

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1408

H.P. 1051

House of Representatives, March 5, 2001

**An Act to Pay for Cleanup of Contamination at a Waste Oil Disposal Site in Plymouth.**

(EMERGENCY)

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Reference to the Committee on Natural Resources suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative STANLEY of Medway.

Under suspension of the rules, cosponsored by Representative COWGER of Hallowell, Senator MARTIN of Aroostook and

Representatives: ANNIS of Dover-Foxcroft, BELANGER of Caribou, BROOKS of Winterport, BRYANT of Dixfield, BUNKER of Kossuth Township, CARR of Lincoln, CLARK of Millinocket, DUGAY of Cherryfield, DUNCAN of Presque Isle, DUNLAP of Old Town, FISHER of Brewer, FOSTER of Gray, GOODWIN of Pembroke, GOOLEY of Farmington, HALL of Bristol, HASKELL of Milford, JODREY of Bethel, JONES of Greenville, KASPRZAK of Newport, MAYO of Bath, McGLOCKLIN of Embden, McKENNEY of Cumberland, MURPHY of Berwick, PERKINS of Penobscot, PINKHAM of Lamoine, RICHARD of Madison, Speaker SAXL of Portland, SHERMAN of Hodgdon, STEDMAN of Hartland, TOBIN of Dexter, TREADWELL of Carmel, TWOMEY of Biddeford, WESTON of Montville, WHEELER of Bridgewater, YOUNG of Limestone, Senators: CATHCART of Penobscot, DAVIS of Piscataquis, KNEELAND of Aroostook, President MICHAUD of Penobscot, YOUNGBLOOD of Penobscot.

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

4           **Whereas,** Portland-Bangor Waste Oil Services, a defunct Maine  
6 corporation, operated a waste oil handling facility in Plymouth;  
and

8           **Whereas,** this site is contaminated and must be cleaned up  
10 expeditiously to protect the public health, safety and welfare;  
and

12           **Whereas,** investigation and cleanup of the site will be  
14 expensive; and

16           **Whereas,** under state and federal law, any entity that sent  
waste oil or other contaminants to the site is a "responsible  
18 party" and, as such, is jointly and severally liable for the cost  
of investigation and cleanup; and

20           **Whereas,** this liability may pose an extraordinary financial  
22 hardship to small businesses, municipalities and others who sent  
waste oil to the site; and

24           **Whereas,** some waste oil handled at the site was collected  
26 from households as a public service, and it is in the public  
interest to ensure the continued financial viability of the  
28 service station owners and other small business owners who  
provided this service; and

30           **Whereas,** responsible parties at the Plymouth site have been  
32 asked to reimburse the United States Environmental Protection  
Agency by May 15, 2001 for clean-up expenses already incurred at  
34 that site; and

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

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

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

46           **1-P. Transfer from Maine Rainy Day Fund; Waste Oil Clean-up**  
48 **Fund.** Notwithstanding subsection 2 and section 1585, \$3,100,000  
must be transferred by the State Controller from the available  
50 balance in the Maine Rainy Day Fund to the Wells Waste Oil  
Clean-up Fund established in Title 10, section 1023-L no later

2 than September 30, 1999, and an additional \$4,300,000 must be so  
transferred no later than September 30, 2001.

4 **Sec. 2. 10 MRSA §963-A, sub-§42-D**, as reallocated by RR 1999,  
c. 1, §10, is repealed.

6 **Sec. 3. 10 MRSA §963-A, sub-§42-E**, as enacted by PL 1999, c.  
8 713, §1, is repealed.

10 **Sec. 4. 10 MRSA §963-A, sub-§49-G**, as enacted by PL 1999, c.  
12 505, Pt. A, §4, is amended to read:

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

30 **Sec. 5. 10 MRSA §963-A, sub-§51-C**, as enacted by PL 1999, c.  
32 505, Pt. A, §5, is amended to read:

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

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

42 **§1023-L. Waste Oil Clean-up Fund**

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

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

50 A. All money appropriated for inclusion in the fund or

2 appropriated to the authority for use in providing financial  
assistance to responsible parties as defined in section  
4 963-A, subsection 47-A, subject to any restrictions  
applicable to the appropriation;

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

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

14 D. Money transferred from the available balance in the  
Underground Oil Storage Replacement Fund, ~~subject to the~~  
16 ~~limitations of section 1024-A~~ pursuant to Public Law 1999,  
chapter 505, Part. A, section 15;

18 E. Money transferred from the available balance in the  
Maine Rainy Day Fund pursuant to Title 5, section 1513,  
20 subsection 1-P; and

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

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

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

42 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  
46 be able to repay the loan; and

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

2 E. The applicant employs 50 persons or fewer, or has gross  
3 sales not exceeding \$5,000,000 per year at the time of  
4 application; and

