the State, embodied in the consent decree filed with the United States District Court for the District of Maine, Civil Docket 00-249-B.

**Sec. 3. 10 MRSA §963-A, sub-§49-G**, as enacted by PL 1999, c. 505, Pt. A, §4, is amended to read:

**COMMITTEE AMENDMENT**

2           **49-G. Total response costs.** "Total response costs" means  
 3 the total costs that have been or will be paid in association  
 4 with investigatory, removal or remedial activities at the  
 5 Portland-Bangor Waste Oil Services Site in Wells,---"Total  
 6 response costs"- includes any payments that either have been made  
 7 or will be made to the Department of Environmental Protection or  
 8 any payments that either have been made or will be made as a  
 9 total or partial settlement with any entity that assumes that  
 10 person's liability at that site,---"Total response costs"- includes  
 11 Plymouth, including costs incurred by the Department of  
 12 Environmental Protection or , the United States Environmental  
 13 Protection Agency and 3rd parties in connection with the to carry  
 14 out investigatory, removal or remedial activities regarding the  
 15 Portland-Bangor Waste Oil Services Site in Wells at that site  
 16 approved by the Department of Environmental Protection or the  
 17 United States Environmental Protection Agency.

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

19           **49-I. Time-critical removal action.** "Time-critical removal  
 20 action" means the removal activities undertaken pursuant to the  
 21 Administrative Order by Consent for Time-Critical Removal Action,  
 22 United States Environmental Protection Agency Docket No. CERCLA  
 23 1-97-1080.

24           **Sec. 5. 10 MRSA §963-A, sub-§51-C,** as enacted by PL 1999, c.  
25 505, Pt. A, §5, is amended to read:

26           **51-C. Waste oil disposal site.** "Waste oil disposal site"  
 27 means the Portland-Bangor Waste Oil Services Site in Wells  
 28 Plymouth designated by the Department of Environmental Protection  
 29 as an uncontrolled hazardous substance site.

30           **Sec. 6. 10 MRSA §1023-L,** as corrected by RR 1999, c. 1, §§12  
31 and 13, is amended to read:

32           **§1023-L. Waste Oil Clean-up Fund**

33           **1. Fund established.** The Waste Oil Clean-up Fund, referred  
 34 to in this section as the "fund," is established under the  
 35 jurisdiction and control of the authority.

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

38           **A.** All money appropriated for inclusion in the fund or  
 39 appropriated to the authority for use in providing financial  
 40 assistance to responsible parties as defined in section  
 41  
 42  
 43  
 44  
 45  
 46  
 47  
 48

COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1408

- 2           963-A, subsection 47-A, subject to any restrictions applicable to the appropriation;
- 4           B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment
- 6           of money of the fund;
- 8           C. Subject to any pledge, contract or other obligation any money the authority receives in repayment of advances from
- 10          the fund;
- 12          D. Money transferred from the available balance in the Underground Oil Storage Replacement Fund, ~~subject to the~~
- 14          ~~limitations of section 1024-A~~ pursuant to Public Law 1999, chapter 505, Part A, section 15;
- 16          E. Money transferred from the available balance in the Maine Rainy Day Fund pursuant to Title 5, section 1513,
- 18          subsection 1-P; and
- 20          F. Any other money available to the authority and directed
- 22          by the authority to be paid into the fund.

24           ~~3. --- Eligibility to participate in loan program. --- The authority may use money in the fund to carry out any power of the authority under this section, under section 1023-M, under section 1026-R or under section 1026-S, including, but not limited to, the pledge or transfer and deposit of money in the fund as security for and the application of money in the fund in payment of principal, interest and other amounts due on insured loans. Money in the fund may be used for direct loans or deferred loans for all or part of the waste oil disposal site clean up project when the authority determines that:~~

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

40           ~~B. --- If the applicant is not a unit of local government, the applicant demonstrates financial need for the assistance;~~

44           ~~C. --- There is a reasonable likelihood that the applicant will be able to repay the loan; and~~

46           ~~D. --- An agreement has been reached with an entity that has assumed liability for total response costs at the Wells waste oil disposal site and the applicant is a participant in that agreement.~~

