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Final Report of the Select Commission to Study State Participation in Funding Cleanup and Remediation of Uncontrolled Hazardous Substance Sites

Maine State Legislature

Office of Policy and Legal Analysis

David Webb

Maine State Legislature

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**STATE OF MAINE
119TH LEGISLATURE
FIRST REGULAR SESSION**

**Final Report of the
Select Commission to Study
State Participation in Funding
Cleanup and Remediation of
Uncontrolled Hazardous Substance Sites**

December 1999

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Sen. James D. Libby**

**Rep. Linda Rogers McKee, Co-Chair
Rep. Robert A. Daigle
Rep. Robert W. Duplessie**

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Executive Summary

The Select Commission to Study State Participation in Funding Cleanup and Remediation of Uncontrolled Hazardous Substance Sites, composed of 5 legislators, convened on September 30, 1999 and met 6 times between September 1999 and December 1999. The study was formed in connection with Public Law 1999, c. 505, "An Act to Assist in the Cleanup of the Town of Wells Maine Waste Oil Site," which provided a state funded grant and loan program to provide financial assistance to eligible responsible parties at the Portland-Bangor Waste Oil Services Company (PBWO) waste oil site in Wells. This legislation created the commission to study the state's participation in funding the cleanup of uncontrolled hazardous substance sites, and whether the state should provide financial assistance to responsible parties at uncontrolled hazardous substance sites. The commission is required to report its findings along with any recommended legislation to the Joint Standing Committee on Natural Resources.

While the commission is divided as to whether the state should provide financial assistance (in the form of reimbursement of clean up costs and loans to responsible parties) at any hazardous waste site, the commission agrees that if the legislature chooses to provide additional assistance, the assistance should be limited to the 3 remaining PBWO sites at Plymouth, Casco and Ellsworth. With regard to this assistance, the Commission recommends the following:

- Limited assistance: Any initial assistance should focus on the Plymouth site (see appendix C);
- Settlement prerequisites: Any assistance should only take effect if the government entities and responsible parties reach a settlement agreement with respect to the clean up and remediation of the site. In addition, only persons who participate in the settlement may take advantage of any state sponsored assistance.
- Residency prerequisites: Financial assistance should only be available to responsible parties who are Maine residents, municipalities, schools or Maine-based businesses;

Funding features for assistance at the Plymouth site. The commission recommends that funds be distributed as follows:

- Direct payment program: Allocate a total of \$3,100,000 to assist eligible responsible parties at the Plymouth site. From this amount, \$5,000 should be distributed to each eligible Maine responsible party, with remaining funds distributed to all eligible Maine responsible parties on a pro-rata basis. No responsible party's share, however, may exceed a total of \$50,000.

The commission makes no specific recommendation with respect to the funding source for this assistance; some of the members recommend that the funds be appropriated from the general fund, and some members recommend that these payments be funded by a \$.10/qt. tax on unused motor oil sold in the state. The proposed legislation (attached as exhibit E) includes alternative language for both options for the legislature to consider.

Loan program. The commission recommends that loans and deferred loans be made available to all eligible Maine responsible parties at the Plymouth PBWO site provided that the applicant demonstrates financial need. Money for the loan program should derive from the loan money already allocated to the Wells waste oil clean up fund.

With respect to the Wells Waste Oil legislation (PL 1999, c. 505), the commission recommends that legislation be enacted on an emergency basis to clarify the legislature's intent that the state financial assistance only be available to responsible parties who participate in the settlement agreement reached with the state and the entity that has assumed liability for the clean up of the site. A copy of proposed legislation, which also proposes to make technical corrections to assist in the implementation of the Wells Waste Oil Clean Up Fund, is attached hereto as exhibit F.

I. INTRODUCTION

This study was established pursuant to Public Law 1999, c. 505, "An Act to Assist in the Cleanup of the Town of Wells Maine Waste Oil Site," which provided a state funded grant and loan program to eligible responsible parties at the Portland-Bangor Waste Oil Services Company (PBWO) waste oil site in Wells. The commission was charged with studying the state's participation in funding the cleanup of uncontrolled hazardous substance sites, and whether the state should provide financial assistance to responsible parties at uncontrolled hazardous substance sites.

