

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1929

H.P. 1368

House of Representatives, June 18, 2007

An Act To Assist in the Cleanup of Waste Motor Oil Disposal Sites

Reported by Representative KOFFMAN of Bar Harbor for the Joint Standing Committee on Natural Resources pursuant to Joint Order 2007, H.P. 1345.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 10 MRSA §963-A, sub-§17-A** is enacted to read:

3 **17-A. Final remedy selection.** "Final remedy selection" means:

4 A. In the case of the Department of Environmental Protection, a final determination
5 by the Commissioner of Environmental Protection or the commissioner's designee of
6 the appropriate response action at a waste motor oil disposal site that is an
7 uncontrolled hazardous substance site; and

8 B. In the case of the United States Environmental Protection Agency, the remedy
9 selected in a final record of decision for the so-called Hows Corner Federal
10 Superfund Site in Plymouth, Maine.

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

12 **47-B. Response costs.** "Response costs" means:

13 A. Costs incurred or costs that will be incurred by a responsible party for
14 investigation, study, removal, remediation, institutional controls, alternative water
15 supplies, operation, maintenance, monitoring or other acts or activities to protect
16 human health and the environment at a waste motor oil disposal site;

17 B. Costs incurred or costs that will be incurred by the Department of Environmental
18 Protection or the United States Environmental Protection Agency in conducting,
19 monitoring or supervising work at a waste motor oil disposal site, in reviewing or
20 developing plans, reports and other items at a waste motor oil disposal site and for
21 administrative activities, including providing notice to responsible parties, at a waste
22 motor oil disposal site;

23 C. Loans issued pursuant to section 1023-M;

24 D. A payment or payments, including any settlement premium, that a responsible
25 party is required to make pursuant to a final de minimis or cash-out settlement among
26 the United States, the State and one or more responsible parties; and

27 E. Damages for injury to or destruction or loss of natural resources, including the
28 reasonable costs of assessing such injury, destruction or loss, resulting from
29 hazardous substances at a waste motor oil disposal site pursuant to Title 38, chapter
30 13-B and 42 United States Code, Section 9601 et seq.

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

32 **47-C. Potentially responsible party (PRP) group.** "Potentially responsible party
33 (PRP) group" means a group of responsible parties organized to manage liabilities at a
34 waste motor oil disposal site listed in subsection 51-E and that have negotiated final
35 settlement agreements with the United States Environmental Protection Agency or the
36 Department of Environmental Protection.

37 **Sec. 4. 10 MRSA §963-A, sub-§51-D** is enacted to read:

1 E. "Motor vehicle oil change" means the changing of any lubricating oil classified
2 for use in an internal combustion engine, transmission, gearbox, differential or
3 hydraulics in a motor vehicle.

4 **2. Creation; sources of fund.** The Waste Motor Oil Revenue Fund is established.
5 The fund consists of:

6 A. All money appropriated for inclusion in the fund;

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

9 C. Any other money available to the authority and directed by the authority to be
10 paid into the fund; and

11 D. All revenue received from the State Tax Assessor pursuant to subsection 6.

12 **3. Application of fund.** Money in the fund must be applied to the payment of
13 principal of, interest on or redemption of premiums on revenue obligation securities
14 issued pursuant to section 1020-A and may, in whole or in part, be pledged or transferred
15 and deposited as security for those securities. Money in the fund not immediately needed
16 to meet the obligations of the authority as provided for in this subsection may be invested
17 in such a manner as permitted by law. Any reasonable costs incurred by the authority in
18 administering this fund may be taken from the money in the fund.

19 **4. Accounts within fund.** The authority may divide the fund into separate accounts
20 as it determines necessary or convenient for carrying out the purposes of this subchapter.

21 **5. Revolving fund.** The fund is a nonlapsing, revolving fund. All money in the fund
22 must be continuously applied by the authority to carry out the purposes of this subchapter
23 except as provided in subsection 3.

24 **6. Premium.** In addition to any other tax or charge imposed under state or federal
25 law, a premium is imposed on all motor vehicle oil changes sold in the State at retail in
26 the amount of \$1 per oil change on a vehicle with a gross vehicle weight of under 10,000
27 pounds, \$2 on a vehicle with a gross vehicle weight of 10,000 pounds to 25,999 pounds
28 and \$3 on a vehicle with a gross vehicle weight of 26,000 pounds or more. Any person
29 that owns a fleet of vehicles and performs oil changes on those vehicles shall pay a
30 premium of \$1 for each oil change performed on each vehicle in the fleet with a gross
31 vehicle weight of under 10,000 pounds, \$2 for each vehicle with a gross vehicle weight of
32 10,000 pounds to 25,999 pounds and \$3 for each vehicle with a gross vehicle weight of
33 26,000 pounds or more. All premiums must be paid monthly to the State Tax Assessor.
34 By the 20th day of each month, the State Tax Assessor shall notify the State Controller
35 and the Treasurer of State of the amount of revenue attributable to the premium collected
36 under this subsection in the previous month. When notified by the State Tax Assessor,
37 the State Controller shall transfer that amount to the fund.

