

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1655
7

8 S.P. 641

In Senate, June 18, 1985

9 Reported by Senator Diamond of Cumberland from the Committee on
10 Audit and Program Review pursuant to 3 MRSA Chapter 23 and printed
under Joint Rule 18.

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

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT to Amend Certain Provisions of the Oil
19 Discharge Prevention and Pollution
20 Control Act and to Establish a New Act
21 Relating to Underground Oil Storage
22 Facilities.
23

24 Emergency preamble. Whereas, Acts of the Legis-
25 lature do not become effective until 90 days after
26 adjournment unless enacted as emergencies; and

27 Whereas, the 90-day period may not terminate un-
28 til after the beginning of the next fiscal year; and

29 Whereas, regulating the installation and opera-
30 tion of existing, new and replacement underground oil
31 storage tanks and facilities is important in order to
32 prevent contamination of valuable ground water and
33 well water resources and to provide the means to
34 clean-up contamination by leaking underground tanks;
35 and

1 Whereas, certain obligations and expenses inci-
2 dent to the operation of departments and agencies
3 will become due and payable on or immediately after
4 July 1, 1985; and

5 Whereas, in the judgment of the Legislature,
6 these facts create an emergency within the meaning of
7 the Constitution of Maine and require the following
8 legislation as immediately necessary for the preser-
9 vation of the public peace, health and safety; now,
10 therefore,

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

13 PART A

14 Sec. 1. 5 MRSA §12004, sub-§1, ¶A, sub-¶(40) is
15 enacted to read:

16 (40) Board of Underground Expenses only 32 MRSA §10001
17 Oil Storage Tank
18 Installers

19 Sec. 2. 32 MRSA c. 105 is enacted to read:

20 CHAPTER 105

21 UNDERGROUND OIL STORAGE TANK INSTALLERS

22 §10001. Declaration of purpose

23 In order to safeguard the public health, safety
24 and welfare, to protect the public from incompetent
25 and unauthorized persons, to assure the highest de-
26 gree of professional conduct on the part of under-
27 ground oil storage tank installers and to assure the
28 availability of underground oil storage tank instal-
29 lations of high quality to persons in need of those
30 services, it is the purpose of this chapter to pro-
31 vide for the regulation of persons offering under-
32 ground oil storage tank installation services.

33 §10002. Definitions

34 As used in this chapter, unless the context oth-
35 erwise indicates, the following terms have the fol-
36 lowing meanings.

1 1. Board. "Board" means the Board of Under-
2 ground Oil Storage Tank Installers established under
3 this chapter.

4 2. Commissioner. "Commissioner" means the Com-
5 missioner of Environmental Protection.

6 3. Department. "Department" means the Depart-
7 ment of Environmental Protection.

8 4. Oil. "Oil" means oil, petroleum products and
9 their by-products of any kind and in any form includ-
10 ing, but not limited to, petroleum, fuel oil, sludge,
11 oil refuse, oil mixed with other waste, crude oils
12 and all other liquid hydrocarbons regardless of spec-
13 ific gravity.

14 5. Public member. "Public member" means that
15 that person may not be a past or present member of
16 the occupation or profession regulated by the board,
17 may not have been professionally affiliated with that
18 occupation or profession for a period of 5 years pre-
19 ceding appointment to the board and may not have had
20 in the past a material or financial interest in ei-
21 ther the provision of services provided by this occu-
22 pation or profession or an activity directly related
23 to this occupation or profession, including the
24 representation of the board or profession for a fee
25 at any time during the 5 years preceding appointment.

26 6. Underground oil storage tank. "Underground
27 oil storage tank," for purposes of this chapter,
28 means any tank or container, 10% or more of which is
29 beneath the surface of the ground, together with as-
30 sociated piping and dispensing facilities and which
31 is used, or intended to be used, for the storage or
32 supply of oil as defined in subsection 4. The term
33 "underground oil storage tank" does not include tanks
34 or containers, associated piping or dispensing facil-
35 ities that are located in an underground area if
36 these tanks or containers, associated piping or dis-
37 persing facilities are situated upon or above the
38 surface of a floor and in such a manner that they may
39 be readily inspected.

40 7. Underground oil storage tank install-
41 er. "Underground oil storage tank installer" means a
42 person certified under this chapter to install under-
43 ground oil storage tanks.

1 §10003. Board of underground oil storage tank in-
2 stallers; establishment; compensation

3 1. Establishment and membership. There is es-
4 tablished within the Department of Environmental Pro-
5 tection, a Board of Underground Oil Storage Tank In-
6 stallers. The board shall consist of 7 members ap-
7 pointed by the Governor as follows: One from the De-
8 partment of Environmental Protection; one from either
9 the Maine Oil Dealer's Association, the Pine Tree Gas
10 Retailers Association or the Maine Petroleum Associa-
11 tion; one underground oil storage tank installer; one
12 from either the Oil and Solid Fuel Board, the
13 Plumber's Examining Board or the State Board of Cer-
14 tification for Geologists and Soil Scientists; one
15 from the Board of Environmental Protection; and 2
16 public members.

