

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 453-End

AND AT THE

FIRST SPECIAL SESSION
September 6, 1983 to September 7, 1983
Chapters 583-588

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
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J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

Sec. 18. Allocation of Training Assistance Fund. There is allocated from the Training Assistance Fund the following funds to carry out the purposes of this Act.

| <u>LABOR, DEPARTMENT OF</u> | <u>1983-84</u> | <u>1984-85</u> |
|-----------------------------|----------------|-------------------|
| Bureau of Labor Standards | | |
| Positions | (1 1/2) | (2) |
| Personal Services | \$28,000 | \$38,800 |
| All Other | 7,500 | 9,900 |
| Capital Expenditures | <u>1,900</u> | <u> </u> |
| Total | \$37,400 | \$48,700 |

Effective September 23, 1983.

CHAPTER 569

S.P. 617 - L.D. 1751

AN ACT to Establish a Program to Abate, Clean up and Mitigate Threats to Public Health and the Environment from Uncontrolled Hazardous Substance Sites.

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

Whereas, the Legislature deems it necessary to alleviate the threat or potential threat to the public health, safety or welfare of all the people of the State, to prevent the contamination of ground and surface waters and air of the State and to preserve land and other resources; and

Whereas, uncontrolled hazardous substance sites in the State pose a threat to the people of the State and problems associated with these sites have occurred in the past, are occurring now and present future threats to the public health, safety or welfare and to the environment of potentially grave proportions; and

Whereas, these threats are inimical to the paramount interests of the State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of

the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 38 MRSA c. 13-B is enacted to read:

CHAPTER 13-B

UNCONTROLLED HAZARDOUS SUBSTANCE SITES

§1361. Findings and purpose

The Legislature finds and declares that uncontrolled hazardous substance sites within the jurisdiction of the State present a hazard to all the people of the State and that hazard poses a threat or potential threat to the public health, safety or welfare, to the environment of the State and to owners and users of property near or adjacent to uncontrolled sites.

The Legislature further finds that adequate measures must be taken to ensure that the threats posed by uncontrolled hazardous substance sites are abated, cleaned up or mitigated promptly.

The Legislature further finds that it is in the public interest of the State and its citizens to provide the capacity for prompt and effective planning and implementation of plans to abate, clean up or mitigate threats posed or potentially posed by uncontrolled sites. This paramount state interest outweighs any burden, economic or otherwise, imposed by this chapter.

§1362. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Hazardous substance. "Hazardous substance" means:

A. Any substance identified by the board under section 1303-A;

B. Any substance identified by the board under section 1319;

C. Any substance designated pursuant to the Federal Comprehensive Environmental Response, Com-

pensation and Liability Act of 1980, Public Law 96-510, Section 102 (Superfund);

D. Any toxic pollutant listed under the United States Federal Water Pollution Control Act, Section 307(a);

E. Any hazardous air pollutant listed under the United States Clean Air Act, Section 112; and

F. Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to the United States Toxic Substances Control Act, Section 7.

2. Responsible party. "Responsible party" means any one or more of the following persons:

A. The owner or operator of the uncontrolled site;

B. Any person who owned or operated the uncontrolled site from the time any hazardous substance arrived there;

C. Any person who arranged for the transport or handling of a hazardous substance, provided that the substance arrived at the uncontrolled site; and

D. Any person who accepted a hazardous substance for transport, provided that the substance arrived at the uncontrolled site.

3. Uncontrolled hazardous substance site. "Uncontrolled hazardous substance site" or "uncontrolled site" means an area or location, whether or not licensed, at which hazardous substances are or were handled or otherwise came to be located, if it is concluded by the commissioner that the site poses a threat or hazard to the health, safety or welfare of any person or to the natural environment and that action under this chapter is necessary to abate, clean up or mitigate that threat or hazard. The term includes all contiguous land under the same ownership or control and includes without limitation all structures, appurtenances, improvements, equipment, machinery, containers, tanks and conveyances on the site.

§1363. Prohibited acts

No person may handle hazardous substances at an uncontrolled hazardous substance site in violation of any order issued under this chapter.