50

## COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1408

~~The authority, pursuant to Title 5, chapter 375, subchapter II, shall adopt rules for determining eligibility, feasibility, terms, conditions, security and fees for the loans, including deferred loans. The authority may not issue deferred loans for eligible parties who have received payments under subsection 8. The authority shall adopt rules that provide for a simplified loan application process for loan requests of under \$2000. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The authority may charge an interest rate as low as 0% or up to a maximum rate equal to the prime rate of interest as published in The Wall Street Journal, depending on the financial ability of the applicant to pay as determined by the authority. The maximum the authority may loan, or issue as a deferred loan, to any one borrower, including related entities as determined by the authority, is \$50,000. Money in the fund not needed currently to meet the obligations of the authority as provided in this section or section 1023-M may be invested as permitted by law. Any costs incurred by the authority in administering this fund may be taken from interest from all sources of the fund.~~

**3-A. Use of funds by authority.** The authority may use money in the fund to carry out any power of the authority under this section, section 1023-M, section 1026-R or section 1026-S, including, but not limited to, the pledge or transfer and deposit of money in the fund as security for and the application of money in the fund in payment of principal, interest and other amounts due on insured loans. Money in the fund not needed to meet the obligations of the authority as provided in this section or section 1023-M may be invested as permitted by law. Any costs incurred by the authority in administering this fund may be taken from interest from all sources of the fund.

**4. Accounts within fund.** The authority may divide the fund into separate accounts as it determines necessary or convenient for carrying out this section or section 1023-M, including, but not limited to, accounts reserved for direct loan funds for waste oil cleanup.

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

**6. Lapse to Groundwater Oil Clean-up Fund upon cleanup of waste oil disposal site.** Within 30 days after the Department of Environmental Protection notifies the authority that the waste oil disposal site has been remediated and the total response costs have been paid and that the Plymouth waste oil site remedial study has been completed and the costs of that study

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1408

paid, the authority shall transfer all amounts remaining in the fund to the Groundwater Oil Clean-up Fund.

7. ~~Direct payment program.~~ The direct payment program is managed as follows.

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

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

C. ~~After the payments authorized in paragraphs A and B have been made, additional payments must be made from the available balance from funds transferred from the Maine Rainy-Day Fund to all persons who received funds under paragraphs A and B who have paid their settlement share of total response costs, and whose total liability at the site exceeds the amount the persons received under paragraph A or B. Distributions under this paragraph are proportionate to the amount each person paid as the person's share of total response costs at the site. Payments made pursuant to this subsection may not exceed the person's settlement share of total response costs attributable to eligible persons as defined in this subsection multiplied by the total orphan share percentage at the waste oil disposal site. The authority may not issue deferred loans for eligible persons who have received payments pursuant to this subsection.~~

COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1408

2 This--distribution--must--occur--on--June--30,--2000,--Any  
3 remaining--funds--in--the--fund--must--be--transferred--to--the  
4 Groundwater-Oil-Clean-up-Fund.

5 For--purposes--of--this--subsection,--"person"--means--any--natural  
6 person--domiciled--in--this--State,--a--corporation--or--partnership--in  
7 the--State,--the--State,--any--agency,--authority,--department,  
8 commission,--municipality,--quasi-municipal--corporation,  
9 special-purpose-district--or--other--instrumentality--of--the--State,--a  
10 political-subdivision--of--the--State,--including--but--not--limited--to  
11 those--defined--in--Title--14,--chapter--741--and--Title--30--A,--chapter  
12 225,--any--other--entity--identified--as--a--responsible--party--at--the  
13 waste--oil--disposal--site--whose--waste--oil--is--identified--as  
14 delivered--to--the--waste--oil--disposal--site--and--picked--up--from--an  
15 address--or--location--within--the--State--in--the--records--compiled--by  
16 the--Department--of--Environmental--Protection--or--the--United--States  
17 Environmental--Protection--Agency--or--their--agents,--provided--that  
18 neither--the--Federal--Government--nor--any--of--its--agencies,  
19 authorities,--departments,--boards,--commissions--or  
20 instrumentalities--are--eligible--to--have--any--share--of--their  
21 obligation--for--response--costs--paid--by--the--fund,--A--person--is--not  
22 eligible--for--assistance--under--this--subsection--unless--the--person  
23 is--a--participant--in--a--settlement--agreement--under--which--an--entity  
24 has--assumed--liability--for--total--response--costs--at--the--Wells--waste  
25 oil--disposal--site.

