

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1827

H.P. 1314

House of Representatives, March 26, 2010

### **An Act To Amend the Waste Motor Oil Disposal Site Remediation Program**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND

Clerk

Presented by Representative MARTIN of Eagle Lake.  
Cosponsored by Senator GOODALL of Sagadahoc and  
Representative: DUCHESNE of Hudson, Senator: SMITH of Piscataquis.

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

Sec. 1. 10 MRSA §1020, sub-§1, ¶A-2, as enacted by PL 2007, c. 618, §3, is repealed.

Sec. 2. 10 MRSA §1020, sub-§1, ¶C-1, as enacted by PL 2007, c. 618, §5, is repealed.

Sec. 3. 10 MRSA §1020, sub-§6-A, as amended by PL 2009, c. 213, Pt. KKK, §2, is further amended to read:

6-A. Premium. In addition to any other tax or charge imposed under state or federal law, a premium is imposed on bulk motor vehicle oil and prepackaged motor vehicle oil sold or distributed in the State as provided in this subsection. A motor vehicle oil dealer that makes the first sale or distribution of bulk motor vehicle oil or prepackaged motor vehicle oil in the State shall pay the premium. Gasoline engine bulk motor vehicle oils and prepackaged motor vehicle oils are subject to a premium of \$1.10 per gallon. Diesel engine bulk motor vehicle oils are subject to a premium of 35¢ per gallon. ~~Prepackaged motor vehicle oils are subject to a premium of 35¢ per gallon.~~ All premiums must be paid to the State Tax Assessor and are subject to the administrative provisions of Title 36, Parts 1 and 3, as though they were a sales tax liability. Any seller of prepackaged motor vehicle oil that stores prepackaged motor vehicle oil at a distribution facility located in the State and distributes the prepackaged motor vehicle oil to a sales location out of the State, and for consumption out of the State, is entitled to a rebate of the premium paid on the prepackaged motor vehicle oil distributed to out-of-state locations by providing the State Tax Assessor with a monthly sworn certification stating the gallons of prepackaged motor vehicle oil shipped from the seller's distribution facility to out-of-state locations in the previous month, the specific out-of-state store locations and the amount of premium previously paid on the prepackaged motor vehicle oil. By the 20th day of each month, the State Tax Assessor shall notify the State Controller and the Treasurer of State of the amount of revenue attributable to the premium collected under this subsection in the previous month. When notified by the State Tax Assessor, the State Controller shall transfer that amount to the fund. ~~The premium imposed on prepackaged motor vehicle oil takes effect October 1, 2009.~~

Sec. 4. 10 MRSA §1020, sub-§8, as enacted by PL 2007, c. 618, §13, is repealed.

Sec. 5. 10 MRSA §1020-A, sub-§4, ¶A-1, as enacted by PL 2009, c. 304, §1, is amended to read:

A-1. The provisions of this paragraph may be used as an alternative to the procedure described in paragraph A. This alternative procedure may be used only when the authority is advised by the Department of Environmental Protection of the issuance of a certificate of final response costs and a final remedy selection for the remedy that will be or has been implemented by the department at the Ellsworth, or Casco ~~or Presque Isle~~ waste motor oil disposal sites identified in section 963-A, subsection 51-E, paragraphs B, and C ~~and D~~.

1 (1) Upon notification by the Department of Environmental Protection, the  
2 authority shall determine the costs for that site that represent the collective share  
3 of those persons eligible under subsection 7 to have their share of the costs for  
4 the waste motor oil disposal site paid from the proceeds of revenue obligation  
5 securities. The proceeds of revenue obligation securities may be used only to  
6 fund the proportion of response costs attributable to responsible parties that are  
7 eligible under subsection 7. The authority may disburse proceeds of revenue  
8 obligation securities only after January 15, 2010 or after all Plymouth waste  
9 motor oil disposal site response costs set forth in a certificate of costs and a  
10 certificate of determination under paragraphs A and B have been paid to or on  
11 behalf of eligible persons from the proceeds of revenue obligation securities,  
12 whichever occurs first. In determining the amount of response costs incurred by  
13 the department, the authority shall rely on a written certificate of response costs  
14 from the department supported by copies of invoices, receipts or other evidence  
15 of payment. The department shall make the certificate of costs and supporting  
16 evidence available for public review and comment for a minimum of 30 days  
17 before receiving any disbursements from the proceeds of the revenue obligation  
18 securities. Notice of the availability of cost information and the opportunity for  
19 public comment must be included in the public notice made pursuant to  
20 subsection 7, paragraph B, placed on the publicly accessible website of the  
21 department and sent to persons that have registered with the department as  
22 interested in receiving a notice of availability of response cost information for the  
23 site. If warranted by public comment, the department shall provide the authority  
24 with an amended certificate of final response costs.