§1364. Powers and duties of the department

1. Technical services. The commissioner shall establish a technical services capability within the department to assist in the identification, evaluation and mitigation of uncontrolled hazardous substance sites.

2. Rules. The board may adopt rules related to the handling of hazardous substances and the designation and mitigation of uncontrolled hazardous substance sites.

3. Investigation and evaluation. The department may investigate and sample sites where hazardous substances are stored or handled to identify uncontrolled hazardous substance sites.

4. Designation. In accordance with section 1365, the commissioner may declare a site to be an uncontrolled hazardous substance site.

5. Mitigation. The department may take whatever action is deemed necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by an uncontrolled site or to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards, and implementing remedies to remove, store, treat, dispose of or otherwise handle hazardous substances located in, on or over an uncontrolled site, including soil and water contaminated by hazardous substances.

6. Accept funds. The department may accept any public or private funds which may be available for carrying out the purposes of this chapter.

§1365. Designation of uncontrolled hazardous substance sites

1. Investigation. If the commissioner finds, after investigation, that any location at which hazardous substances are or were handled or otherwise came to be located may create a danger to public health or safety of any person or to the environment, he may designate that location as an uncontrolled hazardous substance site. He may order any responsible party dealing with the hazardous substances to cease immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger. He may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution.

2. Orders. Any order issued under this section shall contain findings of fact describing, insofar as possible, the hazardous substances, the site of the activity and the danger to the public health or safety.

3. Service. Service of the commissioner's findings and an order shall be made pursuant to the Maine Rules of Civil Procedure.

4. Compliance, appeal. The person to whom the order is directed shall comply immediately. A person to whom it is directed may apply to the board for a hearing on the order. The hearing shall be held by the board within 3 days after receipt of application. Within 7 days after the hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

5. Civil action. The Attorney General may file suit in Superior Court to compel any responsible party to abate, clean up or mitigate threats or hazards posed or potentially posed by an uncontrolled site.

§1366. Abatement, clean up and mitigation costs

Whenever possible and practical, the department shall make use of resources available under the Superfund program or other federal programs to evaluate and investigate uncontrolled sites and to abate, clean up or mitigate threats or hazards posed or potentially posed by uncontrolled sites.

In the case of a site at which federal resources may be or are being used, proceeds from the sale of bonds for the evaluation and investigation of sites and for implementation of plans to abate, clean up or mitigate hazards or threats posed or potentially posed by an uncontrolled site may be used:

1. Privately owned sites. In the case of a site that was privately owned at the time of disposal of any hazardous substances, for the state's share of remedial action costs; and

2. Sites owned by state or political subdivision. In the case of a site which was owned at the time of disposal of any hazardous substances by the state or a political subdivision thereof, for the state's share of response costs.

In the case of a site at which federal resources

are not used, the commissioner shall so notify the Governor in writing. The Governor may authorize the department to proceed under the provisions of this chapter without those resources. In the event the State proceeds at its own expense with work eligible for federal funding, the Commissioner of Environmental Protection shall present the United States Environmental Protection Agency with a demand for reimbursement.

All funds, from whatever source, available for site evaluation and investigation and for the implementation of plans to abate, clean up or mitigate threats or hazards to the public health, safety or welfare and to the environment are to be expended under the direction and supervision of the commissioner and shall be segregated, apportioned and expended as provided by the Legislature.

§1367. Liability; recovery by the State for abatement, clean up or mitigation costs and for damages

Each responsible party is jointly and severally liable for all costs incurred by the State for the abatement, clean up or mitigation of the threats or hazards posed or potentially posed by an uncontrolled site and for damages for injury to, destruction of or loss of natural resources of the State resulting from hazardous substances at the site or from the acts or omissions of a responsible party with respect to those hazardous substances. The commissioner shall demand reimbursement of costs and payment of damages to be recovered under this section and payment shall be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

In any suit filed under this section, the State need not prove negligence in any form or matter by a defendant. The State need only prove that a defendant is a responsible party, as defined in section 1362, and the site poses or posed or potentially poses or posed a threat or hazard to the health, safety or welfare of any citizen of the State or the environment of the State, to which the acts or omissions of the defendant are or were causally related.