26 **8. -- Determinations -- regarding -- eligibility. --** The-- authority  
27 shall-- establish-- a-- registry-- of-- all-- persons-- who-- qualify-- under  
28 subsection--7--to--have--a--portion--of--their--share--of--total--response  
29 costs--paid--pursuant--to--this--section,--The--authority--shall--adopt  
30 rules--relating--to--eligibility,--including--the--calculation--of--an  
31 eligible--person's--proportionate--share,--procedures--to--ensure--that  
32 money--paid--pursuant--to--this--section--is--used--to--settle--an--eligible  
33 person's--liabilities--related--to--the--waste--oil--disposal--site--and  
34 repayment--of--any--amounts--in--excess--of--that--person's--share,--Rules  
35 adopted--pursuant--to--this--subsection--are--routine--technical--rules  
36 as--defined--in--Title--5,--chapter--375,--subchapter--II--A.

37 **Sec. 7. 10 MRSA §1023-M,** as enacted by PL 1999, c. 713, §3,  
38 is amended to read:

39 **§1023-M. Plymouth Waste Oil Loan Program**

40 **1. Use of fund established.** Money in the Waste Oil Clean-up  
41 Fund created under section 1023-L may be used by the authority to  
42 carry out the purposes of this section. As used in this section,  
43 the term "fund" refers to the Waste Oil Clean-up Fund.

44 **2. Eligibility to participate in loan program.** The  
45 authority may use money in the fund to carry out any power of the

2 authority under this section or under section 1026-S, including,  
3 but not limited to, the pledge or transfer and deposit of money  
4 in the fund as security for and the application of money in the  
5 fund in payment of principal, interest and other amounts due on  
6 insured loans. Money in the fund may be used for direct loans or  
7 deferred loans for all or part of the costs of the Plymouth waste  
8 oil site remedial study, past cost settlement and time-critical  
removal action costs when the authority determines that:

10 ~~A.--The applicant has joined a group of persons potentially~~  
11 ~~responsible for remedial costs associated with the~~  
12 ~~Portland-Banger Waste Oil Services Site in Plymouth~~  
13 ~~designated by the United States Environmental Protection~~  
14 ~~Agency as a National Priorities List site and has, as a~~  
15 ~~member of that group, become obligated under an agreement~~  
16 ~~with an entity conducting the remedial study to pay a~~  
17 ~~portion of the cost of the remedial study;~~

18  
19 A-1. The applicant has been identified by the United States  
20 Environmental Protection Agency as a potentially responsible  
21 party with respect to the waste oil disposal site and the  
22 applicant is alleged by the United States Environmental  
23 Protection Agency to have generated waste oil from an  
24 address or location within the State;

25 B. The applicant has signed the Administrative Order by  
26 Consent pursuant to United States Environmental Protection  
27 Agency Docket No. CERCLA 1-2000-0004;

28  
29 B-1. The applicant has signed the West Site/Hows Corner  
30 RI/FS Group Agreement;

31  
32 B-2. The applicant has entered into a consent decree with  
33 the United States and the State regarding past cost  
34 settlement at the Plymouth waste oil disposal site and the  
35 applicant is a participant in that consent decree or the  
36 applicant has entered into an inability-to-pay settlement  
37 with the United States Environmental Protection Agency;

38  
39 C. The applicant is not a state or federal agency; and

40  
41 D. There is a reasonable likelihood that the applicant will  
42 be able to repay the loan.

43  
44 Money in the fund may not be used for attorney's fees associated  
45 with costs of the Plymouth waste oil site remedial study, past  
46 cost settlement or time-critical removal action.

47  
48 A past cost settlement share may not be paid from the fund to a  
49 person if the United States Environmental Protection Agency has  
50



## COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1408

2 waived payment of the share based on the person's financial  
 3 capacity. The authority may condition payments related to the  
 4 Plymouth waste oil disposal site on receipt of an ability-to-pay  
 5 determination from the agency.

