LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION
October 1, 1992 to October 6, 1992

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J.S. McCarthy Company
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PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

of the

ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

D. To any criminal justice agency if necessary to carry out the administration of criminal justice, the administration of juvenile criminal justice or for criminal justice agency employment.

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of juveniles receiving services from the department and, if applicable, the Medicaid eligibility numbers and the dates on which those juveniles received Medicaid services to the Bureau of Medical Services and the Bureau of Income Maintenance within the Department of Human Services for the sole purpose of determining eligibility and billing for Medicaid services provided by or through the department. The department may also release to the Department of Human Services information required for, and to be used solely for, audit purposes, consistent with federal law, for Medicaid services provided by or through the department. Department of Human Services personnel must treat this information as confidential in accordance with federal and state law and must return the records when their purpose has been served. ~~This paragraph does not authorize the department to release client treatment plans, psychological profiles or criminal records to the Department of Human Services.~~

Sec. 15. 34-A MRSA §4110, as enacted by PL 1991, c. 400, is amended to read:

§4110. State responsible for detention

Notwithstanding any other provision of law, on the date that the Northern Maine Regional Juvenile Detention Facility begins operating, the State is responsible for all physically restrictive juvenile detention statewide, except that the detention provided under Title 15, section 3203-A, subsection 1 remains the responsibility of the counties.

See title page for effective date.

CHAPTER 355

H.P. 1113 - L.D. 1509

An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection's Bureau of Hazardous Materials and Solid Waste Control

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

Whereas, there is a need to exempt certain oil terminal facilities from unnecessary licensing requirements; and

Whereas, it is necessary to resolve questions raised in a recent law court decision concerning procedural provisions of the 3rd-party oil damage claims process in order to achieve efficiencies in the resolution of disputed claims; and

Whereas, it is important to exempt certain underground oil storage facilities from daily inventory and annual statistical inventory requirements in cases where they are not technically feasible; 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. 37-B MRSA §797, first ¶, as enacted by PL 1989, c. 464, §3, is amended to read:

~~Any~~ A person required to submit a facility emergency response plan, material safety data sheet or list of hazardous chemicals and extremely hazardous substances must submit a Maine chemical inventory reporting form to the commission, the Department of Environmental Protection, the local emergency planning committee and the local fire department with jurisdiction over the facility, by March 1st annually. ~~This form shall require information~~ Information on the inventory of extremely hazardous substances and hazardous chemicals for the previous calendar year is required on the form. These forms ~~shall~~ must state, at a minimum:

Sec. 2. 37-B MRSA §799, as amended by PL 1989, c. 929, §4, is further amended to read:

§799. Toxic chemical release forms

Under this section, the owner or operator of every facility with 10 or more employees and within Standard Industrial Classification Codes 20-39 must file toxic chemical release forms for routine releases with the United States Environmental Protection Agency, the Department of Environmental Protection, the commission and the local emergency planning committee by October 1, 1989~~,~~ and annually thereafter consistent with the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 313, and 40 Code of Federal Regulations, Part 372. Those forms must be made available to the public by the commission and the local emergency planning committee. The owner or operator of every facility required to report under this section must also submit a report on the progress made by the facility toward meeting the toxics release reduction goals established in Title 38, section 2303.

Sec. 3. 38 MRSA §342, sub-§15 is enacted to read:

15. Technical services. The commissioner shall establish a technical services unit within the department to assist any person involved in a real estate transaction in determining whether real property that is the subject of the transaction has been the site of a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products.

The commissioner may also assist in or supervise the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, review and approval of a requester's investigation plans, site assessments and reports, voluntary response action plans and implementation of those plans.

The person requesting assistance under this subsection shall pay the department an initial nonrefundable fee of up to $500 to be determined by the Commissioner. The person shall also pay the department for its actual direct and indirect costs of providing assistance, which must be determined by the commissioner but which must not on an hourly basis exceed $50 per hour per person. Money received by the department for assistance under this subsection must be deposited in the Uncontrolled Sites Fund.

Sec. 4. 38 MRSA §342-B is enacted to read:

§342-B. Liability of fiduciaries and lenders

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. The following must be considered in determining whether a secured lender is "acting diligently to sell or otherwise divest" or as "evidence of diligent efforts to sell or divest:"

(1) Use of the property during the period;

(2) Market conditions;

(3) Marketability of the site; or

(4) Legal constraints on the sale or divestment.

If the lender holds the property for longer than the 5-year period but meets the conditions in subsection 4, paragraph C, subparagraph (4) and the requirements enumerated in this paragraph, then liability is not imposed on the lender.

B. "Assets of the estate or trust" means assets of the estate or trust of which the site is a part; assets that subsequent to knowledge of the release are placed by the fiduciary or the grantor in an estate or trust over which the fiduciary has control if the grantor is or was an owner or operator of the release site at the time of the transfer; and assets that are transferred by the fiduciary upon or subsequent to knowledge of the release for less than full and fair consideration, to the extent of the amount that the fair market value exceeded the consideration received by the estate or trust.

C. "Participates in management" means, while the borrower is in possession of the facility, executing decision-making control over the borrower's management of oil or hazardous materials or exercising control over substantially all of the operational aspects of the borrower's enterprise, but does not include the following:

(1) Conducting or requiring site assessments of the property;

(2) Engaging in periodic or regular monitoring of the business;

(3) Financing conditioned on compliance with environmental laws;

(4) Providing general business or financial advice, excluding management of hazardous materials and oil;

(5) Providing general advice with respect to site management;

(6) Policing the security interest or loan;

(7) Engaging in work-out activities prior to foreclosure; or

(8) Participating in foreclosure proceedings.

2. Exemption from liability. Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings, liable or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367; and 1371 for discharges, releases or threats of releases of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant or a petroleum product or by-product if that person is:

A. A fiduciary, as defined in section 1362, subsection 1-D, but that exclusion does not apply to an estate or trust of which the site is a part; or

B. A lender, as defined in section 1362, subsection 1-B, who, without participating in management of a site, holds indicia of ownership primarily to protect a security interest in the site.