17 2. Terms of appointment. The Governor, within
18 60 days following the effective date of this chapter,
19 shall appoint 3 board members for a term of one year,
20 3 for a term of 2 years and one for a term of 3
21 years. Appointments made thereafter shall be for
22 3-year terms, but no person may be appointed to serve
23 more than 2 consecutive terms at any one time. Terms
24 shall begin on the first day of the calendar year and
25 end on the last day of the calendar year or until
26 successors are appointed, except for the first ap-
27 pointed members who shall serve through the last cal-
28 endar days of the year in which they are appointed,
29 before commencing the terms prescribed by this sec-
30 tion.

31 Any member of the board may be removed from office
32 for cause by the Governor. A member may not serve
33 more than 2 full successive terms provided that, for
34 this purpose only, a period actually served which ex-
35 ceeds 1/2 of the 3-year term shall be deemed a full
36 term.

37 3. Meetings. The board shall meet during the
38 first month of each calendar year to select a chair-
39 man and for other purposes. At least one additional
40 meeting shall be held before the end of each calendar
41 year. Other meetings may be convened at the call of
42 the chairman or the written request of any 2 board
43 members. A majority of the members of the board
44 shall constitute a quorum for all purposes.

1 4. Compensation. Members of the board shall re-
2 ceive no compensation for their services, but are en-
3 titled to expenses on the same basis as provided for
4 state employees.

5 §10004. Board of Underground Oil Storage Tank In-
6 stallers; powers and duties

7 1. Powers. The board shall administer and en-
8 force this chapter and evaluate the qualifications of
9 applicants for certification. The board may issue
10 subpoenas, examine witnesses, administer oaths and
11 may investigate or cause to be investigated any com-
12 plaints made to it or any cases of noncompliance with
13 or violation of this chapter.

14 2. Rules. The board may adopt, in accordance
15 with the Maine Administrative Procedure Act, Title 5,
16 chapter 375, rules relating to professional conduct
17 to carry out the policy of this chapter, including,
18 but not limited to, rules relating to professional
19 regulation and to the establishment of ethical stan-
20 dards of practice for persons certified to practice
21 underground oil storage tank installation.

22 3. Hearings. Hearings may be conducted by the
23 board to assist with investigations, to determine
24 whether grounds exist for suspension, revocation or
25 denial of certification, or as otherwise deemed nec-
26 essary to the fulfillment of its responsibilities un-
27 der this chapter. Hearings shall be conducted in ac-
28 cordance with the Maine Administrative Procedure Act,
29 Title 5, chapter 375, subchapter IV, to the extent
30 applicable.

31 4. Records. The board shall keep such records
32 and minutes as are necessary to the ordinary dispatch
33 of its functions.

34 5. Contracts. The board may enter into con-
35 tracts to carry out its responsibilities under this
36 chapter.

37 6. Reports. No later than August 1st of each
38 year, the board shall submit to the commissioner, for
39 the preceding fiscal year ending June 30th, its annu-
40 al report of its operations and financial position,
41 together with such comments and recommendations as
42 the commissioner deems essential.

1 §10005. Board of Underground Oil Storage Tank In-
2 stallers; administrative provisions

3 1. Officers. The board shall appoint a secre-
4 tary and may appoint other officers as it deems nec-
5 essary.

6 2. Employees. With the advice of the board, the
7 commissioner may appoint, subject to the Personnel
8 Law, such employees as may be necessary to carry out
9 this chapter. Any person so employed shall be lo-
10 cated in the department and under the administrative
11 and supervisory direction of the commissioner.

12 3. Budget. The board shall submit to the com-
13 missioner its budgetary requirements in the same man-
14 ner as is provided in Title 5, section 1665.

15 §10006. Certification

16 1. Certification required. No person may prac-
17 tice, or hold himself out as authorized to practice,
18 as an underground oil storage tank installer in this
19 State or use the words "underground oil storage tank
20 installer" or other words or letters to indicate that
21 the person using the words or letters is a certified
22 underground oil storage tank installer practitioner
23 unless he is certified in accordance with this chap-
24 ter.

25 2. Individual. Only an individual may be certi-
26 fied under this chapter.

27 §10007. Persons and practices exempt

28 Nothing in this chapter may be construed as pre-
29 venting or restricting the practice, services or ac-
30 tivities of:

31 1. Certified persons. Any person certified in
32 this State by any other law from engaging in the pro-
33 fession or occupation for which he is certified.

34 §10008. Reciprocity

35 A person who is a resident of the State and has
36 been certified in another state as an underground oil
37 storage tank installer may, upon payment of a fee as

1 established under section 10012, obtain a certifica-
2 tion as an underground oil storage tank installer,
3 provided that a person submits satisfactory evidence
4 of certification as an underground oil storage tank
5 installer in another state under qualifications
6 equivalent to those specified in this chapter.

