

# **Title 38: WATERS AND NAVIGATION**

## **Chapter 13-B: UNCONTROLLED HAZARDOUS SUBSTANCE SITES**

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## Maine Revised Statutes

### Title 38: WATERS AND NAVIGATION

#### Chapter 13-B: UNCONTROLLED HAZARDOUS SUBSTANCE SITES

##### §1361. FINDINGS AND PURPOSE

The Legislature finds and declares that uncontrolled hazardous substance sites within the jurisdiction of the State present a hazard to all the people of the State and that hazard poses a threat or potential threat to the public health, safety or welfare, to the environment of the State and to owners and users of property near or adjacent to uncontrolled sites. [1983, c. 569, §1 (NEW).]

The Legislature further finds that adequate measures must be taken to ensure that the threats posed by uncontrolled hazardous substance sites are abated, cleaned up or mitigated promptly. [1983, c. 569, §1 (NEW).]

The Legislature further finds that it is in the public interest of the State and its citizens to provide the capacity for prompt and effective planning and implementation of plans to abate, clean up or mitigate threats posed or potentially posed by uncontrolled sites. This paramount state interest outweighs any burden, economic or otherwise, imposed by this chapter. [1983, c. 569, §1 (NEW).]

##### SECTION HISTORY

1983, c. 569, §1 (NEW).

##### §1362. DEFINITIONS

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 569, §1 (NEW).]

**1. Hazardous substance.** "Hazardous substance" means:

A. Any substance identified by the commissioner under section 1319-O; [2017, c. 475, Pt. A, §67 (AMD).]

B. Any substance identified by the board under section 1319; [1983, c. 569, §1 (NEW).]

C. Any substance designated pursuant to the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, Sections 101 and 102 (Superfund); [1985, c. 746, §32 (AMD).]

D. Any toxic pollutant listed under the United States Federal Water Pollution Control Act, Section 307(a); [1983, c. 569, §1 (NEW).]

E. Any hazardous air pollutant listed under the United States Clean Air Act, Section 112; [1985, c. 746, §32 (AMD).]

F. Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to the United States Toxic Substances Control Act, Section 7; and [1985, c. 746, §32 (AMD).]

G. Waste oil as defined in section 1303-C. [1989, c. 878, Pt. B, §42 (AMD).]

[ 2017, c. 475, Pt. A, §67 (AMD) . ]

**1-A. Federal banking or lending agency.** "Federal banking or lending agency" means the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, a federal reserve bank, a federal home loan bank, the United States Comptroller of the

Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Small Business Administration, the Farmers' Home Administration, the Rural Electrification Administration or the RECOLL Management Corporation.

[ 1991, c. 811, §1 (NEW); 1991, c. 811, §7 (AFF) . ]

**1-B. Lender.** "Lender" means any person, as defined by Title 9-B, section 131, subsection 30, including a successor or assignee of that person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person; a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A; a financial institution that is acting through a service corporation as defined in Title 9-B, section 131, subsection 37; or any federal or state banking or lending agency that provides loans, guarantees or other financial assistance. For the purpose of this subsection, the phrase "acting through" includes the assignment or transfer of an interest in real property acquired in satisfaction of a debt.

[ 1999, c. 289, §1 (AMD) . ]

**1-C. Political subdivision.** "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119, or quasi-municipal corporation or special purpose district, including, but not limited to, any water district or sanitary district.

[ 1991, c. 811, §1 (NEW); 1991, c. 811, §7 (AFF) . ]

**1-D. Fiduciary.** "Fiduciary" means a person who is:

A. (TEXT EFFECTIVE UNTIL 7/1/2019) Acting in any of the following capacities: a personal representative as defined in Title 18-A, section 1-201; a voluntary executor or administrator; a guardian; a conservator; a trustee under a will or intervivos instrument creating a trust of a donative type associated with probate practice where the trustee takes title to, otherwise controls or manages, property for the purpose of protecting or conserving that property; a trustee pursuant to an indenture agreement or similar financing agreement; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; and an assignee or trustee acting under an assignment made for the benefit of creditors; and [1993, c. 355, §59 (NEW).]