3. Exclusion from exemption for fiduciaries. The exemption from liability provided by subsection 2 does not apply if:

A. The fiduciary causes, contributes to or exacerbates the discharge, release or threat of release; or

B. After acquiring title to or commencing control or management of the site, the fiduciary does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a release or threat of release;

(2) Provide reasonable access to the site to the department and its authorized representatives so that necessary response actions may be conducted; and

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment.

4. Exclusion from exemption for lenders. The exemption from liability for lenders provided in subsection 2 does not apply if:

A. The secured lender causes, contributes to or exacerbates the discharge, release or threat of release;

B. The secured lender participates in management of the site prior to acquiring ownership of the site; or

C. After acquiring ownership of the site and upon obtaining knowledge of a release or threat of release, the secured lender does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a release or threat of release;

(2) Provide reasonable access to the department and its authorized representatives so that necessary response actions may be conducted;

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment; and

(4) Act diligently to sell or otherwise divest the property within a limited time period of up to 5 years from the earlier of the lender's possession or ownership. There is a rebuttable presumption that the 2nd lender is acting diligently to sell or otherwise divest the property during the first 18 months after taking possession. The secured lender must demonstrate by a preponderance of the evidence diligent efforts to sell or divest the property during the next 42 months.

When a lender has ownership or possession of a site pursuant to a security interest in the site, the term "owner" or "operator" means a person who owned or operated the site immediately prior to that secured lender obtaining ownership or possession of the site.

5. Relationship to ground water fund claims. The exemption provided in subsection 2, paragraph B from liability under section 570 does not exempt lenders who apply to the Ground Water Oil Clean-up Fund for coverage pursuant to section 568-A from the obligation to pay the full amount of deductible determined by the commissioner.

6. Exempt person as party. Notwithstanding the exemption from liability provided by this section, a fiduciary may be named as a party in an administrative enforcement proceeding or civil action brought by the State pursuant to this Title for purposes of requiring the submission of information or documents relating to an uncontrolled hazardous substance site, for purposes of proceeding against the assets of the estate or trust for reimbursement, fines or penalties or for purposes of compelling the expenditure of assets of the estate or trust by the fiduciary to abate, clean up or mitigate threats or hazards posed by a discharge or release, or to comply with state environmental laws and regulations or the terms of a department order of enforcement proceeding. This subsection does not require the fiduciary to expend its own funds or to make the fiduciary personally liable for compliance pursuant to an order or enforcement proceeding except as provided in section 568, section 4, paragraph B or section 1365, subsection 6.

Sec. 5. 38 MRSA §§343-E and 343-F are enacted to read:

§343-E. Voluntary response action program

1. Liability protection for complete cleanup. Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 or 1371 for, or as a result of, a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products, if the person investigates the discharge, release or threatened release and undertakes and completes response actions to remove or remedy all known discharges, releases and threatened releases at an identified area of real property in accordance with a voluntary response action plan approved by the commissioner.

2. Liability protection for partial cleanup. The commissioner may approve a voluntary response action

plan submitted under this section that does not require removal or remedy of all discharges, releases and threatened releases at an identified area of real property conditioned upon any or all of the terms identified in subsection 3 and based on consideration of the following:

A. If reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that protects public health and the environment;

B. The response actions and the activities associated with any reuse or development proposed for the property will not cause, contribute or exacerbate discharges, releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan and will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases or threatened releases; and

C. The owner of the property that is the subject of the partial voluntary response action plan agrees to cooperate with the commissioner, the requestor or the commissioner's authorized representatives to avoid any action that interferes with the response actions.

3. Conditions for protection. The commissioner may condition the protection from liability provided by this section on the requestor's agreement to any or all of the following terms that the commissioner may determine to be necessary:

A. To provide access to the property to the commissioner and the commissioner's authorized representatives;

B. To allow the commissioner or the commissioner's authorized representatives to undertake activities at the property including placement of borings, wells, equipment, and structures on the property; and

C. To the extent the requestor has title to the property, to grant easements or other interests in the property to the department for any of the purposes provided in paragraph A or B. An agreement under this subsection must apply to and be binding upon the successors and assigns of the owner. To the extent the requestor has title to the property, the requestor shall record the agreement or a memorandum approved by the commissioner that summarizes the agreement in the registry of deeds for the county where the property is located.

4. Investigation report. A voluntary response action plan submitted for approval of the commissioner must include an investigation report prepared by an appropriate professional that identifies and describes the nature and extent of the discharges, releases and threatened releases at the identified area of real property, methods of investigation, the analytical results and the professional's evaluation of this information.

5. Approval of plan. When the commissioner approves a voluntary response action plan pursuant to subsection 1 or 2, the commissioner shall include in the approval a no-action assurance pursuant to subsection 9, acknowledging that so long as the plan is implemented pursuant to its terms and with the exercise of due care, the person submitting the plan and those persons identified in subsection 6 will receive the protection from liability provided under this section. Upon completion of the voluntary response action plan, the parties implementing the voluntary response action plan shall notify the commissioner who shall issue a certificate of completion upon demonstration by the parties that the response action is complete. In addition, a person who has submitted and received department approval of a voluntary response action plan and is implementing or has implemented that plan pursuant to its terms is not liable for claims for contribution regarding the site.

6. Additional persons protected from liability. In addition to the person who undertakes and completes a voluntary response action pursuant to an approved voluntary response action plan, the liability protection provided by this section applies to the following persons:

A. An owner or operator who is a responsible party or who is subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threat of release and who undertakes and completes a voluntary response action plan that fully remediates all known discharges, releases or threatened releases. The liability protection is limited to protection from further cleanup requirements and does not include protection from liability for penalties, fines or natural resource damages, to the extent applicable, unless a no-action assurance issued pursuant to subsection 9 so provides;

B. A person providing financing to the person who undertakes and completes the response actions or who acquires or develops the identified property;

C. A lender or fiduciary as defined in section 1362 who arranges for the undertaking and completion of response actions;

D. A person who seeks to acquire or develop the identified property and who arranges for the undertaking and completion of response actions;

E. A successor or assign of a person to whom the liability protection applies; and

F. A person acting in compliance with a voluntary response action program approved by the commissioner who, while implementing the voluntary response action plan and exercising due care in implementation, causes, contributes or exacerbates a discharge or release, provided that the discharge or release is removed or remediated to the satisfaction of the commissioner.