The commission convened on September 30, 1999 and met 6 times between September 1999 and December 1999. At the initial meetings, the Commission received an overview of federal superfund law, and the state uncontrolled sites law from the Maine Attorney General's office and the Maine Department of Environmental Protection. Subsequent meetings provided an overview of the status of the uncontrolled hazardous substance sites program, including detailed case studies on several uncontrolled sites. The final meeting of the commission was held on December 16, 1999. The commission is required to report its findings along with any recommended legislation to the Joint Standing Committee on Natural Resources.

II. Overview of the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, on December 11, 1980. Among other things, this law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Over five years, \$1.6 billion was collected and the tax went to a trust fund for cleaning up abandoned or uncontrolled hazardous waste sites. CERCLA:

- established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- provided for liability of persons responsible for releases of hazardous waste at these sites; and
- established a trust fund to provide for cleanup when no responsible party could be identified.

CERCLA authorizes two kinds of response actions:

- Short-term removals where actions may be taken to address releases or threatened releases requiring prompt response.
- Long-term remedial response actions that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life threatening. These actions can be conducted only at sites listed on EPA's National Priorities List (NPL).

CERCLA also enabled the revision of the National Contingency Plan (NCP). The NCP provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants.

The Superfund Amendments and Reauthorization Act (SARA) amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on October 17, 1986. SARA reflected EPA's experience in administering the complex Superfund program during its first six years and made several important changes and additions to the program. SARA:

- stressed the importance of permanent remedies and innovative treatment technologies in cleaning up hazardous waste sites;
- required Superfund actions to consider the standards and requirements of other State and Federal environmental laws and regulations;
- provided new enforcement authorities and settlement tools;
- increased State involvement in every phase of the Superfund program;
- increased the focus on human health problems posed by hazardous waste sites;
- encouraged greater citizen participation in making decisions on how sites should be cleaned up; and
- increased the size of the trust fund to \$8.5 billion.

SARA also required EPA to revise the Hazard Ranking System (HRS) to ensure that it accurately assessed the relative degree of risk to human health and the environment posed by uncontrolled hazardous waste sites that may be placed on the National Priorities List (NPL).

III. The Maine Uncontrolled Sites Law

The Maine uncontrolled sites law (38 MRSA § 1361 et seq) became effective on July 1, 1983, and parallels the Federal Superfund law in many ways. Like Superfund, the uncontrolled sites law is designed to create a mechanism for the clean up, mitigation or abatement of uncontrolled hazardous substance sites (“uncontrolled sites”) designated as such by the Commissioner of the Maine Department of Environmental Protection. The uncontrolled sites law gives the state the option to either order responsible parties to clean up the uncontrolled site themselves or to use state funds and then seek reimbursement from responsible parties in a cost recovery action.

Liability under the uncontrolled sites law is assigned to "responsible parties" which means any one or more of the following persons:

- A. The owner or operator of the uncontrolled site;
- B. Any person who owned or operated the uncontrolled site from the time any hazardous substance arrived there;
- C. Any person who arranged for the transport or handling of a hazardous substance, provided that the substance arrived at the uncontrolled site; and
- D. A person who accepted a hazardous substance for transport, if substance arrived at the uncontrolled site. After April 1, 1992, a person who accepts a hazardous substance for transport and delivers that substance to a licensed hazardous waste storage, treatment or disposal facility according to the manifest signed by the generator is not a responsible party.

The program is involved with 13 federal Superfund Sites, 472 state uncontrolled hazardous substance sites, and over 100 Formally Used Defense Sites (FUDS). Funding estimates for these sites are identified in table A in the appendix.

Among other substances, the Legislature has designated waste oil as a hazardous substance, subject to the provisions of the uncontrolled sites law. (38 M.R.S.A. 1362(1)(G))

IV. Findings and Recommendations

A. Any additional state assistance should be limited to waste oil sites.

The commission believes that the Federal Superfund and the State uncontrolled sites programs have been effective in furthering the state's goals to provide a prompt, efficient cleanup of the state's hazardous substance sites. In particular, the commission finds that the strict, joint and several liability standard imposed by these laws encourages settlement, reduces transaction costs and results in a more cost effective and timely clean up of uncontrolled sites.

