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An Act To Assist in the Cleanup of Waste Motor Oil Disposal Sites

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

Sec. 1. 5 MRSA §12004-F, sub-§19 is enacted to read:

19.

	<u>Expenses Only</u>	
<u>Waste Motor Oil Revenue</u>		<u>10 MRSA §1020-</u>
Board		B

Sec. 2. 10 MRSA §963-A, sub-§17-A is enacted to read:

17-A. Final remedy selection. "Final remedy selection" means:

A. In the case of the Department of Environmental Protection, a final determination by the Commissioner of Environmental Protection or the commissioner's designee of the appropriate response action at a waste motor oil disposal site that is an uncontrolled hazardous substances site; and

B. In the case of the United States Environmental Protection Agency, the remedy selected in a final record of decision for the so-called Howes Corner Federal Superfund Site.

Sec. 3. 10 MRSA §963-A, sub-§47-B is enacted to read:

47-B. Response costs. "Response costs" means those costs incurred or those costs that will be incurred by the Department of Environmental Protection, the United States Environmental Protection Agency or a responsible party for investigation, removal, remediation and operation monitoring at a waste motor oil disposal site. "Response costs" does not include salaries, benefits, administrative costs or other expenses that relate in any way to employees of the Department of Environmental Protection or the United States Environmental Protection Agency, or that relate to expenses otherwise incurred by the Department of Environmental Protection or the United States Environmental Protection Agency in the operation of the department or agency.

Sec. 4. 10 MRSA §963-A, sub-§51-D is enacted to read:

51-D. Waste motor oil. "Waste motor oil" means any lubricating oil classified for use in an internal combustion engine, transmission, gear box, differential or hydraulics for a motor vehicle, boat, off-highway recreational vehicle, commercial or household power equipment or earth-moving equipment; "waste motor oil" means motor oil that through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or the loss of original properties.

Sec. 5. 10 MRSA §963-A, sub-§51-E is enacted to read:

51-E. Waste motor oil disposal site. "Waste motor oil disposal site" means the following 3 sites, where waste motor oil was stored and that are now contaminated and subject to such response action requirements as the Department of Environmental Protection or the United States Environmental Protection Agency may impose according to applicable law:

- A. Portland-Bangor Waste Oil Services Site/Howes Corner Federal Superfund Site - Plymouth, Maine;
- B. Portland-Bangor Waste Oil Services Site/Maine Uncontrolled Hazardous Substances Site - Ellsworth, Maine; and
- C. Portland-Bangor Waste Oil Services Site/Maine Uncontrolled Hazardous Substances Site - Casco, Maine.

Sec. 6. 10 MRSA c. 110, sub-c. 1-F is enacted to read:

SUBCHAPTER 1-F

WASTE MOTOR OIL DISPOSAL SITE REMEDIATION PROGRAM

§ 1020. Waste Motor Oil Revenue Fund

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

- A. "Board" means the Waste Motor Oil Revenue Board.
- B. "Fund" means the Waste Motor Oil Revenue Fund.

2. Creation; sources of fund. The Waste Motor Oil Revenue Fund is created. The fund consists of the following sources:

- A. All money appropriated for inclusion in the fund;
- B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money of the fund;
- C. Any other money available to the authority and directed by the authority to be paid into the fund; and
- D. All revenue received from the Treasurer of State pursuant to subsection 6.

3. Application of fund. Money in the fund must be applied to the payment of principal of, interest on or redemption premiums on revenue obligation securities issued pursuant to section 1020-A and may, in whole or in part, be pledged or transferred and deposited as security for those securities. Money in the fund not needed currently to meet the obligations of the authority as provided for in this

subsection may be invested in such a manner as permitted by law. Money may also be applied to pay the reasonable operating costs of the board, including expenses of members of the board pursuant to section 1020-B, subsection 2.

4. Accounts within fund. The authority may divide the fund into separate accounts as it determines necessary or convenient for carrying out the purposes of this subchapter.

5. Revolving fund. The fund is a nonlapsing, revolving fund. All money in the fund must be continuously applied by the authority to carry out the purposes of this subchapter.

6. Premium. In addition to any other tax or charge imposed under state or federal law, a premium is imposed on all motor oil sold in the State at wholesale. The premium is in the amount of 20¢ per quart. The premium must be paid monthly by the manufacturer or wholesaler to the State Tax Assessor. The State Tax Assessor shall pay monthly all amounts received pursuant to this subsection to the Treasurer of State, who shall deposit the funds in the fund. Costs of administration are paid by the fund.