7. Persons ineligible for protection from liability. The protection from liability provided by this section does not apply to:

A. A person who causes, contributes or exacerbates a discharge, release or threatened release that was not remedied under an approved voluntary response action plan;

B. For partial voluntary response action plans that do not require removal or remediation of all known releases, a person who was responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threatened release; or

C. A person who obtains approval of a voluntary response action plan for purposes of this section by fraud or intentional misrepresentation, or by knowingly failing to disclose material information, or a successor or assign of the person who obtained approval if that successor or assign had knowledge that the approval was obtained by fraud or intentional misrepresentation or by knowingly failing to disclose material information.

8. Effect of protection from liability. This section does not affect the authority of the commissioner to exercise the powers or duties under law with respect to a discharge, release or threatened release, or the right of the commissioner or any other person to seek relief available, against a party who is not subject to the liability protection provided under this section.

9. No-action assurance. The commissioner shall issue a written determination or enter into an agreement pursuant to subsections 1 or 2 to take no action under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 against a person afforded protection for undertaking a voluntary response action plan pursuant to subsection 6 when the commissioner approves a voluntary response action plan pursuant to subsections 1 and 2. For partial voluntary response action plans approved under subsection 2, the commissioner's written determination or agreement to take no action may be limited to the matters addressed by the terms of the voluntary response action plan.

A. A determination issued or agreement entered into under this subsection may be conditioned upon those terms identified in subsection 3 and upon any other reasonable conditions determined necessary by the commissioner.

B. A determination issued or agreement entered into under this subsection may extend to the successors and assigns of the person to whom it originally applies if the successors and assigns are bound by the conditions in the determination or agreements.

C. Issuance of a determination or execution of an agreement under this subsection does not affect the authority of the commissioner to expend funds, to take response action with respect to the discharge or release subject to the determination or agreement, or to take administrative or judicial action with respect to persons not bound by the determination or agreement.

§343-F. Reporting and disclosure requirements

An environmental professional who obtains analytical information indicating a discharge or release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products at a site, at levels that, in that professional's best professional judgment, require removal or remedial action to prevent significant threats to public health or the environment shall advise that professional's client of that information.

If the client of the environmental professional is not the owner or operator of the site, the client shall disclose the analytical information to the owner or operator of the site. Upon receipt of that information, the owner or operator shall submit this information to the commissioner within a reasonable time period unless the time period is otherwise prescribed by law. This section does not affect the legal protections afforded to confidential business information or other privileges, if any, that may be applicable. If the client makes a disclosure and the owner or operator does not submit this information to the commissioner, the client and the environmental professional may not be held liable for the owner's or the operator's failure to disclose.

Sec. 6. 38 MRSA §542, sub-§3-A, as enacted by PL 1991, c. 817, §9, is amended to read:

3-A. Coastal waters. "Coastal waters" means all waters of the State within the rise and fall of the tide and ~~within the marine limits of the jurisdiction of the State~~ to a distance of 12 miles from the coastline of the State but does not include areas above any fishway or dam when the fishway or dam is the dividing line between tidewater and fresh water.

Sec. 7. 38 MRSA §542, sub-§7, as amended by PL 1991, c. 698, §4, is further amended to read:

7. Oil terminal facility. "Oil terminal facility" means any facility of any kind and related appurtenances, located in, on or under the surface of any land or water, including submerged lands, which is used or capable of being used for the purpose of transferring, processing or refining oil, or for the purpose of storing the same, but does not include any facility used or capable of being used to store no more than ~~500~~ 1500 barrels or 63,000 gallons, nor any facility not engaged in the transfer of oil to or from waters of the State. A vessel is considered an oil terminal facility only in the event of a ship-to-ship transfer of oil, but only that vessel going to or coming from the place of ship-to-ship transfer and a permanent or fixed oil terminal facility. The term does not include vessels engaged in oil spill response activities.

Sec. 8. 38 MRSA §544, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §109, is further amended to read:

1. Jurisdiction. The rights, powers and duties ~~of~~ conferred on the department and other persons under this subchapter ~~shall~~ extend ~~to the areas described in section 543 and~~ to a distance of 12 miles from the coastline of the State.

Sec. 9. 38 MRSA §545, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §110, is further amended to read:

1. Expiration of license. Licenses ~~shall be~~ are issued upon application and ~~shall be~~ are for a period of not less than 12 months to expire no later than ~~24~~ 60 months after the date of issuance. The department may issue a temporary license for a shorter period of time if it finds that the applicant has substantially complied but has failed to comply with one or more provisions of existing rules. Licenses ~~shall be~~ are issued subject to such terms and conditions determined by the department as necessary to carry out the purposes of this subchapter.

Sec. 10. 38 MRSA §545, sub-§3, ¶A, as enacted by PL 1969, c. 572, §1, is amended to read:

A. Persons engaged in the business of servicing the fuel requirements of pleasure craft, fishing boats and other commercial vessels, where the purchaser and the consumer are the same entity and the serviced vessel is ~~75~~ 200 feet or less in overall length.

Sec. 11. 38 MRSA §551, sub-§2, as amended by PL 1991, c. 817, §11, is further amended by amending the first paragraph to read:

2. Third-party damages. Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses arising from physical bodily injury, directly or indirectly as a result of a discharge of oil prohibited by section 543 including all discharges of oil from interstate pipelines, in this subsection called the claimant, may apply within 12 months after the occurrence of a discharge to coastal waters and for other surface discharges within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner may, upon petition and for good cause shown, waive the time limitation for filing damage claims. All 3rd-party damage claims for which no determination of award has been made or that have not been referred to a board of arbitration must be processed in accordance with the substantive and procedural provisions of this section.