38 **7. Effective date.** This section takes effect on October 1, 2007 and remains in effect
39 until the later of June 30, 2018 and any date thereafter but no later than December 31,
40 2028 on which the authority notifies the State Tax Assessor that there are no outstanding
41 revenue obligation securities that were issued pursuant to section 1020-A.

1 **§1020-A. Waste motor oil disposal site remediation program**

2 **1. Issue of securities.** The authority shall issue revenue obligation securities
3 pursuant to subchapter 3 in an amount sufficient to:

4 A. Pay the response costs of eligible persons;

5 B. Establish any capital reserve fund pursuant to section 1053; and

6 C. Pay the costs of issuance of revenue obligation securities.

7 **2. Payment of proceeds.** The authority shall pay proceeds of the revenue obligation
8 securities to or on behalf of the responsible parties in accordance with subsection 4. To
9 the extent that any responsible party receives or is eligible to receive proceeds of the
10 revenue obligation securities as reimbursement for expenses that party has paid through
11 the Plymouth Waste Oil Loan Program in section 1023-M, that party's obligations to the
12 authority must be repaid in full with the proceeds of the revenue obligation securities and
13 the authority is authorized to receive those proceeds directly.

14 **3. Revenue refunding securities.** The authority may provide for issuance of
15 revenue refunding securities pursuant to section 1048.

16 **4. Certificate of determination.** From time to time, the authority shall ascertain
17 from the Department of Environmental Protection, the United States Environmental
18 Protection Agency or the responsible parties, as applicable, the final remedy selection and
19 response costs for each waste motor oil disposal site.

20 A. When the authority is advised by the Department of Environmental Protection,
21 the United States Environmental Protection Agency or the responsible parties of the
22 issuance of a final remedy selection and that the remedy will be implemented
23 pursuant to a consent decree or other final settlement order or agreement determining
24 substantially final response costs for a waste motor oil disposal site, the authority
25 shall determine those costs for that waste motor oil disposal site that represent the
26 collective share of those persons eligible under subsection 7 to have their share of
27 those costs for the waste motor oil disposal site paid from the proceeds of revenue
28 obligation securities. In determining the amount of response costs incurred by an
29 eligible person prior to the effective date of a consent decree or other final settlement
30 order or agreement, the authority shall rely on a written certificate of costs from the
31 potentially responsible party (PRP) group, if any, at the waste oil disposal site. If a
32 potentially responsible party (PRP) group is not active at a waste oil disposal site, the
33 authority shall rely on a written certificate of costs from each eligible person
34 supported by copies of invoices, receipts or other evidence of payment. The
35 certificate of costs must be made under oath and subject to the provisions of Title
36 17-A, section 451. In determining the amount of response costs to be incurred by an
37 eligible person after the effective date of a consent decree or other final settlement
38 order or agreement, the authority shall rely on the final allocation of response costs as
39 agreed on by the responsible parties and as reflected in the consent decree or other
40 final settlement order or agreement.

1 B. With respect to a waste motor oil disposal site, following the determinations made
2 pursuant to paragraph A, the authority shall issue a certificate of determination setting
3 forth the amount of:

4 (1) The response costs paid or to be paid with respect to that waste motor oil
5 disposal site;

6 (2) The eligible response costs with respect to that waste motor oil disposal site to
7 be paid from the proceeds of revenue obligation securities; and

8 (3) The proceeds of the revenue obligation securities to be paid to or on behalf of
9 the responsible parties.

10 C. The authority may issue no more than one supplemental certificate of
11 determination with respect to a waste motor oil disposal site, which may provide for
12 the payment from the proceeds of additional revenue obligation securities of an
13 amount equal to no more than 10% of the amount of costs initially certified for that
14 waste motor oil disposal site. The authority is not authorized to issue more than 2
15 certificates of determination for a waste motor oil disposal site.