7 §10009. Certification requirements for persons work-
8 ing as underground oil storage tank install-
9 ers

10 1. Certification requirements for persons now
11 working as underground oil storage tank install-
12 ers. A certificate may be granted to those persons
13 who have been employed as underground oil storage
14 tank installers for at least 2 years preceding cre-
15 ation of this board, by one of the following means:

16 A. The person has passed an oral test based on
17 Title 38, chapter 3, subchapter II-B, and any
18 rules promulgated thereunder by the Board of En-
19 vironmental Protection concerning underground oil
20 storage tank installations;

21 B. The person has passed a written test based on
22 Title 38, chapter 3, subchapter II-B, and any
23 rules promulgated thereunder by the Board of En-
24 vironmental Protection concerning underground oil
25 storage tank installations; or

26 C. The person has completed successful installa-
27 tion of an underground oil storage tank under the
28 supervision of a designated representative of the
29 Department of Environmental Protection.

30 §10010. Requirements for certification

31 An applicant applying for certification as an un-
32 derground oil storage tank installer shall file a
33 written application provided by the board, showing to
34 the satisfaction of the board that he meets the fol-
35 lowing requirements.

36 1. Residence. An applicant need not be a resi-
37 dent of this State.

38 2. Character. An applicant shall have demon-
39 strated ethical practice.

1 3. Education and examination. An applicant
2 shall meet the following requirements:

3 A. He shall have passed a written examination
4 based on Title 38, chapter 3, subchapter II-B,
5 and any rules promulgated thereunder by the Board
6 of Environmental Protection concerning the in-
7 stallation of underground oil storage tanks; and

8 B. He shall have completed successful installa-
9 tion of an underground oil storage tank under the
10 supervision of a designated representative of the
11 Department of Environmental Protection.

12 §10011. Examination for certification

13 1. Requirement fees. Only a person satisfying
14 the requirements of section 10010, subsections 1 and
15 2, may apply for examination in such a manner as the
16 board prescribes. The application shall be accompa-
17 nied by the nonrefundable fee prescribed by section
18 10012. A person who fails either part of the exami-
19 nation specified in section 10010, subsection 3, may
20 apply for reexamination upon payment of the pre-
21 scribed fee.

22 2. Content. The written examination shall test
23 the applicant's knowledge of the skills and knowledge
24 relating to storage tank installation and such other
25 subjects as the board requires to determine the ap-
26 plicant's fitness to practice. The board shall ap-
27 prove an examination for underground oil storage tank
28 installers and establish standards for an acceptable
29 performance.

30 3. Time and place. Applicants for certification
31 shall be examined at a time and place and under such
32 supervision as the board requires. Examinations
33 shall be given at least twice each year at such
34 places as the board determines.

35 The board shall give reasonable public notice of
36 these examinations in accordance with its rules.

37 4. Scores; review. Applicants may obtain their
38 examination scores and may review their papers in ac-
39 cordance with rules as the board may establish.

1 §10012. Fees

2 1. Amount. Fees may be established by the board
3 in amounts which are reasonable and necessary for
4 their respective purposes.

5 2. Disposal of fees. All fees received by the
6 board shall be paid to the Treasurer of State to be
7 used for carrying out this chapter. Any balance of
8 fees shall not lapse but shall be carried forward as
9 a continuing account to be expended for the same pur-
10 poses in the following fiscal years.

11 §10013. Issuance of certification

12 The board shall issue a certificate to any person
13 who meets the requirements of this chapter upon pay-
14 ment of the prescribed certification fee.

15 §10014. Renewal of certification

16 1. Biennial renewal. Any certificate issued un-
17 der this chapter is subject to biennial renewal and
18 shall expire, unless renewed in the manner prescribed
19 by the rules of the board, upon the payment of a re-
20 newal fee. Certificates may be renewed up to 30 days
21 after the date of expiration upon payment of a late
22 fee of \$10 in addition to the renewal fee. Any per-
23 son who submits an application for renewal more than
24 30 days after the certification renewal date is sub-
25 ject to all requirements governing new applicants un-
26 der this chapter, except that the board may, in its
27 discretion, giving due consideration to the protec-
28 tion of the public, waive examination if that renewal
29 application is made within 2 years from the date of
30 that expiration.

31 2. Inactive status. Upon request, the board
32 shall grant inactive status to a certified person who
33 does not practice or present himself as an under-
34 ground oil tank installer and maintains any continu-
35 ing competency requirements established by the board.

36 3. Continuing competency. Each certification
37 renewal shall be accompanied with evidence of contin-
38 uing competencies as determined by the board.

39 §10015. Investigation; refusal of license or renew-
40 al; disciplinary action

1 1. Complaints; investigations. The board shall
2 investigate or cause to be investigated a complaint
3 made on its own motion or on written complaint filed
4 with the board and all cases of noncompliance with or
5 violation of this chapter or of any rules adopted by
6 the board.