A. (TEXT EFFECTIVE 7/1/2019) Acting in any of the following capacities: a personal representative as defined in Title 18-C, section 1-201; a voluntary executor or administrator; a guardian; a conservator; a trustee under a will or intervivos instrument creating a trust of a donative type associated with probate practice where the trustee takes title to, otherwise controls or manages, property for the purpose of protecting or conserving that property; a trustee pursuant to an indenture agreement or similar financing agreement; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; and an assignee or trustee acting under an assignment made for the benefit of creditors; and [ 2017, c. 402, Pt. C, §108 (AMD); 2017, c. 402, Pt. F, §1 (AFF). ]

B. Holding legal title to, controlling or managing, directly or indirectly, any site as a fiduciary for purposes of administering an estate or trust of which the site is a part. [1993, c. 355, §59 (NEW) . ]

"Fiduciary" does not include the real or personal property held by an estate or trust administered by a fiduciary.

[ 1993, c. 355, §59 (NEW); 2017, c. 402, Pt. C, §108 (AMD); 2017, c. 402, Pt. F, §1 (AFF) . ]

**1-E. Site.** "Site" means a licensed or unlicensed area or location where hazardous substances are handled or were handled or otherwise came to be located. "Site" includes all structures, appurtenances, improvements, equipment, machinery, containers, tanks and conveyances on the site.

[ 1993, c. 355, §59 (NEW) .]

**2. Responsible party.** "Responsible party" means any one or more of the following persons:

A. The owner or operator of the uncontrolled site; [1983, c. 569, §1 (NEW) .]

B. Any person who owned or operated the uncontrolled site from the time any hazardous substance arrived there; [1983, c. 569, §1 (NEW) .]

C. Any person who arranged for the transport or handling of a hazardous substance, provided that the substance arrived at the uncontrolled site; and [1983, c. 569, §1 (NEW) .]

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. [1993, c. 732, Pt. A, §10 (AMD) .]

[ 1993, c. 732, Pt. A, §10 (AMD) .]

**2-A. State banking or lending agency.** "State banking or lending agency" means any state agency that provides loans, guarantees or other financial assistance, including the Finance Authority of Maine, the Department of Economic and Community Development and the Maine State Housing Authority.

[ 1991, c. 811, §3 (NEW); 1991, c. 811, §7 (AFF) .]

**3. Uncontrolled hazardous substance site.** "Uncontrolled hazardous substance site" or "uncontrolled site" means an area or location, whether or not licensed, at which hazardous substances are or were handled or otherwise came to be located, if it is concluded by the commissioner that the site poses a threat or hazard to the health, safety or welfare of any person or to the natural environment and that action under this chapter is necessary to abate, clean up or mitigate that threat or hazard. The term includes all contiguous land under the same ownership or control and includes without limitation all structures, appurtenances, improvements, equipment, machinery, containers, tanks and conveyances on the site.

[ 1983, c. 569, §1 (NEW) .]

#### SECTION HISTORY

1983, c. 569, §1 (NEW). 1985, c. 746, §32 (AMD). 1987, c. 517, §29 (AMD). 1989, c. 878, §B42 (AMD). 1991, c. 811, §§1-3 (AMD). 1991, c. 811, §7 (AFF). 1993, c. 355, §§58,59 (AMD). 1993, c. 732, §A10 (AMD). 1999, c. 289, §1 (AMD). 2017, c. 402, Pt. C, §108 (AMD). 2017, c. 402, Pt. F, §1 (AFF). 2017, c. 475, Pt. A, §67 (AMD).

## §1363. PROHIBITED ACTS

No person may handle hazardous substances at an uncontrolled hazardous substance site in violation of any order issued under this chapter. [1983, c. 569, §1 (NEW) .]