The commission nonetheless recognizes that several waste oil disposal sites, designated by the Maine DEP as uncontrolled sites, present unique cost recovery issues due to the large numbers of responsible parties and insolvent parties (orphans) at these sites. These cost recovery issues can impact the prompt cleanup and remediation of these sites.

During its first session, 119th Maine legislature enacted "An Act to Assist in the Cleanup of the Town of Wells Maine Waste Oil Site," which provided financial assistance to eligible responsible parties at a waste oil disposal site in Wells, owned and operated by the Portland-Bangor Waste Oil Services Company. (In addition to the Wells site, The Portland-Bangor Waste Oil Services Company owned and operated sites in Plymouth, Ellsworth and Casco, which have also been designated as uncontrolled sites.)

The financial assistance provided in the Wells legislation includes reimbursements to eligible responsible parties at the Wells site for costs actually incurred towards the clean up of this site. In addition, the legislation provides for low interest loans and deferred loans to assist eligible responsible parties at the Wells site.

The commission finds that the sites in Plymouth, Ellsworth and Casco present similar cost recovery, clean up and remediation challenges to those faced at the Wells site. The recommendations in this report reflect the commission's attempt to provide similar assistance to eligible responsible parties at these remaining sites. The commission's estimated state "fund" share with regard to the Ellsworth and Casco sites as noted in the have been adjusted to reflect differences in the respective clean-up costs at these sites.

While the commission is divided as to whether the state should provide financial assistance to responsible parties at these sites, the commission agrees that if the legislature chooses to provide additional assistance, it should be limited to eligible responsible parties at the 3 remaining PBWO waste oil sites at Plymouth, Casco and Ellsworth. While the commission recommends limiting initial state financial assistance to eligible responsible parties at the Plymouth site, the commission outlines the respective estimated clean-up costs and state "fund" share for the remaining PBWO sites, in amounts which would provide assistance comparable to that provided to responsible parties at the Wells site:

<u>Site State</u>	<u>Total Estimated Clean up Cost</u>		<u>Estimated</u>
	<u>low</u>	<u>high</u>	<u>“fund” share</u>
Plymouth	\$12,000,000	\$14,500,000	\$3,100,000
Casco	\$1,500,000	\$5,350,000	\$750,000
Ellsworth	\$1,500,000	\$5,042,500	\$750,000
Total	\$15,000,000	\$24,892,500	\$4,600,000

B. Initial State financial assistance should be limited to eligible responsible parties at the PBWO waste oil site in Plymouth.

First, the commission recommends that any financial assistance to eligible responsible parties be made in the form of loans or partial reimbursement of clean up costs paid by responsible parties at the site, in accordance with sections F and G below.

In addition, as state financial assistance of this type represents a departure from the strict application of the state’s “polluter pays” policy, the commission recommends that any state financial assistance to responsible parties be implemented on an incremental basis. The commission finds that providing assistance on an incremental basis will enable the state to measure the costs and effectiveness of the Plymouth program before additional funds are allocated to responsible parties at the Casco or Ellsworth sites.

The commission also finds that the timing of any state assistance is also important. Namely, for any state assistance to be effective, a certain amount of data must be known about the site and the responsible parties at the site, including clean up costs and the identities and respective shares of the responsible parties.

The commission finds that of all the remaining PBWO waste oil sites, the Plymouth site is the closest to reaching the point where sufficient data is known to maximize the effectiveness of any state financial assistance. (see appendix C: site description of Portland Bangor Waste Oil site in Plymouth, ME) The commission therefore recommends that if the legislature chooses to offer assistance, that it initially provide this financial assistance to eligible responsible parties at the Plymouth site, with appropriate adjustments based on updated program experience received from Wells program.

C. Settlement prerequisites

In furtherance of the state's goal of encouraging settlement and prompt clean-up, the commission recommends that assistance be offered only to settling responsible parties under a settlement agreement between the applicable government entities and responsible parties. In the case of the Plymouth site, the applicable government entities include both the Maine Department of Environmental Protection and the United States Environmental

Protection Agency. In addition, the commission recommends that assistance be limited to only those responsible parties who settle in accordance with the agreement or agreements reached with the government entities.

D. Residency prerequisites

Furthermore, the commission recommends that assistance be offered to settling responsible parties at the PBWO sites who are Maine residents; Maine municipalities or schools; or domestic corporations or partnerships existing under the laws of the State of Maine.