Sec. 12. 38 MRSA §551, sub-§3-A, ¶D, as enacted by PL 1991, c. 817, §14, is amended to read:

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. The ~~commissioner or a claimant~~ party seeking review of a hearing examiner's determination must file an appeal in the Superior Court within 30 days of the determination. Determinations made by the hearing examiner must be accorded a presumption of regularity and validity in a subsequent reimbursement action, but this presumption may be rebutted by responsible parties.

Sec. 13. 38 MRSA §551, sub-§6, as repealed and replaced by PL 1991, c. 454, §12, is amended to read:

6. Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund. For the use of the fund, the commissioner shall seek recovery of all disbursements from the fund for the following purposes, including overdrafts and interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small ~~or~~, the likelihood of success too uncertain or that recovery of costs is unlikely due to the inability of the responsible party to pay those costs, provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 must be apportioned between the Maine Coastal and Inland Surface Oil Clean-up Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D, E, H and I in connection with a prohibited discharge; and

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd-party claims in excess of $15,000, except to the extent that the costs are covered by payments received under any federal program.

Requests for reimbursement to the fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191. The commissioner may file claims with appropriate federal agencies to recover for the use of the fund all disbursements from the fund in connection with a prohibited discharge.

Requests for reimbursement to the fund for disbursements pursuant to subsection 5, paragraph B, if not paid within 60 days of demand, are subject to a penalty not to exceed twice the total amount of reimbursement requested. This penalty is in addition to the reimbursement requested and any other fines or civil penalties authorized by this Title.

Sec. 14. 38 MRSA §564, sub-§2-A, ¶H, as amended by PL 1991, c. 763, §5, is further amended by amending subparagraph (1) to read:

(1) Unexplained differences in daily inventory reconciliation values that, over a 30-day period, exceed ~~.5%~~ 1.0% of the product delivered;

Sec. 15. 38 MRSA §568-A, sub-§5, as amended by PL 1991, c. 817, §24, is repealed.

Sec. 16. 38 MRSA §569-A, 4th ¶, as enacted by PL 1991, c. 817, §26, is repealed.

Sec. 17. 38 MRSA §569-A, sub-§2, as enacted by PL 1991, c. 817, §26, is amended by amending the first paragraph to read:

2. Third-party damages. Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the "claimant," may apply to the commissioner within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner, upon petition and for good cause shown, may waive the 2-year limitation for filing damage claims. ~~For claims made on discharges eligible for coverage by the 3rd-party commercial risk pool account, the commissioner shall pay the first $100,000 per claimant out of the 3rd-party commercial risk pool account as long as funds are available. The commissioner shall pay any claims that exceed $100,000 or available money in the 3rd-party commercial risk pool account from the fund.~~

All 3rd-party damage claims for which no determination of award has been made or that have not been referred to a board of arbitration must be processed in accordance with the substantive and procedural provisions of this section.

Sec. 18. 38 MRSA §569-A, sub-§4, ¶D, as enacted by PL 1991, c. 817, §26, is amended to read:

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. A ~~claimant~~ party seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination. Determinations made by the hearing examiner must be accorded a presumption of regularity and validity in a subsequent reimbursement action, but this presumption may be rebutted by responsible parties who do not become interested parties.

Sec. 19. 38 MRSA §569-A, sub-§5, ¶C, as enacted by PL 1991, c. 817, §26, is amended to read:

C. The owner or operator of an underground oil storage facility that stores motor fuel or is used in the marketing and distribution of oil shall pay an annual fee of $130 per tank not constructed of fiberglass, cathodically protected steel or other noncorrosive material. ~~These funds must be deposited in the 3rd-party commercial risk pool account. If the funds in the account are inadequate to pay the claims, costs and expenses for which payment from the account is authorized, the board may increase the per tank assessment up to $500 per tank. Any shortfall in the account occurring after the maximum assessment has been levied must be paid out of the fund. Upon payment of the annual fee, the commissioner shall issue a certificate of coverage for the tank.~~

Sec. 20. 38 MRSA §569-A, sub-§8, ¶A, as enacted by PL 1991, c. 817, §26, is amended to read:

A. Administrative expenses, personnel expenses and equipment costs of the department related to the administration and enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Clean-up Fund made pursuant to this section. ~~Administrative~~ Except for

disbursements for capital costs related to paragraph B or C, administrative expenses, personnel expenses and equipment costs may not exceed $1,734,000 per fiscal year;

Sec. 21. 38 MRSA §569-A, sub-§8, ¶F, as enacted by PL 1991, c. 817, §26, is repealed.

Sec. 22. 38 MRSA §569-A, sub-§12, as enacted by PL 1991, c. 817, §26, is repealed.

Sec. 23. 38 MRSA §570, 2nd ¶, as repealed and replaced by PL 1987, c. 735, §72, is amended to read:

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 the fact of the prohibited discharge and that a defendant is a responsible party, as defined in section ~~562~~ 562-A.

Sec. 24. 38 MRSA §570-A, as amended by PL 1991, c. 817, §31, is further amended to read:

§570-A. Budget approval

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 569-A, subsection 8, paragraphs A, C, G, H and I for each biennium. The budget must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures from the fund as approved by the commissioner. Expenditures pursuant to section 569-A, subsection 8, paragraphs B, D, E, ~~F~~ and J may be made as authorized by the State Controller following approval by the commissioner.

This section is repealed December 31, 1999.

Sec. 25. 38 MRSA §1271, first ¶, as enacted by PL 1987, c. 448, §1-C, is amended to read:

The Legislature finds that the presence of friable and potentially friable asbestos in public and private buildings is a public health hazard; that State Government and local government agencies are conducting major abatement programs; that it is critical to the safe conduct of all asbestos abatement activities such as monitoring, design, analysis, training, identification, encapsulation, removal, handling and disposal activities that trained and qualified personnel from the public and private sectors be employed; and that work practice standards for asbestos abatement activities must be established and enforced to ensure protection of the public health.