#### SECTION HISTORY

1983, c. 569, §1 (NEW).

## §1364. POWERS AND DUTIES OF THE DEPARTMENT

**1. Technical services.** The commissioner shall establish a technical services capability within the department to assist in the identification, evaluation and mitigation of uncontrolled hazardous substance sites.

[ 1983, c. 569, §1 (NEW) .]

**2. Rules.** The board may adopt rules related to the handling of hazardous substances; the investigation, abatement, mitigation and cleanup of spills of hazardous substances; and the investigation, designation and mitigation of uncontrolled hazardous substance sites. The board may provide by rule that any person who knows or has reason to believe that any hazardous substance is present in ground water or soils beneath a site which is owned or operated by that person provide notice of that condition to the department if the concentration of the hazardous substance in ground water exceeds state or federal recommended contaminant levels for drinking water or the concentration in soils exceeds contaminant levels established by the board.

[ 1993, c. 355, §60 (AMD) .]

**3. Investigation and evaluation.** The commissioner may investigate and sample sites where hazardous substances are stored or handled to identify uncontrolled hazardous substance sites. During the course of the investigation, the commissioner may require submission of information or documents that relate or may relate to the site under investigation from any person whom the commissioner has reason to believe may be a responsible party. The information may include the nature and amounts of hazardous substances or other wastes that arrived or may have arrived at the site, manner of transportation, treatment or disposal of the hazardous substances or other wastes and any other information relating to the site or to threats posed by the potential site.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §266 (AMD) .]

**4. Designation.** In accordance with section 1365, the commissioner may declare a site to be an uncontrolled hazardous substance site. The designation may be appealed only upon the issuance of an order pursuant to section 1365, subsection 2, as provided in section 1365, subsection 4.

[ 1987, c. 419, §13 (AMD) .]

**5. Mitigation.** The commissioner may take whatever action necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by an uncontrolled site or to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards, and implementing remedies to remove, store, treat, dispose of or otherwise handle hazardous substances located in, on or over an uncontrolled site, including soil and water contaminated by hazardous substances. When the necessary action includes the installation of a public water supply or the extension of mains of an existing water utility, the department's obligation is limited to construction of those works that are necessary to furnish the contaminated or potentially contaminated properties with a supply of water sufficient for existing uses. The department is not obligated to contribute to a water utility's system development charge, nor to provide works or water sources exceeding those required to abate the threats or hazards posed by the uncontrolled site. The department may pay the costs of operation, maintenance and depreciation of the works or water supply for a period not exceeding 20 years if funds are available from Other Special Revenue or proceeds from the sale of bonds. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with a hazardous substance:

A. Neither the commissioner nor any responsible party is obligated under this chapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as provided in section 548, subsection 1; and [1995, c. 462, Pt. A, §78 (AMD) .]

B. The obligation of the commissioner or any responsible party under this chapter with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in an area other than one described in paragraph A. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well. [1995, c. 462, Pt. A, §78 (AMD) .]

For purposes of this subsection, "viable community public water system" has the same meaning as in section 548.

[ 1995, c. 462, Pt. A, §78 (AMD) .]

**6. Accept funds.** The department may accept any public or private funds which may be available for carrying out the purposes of this chapter. The Uncontrolled Sites Fund is established to be used by the department as a nonlapsing revolving fund for carrying out the purposes of this chapter, including the long-term oversight of uncontrolled hazardous substance sites. Money in the fund, not needed currently to meet the obligations of the department in the exercise of its responsibilities under this chapter, shall be deposited with the Treasurer of State to the credit of the fund and may be invested in such a manner as is provided for by law. Interest received on that investment shall be credited to the fund.

[ 1987, c. 192, §29 (AMD) .]

**7. Acquisition of property; authority.** The department may acquire, by purchase, lease, condemnation, donation or otherwise, any real property or any interest in real property that the board in its discretion determines, by 2/3 majority vote, is necessary to conduct remedial actions in response to threats or hazards posed or potentially posed by an uncontrolled site, including, but not limited to:

A. Actions to prevent further threats or hazards and to mitigate or terminate the threats or hazards; [1991, c. 312, §2 (NEW) .]

