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Date: 3/3/20 Majority

L.D. 2033  
(Filing No. H-710)

**ENVIRONMENT AND NATURAL RESOURCES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1443, L.D. 2033, Bill, "An Act To Ensure Proper Closure of Oil Terminal Facilities"

Amend the bill by striking out everything after the enacting clause and inserting the following:

**Sec. 1. 38 MRSA §542, sub-§4-B** is enacted to read:

**4-B. Facility closure.** "Facility closure" means:

- A. Removal of oil and oil residuals from tanks and related appurtenances;
- B. Decontamination of tanks and related appurtenances;
- C. Removal of tanks and related appurtenances;
- D. Disconnection and removal of underground piping or secure capping or plugging of underground piping when removal is not feasible; and
- E. Any other steps required to safely decommission the facility and remediate sediment, soils, groundwaters and surface waters such that the facility site, as determined by the department, is suitable for residential use or meets the most protective use standards practicable for the facility site.

**Sec. 2. 38 MRSA §542, sub-§6**, as amended by PL 2015, c. 319, §11, is further amended to read:

**6. Oil.** "Oil" means oil, oil additives, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, liquid asphalt, bunker fuel, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

**Sec. 3. 38 MRSA §542, sub-§7**, as amended by PL 1993, c. 355, §7, is further amended to read:

**COMMITTEE AMENDMENT**

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1 7. **Oil terminal facility or facility.** "Oil terminal facility" or "facility" means any  
2 facility of any kind and related appurtenances, located in, on or under the surface of any  
3 land or water, including submerged lands, ~~which~~ that is used or capable of being used for  
4 the purpose of transferring, processing or refining oil, or for the purpose of storing the  
5 same, but does not include any facility used or capable of being used to store no more  
6 than ~~1500~~ 1,500 barrels or 63,000 gallons, nor any facility not engaged in the transfer of  
7 oil to or from waters of the State. A vessel is considered an oil terminal facility only in  
8 the event of a ship-to-ship transfer of oil, but only that vessel going to or coming from the  
9 place of ship-to-ship transfer and a permanent or fixed oil terminal facility. The term  
10 does not include vessels engaged in oil spill response activities.

11 **Sec. 4. 38 MRSA §542, sub-§9-D** is enacted to read:

12 **9-D. Related appurtenances.** "Related appurtenances" means pumps, valves,  
13 pipng, loading racks, secondary containment and, as determined by the department, any  
14 other structures related to the operation of an oil terminal facility.

15 **Sec. 5. 38 MRSA §546,** as amended by PL 1991, c. 698, §6, is further amended to  
16 read:

17 **§546. Regulatory powers of ~~board~~ department**

18 **4. Extent of regulatory powers.** ~~The board~~ department shall ~~have the power to~~  
19 ~~adopt rules and regulations~~ including but not limited to rules governing the following  
20 matters:

21 A. Operating and inspection requirements for facilities, vessels, personnel and other  
22 matters relating to licensee operations under this subchapter, including annual  
23 inspections of oil terminal facilities;

24 B. Procedures and methods of reporting discharges and other occurrences prohibited  
25 by this subchapter;

26 C. Procedures, methods, means and equipment to be used by persons subject to  
27 ~~regulations~~ regulation by this subchapter;

28 D. Procedures, methods, means and equipment to be used in the removal of oil and  
29 petroleum pollutants;

30 E. Development and implementation of criteria and plans to meet oil and petroleum  
31 pollution occurrences of various degrees and kinds, including the state marine oil  
32 spill contingency plan required under section 546-A. Those plans must include  
33 provision for annual drills, sometimes unannounced, to determine the adequacy of  
34 response plans and the preparedness of the response teams;

35 E-1. Standards for establishing liability insurance for liabilities under section 552;

36 E-2. Development and implementation of criteria and plans for cleaning and securing  
37 a facility that is out of service but not subject to facility closure requirements under  
38 section 552-B;

39 E-3. Development and implementation of criteria and plans for facility closure  
40 required under section 552-B, including standards, procedures and reporting

1 requirements for removal of tanks and related appurtenances and remediation of the  
2 facility site;

3 E-4. Standards for establishing financial ability adequate to guarantee the  
4 performance of licensee obligations under section 552-B;

5 F. The establishment from time to time of control districts comprising sections of the  
6 Maine coast and the establishment of rules ~~and regulations~~ to meet the particular  
7 requirements of each such district;

8 G. Requirements for the safety and operation of vessels, barges, tugs, motor vehicles,  
9 motorized equipment and other equipment relating to the use and operation of  
10 terminals, facilities and refineries and the approach and departure from terminals,  
11 facilities and refineries;

12 H. Such other rules ~~and regulations~~ as the exigencies of any condition may require or  
13 such as may reasonably be necessary to carry out the intent of this subchapter; and

14 K. Operation and inspection requirements for interstate and intrastate oil pipelines  
15 excluding natural gas and artificial gas pipelines.