E. Administration and Distribution of funds

The commission's recommendations with regard to the PBWO site at Plymouth are intended to provide assistance to Maine responsible parties similar to that now available to responsible parties at the Wells site. The commission has made adjustments it feels are appropriate to reflect differences between Wells and Plymouth in the total number of responsible parties and insolvent parties (orphans).

The commission finds that the Finance Authority of Maine has expertise with regard to the administration the Wells Waste Oil Fund and therefore recommends that the Finance Authority of Maine administer a Plymouth Waste Oil fund, including both the direct payment and the loan programs discussed below.

F. Direct payment program

The commission recommends that a total of \$3,100,000 be allocated to a Plymouth waste oil fund to assist eligible responsible parties. The commission recommends that the funds be distributed as follows:

- Approximately \$1,000,000 should be distributed in payments of up to \$5,000 to each eligible Maine responsible party, as partial reimbursements of cleanup costs. (If the responsible party's total share of the clean up costs was in an amount less than \$5,000, the distribution from the state should be in an amount equal to the amount that person paid in relation to the site).
- Remaining funds under the direct payment program should be distributed to all eligible Maine responsible parties on a pro-rata basis, based on a party's actual contribution of waste oil to the Plymouth site. No responsible party's share, however, should exceed a total of \$50,000

G. Loan program

The commission finds that \$4,000,000 was transferred from the Underground Oil Storage Replacement Fund to the Wells Waste Oil Clean-up Fund for purposes of providing loans and deferred loans to eligible responsible parties at the Wells site. The commission finds that these funds may not be totally utilized at the Wells site, and recommends that these funds be made available to eligible responsible parties at the Plymouth waste oil site. The commission recommends that the loan funds be made available to eligible responsible parties at the Plymouth site on the same basis as the funds are available to responsible parties at the Wells site; specifically, both loans and deferred loans should be made available to all eligible Maine responsible parties provided that the applicant demonstrates financial need.

The commission further recommends that a deadline be established for those wishing to apply for loans. The commission recommends that the proceeds from all of the loans revert to the Groundwater Oil Clean Up Fund. The commission further recommends and any unused loan funds remaining after the loan application deadline also revert to the Groundwater Oil Clean Up Fund

H. Funding sources

The commission has not made a specific recommendation with regard to the source of funds for the direct payment program, but has identified two options for the legislature to consider: Option A provides for funds to be appropriated from the general fund; Option B provides for funding from a \$.10/qt. tax on virgin (unused) motor oil sold in the state.

If the legislature wishes to consider the tax on virgin motor oil, the commission notes that approximately 3 million gallons (12 million quarts) of virgin motor oil is sold in the state on an annual basis, which could lead to the generation of annual tax revenues of \$1,200,000 if a \$.10/qt. tax was imposed. If the legislature chooses the tax option, it should repeal the tax once the \$3,100,000 has been raised. The proposed legislation (attached as exhibit E) includes alternative language for both options for the legislature to consider.

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Appendix A

Legislation Creating Study

"An Act to Assist in the Cleanup of the Town of Wells Maine Waste Oil Site," Chapter 505, PL 1999, Part B

Sec. B-1. Select commission established. The Select Commission to Study State Participation in Funding Cleanup and Remediation of Uncontrolled Hazardous Substance Sites, referred to in this Part as the "select commission," is established.

Sec. B-2. Membership. The select commission consists of 5 members appointed as follows.

1. The President of the Senate shall appoint 2 members from the Senate who serve on the Joint Standing Committee on Natural Resources.
2. The Speaker of the House of Representatives shall appoint 3 members of the House of Representatives who serve on the Joint Standing Committee on Natural Resources.

Sec. B-3. Chairs. The first Senate member named is the Senate Chair and the first House member named is the House Chair.

Sec. B-4. Appointment; convening commission. All appointments must be made no later than 30 days following the effective date of this Part. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, chairs of the select commission shall call and convene the first meeting of the select commission no later than 45 days following the effective date of this Part.