B. Actions to clean up soils and ground water and remove hazardous substances from an uncontrolled site; and [1991, c. 312, §2 (NEW) .]

C. Replacement of water supplies contaminated or threatened by hazardous substances. [1991, c. 312, §2 (NEW) .]

The department may exercise the right of eminent domain in the manner described in Title 35-A, chapter 65, to take and hold real property for any of the purposes described in this subsection. The commissioner shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over natural resource matters during the next regular session following the acquisition of any property by eminent domain. The department may transfer or convey to any person real property or any interest in real property once acquired.

[ 1991, c. 312, §2 (NEW) .]

#### SECTION HISTORY

1983, c. 569, §1 (NEW). 1985, c. 746, §§33,34 (AMD). 1987, c. 192, §29 (AMD). 1987, c. 419, §13 (AMD). 1989, c. 792, (AMD). 1989, c. 890, §§A40,B266, 267 (AMD). 1991, c. 66, §A40 (AMD). 1991, c. 312, §§1,2 (AMD). 1993, c. 355, §60 (AMD). 1993, c. 621, §7 (AMD). 1995, c. 462, §A78 (AMD).

## §1365. DESIGNATION OF UNCONTROLLED HAZARDOUS SUBSTANCE SITES

**1. Investigation.** Upon finding, after investigation, that a location at which hazardous substances are or were handled or otherwise came to be located may create a danger to the public health, to the safety of any person or to the environment, the commissioner may:

A. Designate that location as an uncontrolled hazardous substance site; [2005, c. 330, §34 (NEW).]

B. Order any responsible party dealing with the hazardous substances to cease immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger; and [2005, c. 330, §34 (NEW).]

C. Order any person contributing to the danger or likelihood of danger to cease or prevent that contribution. [2005, c. 330, §34 (NEW).]

[2005, c. 330, §34 (RPR).]

**2. Orders.** Any order issued under this section shall contain findings of fact describing, insofar as possible, the hazardous substances, the site of the activity and the danger to the public health or safety.

[1983, c. 569, §1 (NEW).]

**3. Service.** Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

[2005, c. 330, §35 (AMD).]

**4. Compliance; appeal.** The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by a responsible party. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

[2005, c. 330, §36 (AMD).]

**5. Civil action.** The Attorney General may file suit in Superior Court to compel any responsible party to abate, clean up or mitigate threats or hazards posed or potentially posed by an uncontrolled site.

[1983, c. 569, §1 (NEW).]

**6. Enforcement; penalties; punitive damages.** Any responsible party who fails without sufficient cause to undertake removal or remedial action promptly in accordance with an order issued pursuant to section 1304, subsection 12 and this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action.

The Attorney General is authorized to commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the commissioner pursuant to this subsection must be deposited in the Uncontrolled Sites Fund.

[ 1993, c. 355, §61 (NEW) .]

#### SECTION HISTORY

1983, c. 569, §1 (NEW). 1985, c. 746, §35 (AMD). 1989, c. 890, §§A40,B268 (AMD). 1993, c. 355, §61 (AMD). 2005, c. 330, §§34-36 (AMD).

### §1366. ABATEMENT, CLEAN UP AND MITIGATION COSTS

Whenever possible and practical, the commissioner shall make use of resources available under the Superfund program or other federal programs to evaluate and investigate uncontrolled sites and to abate, clean up or mitigate threats or hazards posed or potentially posed by uncontrolled sites. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §269 (AMD).]

In the case of a site at which federal resources may be or are being used, proceeds from the sale of bonds for the evaluation and investigation of sites and for implementation of plans to abate, clean up or mitigate hazards or threats posed or potentially posed by an uncontrolled site may be used: [1983, c. 569, §1 (NEW) .]

