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H.P. 1328

House of Representatives, December 13, 2023

**An Act to Clarify Liability Under the Uncontrolled Hazardous
Substance Site Law and to Waive a Fee Regarding Voluntary
Response Action Plans**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 203.

Received by the Clerk of the House on December 11, 2023. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FAY of Raymond.

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

2 **Sec. 1. 38 MRSA §342, sub-§15**, as amended by PL 2017, c. 92, §1 and affected
3 by §2, is further amended by amending the 2nd blocked paragraph to read:

4 The fee for department assistance in submitting a voluntary response action plan under
5 section 343-E is equal to 1% of the assessed value of the property at the time the request is
6 submitted, except that the fee may not exceed \$15,000. The fee is waived for a voluntary
7 response action plan submitted for a property transaction or use funded in accordance with
8 Title 7, section 320-K, subsection 4, paragraph D.

9 **Sec. 2. 38 MRSA §1367**, as corrected by RR 2021, c. 2, Pt. B, §287, is amended to
10 read:

11 **§1367. Liability; recovery by the State for abatement, ~~clean-up~~ clean-up or mitigation**
12 **costs and for damages**

13 Each responsible party is jointly and severally liable for all costs incurred by the State
14 resulting from hazardous substances at the site or from the acts or omissions of a
15 responsible party with respect to those hazardous substances and each responsible party is
16 jointly and severally liable for all costs incurred by the State for the abatement, cleanup or
17 mitigation of the threats or hazards posed or potentially posed by an uncontrolled site,
18 including, without limitation, all of the State's costs of acquiring property. Each
19 responsible party also is jointly and severally liable for damages for injury to, destruction
20 of, loss of or loss of use of natural resources of the State, the reasonable costs of assessing
21 natural resources damages and the costs of preparing and implementing a natural resources
22 restoration plan. The commissioner shall demand reimbursement of costs, including
23 interest, and payment of damages to be recovered under this section. The interest rate
24 charged may not exceed the prime rate of interest plus 4%. Interest must be computed
25 beginning 60 days from the date of a payment demand by the commissioner. Payment must
26 be made promptly by the responsible party or parties upon whom the demand is made.
27 Requests for reimbursement to the Uncontrolled Sites Fund, if not paid within 30 days of
28 demand, may be turned over to the Attorney General for collection or may be submitted to
29 a collection agency or agent or an attorney retained by the department with the approval of
30 the Attorney General pursuant to Title 5, section 191. The Attorney General or an attorney
31 retained by the department may file suit in the Superior Court and, in addition to relief
32 provided by other law, may seek punitive damages. Notwithstanding the time limits stated
33 in this paragraph, neither a demand nor other recovery efforts against one responsible party
34 may relieve any other responsible party of liability.

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

40 A person who would otherwise be a responsible party is not subject to liability cost
41 recovery by the State for the State's abatement, clean-up or mitigation costs or for damages
42 under this section, if the person can establish by a preponderance of the evidence that
43 threats or hazards posed or potentially posed by an uncontrolled site, for which threats or
44 hazards the person would otherwise be responsible, were caused solely by:

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1. Act of God. An act of God;

2. Act of war. An act of war;

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

A. For purposes of this subsection, a person may demonstrate the exercise of due care with respect to any uncontrolled site that that person has acquired after hazardous substances were located on that uncontrolled site, if that person shows that at the time that person acquired the uncontrolled site the person did not know and had no reason to know that any hazardous substance that is the subject of the release or threatened release was disposed on, in or at the uncontrolled site.

B. To establish that a person meets the criteria of paragraph A, a person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this paragraph, ~~the court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination of the property, and the ability to detect that contamination by appropriate inspection; or all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice consists of:~~

(1) For a property acquisition after October 31, 2006, conducting all appropriate inquiries in accordance with the United States Environmental Protection Agency's All Appropriate Inquiries Rule, 40 Code of Federal Regulations, Part 312 (2023); and

(2) For a property acquisition after December 31, 1993 and before November 1, 2006, conducting a Phase I Environmental Site Assessment in accordance with the ASTM E1527-21 standard in effect at the time of purchase.

For a property acquisition prior to January 1, 1994, the State and the court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination of the property and the ability to detect that contamination by appropriate inspection.

C. The 3rd-party defense provided by this subsection is not available to defend against any claim, administrative proceeding or civil action pursuant to section 1365 or any other provision of this chapter; or

4. Combination. Any combination of the foregoing subsections.

1 Funds recovered under this section shall must be deposited into the Uncontrolled Sites
2 Fund and shall must be used by the department to carry out the purposes of this chapter.

3 **Sec. 3. 38 MRSA §1367-B, sub-§1-C** is enacted to read:

4 **1-C. Limited exemption from liability for department-licensed land application**
5 **of sludge or sludge-derived products.** A person is exempt from liability under section
6 1367 as a responsible party for contamination of an uncontrolled site with perfluoroalkyl
7 and polyfluoroalkyl substances if the person establishes to the satisfaction of the
8 commissioner that the source of the contamination was primarily caused by
9 department-licensed land application of sludge or sludge-derived products performed by a
10 3rd party that is not that person's employee or agent.

11 A. The exemption from liability provided by this subsection is not available to a person
12 if the commissioner determines that the person:

13 (1) Has failed to follow applicable requirements of the department license for land
14 application of sludge or sludge-derived products;

15 (2) Has failed to comply with an information request or administrative subpoena
16 issued by the department under this chapter; or

17 (3) Has impeded or is impeding, through action or inaction, the performance of a
18 response action, natural resources restoration or department investigation at the
19 uncontrolled site.

20 B. The commissioner may condition the exemption from liability provided by this
21 subsection upon any of the following terms that the commissioner may determine to
22 be necessary:

23 (1) To provide access to the property to the commissioner and the commissioner's
24 authorized representatives;

25 (2) To allow the commissioner or the commissioner's authorized representatives
26 to undertake activities at the property including placement of borings, wells,
27 equipment and structures on the property; or

28 (3) To the extent the person has title to the property, to grant easements or other
29 interests in the property to the department for any of the purposes provided in
30 subparagraph (1) or (2). An agreement to grant an easement or other interest under
31 this subparagraph must apply to and be binding upon the successors and assigns of
32 the owner. To the extent the person has title to the property, the person shall record
33 the agreement or a memorandum approved by the commissioner that summarizes
34 the agreement in the registry of deeds for the county where the property is located.

35 SUMMARY

36 This bill amends the uncontrolled hazardous substance site law in the following ways.

37 1. It clarifies that each responsible party is jointly and severally liable for all costs
38 incurred by the State for the abatement, cleanup or mitigation of the threats or hazards
39 posed by an uncontrolled site, including all of the State's costs of acquiring property.

1 2. It clarifies that a person who would otherwise be a responsible party is not subject
2 to cost recovery by the State for the State's abatement, clean-up or mitigation costs and for
3 damages under certain circumstances.

4 3. For the purpose of demonstrating that a person has exercised due care with respect
5 to an uncontrolled site that the person acquired after hazardous substances were located on
6 that site, it establishes different requirements based on the date the property was acquired.

7 4. It provides a limited exemption from liability for contamination of a site with
8 perfluoroalkyl and polyfluoroalkyl substances if the source of the contamination was
9 primarily caused by Department of Environmental Protection-licensed land application of
10 sludge or sludge-derived products.

11 The bill also provides that a fee for department assistance in submitting a voluntary
12 response action plan is waived if the plan is submitted for a property transaction or use
13 funded by the Fund To Address PFAS Contamination for the purpose of buying or selling
14 agricultural land found to be contaminated by PFAS.