7. Effective date. This section takes effect on October 1, 2007 and remains in effect until the later of June 30, 2015 and any date thereafter, but no later than December 31, 2020, on which the authority notifies the Treasurer of State that there are outstanding no revenue obligation securities that were issued pursuant to section 1020-A.

§ 1020-A. Waste motor oil disposal site remediation program

1. Issue of securities. The authority shall issue revenue obligation securities pursuant to subchapter 3 in an amount sufficient to:

- A. Pay the clean-up costs specified in any certificate of determination issued by the board pursuant to section 1020-B;
- B. Establish any capital reserve fund pursuant to section 1053; and
- C. Pay the costs of issuance of revenue obligation securities.

2. Payment of proceeds. The authority shall pay proceeds of the revenue obligation securities to or on behalf of the Department of Environmental Protection and the United States Environmental Protection Agency in the amounts specified in the certificate of determination pursuant to section 1020-B.

3. Revenue refunding securities. The board, or after its dissolution the authority as the board's successor, may provide for issuance of revenue refunding securities pursuant to subchapter 3.

§ 1020-B. Waste Motor Oil Revenue Board

1. Membership. The Waste Motor Oil Revenue Board, as established in Title 5, section 12004-F, subsection 19, consists of 16 voting members. Five of the members are the chief executive officer of the authority, who serves as the chair of the board, the Commissioner of Economic and Community

Development, the Commissioner of Environmental Protection, the Commissioner of Transportation and the Treasurer of State or their respective designees who must be in major policy-influencing positions. The Governor shall appoint 11 additional members as follows:

A. Four individuals, each of whom is a principal of a licensed franchised new motor vehicle dealer pursuant to Title 29-A, chapter 9, subchapter 3 that has been designated by the Department of Environmental Protection or, in the case of the Howes Corner Federal Superfund Site in Plymouth, the United States Environmental Protection Agency, as a responsible party;

B. One individual who is a principal of a used car dealership licensed pursuant to Title 29-A, chapter 9, subchapter 3 that has been designated by the Department of Environmental Protection or, in the case of the Howes Corner Federal Superfund Site in Plymouth, the United States Environmental Protection Agency, as a responsible party;

C. Two individuals, each of whom owns or operates a business in this State that has as an integral element of its business operations the repair and maintenance of motor vehicles that are owned by 3rd parties in this State. Either the appointee or the business must have been designated by the Department of Environmental Protection or, in the case of the Howes Corner Federal Superfund Site in Plymouth, the United States Environmental Protection Agency, as a responsible party;

D. An individual who owns or operates a fleet of 25 or more motor vehicles in the State. The individual must have been designated by the Department of Environmental Protection or, in the case of the Howes Corner Federal Superfund Site in Plymouth, the United States Environmental Protection Agency, as a responsible party;

E. One individual who is employed by a person engaged in the wholesale sale of motor oil in this State;

F. An officer or employee of a municipality that has been designated by the Department of Environmental Protection or, in the case of the Howes Corner Federal Superfund Site in Plymouth, the United States Environmental Protection Agency, as a responsible party; and

G. An individual employed by a manufacturer or refiner of motor oil or an individual employed by a trade association of such manufacturers or refiners.

2. Compensation. Members of the board are not entitled to compensation but must be paid for expenses pursuant to Title 5, section 12002-A.

3. Replacement or removal. Members of the board shall serve a term of office ending the later of June 30, 2012 and any date thereafter, but no later than December 31, 2032, on which the board notifies the Governor that a final remedy selection has been completed for each waste oil site, on which date the board is dissolved and terminated. Any vacancy on the board must be filled by the Governor by appointment of an individual with the same qualifications. Any member of the board may be removed from office for cause by the Governor.

4. Certificate of determination. From time to time, the board shall ascertain from the Department of Environmental Protection or the United States Environmental Protection Agency the final remedy selection, total response costs and response costs for each waste motor oil disposal site.

A. When the board finds that a substantially final determination of those costs for a waste motor oil disposal site has been made, the board shall determine those costs for that waste motor oil disposal site that represent the collective share of those persons eligible under subsection 7 to have their share of those costs for the waste motor oil disposal site paid from the proceeds of revenue obligation securities.

B. The board shall then issue to the authority the board's certificate of determination setting forth the amount of:

(1) The eligible response costs paid or to be paid with respect to that waste motor oil disposal site;

(2) The total eligible response costs with respect to that waste motor oil disposal site to be paid from the proceeds of revenue obligation securities;

(3) The proceeds of the revenue obligation securities to be paid to or on behalf of the Department of Environmental Protection; and

(4) The proceeds of the revenue obligation securities to be paid to or on behalf of the United States Environmental Protection Agency.