7 2. Disciplinary action; grounds. The board may
8 suspend or revoke a certificate pursuant to Title 5,
9 section 10004. The board may refuse to issue or re-
10 new a certificate or the Administrative Court may
11 suspend, revoke or refuse to renew a certificate of
12 any certified person. The following shall be grounds
13 for an action to modify, suspend, revoke or refuse to
14 issue or renew a certificate:

15 A. The practice of any fraud or deceit in ob-
16 taining a certificate under this chapter or in
17 connection with services rendered within the
18 scope of the certificate issued;

19 B. Unprofessional conduct, including any gross
20 negligence, incompetency or misconduct in the
21 certified person's performance of the work of un-
22 derground oil storage tank installation, or vio-
23 lation of any standard of professional behavior
24 which has been established by the board;

25 C. Subject to the limitation of Title 5, chapter
26 341, conviction of a crime which involves dishon-
27 esty or false statement or which relates directly
28 to the practice for which the certified person is
29 certified or conviction of any crime for which
30 imprisonment for one year or more may be imposed;
31 or

32 D. Any violation of this chapter or any rule
33 adopted by the board.

34 3. Criminal penalty. Any person who violates a
35 provision of this chapter or any lawful order or rule
36 adopted by the board is guilty of a Class E crime.

37 4. Injunction. The State may bring an action in
38 Superior Court to enjoin any person from violating
39 this chapter, regardless of whether proceedings have
40 been or may be instituted in the Administrative Court
41 or whether criminal proceedings have been or may be
42 instituted.

1 5. Reinstatement. An application for reinstatement
2 may be made to the board one year from the date
3 of revocation of a certificate. The board may accept
4 or reject the application and hold a hearing to consider
5 the reinstatement.

6 Sec. 3. 38 MRSA §347, sub-§7, as enacted by PL
7 1983, c. 796, §16, is amended to read:

8 7. Right of inspection and entry. Employees of
9 the Department of Environmental Protection shall have
10 the authority to enter any property at reasonable
11 hours, and to enter any building with the consent of
12 the property owner, occupant or agent, to inspect the
13 property or structure ~~for~~, to take samples and to
14 conduct tests, as appropriate, to determine compli-
15 ance with any provision of the laws administered by
16 the department, or the terms and conditions of any
17 order, regulation, license, permit, approval or deci-
18 sion of the Board of Environmental Protection.

19 Sec. 4. 38 MRSA §361-A, sub-§2-B is enacted to
20 read:

21 2-B. Handle. "Handle" means to store, transfer,
22 collect, separate, salvage, process, reduce, recover,
23 incinerate, treat or dispose of.

24 Sec. 5. 38 MRSA §541, as amended by PL 1983, c.
25 785, §9, is further amended to read:

26 §541. Findings; purpose

27 The Legislature finds and declares that the high-
28 est and best uses of the seacoast of the State are as
29 a source of public and private recreation and solace
30 from the pressures of an industrialized society, and
31 as a source of public use and private commerce in
32 fishing, lobstering and gathering other marine life
33 used and useful in food production and other commer-
34 cial activities.

35 The Legislature further finds and declares that
36 the preservation of these uses is a matter of the
37 highest urgency and priority and that such uses can
38 only be served effectively by maintaining the coastal
39 waters, estuaries, tidal flats, beaches and public
40 lands adjoining the seacoast in as close to a

1 pristine condition as possible taking into account
2 multiple use accommodations necessary to provide the
3 broadest possible promotion of public and private in-
4 terests with the least possible conflicts in such
5 diverse uses.

6 The Legislature further finds and declares that
7 the transfer of oil, petroleum products and their by-
8 products between vessels and vessels and onshore fa-
9 cilities and vessels within the jurisdiction of the
10 State and state waters ~~is a~~ and the transportation
11 and other handling of oil in inland areas of the
12 State are hazardous ~~undertaking~~ undertakings; that
13 spills, discharges and escape of oil, petroleum
14 products and their by-products occurring as a result
15 of procedures involved in the transfer ~~and~~ storage
16 and other handling of such products pose threats of
17 great danger and damage to the marine, estuarine, in-
18 land surface water and adjacent terrestrial environ-
19 ment of the State; to owners and users of shorefront
20 property; to public and private recreation; to citi-
21 zens of the State and other interests deriving live-
22 lihood from ~~marine-related~~ marine and inland surface
23 water related activities; and to the beauty of the
24 Maine coast and inland waters; that such hazards have
25 frequently occurred in the past, are occurring now
26 and present future threats of potentially catastroph-
27 ic proportions, all of which are expressly declared
28 to be inimical to the paramount interests of the
29 State as set forth in this subchapter and that such
30 state interests outweigh any economic burdens imposed
31 by the Legislature upon those engaged in transferring
32 and other handling of oil, petroleum products and
33 their by-products and related activities.

