



HOUSE OF REPRESENTATIVES

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Sen. Brenner, Rep. Gramlich and distinguished Members of the Environment and Natural Resources Committee, I am Jessica Fay representing House District 86, Casco, Frye Island, Raymond and a part of Poland.

I am here today to present LD 2066 **“An Act to Clarify Liability Under the Uncontrolled Hazardous Substance Site Law and to Waive a Fee Regarding Voluntary Response Action Plans”** on behalf of Maine DEP.

The VRAP program has a 30-year history having been enacted by the Legislature in 1993:

“The VRAP allows applicants to voluntarily investigate and cleanup properties to the Department’s satisfaction, in exchange for protections from Department enforcement actions. The VRAP is intended to encourage the cleanup and redevelopment of contaminated properties within the state.¹”

LD 2066 will provide needed clarifications to the VRAP and to the Uncontrolled Sites Program. Both programs are used by the Department to clean up contaminated sites so that these properties can be redeveloped and put back into productive use.

This bill provides one change to VRAP Statute and four changes to the Uncontrolled Sites Law Statute.

- VRAP:

Waive the VRAP application fee for persons applying to the program under Title 7 Section 320-K (4)(D) which is the PFAS Fund administered under DACF. This will allow those with PFAS contaminated land primarily caused by DEP licensed land application of sludge/septage to use this program if they choose to do so and not have to pay application fees. The fees are generally 1% of the assessed value of the property at time of application or a maximum of \$15,000.00

- Uncontrolled Sites Statute proposed changes:

- Clarifies language that Responsible Parties (RPs) are jointly and severally liable for all costs associated with abatement, clean-up, mitigation and costs of acquiring property.

¹ <https://www.maine.gov/dep/spills/vrap/index>

- Clarifies language for situations when an Responsible Party who would otherwise be responsible, but can demonstrate otherwise by following provisions in the statute. Again, here the clarification includes the costs of abatement, cleanup, mitigation or damages.
- Third-party defense may be used by property owners who acquired property and later found that there was a release of a hazardous substance if they can show appropriate standard of due care as set forth in the statute. The bill proposes clarifications on when this defense can be used by adding the following provisions:
 - Landowner follows Federal rule 40 CFR Part 312 for any transaction occurring after 10/31/2006.
 - Landowner follows provisions in ASTM-1527-21 for Phase I Environmental Site Assessments for land transactions occurring after 12/31/1993 and before 11/1/2006.
 - Where transactions occurred before 1/1/1994, the State and courts will evaluate on a case-by-case basis whether the standard of due care was used.
 - Third-party defense cannot be used if the Commissioner sets forth an Order or designates a site pursuant to 38 M.R.S. §1365.
- Prevents certain property owners from becoming a RP by adding a new section (1-C) under 38 M.R.S. § 1367-B if the landowner can demonstrate that PFAS contamination was primarily caused by Department licensed sludge/septage land application and that was performed by a party that is not the person's employee or agent. This applies with conditions:
 - Provisions of the land application license must have been followed.
 - Landowner must provide information as requested to Department.
 - Landowner must not impede Department investigation and response activities at the property.
 - Landowner must provide access to the property.
 - Landowner must allow Department staff to undertake on the property for investigation and remediation.
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For the last year I have been honored to Co-Chair the PFAS Fund Advisory Committee. Allowing the VRAP fund to be used in PFAS situations will provide an additional way to help those with contaminated land to redevelop it.

Thank you for your time. Please direct any questions to DEP.