C. The board may issue to the authority no more than one supplemental certificate of determination with respect to a waste motor oil disposal site that may provide for the payment from the proceeds of additional revenue obligation securities of an amount equal to no more than 10% of the amount of costs initially certified to the authority for that waste motor oil disposal site. The board is not authorized to issue more than 2 certificates of determination to the authority for a waste motor oil disposal site.

5. Eligibility. For purposes of this section, "person" means any natural person, corporation, partnership or other entity identified as a responsible party at a waste motor oil disposal site. The following persons that contributed waste motor oil to a waste motor oil disposal site and who have been designated by the Department of Environmental Protection or the United States Environmental Protection Agency as responsible parties with respect to any of the waste motor oil disposal sites are eligible to have their share of response costs and total response costs paid from the proceeds of revenue obligation securities issued pursuant to this subchapter:

A. Those persons who the board determines are no longer in business and cannot pay their share;

- B. The State, any of its political subdivisions and any agency, authority, department, board, commission or instrumentality of the State or a political subdivision of the State;
- C. All franchised new car and truck dealers licensed pursuant to Title 29-A, chapter 9, subchapter 3, or the successors in interest of any such franchised new car or truck dealers;
- D. All used car dealers licensed in accordance with Title 29-A, chapter 9, subchapter 3, or the successors in interest of any such used car dealers;
- E. Any person or the successor in interest to any person that, as an integral element of its business, performed repairs at repair facilities located in this State on motor vehicles, as defined in Title 29-A, section 101, subsection 42, that are owned by 3rd parties; and
- F. Any person or its successor in interest that performed repairs on its own fleet of motor vehicles. The fleet at all pertinent times must have included at least 25 vehicles registered, garaged and serviced in this State. The share of any such person is a ratio, the numerator of which is all vehicles garaged, serviced and registered in this State at the time of the certification by the board determined in subsection 4, and the denominator of which is all vehicles in the person's total fleet, wherever garaged, serviced or registered.

Response costs and total response costs must include, in the site identified in section 963-A, subsection 51-E, paragraph A, any payments that either have been made, or that will be made, as a total or partial settlement of a person's share of response costs and total response costs to any entity that assumes the person's liability at that site.

6. Parties ineligible. The following responsible parties are not eligible to have any share of any of their obligation for response costs or total response costs covered by revenue obligation securities issued pursuant to section 1020-A:

- A. The United States of America or any of its agencies, authorities, departments, boards, commissions or instrumentalities.

7. Determinations regarding eligibility. In accordance with the standards set forth in subsection 5 and with the procedures set forth in Title 5, chapter 375, subchapter 2-A for rulemaking, the board shall establish a registry of all persons who qualify to have their share of response costs and total response costs paid pursuant to this subchapter.

- A. In order to establish the registry, the board shall review the list of responsible parties prepared by the Department of Environmental Protection or the United States Environmental Protection Agency with respect to the waste motor oil disposal sites and must have access to all Department of Environmental Protection and United States Environmental Protection Agency records that relate in any way to the volume or composition of materials that may have been deposited in any waste motor oil disposal site. Copies of the registry must be made available to the public at the office of the Commissioner of Economic and Community Development, the office of the Commissioner of Environmental Protection and the office of the chief executive officer of the authority.

B. The board shall cause the list for each waste motor oil disposal site to be published simultaneously, 2 times, 7 days apart, in the weekend edition of the following newspapers or any of their successors: the Bangor Daily News, the Portland Press Herald, the Kennebec Journal, the Waterville Morning Sentinel, the Brunswick Times Record, the Aroostook Republican, the Lewiston Sun Journal and the Biddeford Time Journal.

C. Any responsible party may request reconsideration from the board of any board decision relating to eligibility for that responsible party. All requests for reconsideration must be mailed, postage prepaid, to the address designated by the board. All requests for reconsideration may be in writing only and include such information as the responsible party desires to draw to the board's attention and must be received by the board no later than 30 days from the 2nd date of publication of notice in the newspapers identified in this subsection. The chair of the board shall appoint a subcommittee of 5 members to render a decision in writing within 60 days of the date the board receives a request for reconsideration. The chair may appoint multiple subcommittees at the discretion of the chair. Each subcommittee of the board may grant a request for reconsideration, in whole or in part, or may deny a request for reconsideration.

D. Any responsible party may appeal a decision on reconsideration to the Superior Court, Kennebec County, pursuant to Title 5, section 8058, within 30 days of the date of the board's decision on reconsideration. An appeal under this paragraph is nontestimonial. The record consists solely of written materials reviewed by the board and its decision on reconsideration. The Superior Court shall issue its decision within 45 days of the date of filing of the appeal.