Sec. 26. 38 MRSA §1272, sub-§2, as amended by PL 1991, c. 473, §2, is further amended to read:

2. Asbestos abatement activity. "Asbestos abatement activity" means activity involving the removal, demolition, enclosure, repair, encapsulation, handling, transportation or disposal of friable asbestos-containing materials in an amount greater than 3 square feet or 3 linear feet. "Asbestos abatement activity" includes ~~the~~ associated activities such as design, monitoring, analysis and inspection of any friable asbestos-containing material in an amount greater than 3 square feet or 3 linear feet, and conducting training for persons seeking a state certificate or license.

Sec. 27. 38 MRSA §1272, sub-§4, as enacted by PL 1987, c. 448, §1-C, is amended to read:

4. Asbestos abatement design consultant. "Asbestos abatement design consultant" means ~~a person~~ an individual engaged in preparing and supervising the implementation of facility plans for the removal or abatement of asbestos. These activities include, but are not limited to, the performance of air quality and bulk sampling; advising building owners, contractors and project supervisors on health impacts of asbestos abatement activities; and supervising the conduct of training courses. This category of specialists includes, but is not limited to, engineers, architects, health professionals, industrial hygienists, private consultants or other individuals involved in asbestos risk assessment or regulatory activities.

Sec. 28. 38 MRSA §1272, sub-§5, as amended by PL 1989, c. 630, §1, is further amended to read:

5. Asbestos abatement project supervisor. "Asbestos abatement project supervisor" means ~~a person~~ an individual with responsibility for the supervision of asbestos abatement activities. Those persons include, but are not limited to, abatement project supervisors employed by contractors, in-house asbestos abatement units, employees of governmental or public entities who coordinate or directly supervise asbestos abatement activities performed by public schools, governmental or other public employees in a school district, governmental or other public buildings and project supervisors employed as consultants to monitor and direct abatement contractors.

Sec. 29. 38 MRSA §1272, sub-§6, as amended by PL 1989, c. 325, §2, is further amended to read:

6. Asbestos abatement worker. "Asbestos abatement worker" means ~~any worker performing~~ an individual engaging in any asbestos abatement activity for any employer.

Sec. 30. 38 MRSA §1272, sub-§§6-C and 6-D are enacted to read:

6-C. Asbestos air analyst. "Asbestos air analyst" means an individual engaging in the analysis of air samples for fiber count including, but not limited to asbestos fibers.

6-D. Asbestos bulk analyst. "Asbestos bulk analyst" means an individual engaging in the analysis of bulk samples for asbestos or other material composition.

Sec. 31. 38 MRSA §1272, sub-§§8-A, 8-B and 8-C, as enacted by PL 1991, c. 473, §7, are amended to read:

8-A. Asbestos consultant. "Asbestos consultant" means a business entity that engages in, or intends to engage in, the design, inspection or monitoring of asbestos abatement activities.

8-B. Asbestos inspector. "Asbestos inspector" means ~~a person~~ an individual whose activities include, but are not limited to, collecting bulk samples and assessing the potential for exposure associated with the presence of asbestos-containing material.

8-C. Asbestos professional. "Asbestos professional" means ~~a person licensed and~~ an individual certified by the commissioner to ~~work~~ engage in ~~the~~ asbestos abatement ~~field~~ activities, including, but not limited to, an asbestos abatement worker, an asbestos abatement project supervisor, an asbestos air monitor, an asbestos inspector, ~~and~~ an asbestos abatement design consultant, an asbestos air analyst, an asbestos bulk analyst and an asbestos management planner.

Sec. 32. 38 MRSA §1272, sub-§8-D is enacted to read:

8-D. Asbestos management planner. "Asbestos management planner" means a person who assesses hazards associated with the presence and condition of asbestos-containing materials in schools and who develops a response action plan based upon the assessment.

Sec. 33. 38 MRSA §1272, sub-§10, as amended by PL 1991, c. 473, §8, is further amended to read:

10. Certificate. "Certificate" means a document issued to an individual by the commissioner affirming that an individual has successfully completed the training and other requirements set forth in this chapter to qualify as an asbestos professional ~~abatement design consultant, an asbestos abatement project supervisor, an asbestos abatement worker, an asbestos air monitor or an asbestos inspector, whether held by an individual, business or public entity~~.

Sec. 34. 38 MRSA §1272, sub-§12, as enacted by PL 1987, c. 448, §1-C, is amended to read:

12. Employee. "Employee" means ~~every person~~ an individual who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit, to engage in any employment.

Sec. 35. 38 MRSA §1272, sub-§13, as repealed and replaced by PL 1991, c. 473, §9, is amended to read:

13. Friable. "Friable" means materials that, when dry, have the potential to readily release asbestos fibers when crumbled, pulverized, handled, deteriorated or subjected to mechanical, physical or chemical processes. It also means ~~previously nonfriable~~ potentially friable material that has deteriorated or has been or will be processed to the extent that, when dry, it may readily release asbestos fibers.

Sec. 36. 38 MRSA §1272, sub-§15, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §218, is further amended to read:

15. License. "License" means a document issued by the ~~Commissioner of Environmental Protection~~ commissioner to a business entity or public entity affirming that the entity has met the requirements set forth in this chapter to engage in asbestos abatement activities ~~as an~~ including, but not limited to, asbestos abatement contractor, ~~or~~ in-house asbestos abatement unit, asbestos consultant, asbestos analytical laboratory and training provider.

Sec. 37. 38 MRSA §1272, sub-§15-A, as enacted by PL 1991, c. 473, §10, is amended to read:

15-A. Owner or operator. "Owner or operator" means ~~any~~ a person who owns, leases, operates, controls or supervises ~~any~~ an asbestos abatement activity within a building, structure or facility ~~having asbestos-containing materials~~.

Sec. 38. 38 MRSA §1272, sub-§18 is enacted to read:

18. Training provider. "Training provider" means a person providing training that is necessary to fulfill certification or licensing requirements under this chapter.