16 5. Eligibility. For purposes of this section, "person" means any natural person,
17 corporation, partnership or other entity identified as a responsible party at a waste motor
18 oil disposal site. The following persons that contributed waste motor oil to a waste motor
19 oil disposal site and who have been designated by the Department of Environmental
20 Protection or the United States Environmental Protection Agency as responsible parties
21 with respect to any of the waste motor oil disposal sites are eligible to have their share of
22 response costs paid from the proceeds of revenue obligation securities issued pursuant to
23 this subchapter:

24 A. Those responsible parties that the Department of Environmental Protection or
25 United States Environmental Protection Agency determines are insolvent, unlocated
26 or defunct;

27 B. Those responsible parties that the Department of Environmental Protection or
28 United States Environmental Protection Agency determines have a limited ability to
29 pay;

30 C. Those responsible parties that the Department of Environmental Protection or
31 United States Environmental Protection Agency determines are responsible for 110
32 gallons or less of waste motor oil at a waste motor oil disposal site;

33 D. The State and any agencies, authorities, departments, boards, commissions or
34 instrumentalities of the State or political subdivisions of the State;

35 E. All franchised new car and truck dealers licensed pursuant to Title 29-A, chapter
36 9, subchapter 3 or the successors in interest of any such franchised new car or truck
37 dealers. The Secretary of State shall certify to the authority those responsible parties
38 that were licensed pursuant to Title 29-A, chapter 9, subchapter 3;

39 F. All used car and truck dealers licensed in accordance with Title 29-A, chapter 9,
40 subchapter 3 or the successors in interest of any such used car and truck dealers. The
41 Secretary of State shall certify to the authority those responsible parties that were
42 licensed pursuant to Title 29-A, chapter 9, subchapter 3;

- 1 G. A person or its successor in interest that:
- 2 (1) Performed repairs at repair facilities located in this State on motor vehicles
3 that are owned by 3rd parties;
- 4 (2) Is identified by the potentially responsible party (PRP) group at the waste oil
5 disposal site as qualified under this subsection; and
- 6 (3) Certifies to the authority under oath and subject to the provisions of Title
7 17-A, section 451 that it is qualified under this subsection;
- 8 H. Any person or its successor in interest that performed repairs on its own fleet of
9 motor vehicles, is identified by the potentially responsible party (PRP) group at the
10 waste motor oil disposal site as qualified under this subsection and certifies to the
11 authority under oath and subject to the provisions of Title 17-A, section 451 that it is
12 qualified under this subsection. The motor vehicles at all pertinent times must have
13 been registered, garaged and serviced in this State; and
- 14 I. Any person or its successor in interest that performed repairs, at repair facilities
15 located in this State, on special equipment or special mobile equipment, as defined in
16 Title 29-A, section 101, subsections 69 and 70, is identified by the potentially
17 responsible party (PRP) group at the waste motor oil disposal site as qualified under
18 this subsection and certifies to the authority under oath and subject to the provisions
19 of Title 17-A, section 451 that it is qualified under this subsection.
- 20 **6. Parties ineligible.** The United States of America and its agencies, authorities,
21 departments, boards, commissions and instrumentalities are not eligible to have any share
22 of any of their obligation for response costs covered by revenue obligation securities
23 issued pursuant to this section.
- 24 **7. Registry determinations regarding eligibility.** In accordance with the criteria
25 set forth in subsection 5, the authority shall establish a registry of all responsible parties
26 who qualify to have their share of response costs paid pursuant to this subchapter.
- 27 A. In order to establish the registry, the authority shall review the list of responsible
28 parties prepared by the Department of Environmental Protection or the United States
29 Environmental Protection Agency with respect to the waste motor oil disposal sites,
30 must have access to all Department of Environmental Protection and United States
31 Environmental Protection Agency records that relate in any way to the volume or
32 composition of materials that may have been deposited in a waste motor oil disposal
33 site and shall confirm which responsible parties meet the criteria established in
34 subsection 5. The confirmed responsible parties must be placed on the registry. In
35 addition, with regard to eligibility, the authority may consider and rely upon
36 information provided by the potentially responsible party (PRP) group conducting
37 response activities at the waste motor oil disposal site. Copies of the registry must be
38 made available to the public at the office of the chief executive officer of the
39 authority.
- 40 B. The authority shall cause the registry for each waste motor oil disposal site to be
41 published 2 times, 7 days apart, simultaneously in the weekend edition of the
42 following newspapers or any of their successors: the Bangor Daily News, the
43 Portland Press Herald, the Kennebec Journal, the Morning Sentinel, the Brunswick

1 Times Record, the Aroostook Republican, the Lewiston Sun Journal and the
2 Biddeford Journal Tribune.

3 C. Any responsible party may request reconsideration of any authority decision
4 relating to eligibility for that responsible party. All reconsideration determinations
5 must be made by the Department of Environmental Protection and in accordance with
6 Title 5, chapter 375, subchapter 4. All requests for reconsideration must be mailed,
7 postage prepaid, to the Department of Environmental Protection at the address
8 designated by the authority. All requests for reconsideration must be in writing and
9 include such information as the responsible party desires to draw to the Department
10 of Environmental Protection's attention and must be received by the department no
11 later than 30 days from the 2nd date of publication of notice in the newspapers
12 identified in paragraph B. The request for reconsideration must be accompanied by a
13 filing fee to the Department of Environmental Protection in the amount of \$500. The
14 decision of the Department of Environmental Protection constitutes final agency
15 action.