Sec. B-5. Duties. The select commission shall study state participation in funding cleanup and remediation of uncontrolled hazardous substance sites. The select commission shall also:

1. Evaluate the funding options available to help with the cleanup or remediation of uncontrolled hazardous substance sites, including an evaluation of the percentage of the total response costs payable by parties who are bankrupt, dissolved, insolvent or no longer in business or whose current identity or location can not be determined. In conducting this analysis, the select commission shall collaborate with the Department of Environmental Protection and the United States Environmental Protection Agency;
2. Evaluate the components and substances at uncontrolled hazardous substance sites; and

3. Evaluate uncontrolled hazardous substance sites where, at the time that the hazardous waste was delivered to the site, the delivery of the waste was not illegal under federal or state law.

Sec. B-6. Staff assistance. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the select commission.

Sec. B-7. Compensation. Legislative members of the select commission are entitled to receive the legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for travel and other necessary expenses for attendance at meetings.

Sec. B-8. Report. The select commission shall submit a report on its study along with any recommended legislation to the Joint Standing Committee on Natural Resources by December 31, 1999. Following the receipt of this report, the Joint Standing Committee on Natural Resources may introduce legislation to the Second Regular Session of the 119th Legislature. If the select commission requires an extension of time to make its report, it may apply to the Legislative Council, which may grant the extension.

Sec. B-9. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1999-00

LEGISLATURE

Select Commission to Study State Participation
in Funding Cleanup and Remediation of
Uncontrolled Hazardous Substance Sites

Personal Services	\$1,375
All Other	1,750

Provides funds for the per diem and expenses of legislative members for 5 meetings of the Select Commission to Study State Participation in Funding Cleanup and Remediation of Uncontrolled Hazardous Substance Sites and to print the required report.

LEGISLATURE

TOTAL	\$3,125
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Appendix B

Select Commission to Study State Participation in Funding Cleanup and Remediation of Uncontrolled Hazardous Substance Sites Chapter 505, PL 1999, Part B

Commission Membership

Appointments by the President

Sen. Sharon Anglin Treat
P. O. Box 12
Gardiner, ME 04345

Sen. James Libby
RFD 3, Box 497
Gorham, ME 04038

Appointments by the Speaker

Rep. Linda Rogers McKee
RFD 1, Box 280
Wayne, ME 04284

Rep. Robert W. Duplessie
41 Carol Street
Westbrook, ME 04092

Rep. Robert A. Daigle
197 Mountain Road
Arundel, ME 04046

Staff: David C. Webb, Office of Policy and Legal Analysis
287-1670

Appendix C

Site Description: Portland Bangor Waste Oil site in Plymouth

The West Site/Hows Corners site covers 2 acres of a 17-acre wooded lot on Sawyer Road in Plymouth, Maine (near Hows Corners). The site consists of a partially grassy clearing, approximately 150 by 200 feet, with occasional bedrock outcroppings that run north-south. The site is situated on a slight rise in an area that is otherwise relatively flat. The site is currently inactive and there are no buildings or other structures. The former owner operated the site as a waste oil storage and transfer facility from 1965 to 1980 in affiliation with the Portland/Bangor Waste Oil Company (PBWO). Waste oil, delivered by PBWO tank trucks, was stored on site in approximately eight 1,000 to 20,000 gallon storage tanks. PBWO collected, transported, and deposited unknown quantities of waste oil from military bases, auto dealerships, municipalities, local garages, bulk transportation companies, industries, and utility companies. (a listing of the responsible parties at the Plymouth site is available from the Maine Department of Environmental Protection, Bureau of Waste and Remediation.)

Oil was stored in tanks; the company then sold the lighter oil for fuel and the heavier oils for dust control on dirt roads. PBWO company records indicate that the waste stored on the site was predominantly composed of used motor oils and industrial lubricating oil; however, because of the varied types of facilities contributing waste, the exact elements of the oils are unknown. In 1980, PBWO ceased operations at the site and PBWO cut the tanks on site and sold them to a scrap metal dealer. No waste oil activities are known to have take place after the tanks were removed. When EPA performed a routine site inspection in 1988, the only waste source was contaminated soil. An alternate water supply system has been installed serving 36 residences as residential well water supplies have been contaminated.

Site Responsibility: At this time, the site is being cleaned up through Federal and State actions.