A person who would otherwise be a responsible

party shall not be subject to liability under this section, if he can establish by a preponderance of the evidence that threats or hazards posed or potentially posed by an uncontrolled site, for which threats or hazards he would otherwise be responsible, were caused solely by:

1. Act of God. An act of God;

2. Act of war. An act of war;

3. Act or omission. An act or omission of a 3rd party who is not his employee or agent. A person seeking relief from liability for the acts or omissions of a 3rd party shall also demonstrate by a preponderance of the evidence that he exercised due care with respect to the hazardous substance and uncontrolled site concerned, taking into consideration the characteristics of that substance and site, in light of all relevant facts and circumstances and that he took precautions against foreseeable acts or omissions of any such 3rd party and the consequences that could foreseeably result from such acts or omissions;
or

4. Combination. Any combination of the foregoing subsections.

Funds recovered under this section shall be deposited into the account from which the funds were expended and shall be used by the department to carry out the purposes of this chapter.

§1368. Emergency

Whenever the commissioner determines that an emergency exists as the result of a threat or hazard posed by an uncontrolled site, the commissioner shall immediately notify the Governor. The Governor may declare an emergency and, in addition to whatever action is necessary and available to him under law, may authorize the Commissioner of Environmental Protection in conjunction with the Commissioner of Public Safety to:

1. Take control. Take control of the uncontrolled site and threatened adjacent areas;

2. Secure. Secure the uncontrolled site;

3. Eject. Eject all persons from the uncontrolled site;

4. Dispose, treat, store or handle. Dispose, treat, store or otherwise handle all hazardous substances located on the uncontrolled site, including

soil and water contaminated by hazardous substances;
and

5. Take action. Take whatever other action is deemed necessary to abate, clean up or mitigate the threat or hazard posed by the uncontrolled site.

§1369. Immunity

Notwithstanding the provisions of Title 14, chapter 741, neither the State nor any agency or employee thereof engaged in any abatement, clean up or mitigation activity, while complying with or attempting to comply with this chapter, or with any rule promulgated or directive issued in the implementation of this chapter, may be liable for the death of or injury to persons, or damage to property, as a result of that activity. This section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under the workers' compensation law or any other pension law, nor the right of any person to receive benefits or compensation under any act of Congress.

§1370. Property forfeited

The following property shall be subject to forfeiture to the State in accordance with the procedures set forth in section 1306-C and all property rights therein shall be in the State:

1. Real estate. All real estate, structures, appurtenances, improvements, equipment, machinery, containers, tanks, conveyances, products, materials and supplies used directly or intended to be used directly in violation of any provision of this chapter; and

2. Moneys. All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in any transaction, and all proceeds traceable to such a transaction, intended to be used directly in violation of any provision of this chapter.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1983-84

1984-85

ENVIRONMENTAL PROTECTION,
DEPARTMENT OF

Uncontrolled site program

| | <u>1983-84</u> | <u>1984-85</u> |
|-------------------|----------------|----------------|
| Positions | (4 1/2) | (4 1/2) |
| Personal Services | \$103,923 | \$111,969 |
| All Other | <u>21,077</u> | <u>13,031</u> |
| Total | \$125,000 | \$125,000 |

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective July 1, 1983.

CHAPTER 570

S.P. 527 - L.D. 1550

AN ACT to License Home Health Care Services.

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

22 MRSA c. 419 is enacted to read:

CHAPTER 419

HOME HEALTH SERVICES

§2141. Purpose and intent

The Legislature finds that licensure of all agencies and organizations providing home health services is desirable and it is the purpose of this chapter to protect the public and assure that home health services are provided under standards of safety, efficiency and quality.

It is the intent of this chapter to set forth the statutory authorization for home health care licensure, including the standards, start-up procedures and means by which licensure is established.

§2142. Definitions

As used in this chapter, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Human Services.