Sec. 39. 38 MRSA §1273, sub-§1, as enacted by PL 1987, c. 448, §1-C, is amended to read:

1. License or certificate required. No person or owner or operator may engage in any asbestos abatement activities in the State, unless licensed or certified pursuant to this chapter; and

Sec. 40. 38 MRSA §1273, sub-§2, as amended by PL 1991, c. 473, §11, is further amended to read:

2. Notification required. A person ~~or~~, owner or operator may not engage in any ~~planned~~ asbestos abatement ~~project~~ activity over 3 linear feet or 3 square feet of friable asbestos-containing material unless that person ~~or~~, owner or operator notifies the commissioner in writing at least 10 calendar days before beginning any on-site work, including on-site preparation work, that has the potential to release asbestos fibers.

Sec. 41. 38 MRSA §1274-A, as enacted by PL 1991, c. 473, §14, is amended to read:

§1274-A. Certification and licensing requirements

The board may adopt and amend rules necessary to govern the ~~certification and licensing of asbestos abatement contractors, asbestos abatement design consultants, asbestos inspectors, asbestos air monitors, asbestos abatement project supervisors, asbestos abatement workers, asbestos consultants, asbestos analytical laboratories and other persons undertaking asbestos abatement activities~~ licensing of business or public entities including but not limited to asbestos abatement contractors, in-house asbestos abatement units, asbestos consultants, asbestos analytical laboratory and training providers; and the certification of asbestos professionals undertaking asbestos abatement activities.

Sec. 42. 38 MRSA §1275, as amended by PL 1991, c. 473, §15, is further amended to read:

§1275. Approval of training courses

The board, after consultation with the Commissioner of ~~Administration~~ Administrative and Financial Services and the Commissioner of Labor, shall develop rules establishing criteria and procedures for the ~~certification~~ approval of training courses and examinations ~~which shall~~ that ensure the qualifications of applicants for certification as required in this chapter. The board shall ~~promulgate~~ adopt these rules in accordance with Title 5, chapter 375, subchapter II.

1. Course requirements. To qualify for ~~certification~~ approval, a training course ~~shall~~ must contain a combination of class instruction, practical application and public health procedures of a length and content ~~which~~ that; to the satisfaction of the commissioner~~, shall~~ must ensure adequate training for the level and type of responsibility for each named certification category.

2. Instructors. All courses certified under this section ~~shall~~ must be conducted by instructors whose training and experience is determined by the commissioner to be appropriate for the subject matter being taught and the level of certification category for which the course is designed. All courses ~~shall~~ must be designed and conducted under the guidance of an asbestos abatement design consultant.

3. Transition. Training courses conducted by, and instructors employed by, a firm with in-house asbestos abatement units contracting for asbestos removal with the Federal Government are considered certified under this section pending review for certification if the firm has submitted to the commissioner by March 1, 1990, a training course that meets training requirements set forth in this chapter.

Sec. 43. 38 MRSA §1278, sub-§1, ¶A, as amended by PL 1991, c. 473, §18, is further amended to read:

A. The fees are:

(1) Asbestos abatement contractor: $250;

(1-A) In-house asbestos abatement unit: $250;

~~(2) Asbestos abatement design consultant: $50;~~

~~(2-A) Asbestos inspector: $50;~~

~~(3) Asbestos air monitor: $50;~~

~~(4) Asbestos abatement project supervisor: $50;~~

(5) Asbestos abatement worker: $25;

(6) Asbestos consultant: $250;

(7) Asbestos analytical laboratory: $250;

(8) ~~Asbestos abatement training~~ Training provider: $500 or the equivalent value of training of department personnel; and

(9) Other categories of asbestos ~~abatement~~ professionals except asbestos abatement workers: $50.

Sec. 44. 38 MRSA §1278, sub-§2, as amended by PL 1989, c. 630, §9, is further amended to read:

2. Notification fees. Notification of ~~a planned~~ asbestos abatement ~~project~~ activities pursuant to section 1273, subsection 2, must be accompanied by a notification fee unless the activity occurs in single-unit residential buildings.

A. The fees are:

(1) Projects involving more than 100 square feet or 100 linear feet, but less than 1,000 square feet or 5,000 linear feet: $100; and

(2) Projects involving more than 1,000 square feet or 5,000 linear feet: $200.

Sec. 45. 38 MRSA §1280, as amended by PL 1991, c. 473, §§19 and 20, is further amended to read:

§1280. Standard of acceptable work practice

The board shall adopt rules that establish criteria and procedures of acceptable work practices for licensees and certificate holders and persons exempt from licensing and certification requirements under section 1273, subsection 4 engaged in the following asbestos ~~hazard~~ abatement activities.

1. Removal; demolition; encapsulation; enclosure; repair; handling; transportation; analysis; disposal; storage; design; monitoring; or inspection. For any asbestos activity that involves more than 3 linear feet or 3 square feet of friable asbestos-containing material, the board shall consider the following:

A. Proper work practices for the removal of asbestos-containing materials;

B. Proper work practices for the encapsulation of asbestos-containing materials;

C. Proper work practices for enclosure of asbestos-containing materials;

D. Proper work practices for the demolition of a structure or position of a structure which contains structural members or components of or covered by asbestos-containing materials;

E. Proper work practices for the storage, transport and disposal of asbestos-containing materials;

F. Administrative penalties and cessation of operations to ensure compliance with this subsection;

G. Air monitoring, bulk and air sample analysis and criteria governing public access to sites where asbestos abatement activity has occurred; and

H. Asbestos abatement, monitoring, inspection, design and analysis activities.

In adopting these rules, the board shall consider cost-effective methods and alternatives that do not sacrifice public or worker health or safety.

Sec. 46. 38 MRSA §1303-C, sub-§12, as amended by PL 1991, c. 72, §1, is further amended to read:

12. Disposal. "Disposal" means the discharge, deposit, dumping, ~~incineration,~~ spilling, leaking or placing of any hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage into or on any land, air or water and the incineration of any solid waste, refuse-derived fuel, sludge or septage so that the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

Sec. 47. 38 MRSA §1303-C, sub-§39, as enacted by PL 1989, c. 585, Pt. E, §4, is amended to read:

39. Treatment. "Treatment" means any process including but not limited to incineration designed to change the character or composition of any hazardous waste or waste oil, as defined in rules adopted under section 1319-O, subsection 2, so as to render the waste less hazardous.

