

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 730

6
7 S.P. 272

In Senate, February 27, 1985

8 Reference to the Committee on Energy and Natural Resources suggested
9 and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Diamond of Cumberland.

11 Cosponsored by Senator Pearson of Penobscot and Representative Allen
of Washington.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Establish a Fund Concerning the
18 Excavation, Repair, Maintenance and
19 Cleanup of Underground Gasoline
20 Storage Tanks.
21

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

24 Sec. 1. 38 MRSA §545-A, sub-§2, as enacted by PL
25 1983, c. 785, §12, is amended to read:

26 2. Fee. Any person who applies for a permit for
27 an underground oil storage facility shall pay a fee
28 of ~~\$10~~ \$25 per tank or container to the department,
29 except that no fee may be charged for a permit for a
30 residential oil storage facility. No fee may be
31 charged for an underground oil storage facility that
32 is subject to review under the provisions of the site
33 location of development law, Title 38, Article 6.
34 No permit may be issued until the fee has been paid.
35 Upon receipt by the department, the fee shall be
36 credited to the ~~Maine Coastal Protection~~ Underground
37 Oil Storage Facility Clean-up Fund.

1 The fee shall be used to cover costs of administering
2 the permitting program and the balance shall be used
3 for public education regarding underground tanks.

4 Sec. 2. 38 MRSA §§545-B and 545-C are enacted to
5 read:

6 §545-B. Underground Oil Storage Facility Clean-up
7 Fund

8 The Underground Oil Storage Facility Clean-up
9 Fund is established to be used by the department as a
10 nonlapsing revolving fund to prevent discharges of
11 oil, petroleum products or their by-products; remove
12 prohibited discharges of oil, petroleum products or
13 their by-products; and replace and restore, or both,
14 water supplies contaminated by oil, petroleum
15 products or their by-products.

16 The fund shall accumulate from the following
17 sources:

18 1. Spillover from fees collected. The \$1,000,000
19 spillover from fees collected, pursuant to section
20 551, subsection 4, \$6,000,000 up to the cap of
21 \$7,000,000;

22 2. Interest from Maine Oil Contamination Preven-
23 tion and Clean-up Fund. The interest income accrued
24 by the Maine Oil Contamination Prevention and
25 Clean-up Fund; and

26 3. Interest from Underground Oil Storage Facili-
27 ty Clean-up Fund. The interest income accrued by the
28 Underground Oil Storage Facility Clean-up Fund it-
29 self.

30 Money in the fund, not needed currently to meet
31 the obligations of the department in the exercise of
32 its responsibilities under this subchapter shall be
33 deposited with the Treasurer of State to the credit
34 of the fund, and may be invested in such manner as is
35 provided for by law. Interest received on that in-
36 vestment shall be credited to the Underground Oil
37 Storage Facility Clean-up Fund.

1 The department shall submit to each Legislature
2 its budget recommendations for disbursements from the
3 Underground Oil Storage Facility Clean-up Fund.

4 §545-C. Reimbursements to the Underground Oil Stor-
5 age Facility Clean-up Fund

6 The department shall seek recovery to the use of
7 the fund all sums expended from the fund, including
8 overdrafts, unless the department finds the amount
9 involved too small or the likelihood of success too
10 uncertain.

11 Sec. 3. 38 MRSA §546, sub-§4, ¶¶I and J, as en-
12 acted by PL 1983, c. 785, §13, are amended to read:

13 I. The design, installation and operating proce-
14 dure requirements for both new and replacement
15 underground oil storage facilities to prevent
16 discharges of oil prohibited by this subchapter;
17 and

18 J. The proper methods for safe abandonment or
19 removal of underground oil storage facilities
20 which have been used to hold oil-;

21 Sec. 4. 38 MRSA §546, sub-§4, ¶¶K, L, M and N
22 are enacted to read:

23 K. Registration procedures for existing under-
24 ground oil storage facilities;

25 L. The monitoring, maintenance, operating and
26 remedial procedures for existing underground oil
27 storage facilities;

28 M. Certifying installers of underground oil
29 storage facilities; and

30 N. The replacement or restoration of water sup-
31 plies contaminated with oil, petroleum products
32 or their by-products limited to a disbursement
33 from the Underground Oil Storage Facility
34 Clean-up Fund of not more than \$15,000 per fiscal
35 year per each contaminated well. The department
36 shall employ the lowest cost alternative that is
37 both technologically feasible and reliable and

1 that effectively mitigates or minimizes damage to
2 and provides adequate protection of public
3 health, welfare and the environment. The board
4 may authorize a disbursement above the \$15,000
5 per year per well limit in the event of special
6 or exceptional circumstances.