Threats and Contaminants

The soil is contaminated with polychlorinated biphenyls (PCBs) and chlorinated organic compounds. The source of the PCBs is unknown; however, it is assumed that they were a by-product of the waste oil deposited on the site. Groundwater in private supply wells near the site and in monitoring wells on site is contaminated with volatile organic compounds (VOCs) including tetrachloroethene, trichloroethene, and dichloroethene. Touching or ingesting contaminated groundwater could pose a health threat to local residents.

Cleanup Approach

This site is being addressed in two stages: initial actions and cleanup of the entire site.

Response Action Status

Initial Actions: Aboveground storage tanks were removed in 1980 after PBWO ceased operations at the site. A chain link fence which was partially installed by the Maine Department of Environmental Protection in 1988 and completed by EPA in 1990 surrounds the site. From 1990 to 1991, EPA removed approximately 850 tons of contaminated soil from the center of the site and disposed of it at a federally-approved toxic waste facility. An alternate water line was installed in 1995 for residents with or determined to be at risk of having contaminated groundwater.

Entire Site: The EPA is planning an investigation of the nature and extent of contamination at the site. Once this investigation is complete, a final remedy to clean up the site will be chosen.

Environmental Progress

Removing aboveground storage tanks and contaminated soil and erecting a chain link fence have reduced the potential for further contamination and potential exposure at the West Site/Hows Corners site while further investigations are being planned.

Appendix D

RANGE OF COSTS FOR REMEDIATION RELATED ACTIVITIES AT STATE UNCONTROLLED SITE PROGRAM SITES

2000-2004

ACTIVITY	2000		2001		2002		2003		2004	
	Lower	Upper	Lower	Upper	Lower	Upper	Lower	Upper	Lower	Upper
Investigation	\$614,000	\$713,000	\$610,000	\$1,110,000	\$0	\$450,000	\$0	\$500,000	\$0	\$0
Remedial Actions	\$2,151,104	\$2,261,104	\$1,900,000	\$4,700,000	\$900,000	\$11,700,000	\$0	\$11,500,000	\$0	\$10,000,000
O&M/Monitoring	\$165,450	\$165,450	\$130,714	\$150,714	\$133,811	\$173,151	\$167,825	\$208,321	\$172,860	\$214,547
Contingency (investigation)	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000
(remedial action)	\$450,000	\$450,000	\$450,000	\$450,000	\$450,000	\$450,000	\$450,000	\$450,000	\$450,000	\$450,000
Totals	\$3,530,554	\$3,739,554	\$3,240,714	\$6,560,714	\$1,633,811	\$12,923,151	\$767,825	\$12,808,321	\$772,860	\$10,814,547

Totals for Activities 2000 through 2004

Investigations	\$1,224,000	\$2,773,000
Remedial Actions	\$4,951,104	\$40,161,104
O&M/Mon.	\$770,660	\$912,183
Contingency/inv	\$750,000	\$750,000
Contingency/RA	\$2,250,000	\$2,250,000
Totals	\$9,945,764	\$46,846,287

Excludes PBWO, Wells and PBWO, Plymouth (except for waterline subsidy)

KEY VARIABLES

State share of clean-up cost at Eastland Mill, Corinna (\pm \$1,800,000)
State role and potential clean-up costs at mine sites (\pm \$20,000,000)
PBWO sites, Casco and Ellsworth (\pm \$11,000,000)
Green Street Site, Houlton (\pm \$1,500,000)

Appendix E

Proposed Legislation:

An Act to Assist in the Clean-up of the Town of Plymouth Maine Waste Oil Site

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

Sec. A-1. 5 MRSA §1513, sub-§1-M is enacted to read:

1-M. Transfer from Maine Rainy Day Fund; Plymouth 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, 2000. **(Commission Amendment A)**

Sec. A-2. 10 MRSA §963-A, sub-§49-G 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 the Portland-Bangor Waste Oil Services Sites in Wells or Plymouth. "Total response costs" includes any payments that either have been made or will be made to the Department of Environmental Protection, the United States Environmental Protection Agency 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 costs incurred by the Department of Environmental Protection, the United States Environmental Protection Agency or 3rd parties in connection with the investigatory, removal or remedial activities regarding the Portland-Bangor Waste Oil Services Sites in Wells or Plymouth.