34 The Legislature further finds and declares that
35 significant quantities of oil are being stored in un-
36 derground storage facilities; that leaks and unli-
37 censed discharges from such facilities pose a signif-
38 icant threat to the quality of the waters of the
39 State, including the ground water resources; that
40 protection of the quality of these waters is of the
41 highest importance; and that their protection re-
42 quires proper design and installation of new and re-
43 placement underground storage facilities; and moni-
44 toring, maintenance and remedial action on the exist-
45 ing facilities.

1 The Legislature intends by the enactment of this
2 legislation to exercise the police power of the State
3 through the Board of Environmental Protection and the
4 Department of Environmental Protection by conferring
5 upon the board the ~~exclusive~~ power to deal with the
6 hazards and threats of danger and damage posed by
7 such transfers and related activities; to require the
8 prompt containment and removal of pollution occa-
9 sioned thereby; to provide procedures whereby persons
10 suffering damage from those occurrences may be
11 promptly made whole; and to establish a fund to pro-
12 vide for the inspection and supervision of those ac-
13 tivities and guarantee the prompt payment of reason-
14 able damage claims resulting therefrom.

15 The Legislature further finds and declares that
16 the preservation of the public uses referred to in
17 this subchapter is of grave public interest and con-
18 cern to the State in promoting its general welfare,
19 preventing disease, promoting health and providing
20 for the public safety, and that the state's interest
21 in such preservation outweighs any burdens of abso-
22 lute liability imposed by the Legislature upon those
23 engaged in transferring or other handling of oil, pe-
24 troleum products and their by-products and related
25 activities.

26 Sec. 6. 38 MRSA §542, sub-§5, as enacted by PL
27 1969, c. 572, §1, is amended to read:

28 5. Fund. "Fund" ~~shall mean~~ means the Maine
29 Coastal ~~Protection~~ and Inland Surface Oil Clean-up
30 Fund.

31 Sec. 7. 38 MRSA §542, sub-§10-A, as enacted by
32 PL 1983, c. 785, §10, is repealed.

33 Sec. 8. 38 MRSA §543, first ¶, as amended by PL
34 1983, c. 785, §11, is further amended to read:

35 The discharge of oil into or upon any coastal wa-
36 ters, estuaries, tidal flats, beaches and lands ad-
37 joining the seacoast of the State, or into or upon
38 any lake, pond, river, stream, sewer, surface water
39 drainage, ground water or other waters of the State
40 or any public or private water supply or onto lands
41 adjacent to, on, or over such waters of the State is
42 prohibited.

1 Sec. 9. 38 MRSA §545-A, as enacted by PL 1983,
2 c. 785, §12, is repealed.

3 Sec. 10. 38 MRSA §546, sub-§4, ¶¶I and J, as
4 enacted by PL 1983, c. 785, §13, are repealed.

5 Sec. 11. 38 MRSA §548, as amended by PL 1983, c.
6 483, §9, is further amended to read:

7 § 548. Removal of prohibited discharges

8 Any person discharging or suffering the discharge
9 of oil, petroleum products or their by-products in
10 the manner prohibited by section 543 shall immediate-
11 ly undertake to remove that discharge to the board's
12 department's satisfaction. Notwithstanding the above
13 requirement, the department may undertake the removal
14 or cleanup of that discharge and may retain agents
15 and contracts for those purposes who shall operate
16 under the direction of the board department. The de-
17 partment may implement remedies to restore or replace
18 water supplies contaminated by a discharge of oil,
19 petroleum products or their by-products prohibited by
20 section 543, including all discharges from interstate
21 pipelines, using the most cost-effective alternative
22 that is technologically feasible and reliable and
23 which effectively mitigates or minimizes damages to,
24 and provides adequate protection of, the public
25 health, welfare and the environment.

26 Any unexplained discharge of oil, petroleum
27 products or their by-products within state jurisdic-
28 tion or discharge of oil, petroleum products or their
29 by-products occurring in waters beyond state jurisdic-
30 tion that for any reason penetrates within state
31 jurisdiction shall be removed by or under the direc-
32 tion of the department. Any expenses involved in the
33 removal or cleanup of discharges, including the res-
34 toration of water supplies contaminated by discharges
35 from interstate pipelines and other discharges pro-
36 hibited by section 543, whether by the person caus-
37 ing the same, the person reporting the same or the
38 board by itself or through its agents or contractors,
39 shall be paid in the first instance from the Maine
40 Coastal Protection and Inland Surface Oil Clean-up
41 Fund and any reimbursements due that fund shall be
42 collected in accordance with section 551.