7 Sec. 5. 38 MRSA §551, as amended by PL 1983, c.
8 483, §§11 to 15, is further amended to read:

9 §551. Maine Oil Contamination Prevention and
10 Clean-up Fund

11 The Maine Coastal Protection Maine Oil Contamina-
12 tion Prevention and Clean-up Fund is established to
13 be used by the department as a nonlapsing, revolving
14 fund for carrying out the purposes of this subchap-
15 ter. The fund shall be limited to \$4,000,000 until
16 July 1, 1978. Thereafter, the fund shall be limited
17 to ~~\$6,000,000~~ \$7,000,000 and the Department of Envi-
18 ronmental Protection shall collect fees in accordance
19 with subsection 4. To this fund shall be credited all
20 license fees, penalties and other fees and charges
21 related to this subchapter, and to this fund shall be
22 charged any and all expenses of the department relat-
23 ed to this subchapter, including administrative ex-
24 penditures, costs of removal of discharges of pollutants
25 and 3rd party damages covered by this subchapter.

26 Moneys Money in the fund, not needed currently to
27 meet the obligations of the department in the exer-
28 cise of its responsibilities under this subchapter
29 shall be deposited with the Treasurer of State to the
30 credit of the fund, and may be invested in such man-
31 ner as is provided for by statute. Interest received
32 on that investment shall be credited to the Maine
33 Coastal Protection Underground Oil Storage Facility
34 Clean-up Fund.

35 1. Research and development. The Legislature may
36 allocate not more than \$100,000 per annum of the
37 amount then currently in the fund to be devoted to
38 research and development in the causes, effects and
39 removal of pollution caused by oil, petroleum
40 products and their by-products on the marine environ-
41 ment. Such allocations shall be made in accordance
42 with section 555.

1 2. Third party damages. Any person, claiming to
2 have suffered damages to real estate or personal
3 property or loss of income directly or indirectly as
4 a result of a discharge of oil, prohibited by section
5 543, hereinafter called the claimant, may apply with-
6 in 6 months after the occurrence of such discharge to
7 the board stating the amount of damage alleged to be
8 suffered as a result of such discharge. The board
9 shall prescribe appropriate forms and details for the
10 applications. The board may, upon petition and for
11 good cause shown, waive the 6 months' limitation for
12 filing damage claims.

13 A. If the claimant, the board and the person
14 causing the discharge can agree to the damage
15 claim, or in the case where the person causing
16 the discharge is not known after the board shall
17 have exercised reasonable efforts to ascertain
18 the discharger, if the claimant and the board can
19 agree to the damage claim, the board shall certi-
20 fy the amount of the claim and the name of the
21 claimant to the Treasurer of State and the Treas-
22 urer of State shall pay the same from the Maine
23 Coastal Protection Maine Oil Contamination Pre-
24 vention and Clean-up Fund.

25 B. If the claimant, the board and the person
26 causing the discharge cannot agree as to the
27 amount of the damage claim, or in the case where
28 the person causing the discharge is not known af-
29 ter the board shall have exercised reasonable ef-
30 forts to ascertain the discharger, if the claim-
31 ant and the board cannot agree as to the amount
32 of the damage claim, the claim shall forthwith be
33 transmitted for action to the Board of Arbitra-
34 tion as provided in this subchapter.

35 C. Third party damage claims shall be stated in
36 their entirety in one application. Damages omit-
37 ted from any claim at the time the award is made
38 shall be deemed waived.

39 D. Damage claims arising under this subchapter
40 shall be recoverable only in the manner provided
41 under this subchapter, it being the intent of the
42 Legislature that the remedies provided in this
43 subchapter are exclusive.

1 E. Awards from the fund on damage claims shall
2 not include any amount which the claimant has re-
3 covered, on account of the same damage, by way of
4 settlement with or judgment of the federal courts
5 against the person causing or otherwise responsi-
6 ble for the discharge.

7 2-A. Exceptions; 3rd party damage claims. Sub-
8 section 2, 3rd party damages, shall not apply to wa-
9 ters of the State classified under sections 368, 369
10 and 371, except those waters below head of tide until
11 July 1, 1978.

12 3. Board of Arbitration. The Board of Arbitra-
13 tion shall consist of 3 persons, one to be chosen by
14 the person determined in the first instance by the
15 board to have caused the discharge, one to be chosen
16 by the board to represent the public interest and one
17 person chosen by the first 2 appointed members to
18 serve as a neutral arbitrator. The neutral arbitrator
19 shall serve as chairman. If the 2 arbitrators fail to
20 agree upon, select and name the neutral arbitrator
21 within 10 days after their appointment then the board
22 shall request the American Arbitration Association to
23 utilize its procedures for the selection of the neu-
24 tral arbitrator.