16 **5. Facility response plans.** Every facility subject to licensing under this section  
17 shall file with the department a copy of any oil discharge response plan submitted to the  
18 President of the United States under the federal Oil Pollution Act of 1990, Public Law  
19 101-380, Section 4202, 104 Stat. 484, or a statement that a plan is not required under  
20 federal law.

21 **6. Vessel response plans.** Every tank vessel, as defined under 56 United States  
22 Code, Section 2101, entering state waters shall have available for inspection by the  
23 commissioner or an agent of the commissioner a copy of any oil discharge response plan  
24 required to be submitted to the President of the United States under the federal Oil  
25 Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484.

26 **Sec. 6. 38 MRSA §552-B** is enacted to read:

27 **§552-B. Financial responsibility and facility closure**

28 **1. Financial responsibility; liability and facility closure costs.** An owner or  
29 operator of an oil terminal facility shall provide to the department evidence of the owner's  
30 or operator's financial ability to satisfy the liability imposed pursuant to section 552 and  
31 to satisfy estimated probable facility closure costs in compliance with this subchapter and  
32 rules adopted by the department.

33 A. The owner or operator of a facility shall provide to the department evidence of the  
34 owner's or operator's financial ability to satisfy the liability imposed pursuant to  
35 section 552 in an amount no less than \$2,000,000.

36 B. To be eligible for a license required under this subchapter, the owner or operator  
37 of a facility shall file with the department an estimate of probable facility closure  
38 costs and a preliminary facility closure plan and shall provide evidence of the owner's  
39 or operator's financial ability to satisfy those estimated costs.

40 C. Subject to the approval of the department, the owner or operator of a facility may  
41 establish the owner's or operator's financial ability to satisfy the probable facility

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1 closure costs estimated under paragraph B by one or a combination of the following:  
2 insurance and risk retention group coverage, guarantee, surety bond, letter of credit or  
3 trust fund. In determining the adequacy of evidence of such financial ability, the  
4 department shall consider the criteria in 40 Code of Federal Regulations, Sections  
5 280.96 to 280.99, 280.102 and 280.103.

6 D. Failure by the owner or operator of a facility to meet the requirements of this  
7 subsection and the department's rules may result in, but is not limited to, nonrenewal  
8 or revocation of the owner's or operator's license in accordance with subsection 3.

9 **2. Facility closure requirements.** An owner or operator shall close an oil terminal  
10 facility in compliance with a written facility closure plan that meets standards for safe  
11 closure and facility site remediation.

12 A. An owner or operator shall file a written facility closure plan with the department  
13 within 60 days of a decision to close an oil terminal facility and may not carry out  
14 facility closure activities until the department has approved the facility closure plan.

15 B. The department shall review the facility closure plan to determine compliance  
16 with applicable rules, consistent with a processing time schedule adopted by the  
17 department. The department's approval must include a timeline for completion by the  
18 owner or operator of the facility closure plan, including dates for performance of  
19 specific closure tasks.

20 C. The owner or operator shall complete the facility closure in accordance with the  
21 approved facility closure plan and to the satisfaction of the department. The  
22 department may conduct inspections, including, but not limited to, soil, groundwater  
23 and other testing, as a part of and to determine compliance with the approved facility  
24 closure plan.

25 D. Following completion of the facility closure, the owner or operator shall file a  
26 written facility closure completion report with the department, which must include a  
27 certification from an independent licensed professional engineer that the facility  
28 closure was conducted in accordance with the approved facility closure plan and that  
29 all regulated substances have been removed or remediated to the satisfaction of the  
30 department.

31 E. The department shall post the facility closure plan, departmental approval,  
32 inspection and testing results and completion report, including the independent  
33 licensed professional engineer's certification, on the department's publicly accessible  
34 website for 5 years following the completion of the facility closure.

35 **3. Enforcement.** An owner or operator that fails to comply with the requirements of  
36 this section is subject to enforcement action by the department, including, but not limited  
37 to, revocation of the license of the owner or operator required by sections 544 and 545.

38 **Sec. 7. Effective date.** This Act takes effect January 1, 2021.'

39 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
40 section number to read consecutively.

**SUMMARY**

1  
2 This amendment, which is the majority report of the committee, makes the following  
3 changes to the bill.

4 1. It removes from the bill the requirement that oil terminal facilities not in use for  
5 10 years file a closure plan.

6 2. It adds to the laws governing oil terminal facilities a definition for the term  
7 "related appurtenances."

8 3. It makes a number of technical clarifications and other changes to provisions in  
9 the bill dealing with the definitions of "facility closure" and "oil" and financial  
10 responsibility, liability and facility closure requirements related to oil terminal facilities.

**FISCAL NOTE REQUIRED**  
(See attached)



# 129th MAINE LEGISLATURE

LD 2033

LR 3125(02)

An Act To Ensure Proper Closure of Oil Terminal Facilities

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-710)

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

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## Fiscal Note

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Any additional costs to the Department of Environmental Protection as a result of changes to the financial assurance requirements and the reporting requirements for the closure of marine oil terminal facilities are anticipated to be minor and can be absorbed within existing budgeted resources.