**1. Privately owned sites.** In the case of a site that was privately owned at the time of disposal of any hazardous substances, for the state's share of remedial action costs; and

[ 1983, c. 569, §1 (NEW) .]

**2. Sites owned by state or political subdivision.** In the case of a site which was owned at the time of disposal of any hazardous substances by the state or a political subdivision thereof, for the state's share of response costs.

[ 1983, c. 569, §1 (NEW) .]

In the case of a site where federal resources are not used, the commissioner shall notify the Governor in writing. The Governor may authorize the commissioner to proceed under this chapter without those resources. In the event the State proceeds at its own expense with work eligible for federal funding, the commissioner shall present the United States Environmental Protection Agency with a demand for reimbursement. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §269 (AMD).]

#### SECTION HISTORY

1983, c. 569, §1 (NEW). 1987, c. 192, §30 (AMD). 1989, c. 890, §§A40,B269 (AMD).

### §1367. LIABILITY; RECOVERY BY THE STATE FOR ABATEMENT, CLEAN UP OR MITIGATION COSTS AND FOR DAMAGES

Each responsible party is jointly and severally liable for all costs incurred by the State resulting from hazardous substances at the site or from the acts or omissions of a responsible party with respect to those hazardous substances and for the abatement, cleanup or mitigation of the threats or hazards posed or potentially posed by an uncontrolled site, including, without limitation, all costs of acquiring property. Each responsible party also is jointly and severally liable for damages for injury to, destruction of, loss of or loss of use of natural resources of the State, the reasonable costs of assessing natural resources damages and the costs of preparing and implementing a natural resources restoration plan. The commissioner shall demand reimbursement of costs, including interest, and payment of damages to be recovered under this section. The

interest rate charged may not exceed the prime rate of interest plus 4%. Interest must be computed beginning 60 days from the date of a payment demand by the commissioner. Payment must be made promptly by the responsible party or parties upon whom the demand is made. Requests for reimbursement to the Uncontrolled Sites Fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191. The Attorney General or an attorney retained by the department may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability. [ 2009 , c. 121, §16 (AMD) . ]

In any suit filed under this section, the State need not prove negligence in any form or matter by a defendant. The State need only prove that a defendant is a responsible party, as defined in section 1362, and the site poses or posed or potentially poses or posed a threat or hazard to the health, safety or welfare of any citizen of the State or the environment of the State, to which the acts or omissions of the defendant are or were causally related. [1983, c. 569, §1 (NEW) . ]

A person who would otherwise be a responsible party shall not be subject to liability under this section, if he can establish by a preponderance of the evidence that threats or hazards posed or potentially posed by an uncontrolled site, for which threats or hazards he would otherwise be responsible, were caused solely by: [1983, c. 569, §1 (NEW) . ]

**1. Act of God.** An act of God;

[ 1983, c. 569, §1 (NEW) . ]

**2. Act of war.** An act of war;

[ 1983, c. 569, §1 (NEW) . ]

**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. [1991, c. 81, (NEW) . ]

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 [1991, c. 81, (NEW) . ]

[ 1991, c. 81, (AMD) . ]

**4. Combination.** Any combination of the foregoing subsections.

[ 1983, c. 569, §1 (NEW) .]

Funds recovered under this section shall be deposited into the Uncontrolled Sites Fund and shall be used by the department to carry out the purposes of this chapter. [1987, c. 192, §31 (AMD).]

#### SECTION HISTORY

1983, c. 569, §1 (NEW). 1987, c. 192, §31 (AMD). 1991, c. 81, (AMD). 1991, c. 312, §3 (AMD). 2007, c. 655, §16 (AMD). 2009, c. 121, §16 (AMD).

### **§1367-A. LIMITED EXEMPTION FROM LIABILITY FOR FINANCIAL INSTITUTIONS AND FEDERAL AND STATE BANKING OR LENDING AGENCIES**

*(REPEALED)*

#### SECTION HISTORY

1991, c. 811, §4 (NEW). 1991, c. 811, §7 (AFF). 1993, c. 732, §A11 (RP).