Sec. A-3. 10 MRSA §963-A, sub-§§51-C is amended to read:

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

Sec. A-4. 10 MRSA §1023-M is enacted to read:

§1023-M. Plymouth Waste Oil Clean-up Fund

1. Fund established. The Plymouth 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 Maine Rainy Day Fund pursuant to Title 5, section 1513, subsection 1-L; and **(Commission Amendment A)**

D. The tax on motor oil sold in the State at wholesale as provided in subsection 9. **(Commission Amendment B)**

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

Without limiting the generality of any other power or authority given to or conferred upon the authority in anticipation of the appropriation or transfer of any money for inclusion in the fund, the authority may borrow funds for application to the fund. All funds borrowed pursuant to this authorization, including interest on the borrowed funds, must be repaid from such fees or by other appropriation.

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 or under section 1026-R, 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 by the Maine Department of Environmental Protection or the United States Environmental Protection Agency 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 in a timely manner; and

D. An agreement has been reached with an entity that has assumed liability for total response costs at the Plymouth waste oil disposal site.

All loans and deferred loans made under this subsection must be from available loan funds in the Wells Waste Oil Clean-up Fund. 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 applications of less than \$5000. 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 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, 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 or the United States Environmental Protection Agency notifies the authority that the Plymouth waste oil disposal site has been remediated and the total response costs have been 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 eligible person \$5,000 upon presentation by the eligible 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 \$5,000, 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-Commission amendment A); (received from the State Tax Assessor from the tax on motor oil sold in this state pursuant to subsection 9-Commission amendment B)

B. Any eligible person who presents an invoice for that person's share of total response costs at the site, but who has not yet paid the invoice, shall receive a negotiable instrument from the authority made payable jointly to that person and the Department of Environmental Protection or the United States Environmental Protection Agency or any entity identified by the Department of Environmental Protection or the United States Environmental Protection Agency as assuming responsibility for the clean-up of the site. The negotiable instrument must be in the amount of \$5,000, unless the authority determines that the payment to be made by the person at the site will be in an amount less than \$5,000, 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.

C. After the payments authorized in paragraphs A and B have been made, additional payments must be made from the available balance 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 party's actual contribution of waste oil to the Plymouth site, and shall be divided among all eligible responsible parties on a pro-rata basis. Payments made pursuant to this subsection to any one responsible party may not exceed \$50,000.

For purposes of this subsection, "eligible person" means a responsible party at the Plymouth waste oil site whose waste oil is identified as delivered to the Plymouth waste oil disposal site and picked up from an address or location within the State and who enters into the settlement relating to the cleanup at the Plymouth waste oil disposal site and who is:

D. a natural person domiciled in this State;

E. a domestic corporation or partnership existing under the laws of the State of Maine.

F. the State; any agency, authority, department, commission, municipality, quasi-municipal corporation, special-purpose district or other instrumentality of the State;

G. a political subdivision of the State, including but not limited to those defined in Title 14, chapter 741 and Title 30-A, chapter 225; or

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. No payments shall be made hereunder unless an agreement has been reached between responsible parties, the Maine Department of Environmental Protection and the United States Environmental Protection Agency with regard to the clean up and remediation at the Plymouth waste oil 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.

9. Tax on motor oil. A tax is assessed on motor oil sold in the State at a rate of 10 cents per quart. The tax must be paid monthly by the person who first sells the motor oil in the state, either at the wholesale or the retail level. The tax shall be paid to the State Tax Assessor. The State Tax Assessor shall deposit monthly all amounts received pursuant to this subsection into the Plymouth Waste Oil Clean-up Fund. (Commission Amendment B)

Sec. A-8. 10 MRSA §1026-Q 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 and the Plymouth Waste Oil Fund under Title 10, section 1023-L, and Title 10, section 1023-M. 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. A-17. Report. The Department of Environmental Protection shall evaluate the status of the Plymouth Waste Oil Clean-up Fund and remediation of the Portland-Bangor Waste Oil Services Site in Plymouth, designated by the United States Environmental Protection Agency as a Superfund site and by the Department of Environmental Protection as an uncontrolled hazardous substance site. The department shall evaluate and report on the amounts disbursed under the Plymouth Waste Oil Clean-up Fund, and whether the Plymouth Waste Oil Clean-up Fund should be extended to other

uncontrolled hazardous substance sites or federal superfund sites in the State. The department shall evaluate the components and substances at uncontrolled hazardous substance sites, including sites where waste oil constitutes more than 50% by volume of the substances delivered to the site. The department shall evaluate the need and the amount of any adjustment to the maximum balance in the Groundwater Oil Clean-up Fund. The department shall submit a report to the Joint Standing Committee on Natural Resources by December 31, 2000. Following the receipt of this report, the Joint Standing Committee on Natural Resources may introduce legislation to the First Regular Session of the 120th Legislature.