Sec. 48. 38 MRSA §1304, sub-§11, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §228, is repealed.

Sec. 49. 38 MRSA §1310-F, sub-§2, as amended by PL 1991, c. 519, §10, is further amended to read:

2. Eligibility. Any municipality that owns, rents or leases a solid waste landfill for which a remediation or closure plan has been adopted is eligible for grants. A municipality that has acted to close its solid waste landfill or to remedy environmental and public health hazards posed by the landfill prior to the adoption of a closure or remediation plan under this subchapter or that closed a landfill or remediated environmental or public health hazards posed by a landfill, is also eligible for reimbursement of closure or remediation costs incurred after February 1, 1976, as long as the closure or remediation actions were in conformance with all applicable laws or rules in effect at the time. Costs incurred by closure or remediation actions taken after the adoption of a closure or remediation plan under this subchapter are eligible for reimbursement only if those actions conform to that plan. Grant payments may not be made to any municipality for any portion of payments to settle civil or criminal judgments against that municipality for damages or injuries caused by the landfill. In addition, for landfills in operation prior to January 1, 1993, grant payments may not be made to a municipality for remediation to mitigate any threat posed by that landfill to structures built, or permitted by the municipality to be built after January 1, 1994 unless the commissioner determines that the municipality could not have reasonably anticipated these threats. Any interest paid by a municipality prior to reimbursement on a municipal bond issued to raise funds for remediation and closure activities during this period is a cost eligible for reimbursement under this section. The commissioner shall use at least 1/3 of the available funds for municipalities eligible for reimbursement of closure and remediation costs under this subsection until all those municipalities have been reimbursed. A landfill that is privately owned and privately operated is not eligible for reimbursement under this subchapter.

A. The commissioner may act to abate public health, safety and environmental threats at sites identified as uncontrolled hazardous substance sites under section 1362, subsection 3 or at federally declared Superfund sites. Notwithstanding any other provision of this article, the commissioner shall determine the amount of funds expended at such sites.

B. The commissioner may enter into contracts with the Maine Municipal Bond Bank to manage bonds issued under this article, as long as the manage-

ment fee structure does not allow dilution of the bond principal.

Sec. 50. 38 MRSA §1310-G, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §239, is repealed.

Sec. 51. 38 MRSA §1310-I, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §241, is repealed.

Sec. 52. 38 MRSA §1310-X, as amended by PL 1991, c. 382, is further amended to read:

§1310-X. Future commercial waste disposal facilities

1. New facilities. Notwithstanding Title 1, section 302, the department may not approve an application for a new commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989, including any applications pending before the department on or after September 30, 1989.

2. Relicense or transfer of license. The department may relicense or approve a transfer of license for a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989, if the facility had been previously licensed by the department prior to October 6, 1989, and all other provisions of law have been satisfied.

3. Expansion of facilities. The department may license an expansion of a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989 if:

A. The department has previously licensed the facility prior to October 6, 1989;

B. The department determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on September 30, 1989; and

C. For a commercial solid waste disposal facility and prior to the adoption of the state plan and siting criteria under chapter 24, the department determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1 or, after the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

4. Exemption. A commercial biomedical waste disposal or treatment facility is exempt from the prohibitions of this section if at least 51% of the facility is owned by a hospital or hospitals as defined in Title 22, section 382, subsection 7 or an affiliated interest or interests as defined in Title 22, section 396-L, subsection 1, paragraph A.

Sec. 53. 38 MRSA §1318-C, sub-§1, ¶A, as enacted by PL 1991, c. 208, §3, is amended to read:

A. The hazardous matter and substances covered including the reportable quantity for each hazardous matter and mixture measured in pounds ~~or~~ if a solid and in pounds and gallons if a liquid;

Sec. 54. 38 MRSA §1319-E, sub-§1, as amended by PL 1991, c. 499, §23, is further amended to read:

1. Money disbursed. Money in the Maine Hazardous Waste Fund may be disbursed by the commissioner for the following purposes, but for no other:

A. Costs incurred in the removal or abatement of an unlicensed discharge or threatened discharge of hazardous waste ~~or~~, waste oil or biomedical waste. Whenever practical, the commissioner ~~shall~~ may offer the responsible party the opportunity to remove or abate the discharge or threatened discharge;

C. Costs incurred for the purchase of necessary hazardous waste, ~~and~~ waste oil and biomedical waste testing, response, inspection and monitoring equipment and supplies, response and compliance personnel and training of personnel in accordance with an allocation approved by the Legislature;

D. Amounts necessary to reimburse municipalities as required by section 1319-R, subsection 3;

E. Costs incurred in the inspection or supervision of hazardous waste, waste oil and biomedical waste activities and ~~hazardous waste~~ handlers; ~~and~~

F. A one-time allocation of $100,000 to the department and the Maine Land Use Regulation Commission to develop mining rules pursuant to section 349-A. This allocation must be repaid by any preapplication fees assessed pursuant to section 352, subsection 4-A; ; and

G. Costs incurred in the administration of chapter 26 or the provision of technical assistance under the toxics use, toxics release and hazardous waste reduction program established in chapter 26.

Sec. 55. 38 MRSA §1319-Q, sub-§2, as reallocated by PL 1987, c. 517, §13, is amended to read:

2. Report to the board. The commissioner shall ~~annually~~ biennially, prior to May 1st, prepare a report to the board covering the prior 2 calendar ~~year which shall~~ years that must include the following data:

A. The amount of hazardous waste by type that is generated, handled or transported within the State;

B. The amount of hazardous waste by type that is handled at commercial hazardous waste facilities within the State;

C. The number of hazardous waste facility permits by type currently active and the number granted and revoked in the year;

D. The amount of hazardous waste by type generated outside the State that was handled at permitted facilities within the State, and the amount of hazardous waste generated within the State that was handled at facilities located outside the State;

E. A list of hazardous waste facilities located within the State and those located outside the State which are available for use by generators in the State; and

F. A list of known firms that provide testing, consulting, brokerage, waste exchange, transport or other services to hazardous waste generators.

