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An Act To Provide Additional Financing for Costs Associated with the Remediation of a Waste Oil Site in Plymouth

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

Whereas, Portland-Bangor Waste Oil Services, a now 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 for expenses incurred at that site; and

Whereas, legislation concerning the Plymouth Waste Oil Loan Program was enacted in 1999, 2001, 2003 and 2004 and now further amendment is required to authorize loans to eligible parties to pay for the implementation of the clean-up remedy that is scheduled to commence in 2007-08; 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. 10 MRSA §1023-M, sub-§2, as amended by PL 2003, c. 537, §28 and affected by §53, is further amended to read:

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-A, subsection 1, paragraph A, subparagraph (1), division (e), 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, implementation of institutional controls selected by the United States Environmental Protection Agency to prevent use of contaminated groundwater by nearby residents, oversight costs of the United States and the State, remedial action costs and time-critical removal action costs when the authority determines that:

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;

B-3. The applicant has signed the Remedial Action Consent Decree for the West Site/Hows Corner Superfund Site in Plymouth, Maine;

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, implementation of institutional controls or, time-critical removal action or remedial action or a de minimis settlement, except that money in the fund may be used for attorney's fees incurred for the preparation of restrictive covenants, including deed and title research, for the properties within the area identified by the United States Environmental Protection Agency as the institutional control zone in order to implement the institutional controls selected by the United States Environmental Protection Agency.

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 2, 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 \$2,000. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The authority shall charge an interest rate of 0% on all loans. Loan repayment must be

deferred until the United States Environmental Protection Agency determines that construction of the final remedy is complete. 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.

Sec. 2. 10 MRSA §1023-M, sub-§2-D is enacted to read:

2-D. De minimis settlement. In addition to the uses authorized in subsection 2, money in the fund may be used for direct loans or deferred loans for payments as part of a de minimis settlement, including any settlement premium, between the United States, the State, responsible parties and an applicant. Money may be used only if the authority determines that the applicant has signed all of the settlement documents required by the United States and the State for a de minimis settlement in the matter of the West Site/Hows Corner Superfund Site in Plymouth, Maine. The provisions of subsection 2 apply to loans authorized under this subsection.

Applications submitted pursuant to this subsection must be received within 180 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.

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

SUMMARY

This bill amends the Plymouth Waste Oil Loan Program and authorizes the Finance Authority of Maine to loan money in the Waste Oil Clean-up Fund to eligible responsible parties to pay their share of oversight costs of the United States and the State, remedial action costs and costs related to any de minimis settlement offered by the United States Environmental Protection Agency under federal law.