25 A. No member of the board shall serve as an ar-
26 bitrator.

27 B. A party determined by the board to have
28 caused a discharge shall appoint an arbitrator
29 within such period of time as the board may by
30 regulation prescribe. In the event that the party
31 shall fail to select its arbitrator within 10
32 days after receipt of notice from the board that
33 such selection is necessary, the board shall re-
34 quest the American Arbitration Association to se-
35 lect an arbitrator to represent the interest of
36 the party in the arbitration proceedings.

37 In the case where the person causing the dis-
38 charge is unknown, the board shall request the
39 American Board of Arbitration to appoint an arbi-
40 trator to represent the interest of the unknown
41 party.

1 C. One Board of Arbitrators shall be established
2 for and hear and determine all claims arising
3 from or related to a common single discharge.

4 D. Hearings before Boards of Arbitrators shall
5 be informal, and the rules of evidence prevailing
6 in judicial proceedings shall not be binding. The
7 Board of Arbitration shall have the power to ad-
8 minister oaths and to require by subpoena the at-
9 tendance and testimony of witnesses, the produc-
10 tion of books, records and other evidence rela-
11 tive or pertinent to the issues represented to
12 them for determination.

13 E. Determinations made by a majority of the
14 Board of Arbitration shall be final, and such de-
15 terminations may be subject to review by a Jus-
16 tice of the Superior Court but only as to matters
17 relating to abuse of discretion by the Board of
18 Arbitration. A party seeking review of a Board
19 of Arbitration determination must file an appeal
20 in the Superior Court within 30 days of the Board
21 of Arbitration determination.

22 F. Representation on the Board of Arbitration
23 shall not be deemed an admission of liability for
24 the discharge.

25 G. If the final determination of the Board of
26 Arbitration includes a damage award, the Board of
27 Arbitration shall certify the amount of the dam-
28 age award and the name of the party to receive
29 the award to the Treasurer of State. The Trea-
30 surer of State shall pay that amount to the party
31 from the ~~Maine Coastal Protection~~ Maine Oil Con-
32 tamination Prevention and Clean-up Fund no sooner
33 than 35 days after the date of the final determi-
34 nation of the Board of Arbitration. If the de-
35 termination of the Board of Arbitration is ap-
36 pealed pursuant to paragraph E, the Treasurer of
37 State shall withhold payment of the damage award
38 until a final judgment on the appeal is entered,
39 at which time the Treasurer of State shall pay
40 any damage awards according to the terms of the
41 final judicial judgment, with interest at the
42 commercial rate as established by the Treasurer
43 of State calculated from the date of the Board of
44 Arbitration's final determination.

1 4. Funding.

2 A. License fees shall be determined on the basis
3 of 1¢ per barrel of oil transferred by the li-
4 censee during the licensing period and shall be
5 paid monthly by the licensee on the basis of
6 records certified to the department, provided
7 that during such time as any bonds issued pursu-
8 ant to private and special law 1969, chapter 239,
9 shall remain outstanding and funds made available
10 for interest and debt retirement shall be inade-
11 quate for that purpose, the license fee shall be
12 determined on the basis of 2¢ per barrel. License
13 fees shall be paid to the department and upon re-
14 ceipt by it credited to the Maine Coastal
15 Protection Maine Oil and Contamination Prevention
16 and Clean-up Fund.

17 B. Whenever the balance in the fund has reached
18 the limit provided under this subchapter, license
19 fees shall be proportionately reduced to cover
20 only administrative expenses and sums allocated
21 to research and development, provided that the
22 license fees shall continue without reduction
23 during such time as any bonds issued pursuant to
24 the private and special laws of 1969, chapter
25 239, shall remain outstanding and funds made
26 available for interest and debt retirement there-
27 under shall be inadequate for such purpose.

28 C. All sums received by the department when the
29 balance in the fund has reached \$4,000,000 shall,
30 after deduction of administrative expenses and
31 sums allocated to research and development,
32 promptly be remitted to the Treasurer of State to
33 be held distinct from all other moneys of the
34 State for the payment of interest and debt re-
35 tirement pursuant to Private and Special Law
36 1969, chapter 239, section 5. When there has been
37 no interest or debt incurred pursuant to Private
38 and Special Law 1969, chapter 239, section 5, or
39 upon payment of all interest and debt so in-
40 curred, the Treasurer of State shall credit to
41 the fund all sums received according to this sub-
42 chapter.