1 Sec. 12. 38 MRSA §549, as amended by PL 1983, c.
2 483, §10, is further amended to read:

3 § 549. Personnel and equipment

4 The department shall establish and maintain at
5 such ports within the State, and other places as it
6 shall determine, such employees and equipment as in
7 its judgment may be necessary to carry out this sub-
8 chapter. The commissioner, subject to the Personnel
9 Law, may employ such personnel as may be necessary to
10 carry out the purposes of this subchapter, and shall
11 prescribe the duties of those employees. The salaries
12 of those employees and the cost of that equipment
13 shall be paid from the Maine Coastal Protection and
14 Inland Surface Oil Clean-up Fund established by this
15 subchapter. The department and the Maine Mining Bu-
16 reau shall periodically consult with each other rela-
17 tive to procedures for the prevention of oil dis-
18 charges into the coastal waters of the State from
19 offshore drilling production facilities. Inspection
20 and enforcement employees of the department in their
21 line of duty under this subchapter shall have the
22 powers of a constable.

23 Sec. 13. 38 MRSA §551, as amended by PL 1983,
24 c. 483, §§11 to 15, is further amended to read:

25 §551. Maine Coastal and Inland Surface Oil Clean-up
26 Fund

27 The Maine Coastal Protection and Inland Surface
28 Oil Clean-up Fund is established to be used by the
29 department as a nonlapsing, revolving fund for carry-
30 ing out the purposes of this subchapter. The fund
31 shall be limited to \$4,000,000 until July 1, 1978
32 \$4,500,000, the sum of which shall include all funds
33 credited under this section and any funds loaned to
34 the Ground Water Oil Clean-up Fund established pursu-
35 ant to subchapter II-B. Thereafter, the fund shall be
36 limited to \$6,000,000 and the The Department of Envi-
37 ronmental Protection shall collect fees in accordance
38 with subsection 4. To this fund shall be credited all
39 license fees, penalties, reimbursements and other
40 fees and charges related to this subchapter, and to
41 this fund shall be charged any and all expenses of
42 the department related to this subchapter, including
43 administrative expenses, costs of removal of dis-

1 charges of pollutants, restoration of water supplies
2 and 3rd party damages covered by this subchapter.

3 Moneys Money in the fund, not needed currently
4 to meet the obligations of the department in the ex-
5 ercise of its responsibilities under this subchapter
6 and not on loan to the Ground Water Oil Clean-up Fund
7 shall be deposited with the Treasurer of State to the
8 credit of the fund, and may be invested in such man-
9 ner as is provided for by statute. Interest received
10 on that investment shall be credited to the Maine
11 Coastal ~~Protection~~ and Inland Surface Oil Clean-up
12 Fund.

13 1. Research and development. The Legislature may
14 allocate not more than \$100,000 per annum of the
15 amount then currently in the fund to be devoted to
16 research and development in the causes, effects and
17 removal of pollution caused by oil, petroleum
18 products and their by-products on the marine environ-
19 ment. Such allocations shall be made in accordance
20 with section 555.

21 2. Third party damages. Any person, claiming to
22 have suffered damages to real estate or personal
23 property or loss of income directly or indirectly as
24 a result of a discharge of oil, prohibited by section
25 543, including all discharges of oil from interstate
26 pipelines, hereinafter called the claimant, may apply
27 within 6 months after the occurrence of such dis-
28 charge to the board stating the amount of damage al-
29 leged to be suffered as a result of such discharge.
30 The board shall prescribe appropriate forms and de-
31 tails for the applications. The board may, upon peti-
32 tion and for good cause shown, waive the 6 months'
33 limitation for filing damage claims.

34 A. If the claimant, the board and the person
35 causing the discharge can agree to the damage
36 claim, or in the case where the person causing
37 the discharge is not known after the board shall
38 have exercised reasonable efforts to ascertain
39 the discharger, if the claimant and the board can
40 agree to the damage claim, the board shall certi-
41 fy the amount of the claim and the name of the
42 claimant to the Treasurer of State and the Treas-
43 urer of State shall pay the same from the Maine
44 Coastal ~~Protection~~ and Inland Surface Oil
45 Clean-up Fund.

1 B. If the claimant, the board and the person
2 causing the discharge cannot agree as to the
3 amount of the damage claim, or in the case where
4 the person causing the discharge is not known af-
5 ter the board shall have exercised reasonable ef-
6 ferts to ascertain the discharger, if the claim-
7 ant and the board cannot agree as to the amount
8 of the damage claim, the claim shall forthwith be
9 transmitted for action to the Board of Arbitra-
10 tion as provided in this subchapter.

11 C. Third party damage claims shall be stated in
12 their entirety in one application. Damages omit-
13 ted from any claim at the time the award is made
14 shall be deemed waived.

15 D. Damage claims arising under this subchapter
16 shall be recoverable only in the manner provided
17 under this subchapter, it being the intent of the
18 Legislature that the remedies provided in this
19 subchapter are exclusive.

20 E. Awards from the fund on damage claims shall
21 not include any amount which the claimant has re-
22 covered, on account of the same damage, by way of
23 settlement with or judgment of the federal courts
24 against the person causing or otherwise responsi-
25 ble for the discharge.