SUMMARY

This bill creates the Plymouth Waste Oil Clean-up Fund under the jurisdiction and control of the Finance Authority of Maine. The bill proposes to allocate a total of \$3,100,000 to assist eligible responsible parties at the Plymouth waste oil site. From this amount, \$5,000 shall be distributed to each eligible Maine responsible party, with the remaining funds distributed to all eligible Maine responsible parties on a pro-rata basis. The bill provides, however, that no responsible party's share, however, may exceed a total of \$50,000. The bill also establishes a loan and deferred loan program and loan guarantees of up to \$50,000 to be made available to all eligible Maine responsible parties provided that the applicant demonstrates financial need. In addition, the Finance Authority of Maine may issue deferred loans, which may be converted to a grant. Money for the loan program shall derive from the loan money allocated to the Wells waste oil clean up fund. Any remaining balance of the fund reverts to the Groundwater fund.

Commission amendment A provides for funding for the direct payment/reimbursement program to eligible responsible parties from a 10 cents per quart tax on motor oil while commission amendment B provides funding from a \$3,100,000 transfer from the Maine Rainy day fund.

Finally, the bill requires the Department of Environmental Protection to report to the Joint Standing Committee on Natural Resources on the status of the cleanup and remediation of the Portland-Bangor Waste Oil Services Site in Plymouth, Maine.

Appendix F

Proposed Legislation:

An Act to Clarify the Wells Waste Oil Clean-up Fund

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

Whereas, the legislature enacted PL 1999, c. 505, An Act to Assist in the Cleanup of the Town of Wells Maine Waste Oil site, to provide financial assistance to responsible parties at the Portland Bangor Waste Oil site in Wells Maine.

Whereas, the settlement negotiations are currently underway with respect to the clean up and remediation of this site;

Whereas, it is necessary to make technical corrections PL 1999, c. 505, to clarify the legislature's intent that the state financial assistance only be available to responsible parties who participate in the settlement agreement reached with the state, and the entity that has assumed liability for the clean up of the site;

Whereas, it is imperative that the corrections to PL 1999, c. 505 be made immediately in order to prevent any party from participating in the state funding program if that party did not participate in the settlement of the clean up of the site.

Whereas, in light of the ongoing nature of the Wells waste oil clean up program, it is necessary to extend the time from December 31, 1999 to February 15, 2000 by which the Department of Environmental Protection must prepare its report on the status of the Wells Waste Oil Clean-up Fund.

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. 10 MRSA §1023-L, sub-§7, paragraph C, is amended to read:

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 ~~April 1, 2000~~. July 1, 2000. Any remaining funds in the fund must be transferred to the Groundwater Oil Clean-up Fund.

Sec. 2. 10 MRSA §1023-L, sub-§8, is amended to read:

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: provided that no person may be eligible for assistance unless a settlement agreement is reached between responsible parties, a third party that has assumed liability for the clean up of the site and the applicable government entities, and provided further that assistance shall be limited to only those responsible parties who participate in the settlement. 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.

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

SUMMARY

This emergency bill makes necessary technical corrections PL 1999, c. 505, An Act to Assist in the Cleanup of the Town of Wells Maine Waste Oil site, to clarify the legislature's intent that the state financial assistance only be available to responsible parties who participate in the settlement agreement reached with the state, and the entity that has assumed liability for the clean up of the site. The bill also gives FAME the authority to adopt emergency rules relating to eligibility and fund distribution, extends the fund distribution time from April 1, 2000 to July 1, 2000, and extends the time from December 31, 1999 to February 15, 2000 by which the Department of Environmental Protection must prepare its report on the status of the Wells Waste Oil Clean-up Fund, in light of the ongoing nature of the Wells waste oil clean up program.