16 D. Any responsible party may appeal a decision by the Department of Environmental
17 Protection to the Kennebec County Superior Court pursuant to Title 5, section 9061
18 within 30 days of the date of the decision. An appeal under this paragraph is
19 nontestimonial. The record consists solely of written materials reviewed by the
20 Department of Environmental Protection and its decision. The Superior Court shall
21 issue its decision within 45 days of the date of filing of the appeal.

22 8. Rules. The authority shall adopt rules necessary to implement this subchapter.
23 Rules adopted by the authority pursuant to this subsection are routine technical rules
24 pursuant to Title 5, chapter 375, subchapter 2-A.

25 **Sec. 7. 10 MRSA §1023-L, sub-§3-A,** as amended by PL 2003, c. 537, §27 and
26 affected by §53, is further amended to read:

27 **3-A. Use of funds by authority.** The authority may use money in the fund to carry
28 out any power of the authority under this section, sections 1020 and 1020-A, section
29 1023-M or section 1026-A, subsection 1, paragraph A, subparagraph (1), division (d) or
30 (e), including, but not limited to, the pledge or transfer and deposit of money in the fund
31 as security for and the application of money in the fund in payment of principal, interest
32 and other amounts due on insured loans. For purposes of using money in the fund to
33 carry out any power of the authority under sections 1020 and 1020-A, money in the fund
34 may be used as if it were proceeds of revenue obligation securities as described in
35 sections 1020 and 1020-A. Money in the fund not needed to meet the obligations of the
36 authority as provided in this section or section 1023-M may be invested as permitted by
37 law. Any costs incurred by the authority in administering this fund may be taken from
38 interest from all sources of the fund.

39 **Sec. 8. 10 MRSA §1023-L, sub-§6,** as amended by PL 1999, c. 713, §2, is
40 further amended to read:

41 **6. Lapse to Groundwater Oil Clean-up Fund upon cleanup of waste oil disposal**
42 **site.** Within 30 days after the Department of Environmental Protection notifies the
43 authority that the waste oil disposal ~~site~~ sites have been remediated and the ~~total~~

1 response costs have been paid ~~and that the Plymouth waste oil site remedial study has~~
2 ~~been completed and the costs of that study paid~~ at the waste oil disposal sites identified in
3 section 963-A, subsection 51-E, the authority shall transfer all amounts remaining in the
4 fund and in the Waste Motor Oil Revenue Fund created in section 1020 to the
5 Groundwater Oil Clean-up Fund.

6 **Sec. 9. 10 MRSA §1053, sub-§6**, as amended by PL 2003, c. 506, §5, is further
7 amended to read:

8 **6. Securities outstanding.** The principal amount of revenue obligation securities the
9 authority may have outstanding at any one time, to which subsection 5 is stated to apply
10 in the trust agreement or other document, may not exceed an aggregate principal amount
11 equal to ~~\$877,000,000~~ \$912,000,000 as follows:

12 A. The sum of \$330,000,000 consisting of not more than \$275,000,000 for loans
13 and up to \$55,000,000 for use of bond proceeds to fund capital reserve funds for
14 revenue obligation securities issued pursuant to this subchapter relating to loans for
15 electric rate stabilization projects;

16 B. The sum of \$120,000,000 consisting of not more than \$100,000,000 for loans
17 and up to \$20,000,000 for use of bond proceeds to fund capital reserve funds for
18 revenue obligation securities issued pursuant to this subchapter relating to loans for
19 major business expansion projects;

20 C. The sum of \$57,000,000 consisting of not more than \$45,000,000 for loans and
21 up to \$12,000,000 for use of bond proceeds to fund capital reserve funds for revenue
22 obligation securities issued pursuant to this subchapter relating to workers'
23 compensation residual market mechanism projects;

24 D. The sum of \$150,000,000 less the aggregate outstanding balance of mortgage
25 loans secured by capital reserve funds pursuant to section 1032 for all other revenue
26 obligation securities issued pursuant to this subchapter;