26 2-A. Exceptions; 3rd party damage claims. Sub-
27 section 2, 3rd party damages, shall not apply to wa-
28 ters of the State classified under sections 368, 369
29 and 371, except those waters below head of tide until
30 July 1, 1978.

31 3. Board of Arbitration. The Board of Arbitra-
32 tion shall consist of 3 persons, one to be chosen by
33 the person determined in the first instance by the
34 board to have caused the discharge, one to be chosen
35 by the board to represent the public interest and one
36 person chosen by the first 2 appointed members to
37 serve as a neutral arbitrator. The determination by
38 the board of the person causing the discharge is not
39 an appealable order. The neutral arbitrator shall
40 serve as chairman. If the 2 arbitrators fail to agree
41 upon, select and name the neutral arbitrator within
42 10 days after their appointment then the board shall
43 request the American Arbitration Association to uti-

1 lize its procedures for the selection of the neutral
2 arbitrator.

3 A. No member of the board shall serve as an ar-
4 bitrator.

5 B. A party determined by the board to have
6 caused a discharge shall appoint an arbitrator
7 within such period of time as the board may by
8 regulation prescribe. In the event that the party
9 shall fail to select its arbitrator within 10
10 days after receipt of notice from the board that
11 such selection is necessary, the board shall re-
12 quest the American Arbitration Association to se-
13 lect an arbitrator to represent the interest of
14 the party in the arbitration proceedings.

15 In the case where the person causing the dis-
16 charge is unknown, the board shall request the
17 American Board of Arbitration to appoint an arbi-
18 trator to represent the interest of the unknown
19 party.

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

23 D. Hearings before Boards of Arbitrators shall
24 be informal, and the rules of evidence prevailing
25 in judicial proceedings shall not be binding. The
26 Board of Arbitration shall have the power to ad-
27 minister oaths and to require by subpoena the at-
28 tendance and testimony of witnesses, the produc-
29 tion of books, records and other evidence rela-
30 tive or pertinent to the issues represented to
31 them for determination.

32 E. Determinations made by a majority of the
33 Board of Arbitration shall be final, and such de-
34 terminations may be subject to review by a Jus-
35 tice of the Superior Court but only as to matters
36 relating to abuse of discretion by the Board of
37 Arbitration. A party seeking review of a Board
38 of Arbitration determination must file an appeal
39 in the Superior Court within 30 days of the Board
40 of Arbitration determination.

1 F. Representation on the Board of Arbitration
2 shall not be deemed an admission of liability for
3 the discharge.

4 G. If the final determination of the Board of
5 Arbitration includes a damage award, the Board of
6 Arbitration shall certify the amount of the dam-
7 age award and the name of the party claimant to
8 receive the award to the Treasurer of State. The
9 Treasurer of State shall pay that amount to the
10 party claimant from the Maine Coastal Protection
11 and Inland Surface Oil Clean-up Fund no sooner
12 than 35 days after the date of the final determi-
13 nation of the Board of Arbitration. If the de-
14 termination of the Board of Arbitration is ap-
15 pealed pursuant to paragraph E, the Treasurer of
16 State shall withhold payment of the damage award
17 until a final judgment on the appeal is entered,
18 at which time the Treasurer of State shall pay
19 any damage awards according to the terms of the
20 final judicial judgment, with interest at the
21 commercial rate as established by the Treasurer
22 of State calculated from the date of the Board of
23 Arbitration's final determination.

24 4. Funding.

25 A. License fees shall be determined on the basis
26 of 1¢ per barrel of oil 1 1/2¢ per barrel of
27 unrefined crude oil, 1¢ per barrel of gasoline
28 and 1/2¢ per barrel of all other refined oil, pe-
29 troleum products and their by-products, including
30 #6 fuel oil, #2 fuel oil, kerosene, jet fuel and
31 diesel fuel, transferred by the licensee during
32 the licensing period and shall be paid monthly by
33 the licensee on the basis of records certified to
34 the department, provided that during such time as
35 any bonds issued pursuant to private and special
36 law 1969, chapter 239, shall remain outstanding
37 and funds made available for interest and debt
38 retirement shall be inadequate for that purpose,
39 the license fee shall be determined on the basis
40 of 2¢ per barrel. License fees shall be paid to
41 the department and upon receipt by it credited to
42 the Maine Coastal Protection and Inland Surface
43 Oil Clean-up Fund.

1 B. Whenever the balance in the fund has reached
2 the limit provided under this subchapter, license
3 fees shall be proportionately reduced to cover
4 only administrative expenses and sums allocated
5 to research and development, provided that the
6 license fees shall continue without reduction
7 during such time as any bonds issued pursuant to
8 the private and special laws of 1969, chapter
9 239, shall remain outstanding and funds made
10 available for interest and debt retirement there-
11 under shall be inadequate for such purpose.