25 (2) Upon receipt of full payment of eligible response costs for a responsible  
26 party from the proceeds of the revenue obligation securities for a site:

27 (a) The department or any other agency or instrumentality of the State may  
28 not sue or take administrative action against that responsible party pursuant  
29 to any state or federal statute or common law regarding response costs or  
30 environmental conditions related to the release, threatened release or  
31 presence of hazardous substances at or from the site prior to the effective date  
32 of this paragraph, including, without limitation, past response costs, future  
33 response costs, oversight costs, natural resource damages and the cost of  
34 assessment; and

35 (b) The eligible person on whose behalf the authority paid response costs to  
36 the department is protected from contribution actions or claims regarding that  
37 site.

38 (3) If responsible parties at the Ellsworth, ~~or Casco or Presque Isle~~ waste motor  
39 oil disposal sites identified in section 963-A, subsection 51-E, paragraphs B, and  
40 C ~~and D~~ are determined to not be eligible persons as defined in section 1020,  
41 subsection 1, paragraph A, the department shall negotiate in good faith with those  
42 responsible parties and seek to enter into a consent decree or other final  
43 settlement order or agreement under which the responsible parties agree to pay  
44 their proportionate share of response costs calculated in the same manner as for  
45 those persons determined to be eligible under subsection 7. Any consent decree  
46 or other settlement agreement entered into in accordance with this subparagraph

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must include a covenant not to sue and contribution protection as provided for in this paragraph.

**Sec. 6. 10 MRSA §1020-A, sub-§4, ¶D** is enacted to read:

D. Notwithstanding subsection 5 and 6, the procedure described in this paragraph may be followed for the Presque Isle waste motor oil disposal site as an alternative to the procedures described in paragraphs A, B and C. Upon issuance by the Commissioner of Environmental Protection of a final remedy selection decision document, including a response to public comments, selecting the final remedy for the Presque Isle waste motor oil disposal site following notice and an adequate opportunity for public comment on the Department of Environmental Protection's proposed final remedy, the department shall provide a written certification to the authority that the department has selected and will implement the final remedy and that the department will incur all response costs to implement the final remedy. The authority shall reimburse the department for those incurred response costs from the proceeds of the revenue obligation securities for the Presque Isle waste motor oil disposal site, subject to fund availability, the payment prioritization in paragraph E and verification that the department has incurred the response costs expended in implementation of the final remedy. Upon full reimbursement of the final response costs as certified by the department, the department or any other agency or instrumentality of the State may not sue or take administrative action against any responsible party at the Presque Isle waste motor oil disposal site under any state or federal statute or common law regarding response costs or environmental conditions related to the release, threatened release or presence of hazardous substances at or from the site prior to the effective date of this paragraph, including, without limitation, past response costs, future response costs, oversight costs, natural resource damages and the cost of assessment. The responsible parties at the Presque Isle waste motor oil disposal site on whose behalf the authority paid response costs to the department are protected from contribution actions or claims regarding that site.

**Sec. 7. 10 MRSA §1020-A, sub-§4, ¶E** is enacted to read:

E. The authority shall pay proceeds of the revenue obligation securities issued pursuant to this section first to responsible parties at the Plymouth waste motor oil disposal site and then to the Department of Environmental Protection for clean-up costs at the Ellsworth, Casco and Presque Isle waste motor oil disposal sites in that order.

**Sec. 8. 10 MRSA §1020-A, sub-§9** is enacted to read:

9. **Maine National Guard.** Notwithstanding the provisions of subsections 4, 5, 6 and 7, the authority shall pay from revenue obligation securities the response costs incurred by the Maine National Guard at the Plymouth waste motor oil disposal site.

**Sec. 9. 36 MRSA §191, sub-§2, ¶PP** is enacted to read:

PP. The disclosure to the Department of Environmental Protection or the Finance Authority of Maine of the name of each motor vehicle oil dealer who paid the premium required under Title 10, section 1020, subsection 6-A.

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## SUMMARY

This bill amends the premium on motor oil to raise additional revenue for deposit in the Waste Motor Oil Revenue Fund.

Currently, the premium is \$1.10 per gallon for bulk quantities of gasoline engine oil and 35¢ for diesel engine oil or prepackaged motor oil, oil sold in containers of 5 gallons or less. The bill increases the premium on prepackaged motor vehicle oil to \$1.10 per gallon. The bill also repeals definitions of the terms "diesel engine bulk motor vehicle oil" and "gasoline engine bulk motor vehicle oil," the effect of which is to expand the applicability of the premium to all motor oil grades.

The bill provides for a rebate of the premium paid for prepackaged motor vehicle oil that is stored in the State, and then sold out-of-state.

The bill authorizes the Finance Authority of Maine to directly reimburse the Department of Environmental Protection for its costs to clean up the Presque Isle waste motor oil disposal site.

The bill directs the Finance Authority of Maine to pay proceeds of the revenue obligation securities issued under the Waste Motor Oil Disposal Site Remediation Program first to responsible parties at the Plymouth waste motor oil disposal site and then to the department for clean-up costs at the Ellsworth, Casco and Presque Isle waste motor oil disposal sites in that order.

The bill authorizes the Finance Authority of Maine to reimburse the Maine National Guard for its share of response costs at the Plymouth waste motor oil disposal site.

The bill allows the State Tax Assessor to disclose to the Department of Environmental Protection and the Finance Authority of Maine the names of each motor vehicle oil dealer who paid the required premium of motor oil sales.