

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTIETH LEGISLATURE**  
**FIRST REGULAR SESSION**  
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**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**2001**

## CHAPTER 356

## H.P. 1051 - L.D. 1408

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

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

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

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

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

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

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

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

**Whereas,** responsible parties at the Plymouth site have been asked to reimburse the United States Environmental Protection Agency by May 15, 2001 for clean-up expenses already incurred at that site; 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. 5 MRSA §1513, sub-§1-P,** as reallocated by RR 1999, c. 1, §2, is amended to read:

**1-P. Transfer from Maine Rainy Day Fund; Waste Oil Clean-up Fund.** Notwithstanding subsection 2 and section 1585, \$3,100,000 must be transferred by the State Controller from the available

balance in the Maine Rainy Day Fund to the ~~Wells~~ Waste Oil Clean-up Fund established in Title 10, section 1023-L no later than September 30, 1999.

**Sec. 2. 10 MRSA §963-A, sub-§42-F** is enacted to read:

**42-F. Past cost settlement.** "Past cost settlement" means the settlement between the potentially responsible parties, the United States and the State, embodied in the consent decree filed with the United States District Court for the District of Maine, Civil Docket 00-249-B.

**Sec. 3. 10 MRSA §963-A, sub-§49-G,** as enacted by PL 1999, c. 505, Pt. A, §4, is amended to read:

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

**Sec. 4. 10 MRSA §963-A, sub-§49-I** is enacted to read:

**49-I. Time-critical removal action.** "Time-critical removal action" means the removal activities undertaken pursuant to the Administrative Order by Consent for Time-Critical Removal Action, United States Environmental Protection Agency Docket No. CERCLA 1-97-1080.

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

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

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

**§1023-L. Waste Oil Clean-up Fund**

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

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

A. All money appropriated for inclusion in the fund or appropriated to the authority for use in providing financial assistance to responsible parties as defined in section 963-A, subsection 47-A, subject to any restrictions applicable to the appropriation;

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

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

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

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

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

**3. Eligibility to participate in loan program.**

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

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

~~B. If the applicant is not a unit of local government, the applicant demonstrates financial need for the assistance;~~

C. There is a reasonable likelihood that the applicant will be able to repay the loan; and

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

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

**3-A. Use of funds by authority.** The authority may use money in the fund to carry out any power of the authority under this section, section 1023-M, section 1026-R or section 1026-S, including, but not limited to, the pledge or transfer and deposit of money in the fund as security for and the application of money in the fund in payment of principal, interest and other amounts due on insured loans. Money in the fund not needed to meet the obligations of the authority as provided in this section or section 1023-M may be invested as permitted by law. Any costs incurred by the authority in administering this fund may be taken from interest from all sources of the fund.

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

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

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

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

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

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

C. After the payments authorized in paragraphs A and B have been made, additional payments must be made from the available balance from funds transferred from the Maine Rainy Day Fund to all persons who received funds under paragraphs A and B who have paid their settlement share of total response costs, and whose total liability at the site exceeds the amount the persons received under paragraph A or B. Distributions under this paragraph are proportionate to the amount each person paid as the person's share of total response costs at the site. Payments made pursuant to this subsection may not

exceed the person's settlement share of total response costs attributable to eligible persons as defined in this subsection multiplied by the total orphan share percentage at the waste oil disposal site. The authority may not issue deferred loans for eligible persons who have received payments pursuant to this subsection. This distribution must occur on June 30, 2000. Any remaining funds in the fund must be transferred to the Groundwater Oil Clean-up Fund.

For purposes of this subsection, "person" means any natural person domiciled in this State; a corporation or partnership in the State; the State; any agency, authority, department, commission, municipality, quasi municipal corporation, special purpose district or other instrumentality of the State; a political subdivision of the State, including but not limited to those defined in Title 14, chapter 741 and Title 30-A, chapter 225; any other entity identified as a responsible party at the waste oil disposal site whose waste oil is identified as delivered to the waste oil disposal site and picked up from an address or location within the State in the records compiled by the Department of Environmental Protection or the United States Environmental Protection Agency or their agents, provided that neither the Federal Government nor any of its agencies, authorities, departments, boards, commissions or instrumentalities are eligible to have any share of their obligation for response costs paid by the fund. A person is not eligible for assistance under this subsection unless the person is a participant in a settlement agreement under which an entity has assumed liability for total response costs at the Wells waste oil disposal site.