6 The authority, pursuant to Title 5, chapter 375, subchapter II,  
 7 shall adopt rules for determining eligibility, feasibility,  
 8 terms, conditions, security and fees for the loans, including  
 9 deferred loans. The authority shall adopt rules that provide for  
 10 a simplified loan application process for loan requests of under  
 11 \$2000. Rules adopted pursuant to this subsection are routine  
 12 technical rules as defined in Title 5, chapter 375, subchapter  
 13 II-A. The authority shall charge an interest rate of 0% on all  
 14 loans. ~~The maximum the authority may loan, or issue as a~~  
 15 ~~deferred loan, to any one borrower, including related entities as~~  
 16 ~~determined by the authority, is \$100,000. Loan repayment must be~~  
 17 ~~deferred until a final remedy at the waste oil disposal site is~~  
 18 ~~determined in the Record of Decision for the site and the cost of~~  
 19 ~~the final remedy is determined. If the total amount of the loan~~  
 20 ~~requests exceeds funds available under section 1023-L, the~~  
 21 ~~authority shall prorate the amount of the loan available to each~~  
 22 ~~applicant by the ratio of the funds available to the total loans~~  
 23 ~~requested.~~

24 2-A. Deadline for applications. Applications submitted  
 25 pursuant to subsection 2 must be received by the authority within  
 26 90 days after the effective date of this subsection, except that  
 27 the authority may extend that deadline by an additional period of  
 28 time not to exceed 60 days for good cause shown.

29 3. Determinations regarding eligibility. The authority  
 30 shall establish a registry of all persons who qualify under  
 31 subsection 2 to have a portion of their share of costs of the  
 32 Plymouth waste oil site remedial study, past cost settlement and  
 33 time-critical removal action costs paid pursuant to this  
 34 section. The authority shall adopt rules relating to  
 35 eligibility, including the calculation of an eligible person's  
 36 proportionate share, procedures to ensure that money paid  
 37 pursuant to this section is used to settle an eligible person's  
 38 liabilities related to the waste oil disposal site and repayment  
 39 of any amounts in excess of that person's share. Rules adopted  
 40 pursuant to this subsection are routine technical rules as  
 41 defined in Title 5, chapter 375, subchapter II-A.

42 **Sec. 8. 38 MRSA §568-B, sub-§2, ¶E,** as enacted by PL 1999, c.  
 43 505, Pt. A, §11, is amended to read:

44 E. To consult with the Finance Authority of Maine at such  
 45 times as are necessary, but no less than annually, to review  
 46 income and disbursements from the Wells Waste Oil Clean-up  
 47

COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1408

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 Clean-up Fund.

Sec. 9. 38 MRSA §570-H, sub-§2, as amended by PL 1999, c. 505, Pt. A, §14, is further amended to read:

2. Adequacy of fund. On or before February 15th of each 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 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 Clean-up 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 Groundwater Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the Wells Waste Oil Clean-up Fund.

Sec. 10. PL 1999, c. 505, Pt. A, §16 is amended to read:

Sec. A-16. Transfer to the Waste Oil Clean-up 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 Clean-up 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. 11. Transition. Persons that received loans or have loans pending under the Maine Revised Statutes, Title 10, section 1023-M prior to the effective date of this Act are eligible to apply for loans pursuant to this Act for the total amount of their past cost settlement, costs of the Plymouth waste oil site remedial study and time-critical removal action costs, provided that the amount loaned pursuant to this Act is used to pay the remaining balance on the loan received under the previously authorized Plymouth loan program.



COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1408

2           5. It requires loan applications to be received by FAME  
within 90 days after the effective date of this Act.

4           6. It defers repayment of the loans until a final remedy at  
the site and the cost of the final remedy are determined.

6           7. It directs FAME to prorate the amount of the loan  
8 available to each applicant, if the total amount of loan requests  
exceeds funds available.

10           8. It requires FAME to establish a registry of persons who  
12 qualify for the loans.

14           9. It has a transition provision for loans received under  
the previous Plymouth remedial study loan program.

16           10. It authorizes the Joint Standing Committee on Natural  
18 Resources to report out legislation during the Second Regular  
Session of the 120th Legislature relating to clean-up costs and  
20 remedial activities at the Plymouth site.

22           11. It adds a fiscal note to the bill.

**COMMITTEE AMENDMENT**