8. Staff. The board shall retain independent counsel to be paid out of the fund. The authority shall provide the board with staff and clerical assistance, including such computer services as the board may require, to be paid out of the fund. The chief executive officer of the authority shall cause a record of the proceedings of the board to be maintained. Records and proceedings of the board are subject to Title 1, chapter 13, subchapter 1.

9. Rules. The board shall adopt rules necessary to implement this subchapter. Rules adopted by the board under this subchapter are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 7. 10 MRSA §1053, sub-§6, as amended by PL 2003, c. 506, §5, is further amended to read:

6. Securities outstanding. The principal amount of revenue obligation securities the authority may have outstanding at any one time, to which subsection 5 is stated to apply in the trust agreement or other document, may not exceed an aggregate principal amount equal to ~~\$877,000,000~~\$910,000,000 as follows:

A. The sum of \$330,000,000 consisting of not more than \$275,000,000 for loans and up to \$55,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for electric rate stabilization projects;

- B. The sum of \$120,000,000 consisting of not more than \$100,000,000 for loans and up to \$20,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for major business expansion projects;
- C. The sum of \$57,000,000 consisting of not more than \$45,000,000 for loans and up to \$12,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to workers' compensation residual market mechanism projects;
- D. The sum of \$150,000,000 less the aggregate outstanding balance of mortgage loans secured by capital reserve funds pursuant to section 1032 for all other revenue obligation securities issued pursuant to this subchapter;
- E. The sum of \$120,000,000 consisting of not more than \$100,000,000 for loans and up to \$20,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for paper industry job retention projects; and
- F. The sum of \$100,000,000 consisting of not more than \$85,000,000 for loans and up to \$15,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for transmission facilities projects as defined in section 963-A, subsection 49-H.; and
- G. The sum of \$30,000,000 for revenue obligation securities issued pursuant to section 1020-A.

The amount of revenue obligation securities issued to refund securities previously issued may not be taken into account in determining the principal amount of securities outstanding, as long as proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the authority that may at any time be outstanding for any purpose, the amounts of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments are valued as of any date of calculation at their then current accreted value rather than their face value.

SUMMARY

From 1953 until 1981, 4 sites were developed in the State for the storage and handling of waste motor oil. These sites are in Wells, Plymouth, Ellsworth and Casco. The Department of Environmental Protection has determined that 3 of the 4 sites, in Wells, Ellsworth and Casco, may pose environmental hazards and must be investigated and remediated. The United States Environmental Protection Agency has determined that the site in Plymouth must also be further investigated and remediated and has designated Plymouth as a federal superfund site. The costs of remediation are significant. The total response costs at the Wells site will be approximately \$15,000,000. The United States Environmental Protection Agency and the Department of Environmental Protection have already expended in excess of \$7,000,000 in relation to the site in Plymouth and significant further investigation and remediation needs to occur. Costs of cleanup in Ellsworth and Casco have not been clarified, but are expected to be significant.

State and federal law require that entities identified as responsible parties pay the cost of cleaning up such sites. In each of the 4 sites identified above, the waste motor oil came primarily from motor vehicles and other engines using motor oil as a lubricant. At the time of storage of waste motor oil on the 4 sites, the materials generally were stored in accordance with then-applicable state and federal regulations. There were other forms of oil, and other materials entirely, that were deposited at the sites. Those substances are not addressed in this bill.

The vast majority of businesses identified as responsible parties that are still in existence today cannot afford to pay the cost of cleanup of waste motor oil deposited since 1953. In addition, numerous entities that disposed of waste oil at these sites are no longer in existence and existing businesses would be asked to bear those orphan share costs as well. This bill creates a stream of revenue to retire the costs of investigation and remediation at the 4 sites. It also retires the cost of any early pay-ins by various businesses at the Wells site. The Finance Authority of Maine is authorized to issue revenue obligation securities in amounts sufficient to cover a large percentage of the clean-up costs. These revenue obligation securities are to be retired with funds derived from a premium on motor oil. The premium is imposed at the wholesale level.

The State and instrumentalities of the State, including the Department of Transportation, the Department of Public Safety and counties and municipalities, are eligible to participate in the waste motor oil disposal site remediation program. The revenue obligation securities will also cover the shares of those businesses that maintained or repaired motor vehicles between 1953 and 1981 or their successors in interest, and that had waste motor oil deposited at one or more of the 4 sites. Any business that operated a fleet of 25 or more vehicles for which it performed its own maintenance and repairs and that contributed waste motor oil to one or more of the 4 sites is eligible for participation in the program. The United States Government and its instrumentalities are not eligible to participate in the program.

The Waste Motor Oil Revenue Board is created to oversee the process and make determinations as to eligibility for participation in the program.