### **§1367-B. LIMITED EXEMPTION FROM LIABILITY FOR STATE OR LOCAL GOVERNMENTAL ENTITIES**

**1. Limited exemption from liability.** Liability under section 1367 does not apply to the State or any political subdivision that acquired ownership or control of an uncontrolled hazardous substance site through tax delinquency proceedings pursuant to Title 36, or through any similar statutorily created procedure for the collection of governmental taxes, assessments, expenses or charges, or involuntarily through abandonment, or in circumstances in which the State or political subdivision involuntarily acquired ownership or control by virtue of its function as a sovereign. The exemption from liability provided under this subsection does not apply to the State or any political subdivision that has caused, contributed to or exacerbated a release or threatened release of a hazardous substance on or from the uncontrolled site.

[ 1991, c. 811, §4 (NEW); 1991, c. 811, §7 (AFF) .]

**2. Reimbursement for department expenses.** Notwithstanding the exemption from liability provided in subsection 1, the State or any political subdivision that acquires or has acquired ownership of property that encompasses an uncontrolled hazardous substance site pursuant to any of the proceedings referred to in subsection 1 is liable for any costs incurred by the department pursuant to this chapter during the period in which the State or political subdivision had ownership of the property, up to the amount of the proceeds from the sale or disposition of the property minus the out-of-pocket costs of the sale or disposition.

[ 1991, c. 811, §4 (NEW); 1991, c. 811, §7 (AFF) .]

#### SECTION HISTORY

1991, c. 811, §4 (NEW). 1991, c. 811, §7 (AFF).

### **§1367-C. LIMIT ON OBLIGATION TO REPLACE OR TREAT WATER SUPPLY WELLS**

If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with a hazardous substance: [1993, c. 621, §8 (NEW).]

**1. Delineated contaminated area.** Neither the commissioner nor any responsible party is obligated under this chapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as provided in section 548, subsection 1; and

[ 1995, c. 462, Pt. A, §79 (AMD) .]

**2. Areas not delineated.** The obligation of the commissioner or any responsible party under this chapter with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well was installed in an area other than one described in subsection 1. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

[ 1995, c. 462, Pt. A, §79 (AMD) .]

For purposes of this section, "viable community public water system" has the same meaning as in section 548. [1993, c. 621, §8 (NEW).]

SECTION HISTORY

1993, c. 621, §8 (NEW). 1995, c. 462, §A79 (AMD).

**§1368. EMERGENCY**

Whenever the commissioner determines that an emergency exists as the result of a threat or hazard posed by an uncontrolled site, the commissioner shall immediately notify the Governor. The Governor may declare an emergency and, in addition to whatever action is necessary and available to him under law, may authorize the Commissioner of Environmental Protection in conjunction with the Commissioner of Public Safety to:

[1983, c. 569, §1 (NEW).]

**1. Take control.** Take control of the uncontrolled site and threatened adjacent areas;

[ 1983, c. 569, §1 (NEW) .]

**2. Secure.** Secure the uncontrolled site;

[ 1983, c. 569, §1 (NEW) .]

**3. Eject.** Eject all persons from the uncontrolled site;

[ 1983, c. 569, §1 (NEW) .]

**4. Dispose, treat, store or handle.** Dispose, treat, store or otherwise handle all hazardous substances located on the uncontrolled site, including soil and water contaminated by hazardous substances; and

[ 1983, c. 569, §1 (NEW) .]

**5. Take action.** Take whatever other action is deemed necessary to abate, clean up or mitigate the threat or hazard posed by the uncontrolled site.

[ 1983, c. 569, §1 (NEW) .]

SECTION HISTORY

1983, c. 569, §1 (NEW).