6 F. The applicant has signed a settlement agreement with the  
7 United States Environmental Protection Agency.

8  
9 The authority, pursuant to Title 5, chapter 375, subchapter II,  
10 shall adopt rules for determining eligibility, feasibility,  
11 terms, conditions, security and fees for the loans, including  
12 deferred loans. ~~The authority may not issue deferred loans for~~  
13 ~~eligible parties who have received payments under subsection 8.~~  
14 The authority shall adopt rules that provide for a simplified  
15 loan application process for loan requests of under \$2000. Rules  
16 adopted pursuant to this subsection are routine technical rules  
17 as defined in Title 5, chapter 375, subchapter II-A. The  
18 authority may charge an interest rate as low as 0% or up to a  
19 maximum rate equal to the prime rate of interest as published in  
20 The Wall Street Journal, depending on the financial ability of  
21 the applicant to pay as determined by the authority. The maximum  
22 the authority may loan, or issue as a deferred loan, to any one  
23 borrower, including related entities as determined by the  
24 authority, is ~~\$50,000~~ \$100,000. ~~Money in the fund not needed~~  
25 ~~currently to meet the obligations of the authority as provided in~~  
26 ~~this section or section 1023-M may be invested as permitted by~~  
27 ~~law. Any costs incurred by the authority in administering this~~  
28 ~~fund may be taken from interest from all sources of the fund.~~

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

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

40  
41 **6. Lapse to Groundwater Oil Clean-up Fund upon cleanup of**  
42 **waste oil disposal site.** Within 30 days after the Department of  
43 Environmental Protection notifies the authority that the waste  
44 oil disposal site has been remediated and the total response  
45 costs have been paid ~~and that the Plymouth waste oil site~~  
46 ~~remedial study has been completed and the costs of that study~~  
47 ~~paid~~, the authority shall transfer all amounts remaining in the  
48 fund to the Groundwater Oil Clean-up Fund.

50 **7. Direct payment program.** The direct payment program is  
managed as follows.

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

16 B. Any person eligible under this subsection who presents  
an invoice for that person's share of total response costs  
18 at the waste oil disposal site, but who has not yet paid the  
invoice, receives a negotiable instrument from the authority  
20 made payable jointly to that person and any entity  
identified by the Department of Environmental Protection as  
22 assuming liability for total response costs at the site.  
~~The negotiable instrument must be in the amount of \$2,000,~~  
24 ~~unless the authority determines that the payment to be made~~  
~~by the person at the site will be in an amount less than~~  
26 ~~\$2,000, in which case the authority shall pay to the person~~  
~~an amount equal to the amount the person is to pay in~~  
28 ~~relation to the site. All payments made under this~~  
~~subsection must be from funds transferred from the Maine~~  
30 ~~Rainy Day Fund.~~

32 C. ~~After the payments authorized in paragraphs A and B have~~  
~~been made, additional payments must be made from the~~  
34 ~~available balance from funds transferred from the Maine~~  
~~Rainy Day Fund to all persons who received funds under~~  
36 ~~paragraphs A and B who have paid their settlement share of~~  
~~total response costs, and whose total liability at the site~~  
38 ~~exceeds the amount the persons received under paragraph A or~~  
~~B. Distributions under this paragraph are proportionate to~~  
40 ~~the amount each person paid as the person's share of total~~  
~~response costs at the site. Payments made~~ A payment  
42 pursuant to this subsection may not be made unless the  
44 person receiving the payment has signed a settlement  
agreement with the United States Environmental Protection  
46 Agency and may not exceed the person's settlement share of  
total response costs attributable to eligible persons as  
48 defined in this subsection multiplied by the total orphan  
share percentage at the waste oil disposal site or \$75,000,  
50 whichever is less. The authority may not issue deferred  
loans for eligible persons who have received payments  
pursuant to this subsection. This distribution

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

4  
6 D. A settlement share may not be paid from the fund to a  
8 person if the United States Environmental Protection Agency  
10 has waived payment of the share based on the person's  
financial capacity. The authority may condition payments  
related to the Plymouth site on receipt of an ability-to-pay  
determination from the agency.

12 For purposes of this subsection, "person" means any natural  
14 person domiciled in this State; a any corporation or partnership  
16 in the State, organized under the laws of the State; and any  
agency, authority, department, commission, municipality,  
18 quasi-municipal corporation, special purpose district or other  
instrumentality of the State, a or political subdivision of the  
20 State, including but not limited to those defined in Title 14,  
chapter 741 section 8102 and Title 30-A, chapter 225, any other  
22 entity section 5903, identified as a responsible party at the  
waste oil disposal site whose waste oil is identified as  
24 delivered to the waste oil disposal site and picked up from an  
address or location within the State in the records compiled by  
26 the Department of Environmental Protection or the United States  
Environmental Protection Agency or their agents, provided except  
28 that neither the Federal Government nor any of its agencies,  
authorities, departments, boards, commissions or  
instrumentalities are a natural person, corporation or  
30 partnership is not eligible to have any share of their its  
obligation for response costs paid by the fund if it employs more  
32 than 50 persons or has gross sales exceeding \$5,000,000 per year  
pursuant to section 1023-L, subsection 3, paragraph E. A person  
34 is not eligible for assistance under this subsection unless the  
person is a participant in a settlement agreement under which an  
36 entity has assumed liability for total response costs at the  
Wells waste oil disposal site.