1 5. Disbursements from fund. Moneys Money in the
2 Maine Coastal Protection Maine Oil Contamination Pre-
3 vention and Clean-up Fund shall be disbursed for the
4 following purposes and no others:

5 A. Administrative expenses, personnel expenses
6 and equipment costs of the board related to the
7 enforcement of this subchapter; ;

8 B. All costs involved in the abatement of pollu-
9 tion related to the discharge of oil, petroleum
10 products and their by-products covered by this
11 subchapter; ;

12 C. Sums allocated to research and development in
13 accordance with this section; ;

14 D. Payment of 3rd party claims awarded in ac-
15 cordance with this section; ;

16 E. Payment of costs of arbitration and arbitra-
17 tors; ;

18 F. Payment of costs of insurance by the State to
19 extend or implement the benefits of the fund; ;

20 G. Payments to Treasurer of State pursuant to
21 subsection 4, paragraph B; ;

22 H. Sums, up to \$50,000 each year, which have
23 been allocated by the Legislature on a contingen-
24 cy basis in accordance with section 555 for pay-
25 ment of costs for studies of the environmental
26 impacts of discharges prohibited by section 543
27 which may have adverse economic effects and which
28 occur subsequent to such allocation, when such
29 studies are deemed necessary by the commission-
30 er; ; and

31 I. All costs involved in the treatment or clean-
32 up of a discharge of hazardous waste or hazardous
33 matter or any action necessary to prevent or min-
34 imize danger from a discharge or threatened dis-
35 charge.

36 6. Reimbursements to Maine Oil Contamination
37 Prevention and Clean-up Fund. The department shall

1 seek recovery to the use of the fund all sums ex-
2 pended therefrom, including overdrafts, for the fol-
3 lowing purposes, unless the department finds the
4 amount involved too small or the likelihood of suc-
5 cess too uncertain; provided that recoveries result-
6 ing from damage due to an oil pollution disaster de-
7 clared by the Governor pursuant to section 547 shall
8 be apportioned between the ~~Maine Coastal Protection~~
9 Maine Oil Contamination Prevention and Clean-up Fund
10 and the General Fund so as to repay the full costs to
11 the General Fund of any bonds issued as a result of
12 the disaster:

13 A. All disbursements made by the fund pursuant
14 to subsection 5, paragraphs B, D, E and H in con-
15 nection with a prohibited discharge;

16 B. In the case of a licensee promptly reporting
17 a discharge as required by this subchapter, dis-
18 bursement made by the fund pursuant to subsection
19 5, paragraphs B, D and E in connection with any
20 single prohibited discharge including 3rd party
21 claims in excess of \$15,000, except to the extent
22 that the costs are covered by payments received
23 under any federal program;

24 C. Requests for reimbursement to the fund if not
25 paid within 30 days of demand shall be turned
26 over to the Attorney General for collection; and

27 D. The department may file claims with appropri-
28 ate federal agencies to recover for the use of
29 the fund all disbursement from the fund in con-
30 nection with a prohibited discharge.

31 7. Waiver of reimbursement. Upon petition of any
32 licensee the board may, after hearing, waive the
33 right to reimbursement to the fund if it finds that
34 the occurrence was the result of any of the follow-
35 ing:

36 A. An act of war.

37 B. An act of government, either State, Federal
38 or municipal, except insofar as the act was pur-
39 suant to section 548;

1 C. An act of God, which shall mean an
2 unforeseeable act exclusively occasioned by the
3 violence of nature without the interference of
4 any human agency.

5 Upon such finding by the board immediate credit
6 therefor shall be entered for the party involved. The
7 findings of the board shall be conclusive as it is
8 the legislative intent that waiver provided in this
9 subsection is a privilege conferred not a right
10 granted.

1 STATEMENT OF FACT

2 This bill addresses the serious issue of leaking
3 underground petroleum storage tanks by establishing a
4 separate fund to prevent and clean up the impacts of
5 leaking tanks and by providing the Department of En-
6 vironmental Protection with additional authority to
7 deal with the problem.

8 Section 1 increases the permitting fee for new or
9 replacement underground oil storage facilities to \$25
10 and requires the fee to be used for administering the
11 permit program or for public education.

12 Section 2 establishes the Underground Oil Storage
13 Facility Clean-up Fund and requires the department to
14 seek recovery to the use of the fund.

15 Sections 3 and 4 authorize the board to register
16 existing underground tanks, regulate existing under-
17 ground tanks, certify installers of underground tanks
18 and replace or restore contaminated water supplies to
19 a limited extent.

20 Section 5 changes the name of the Maine Coastal
21 Protection Fund to the Maine Oil Contamination Pre-
22 vention and Clean-up Fund and raises the cap of the
23 fund to \$7,000,000.

24 Section 5, also, authorizes money in the Maine
25 Oil Contamination Prevention and Clean-up Fund to be
26 disbursed for the treatment, cleanup or prevention of
27 a hazardous waste or hazardous matter discharge.

28 0401020485