27 E. The sum of \$120,000,000 consisting of not more than \$100,000,000 for loans
28 and up to \$20,000,000 for use of bond proceeds to fund capital reserve funds for
29 revenue obligation securities issued pursuant to this subchapter relating to loans for
30 paper industry job retention projects; ~~and~~

31 F. The sum of \$100,000,000 consisting of not more than \$85,000,000 for loans and
32 up to \$15,000,000 for use of bond proceeds to fund capital reserve funds for revenue
33 obligation securities issued pursuant to this subchapter relating to loans for
34 transmission facilities projects as defined in section 963-A, subsection 49-H; ~~and~~

35 G. The sum of \$35,000,000 consisting of not more than \$30,000,000 for the purposes
36 stated in sections 1020-A, subsection 1, paragraphs A and C and up to \$5,000,000 for
37 use of bond proceeds to fund capital reserve funds for revenue obligation securities
38 issued pursuant to section 1020-A, subsection 1, paragraph A.

39 The amount of revenue obligation securities issued to refund securities previously issued
40 may not be taken into account in determining the principal amount of securities
41 outstanding, as long as proceeds of the refunding securities are applied as promptly as
42 possible to the refunding of the previously issued securities. In computing the total

1 amount of revenue obligation securities of the authority that may at any time be
2 outstanding for any purpose, the amounts of the outstanding revenue obligation securities
3 that have been issued as capital appreciation bonds or as similar instruments are valued as
4 of any date of calculation at their then current accreted value rather than their face value.

5 **Sec. 10. Status report.** By January 15, 2008 and every 2 years thereafter, the
6 Finance Authority of Maine and the Department of Environmental Protection shall report
7 to the joint standing committee of the Legislature having jurisdiction over natural
8 resources matters on the status of the waste motor oil disposal site remediation program
9 under the Maine Revised Statutes, Title 10, chapter 110.

10 **Sec. 11. Appropriations and allocations.** The following appropriations and
11 allocations are made.

12 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

13 **Revenue Services - Bureau of 0002**

14 Initiative: Provides funds for the one-time administrative costs associated with
15 administering the premium on oil changes.

16	GENERAL FUND	2007-08	2008-09
17	All Other	\$11,000	\$0
18			
19	GENERAL FUND TOTAL	\$11,000	\$0

20 **SUMMARY**

21 This bill creates a stream of revenue to retire the costs of investigation and
22 remediation at the Portland-Bangor Waste Oil Services Sites in Plymouth, Ellsworth,
23 Casco and Presque Isle. The Finance Authority of Maine is authorized to issue revenue
24 obligation securities in amounts sufficient to cover the clean-up costs. These revenue
25 obligation securities are to be retired with funds derived from a premium on motor
26 vehicle oil changes. The premium is imposed at the retail level.

27 The State, instrumentalities of the State and counties and municipalities are eligible to
28 participate in the waste motor oil disposal site remediation program. The revenue
29 obligation securities will also cover the shares of those businesses that maintained or
30 repaired motor vehicles between 1953 and 1981, or their successors in interest, and that
31 had waste motor oil deposited at one or more of the 4 sites. Any business that operated a
32 fleet of vehicles for which it performed its own maintenance and repairs and that
33 contributed waste motor oil to one or more of the 4 sites is eligible for participation in the
34 program. The United States Government and its instrumentalities are not eligible to
35 participate in the program.



123rd MAINE LEGISLATURE

LD 1929

LR 2694(01)

An Act To Assist in the Cleanup of Waste Motor Oil Disposal Sites

Fiscal Note for Original Bill
Committee: Natural Resources
Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
General Fund	\$11,000	\$0	\$0	\$0
Appropriations/Allocations				
General Fund	\$11,000	\$0	\$0	\$0

Fiscal Detail and Notes

This bill establishes a Waste Motor Oil Site Remediation Program within which is created the Waste Motor Oil Fund to be administered by the Finance Authority of Maine. Increasing the Finance Authority of Maine's revenue obligation securities limit by \$35,000,000 extends the moral obligation of the State. Because this legislation provides that monies in the Fund may be used to pay reasonable costs incurred by the authority to administer the fund, the Finance Authority of Maine will not require additional General Fund appropriations.

This bill includes a one-time General Fund appropriation of \$11,000 in fiscal year 2007-08 for Maine Revenue Services' costs to administer the premium on oil changes.

The bill also imposes a premium on oil changes. The amount of additional Other Special Revenue Funds revenue for the Waste Motor Oil Fund can not be determined at this time.

Additional costs related to the proposed remediation program can be absorbed by the Departments of Environmental Protection, Transportation and Public Safety utilizing existing budgeted resources.