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

50 **9. Application of fund.** The authority may pledge, transfer  
52 and deposit or otherwise use money in the fund to carry out any  
power of the authority under this section or section 1026-R,



2 including, but not limited to, payment of principal, interest and  
4 other amounts due on insured loans. Money in the fund not needed  
6 currently to meet the obligations of the authority under this  
8 section or section 1026-R may be invested in such a manner as is  
10 permitted by law. Costs incurred by the authority in  
12 administering this section may be paid from interest on money in  
14 the fund from all sources under subsection 2.

16 **Sec. 7. 10 MRSA §1023-M**, as enacted by PL 1999, c. 713, §3,  
18 is repealed.

20 **Sec. 8. 10 MRSA §1026-R**, as reallocated by RR 1999, c. 1,  
22 §14, is amended to read:

24 **§1026-R. Mortgage insurance for waste oil disposal site clean-up**  
26 **projects**

28 **1. Insurance.** In addition to its other powers under this  
30 chapter, subject to the limitations of this subchapter except  
32 sections 1026-B to 1026-D, the authority may insure up to 100% of  
34 mortgage payments with respect to mortgage loans for the waste  
36 oil disposal site clean-up project, including a remedial study,  
38 when the authority determines that:

40 A. ~~The applicant is a responsible party with respect to the~~  
42 ~~waste oil disposal site and the applicant is domiciled or~~  
44 ~~has a principal place of business in the State~~ meets the  
46 qualifications for a loan under section 1023-L, subsection  
48 3; and

50 B. The applicant demonstrates a reasonable likelihood that  
it will not be able to obtain a loan for the project on  
reasonable terms without insurance pursuant to this section;  
and.

~~C. The applicant demonstrates a reasonable likelihood that~~  
~~it will be able to repay the insured loan.~~

2. **Limitation on mortgage insurance.** The authority may not  
at any time have, in the aggregate amount of principal and  
interest outstanding, mortgage insurance obligations pursuant to  
this section exceeding \$1,000,000 \$2,000,000.

3. **Mortgage eligibility.** Pursuant to Title 5, chapter 375,  
subchapter II, the authority shall adopt rules for determining  
eligibility, project feasibility, terms, conditions and security  
for insured mortgage loans under this section. The authority may  
accept less than adequate collateral when necessary to ensure the  
cleanup of the waste oil disposal site under applicable law.  
Rules adopted pursuant to this subsection are routine technical  
rules as defined in Title 5, chapter 375, subchapter II-A.

2           **Sec. 9. 10 MRSA §1026-S**, as enacted by PL 1999, c. 713, §4,  
is repealed.

4           **Sec. 10. PL 1999, c. 505, Pt. A, §15**, as amended by PL 1999, c.  
6 713, §5, is further amended to read:

8           **Sec. A-15. Transfer of funds to the Waste Oil Clean-up Fund.**  
On the effective date of this Act, \$4,000,000 is transferred from  
10 the Underground Oil Storage Replacement Fund to the Waste Oil  
Clean-up Fund. ~~Funds transferred under this Act may only be used~~  
12 ~~for the loan programs pursuant to the Maine Revised Statutes,~~  
~~Title 10, sections 1023-L and 1023-M.~~

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

18  
20                                           **SUMMARY**

22           This bill amends State law to address the liability of  
persons who sent waste oil and other hazardous matter to a  
handling facility in Plymouth. The facility was operated by  
24 Portland-Bangor Waste Oil Services, Inc., PBWO, from 1965 through  
1980. PBWO, which no longer is in business, operated waste oil  
26 handling facilities in 4 municipalities in the State: Casco,  
Ellsworth, Plymouth and Wells. All 4 sites are contaminated.

28           Under state and federal law, any person who sent waste oil  
30 or other hazardous matter to the PBWO sites is a responsible  
party and, as such, is jointly and severally liable for the costs  
32 of investigation and cleanup. These costs are very high in the  
case of Plymouth, creating a financial hardship for some towns  
34 and small businesses identified as responsible parties.

36           In 1999, the Legislature established the Wells Waste Oil  
Clean-up Fund to provide loans and direct payments to eligible  
38 responsible parties at the PBWO site in Wells. In 2000, the  
Legislature amended the fund law to also allow loans for  
40 investigative costs at the Plymouth site. This bill now further  
amends fund law to provide grants and loans for all response  
42 costs at Plymouth. Responsible parties will be eligible for  
grants of up to \$75,000 if they employ 50 or fewer people or have  
44 annual gross sales of \$5,000,000 or less. State agencies,  
municipalities and school districts that are responsible parties  
46 at the site also are eligible for grants and loans.

48           The expanded grant and loan program is expected to cost the  
State about \$7,500,000. Revenues will be obtained from unused  
50 money previously transferred to the fund from the Maine Rainy Day  
Fund and the Underground Oil Storage Tank Replacement Fund and  
52 from an additional one-time transfer of \$4,300,000 from the Maine  
Rainy Day Fund.