**§1369. IMMUNITY**

Notwithstanding the provisions of Title 14, chapter 741, neither the State nor any agency or employee thereof engaged in any abatement, clean up or mitigation activity, while complying with or attempting to comply with this chapter, or with any rule promulgated or directive issued in the implementation of this chapter, may be liable for the death of or injury to persons, or damage to property, as a result of that activity. This section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under the workers' compensation law or any other pension law, nor the right of any person to receive benefits or compensation under any act of Congress. [1983, c. 569, §1 (NEW).]

## SECTION HISTORY

1983, c. 569, §1 (NEW).

**§1370. PROPERTY FORFEITED**

The following property shall be subject to forfeiture to the State in accordance with the procedures set forth in section 1319-U and all property rights therein shall be in the State: [1987, c. 517, §30 (AMD).]

**1. Real estate.** All real estate, structures, appurtenances, improvements, equipment, machinery, containers, tanks, conveyances, products, materials and supplies used directly or intended to be used directly in violation of any provision of this chapter; and

[ 1983, c. 569, §1 (NEW) .]

**2. Moneys.** All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in any transaction, and all proceeds traceable to such a transaction, intended to be used directly in violation of any provision of this chapter.

[ 1983, c. 569, §1 (NEW) .]

## SECTION HISTORY

1983, c. 569, §1 (NEW). 1987, c. 517, §30 (AMD).

**§1371. LIEN ESTABLISHED**

**1. Established.** All costs incurred by the State for the abatement, cleanup or mitigation of hazards posed by an uncontrolled hazardous substance site and all interest and penalties shall be a lien against the real estate of the responsible party.

[ 1987, c. 540, (RPR) .]

**2. Priority.** The priority of a lien filed pursuant to this section shall be governed by the following.

A. Any lien filed pursuant to this section on real estate that encompasses an uncontrolled hazardous substance site has precedence over all encumbrances on the real estate, including liens of the State or any political subdivision, recorded after July 7, 1987. The term "real estate" in this paragraph includes all real estate of a responsible party that has been included in the property description of the affected real estate within the 3-year period preceding the date of filing of the lien or on or after July 7, 1987, whichever period is shorter. [1991, c. 811, §5 (AMD); 1991, c. 811, §7 (AFF).]

B. Any lien filed pursuant to this section on any other real estate of the party responsible for the uncontrolled hazardous substance site shall have precedence over all transfers and encumbrances filed after the date that the lien is filed with the registry of deeds. [1987, c. 540, (NEW).]

[ 1991, c. 811, §5 (AMD); 1991, c. 811, §7 (AFF) .]

**3. Notice.** A certificate of lien signed by the Commissioner of Environmental Protection shall be mailed by certified mail, return receipt requested, to all those persons of record holding an interest in the real estate over which the commissioner's lien is entitled to priority under subsection 2, paragraph A. A certificate may be filed for record in the office of the clerk of any municipality in which the real estate is situated.

[ 1987, c. 540, (RPR) .]

**4. Recording.** Any lien filed pursuant to this section shall be effective when filed with the registry of deeds for the county in which the real estate is located. The lien shall include a description of the real estate, the amount of the lien and the name of the owner as grantor.

[ 1987, c. 540, (RPR) .]

**5. Limitation.** This section does not apply to a unit of real estate that consists primarily of real estate used or under construction as single or multi-family housing at the time the lien is recorded or to property owned by a political subdivision except for the real estate that encompasses an uncontrolled hazardous substance site and that is owned by a political subdivision.

[ 1991, c. 811, §6 (AMD); 1991, c. 811, §7 (AFF) .]

**6. Discharge of lien.** When the amount with respect to which a lien has been recorded under this section, has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate which is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate shall be recorded in the registry in which the lien was recorded. Any action of the foreclosure of the lien shall be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the property subject to the lien is situated.

[ 1987, c. 540, (NEW) .]

SECTION HISTORY

1987, c. 419, §14 (NEW). 1987, c. 540, (RPR). 1991, c. 811, §§5,6 (AMD). 1991, c. 811, §7 (AFF).

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