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

**Sec. 7. 10 MRSA §1023-M**, as enacted by PL 1999, c. 713, §3, is amended to read:

#### **§1023-M. Plymouth Waste Oil Loan Program**

**1. Use of fund established.** Money in the Waste Oil Clean-up Fund created under section 1023-L may be used by the authority to carry out the purposes of this section. As used in this section, the term "fund" refers to the Waste Oil Clean-up Fund.

## 2. Eligibility to participate in loan program.

The authority may use money in the fund to carry out any power of the authority under this section or under section 1026-S, including, but not limited to, the pledge or transfer and deposit of money in the fund as security for and the application of money in the fund in payment of principal, interest and other amounts due on insured loans. Money in the fund may be used for direct loans or deferred loans for all or part of the costs of the Plymouth waste oil site remedial study, past cost settlement and time-critical removal action costs when the authority determines that:

~~A. The applicant has joined a group of persons potentially responsible for remedial costs associated with the Portland Bangor Waste Oil Services Site in Plymouth designated by the United States Environmental Protection Agency as a National Priorities List site and has, as a member of that group, become obligated under an agreement with an entity conducting the remedial study to pay a portion of the cost of the remedial study;~~

A-1. The applicant has been identified by the United States Environmental Protection Agency as a potentially responsible party with respect to the waste oil disposal site and the applicant is alleged by the United States Environmental Protection Agency to have generated waste oil from an address or location within the State;

B. The applicant has signed the Administrative Order by Consent pursuant to United States Environmental Protection Agency Docket No. CERCLA 1-2000-0004;

B-1. The applicant has signed the West Site/Hows Corner RI/FS Group Agreement;

B-2. The applicant has entered into a consent decree with the United States and the State regarding past cost settlement at the Plymouth waste oil disposal site and the applicant is a participant in that consent decree or the applicant has entered into an inability-to-pay settlement with the United States Environmental Protection Agency;

C. The applicant is not a state or federal agency; and

D. There is a reasonable likelihood that the applicant will be able to repay the loan.

Money in the fund may not be used for attorney's fees associated with costs of the Plymouth waste oil site remedial study, past cost settlement or time-critical removal action.

A past cost settlement share may not be paid from the fund to a person if the United States Environmental

Protection Agency has waived payment of the share based on the person's financial capacity. The authority may condition payments related to the Plymouth waste oil disposal site on receipt of an ability-to-pay determination from the agency.

The authority, pursuant to Title 5, chapter 375, subchapter II, shall adopt rules for determining eligibility, feasibility, terms, conditions, security and fees for the loans, including deferred loans. The authority shall adopt rules that provide for a simplified loan application process for loan requests of under \$2000. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The authority shall charge an interest rate of 0% on all loans. ~~The maximum the authority may loan, or issue as a deferred loan, to any one borrower, including related entities as determined by the authority, is \$100,000. Loan repayment must be deferred until a final remedy at the waste oil disposal site is determined in the Record of Decision for the site and the cost of the final remedy is determined. If the total amount of the loan requests exceeds funds available under section 1023-L, the authority shall prorate the amount of the loan available to each applicant by the ratio of the funds available to the total loans requested.~~

2-A. Deadline for applications. Applications submitted pursuant to subsection 2 must be received by the authority within 90 days after the effective date of this subsection, except that the authority may extend that deadline by an additional period of time not to exceed 60 days for good cause shown.