Sec. 56. 38 MRSA §1319-Q, sub-§3, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §262, is repealed.

Sec. 57. 38 MRSA §1319-Q, sub-§4, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §262, is further amended to read:

4. Legislative recommendations. The commissioner shall make ~~an annual~~ a biennial status report to the Legislature concerning hazardous waste management, including any recommendations of the board for legislative action to develop and establish needed hazardous waste facilities. These recommendations may include tax and other financial incentives or recommendations to directly, or through an instrumentality, acquire suitable sites for hazardous waste facilities, or to construct and operate hazardous waste facilities. Recommendations in the ~~annual~~ biennial status report must be based solely on the information and plans prepared pursuant to this section and information obtained at public hearings.

Sec. 58. 38 MRSA §1362, sub-§1-B, as enacted by PL 1991, c. 811, §1 and as affected by §7, is amended to read:

1-B. Lender. "Lender" means a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A, a financial institution that is acting through a service corporation pursuant to Title 9-B, section 445, subsection 5 or any federal or state banking or lending agency that provides loans, guarantees or other financial assistance. For the purpose of this subsection ~~and section 1367-A~~ the phrase "acting through" includes the assignment or transfer of an interest in real property acquired in satisfaction of a debt.

Sec. 59. 38 MRSA §1362, sub-§§1-D and 1-E are enacted to read:

1-D. Fiduciary. "Fiduciary" means a person who is:

A. Acting in any of the following capacities: a personal representative as defined in Title 18-A, section 1-201; a voluntary executor or administrator; a guardian; a conservator; a trustee under a will or intervivos instrument creating a trust of a donative type associated with probate practice where the trustee takes title to, otherwise controls or manages, property for the purpose of protecting or conserving that property; a trustee pursuant to an indenture agreement or similar financing agreement; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; and an assignee or trustee acting under an assignment made for the benefit of creditors; and

B. Holding legal title to, controlling or managing, directly or indirectly, any site as a fiduciary for purposes of administering an estate or trust of which the site is a part.

"Fiduciary" does not include the real or personal property held by an estate or trust administered by a fiduciary.

1-E. Site. "Site" means a licensed or unlicensed area or location where hazardous substances are handled or were handled or otherwise came to be located. "Site" includes all structures, appurtenances, improvements, equipment, machinery, containers, tanks and conveyances on the site.

Sec. 60. 38 MRSA §1364, sub-§2, as amended by PL 1985, c. 746, §33, is further amended to read:

2. Rules. The board may adopt rules related to the handling of hazardous substances; the investigation, abatement, mitigation and cleanup of spills of hazardous substances; and the investigation, designation and mitigation of uncontrolled hazardous substance sites. The board may provide by rule that any person who knows or has reason to believe that any hazardous substance is present in ground water or soils beneath a site which is owned or operated by that person provide notice of that condition to the department if the concentration of the hazardous substance in ground water exceeds state or federal recommended contaminant levels for drinking water or the concentration in soils exceeds contaminant levels established by the board.

Sec. 61. 38 MRSA §1365, sub-§6 is enacted to read:

6. Enforcement; penalties; punitive damages. Any responsible party who fails without sufficient cause to

undertake removal or remedial action promptly in accordance with an order issued pursuant to section 1304, subsection 12 and this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action.

The Attorney General is authorized to commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the commissioner pursuant to this subsection must be deposited in the Uncontrolled Sites Fund.

Sec. 62. 38 MRSA §2174, sub-§§1 and 3, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §292, are repealed.

Sec. 63. 38 MRSA §2304, sub-§1, ¶B, as repealed and replaced by PL 1991, c. 520, §13, is amended to read:

B. The following facilities are exempt from the planning and reporting requirements for toxics use:

(1) ~~Water~~ Drinking water supply treatment facilities; ~~and~~

(2) Municipal wastewater treatment facilities; ; and

(3) Wholesale distributors of chemicals.

Sec. 64. 38 MRSA §2304, sub-§2, ¶B, as repealed and replaced by PL 1991, c. 520, §13, is amended by amending subparagraph (1) to read:

(1) The following facilities are exempt from the planning and reduction requirements for toxics release:

(a) ~~Water~~ Drinking water supply treatment facilities;

(b) Municipal wastewater treatment facilities;

(c) Retail and wholesale motor fuel and heating oil distributors; and

(d) Agricultural activities.

Sec. 65. State property. The warehouse located on the grounds of the Southern Maine Technical College in South Portland that was constructed by the Department of Environmental Protection with funds from the Maine Coastal and Inland Surface Oil Clean-up Fund is the property of the Department of Environmental Protection. The warehouse is a beige, steel-walled structure measuring 80 feet by 80 feet and was completed in 1985 as an addition to a previously existing heating and air conditioning building.

Sec. 66. Allocation. The following funds are allocated from Other Special Revenues to carry out the purposes of this Act.

	1993-94	1994-95
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Oil and Hazardous Materials Control		
Positions	(3.0)	(3.0)
Personal Services	$122,583	$133,142
All Other	16,089	24,355
Provides for the allocation of funds for one Manager of Environmental Studies and Permits position, one Environmental Specialist III position, one Oil and Hazardous Materials Specialist III position and operational support costs for review and approval of voluntary remedial investigation and cleanup plans for polluted property.		
DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	$138,672	$157,497

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

Effective June 16, 1993.

CHAPTER 356

H.P. 1073 - L.D. 1439

An Act to Amend Certain Laws Administered by the Department of Environmental Protection Governing Fees, Reconsiderations and Outside Permit Reviews

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

Whereas, the Department of Environmental Protection fee schedule will be repealed on July 1, 1993, resulting in lower fees for most permitting and licensing activities; and

Whereas, the higher fee schedule is necessary to maintain compliance with the permit processing timetables authorized by Public Law 1991, chapter 804; and