3. Determinations regarding eligibility. The authority shall establish a registry of all persons who qualify under subsection 2 to have a portion of their share of costs of the Plymouth waste oil site remedial study, past cost settlement and time-critical removal action costs paid pursuant to this section. The authority shall adopt rules relating to eligibility, including the calculation of an eligible person's proportionate share, procedures to ensure that money paid pursuant to this section is used to settle an eligible person's liabilities related to the waste oil disposal site and repayment of any amounts in excess of that person's share. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 8. 38 MRSA §568-B, sub-§2, ¶E,** as enacted by PL 1999, c. 505, Pt. A, §11, is amended to read:

E. To consult with the Finance Authority of Maine at such times as are necessary, but no less than annually, to review income and disbursements from the ~~Wells~~ Waste Oil Clean-up Fund under Title 10, section 1023-L. The board, at

such times and in such amounts as it determines necessary, and in consultation with the Finance Authority of Maine, shall direct the transfer of funds from the Underground Oil Storage Replacement Fund to the Groundwater Oil Clean-up Fund.

**Sec. 9. 38 MRSA §570-H, sub-§2,** as amended by PL 1999, c. 505, Pt. A, §14, is further amended to read:

**2. Adequacy of fund.** On or before February 15th of each year, the Fund Insurance Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature with jurisdiction over natural resources matters on the department's and the board's experience administering the fund, clean-up activities and 3rd-party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report must also include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the ~~Wells~~ Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this section, the board may order an independent audit of disbursements from the Groundwater Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the ~~Wells~~ Waste Oil Clean-up Fund.

**Sec. 10. PL 1999, c. 505, Pt. A, §16** is amended to read:

**Sec. A-16. Transfer to the Waste Oil Clean-up Fund.** After the State Controller closes the financial accounts of the State for the fiscal year ending June 30, 1999, an amount not to exceed \$3,100,000 must be transferred by the State Controller to the ~~Wells~~ Waste Oil Clean-up Fund established in the Maine Revised Statutes, Title 10, section 1023-L from the available balance in the General Fund as the next priority after the State Contingent Account established in Title 5, section 1507 is replenished, to be made available by financial order upon the recommendation of the State Budget Officer and approval of the Governor.

**Sec. 11. Transition.** Persons that received loans or have loans pending under the Maine Revised Statutes, Title 10, section 1023-M prior to the effective date of this Act are eligible to apply for loans pursuant to this Act for the total amount of their past cost settlement, costs of the Plymouth waste oil site remedial study and time-critical removal action costs, provided that the amount loaned pursuant to this Act is used to pay the remaining balance on the loan received under the previously authorized Plymouth loan program.

**Sec. 12. Authority to report out legislation.** The Joint Standing Committee on Natural Resources may report out legislation during the Second Regular Session of the 120th Legislature relating to clean-up costs and remedial activities at the Plymouth waste oil disposal site.

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

Effective June 4, 2001.

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## CHAPTER 357

H.P. 1168 - L.D. 1568

### An Act to Amend the Laws Pertaining to Protection and Advocacy for Persons with Developmental or Learning Disabilities or Mental Illness

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

**Sec. 1. 5 MRSA c. 511** is amended by repealing the chapter headnote and enacting the following in its place:

#### CHAPTER 511

#### PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES

**Sec. 2. 5 MRSA §19501,** as enacted by PL 1989, c. 837, §1, is amended to read:

##### **§19501. Policy**

It is the policy of the State to ensure that the legal and human rights of all ~~developmentally disabled persons and mentally ill individuals~~ persons with disabilities residing in the State are protected through the establishment of a protection and advocacy system pursuant to 29 United States Code, Section 794(e), 42 United States Code, Section 6042 et seq., as recodified, and Section 10801 et seq.

**Sec. 3. 5 MRSA §19502,** as enacted by PL 1989, c. 837, §1, is amended to read:

##### **§19502. Designation**

The Governor shall designate an agency, independent of any state or private agency that provides treatment, services or habilitation to persons with ~~developmental disabilities or mental illness,~~ to serve as the protection and advocacy agency for persons with disabilities. ~~The agency shall also protect and~~