12 C. All sums received by the department when the
13 balance in the fund has reached \$4,000,000 shall,
14 after deduction of administrative expenses and
15 sums allocated to research and development,
16 promptly be remitted to the Treasurer of State to
17 be held distinct from all other moneys of the
18 State for the payment of interest and debt re-
19 tirement pursuant to Private and Special Law
20 1969, chapter 239, section 5. When there has been
21 no interest or debt incurred pursuant to Private
22 and Special Law 1969, chapter 239, section 5, or
23 upon payment of all interest and debt so in-
24 curred, the Treasurer of State shall credit to
25 the fund all sums received according to this sub-
26 chapter.

27 5. Disbursements from fund. Moneys Money in the
28 Maine Coastal Protection and Inland Surface Oil
29 Clean-up Fund shall be disbursed for the following
30 purposes and no others:

31 A. Administrative expenses, personnel expenses
32 and equipment costs of the board related to the
33 enforcement of this subchapter, and any loans to
34 the Ground Water Oil Clean-up Fund made pursuant
35 to section 569;

36 B. All costs involved in the removal of oil, the
37 abatement of pollution and the implementation of
38 remedial measures including restoration of water
39 supplies, related to the discharge of oil, petro-
40 leum products and their by-products covered by
41 this subchapter, including all discharges from
42 interstate pipelines and other discharges prohib-
43 ited by section 543;

1 C. Sums allocated to research and development in
2 accordance with this section-;

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

5 E. Payment of costs of arbitration and arbitra-
6 tors-;

7 F. Payment of costs of insurance by the State to
8 extend or implement the benefits of the fund-;

9 G. Payments to Treasurer of State pursuant to
10 subsection 4, paragraph B-; and

11 H. Sums, up to \$50,000 each year, which have
12 been allocated by the Legislature on a contingen-
13 cy basis in accordance with section 555 for pay-
14 ment of costs for studies of the environmental
15 impacts of discharges prohibited by section 543
16 which may have adverse economic effects and which
17 occur subsequent to such allocation, when such
18 studies are deemed necessary by the commissioner.

19 6. Reimbursements to Maine Coastal and Inland
20 Surface Oil Clean-up Fund. The department shall seek
21 recovery to the use of the fund all sums expended
22 therefrom, including overdrafts, for the following
23 purposes, unless the department finds the amount in-
24 volved too small or the likelihood of success too un-
25 certain; provided that recoveries resulting from dam-
26 age due to an oil pollution disaster declared by the
27 Governor pursuant to section 547 shall be apportioned
28 between the Maine Coastal ~~Protection~~ and Inland Sur-
29 face Oil Clean-up Fund and the General Fund so as to
30 repay the full costs to the General Fund of any bonds
31 issued as a result of the disaster:

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

35 B. In the case of a licensee promptly reporting
36 a discharge as required by this subchapter, dis-
37 bursement made by the fund pursuant to subsection
38 5, paragraphs B, D and E in connection with any
39 single prohibited discharge including 3rd party
40 claims in excess of \$15,000, except to the extent

1 that the costs are covered by payments received
2 under any federal program;

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

6 D. The department may file claims with appropri-
7 ate federal agencies to recover for the use of
8 the fund all disbursement from the fund in con-
9 nection with a prohibited discharge.

10 7. Waiver of reimbursement. Upon petition of any
11 licensee the board may, after hearing, waive the
12 right to reimbursement to the fund if it finds that
13 the occurrence was the result of any of the follow-
14 ing:

15 A. An act of war;

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

19 C. An act of God, which shall mean an
20 unforeseeable act exclusively occasioned by the
21 violence of nature without the interference of
22 any human agency.

23 Upon such finding by the board immediate credit
24 therefor shall be entered for the party involved. The
25 findings of the board shall be conclusive as it is
26 the legislative intent that waiver provided in this
27 subsection is a privilege conferred not a right
28 granted.

29 Sec. 14. 38 MRSA c. 3, sub-c. II-B is enacted to
30 read:

31 SUBCHAPTER II-B

32 UNDERGROUND OIL STORAGE FACILITIES AND
33 GROUND WATER PROTECTION

34 §561. Findings; purpose

35 The Legislature finds that significant quantities
36 of oil are being stored in underground storage facil-

1 ities; that leaks and unlicensed discharges from
2 these facilities pose a significant threat to the
3 quality of the waters of the State, including the
4 ground water resources; that protection of the quali-
5 ty of these waters is of the highest importance; and
6 that their protection requires proper design and in-
7 stallation of new and replacement underground oil
8 storage facilities, as well as monitoring, mainte-
9 nance and operating procedures for existing, new and
10 replacement facilities.

11 The Legislature intends by the enactment of this
12 subchapter to exercise the police power of the State
13 through the Board of Environmental Protection and the
14 Department of Environmental Protection by conferring
15 upon the board and the department the power to deal
16 with the hazards and threats of danger and damage
17 posed by the storage and handling of oil in under-
18 ground facilities and related activities; to require
19 the prompt containment and removal of pollution occa-
20 sioned thereby; to provide procedures whereby persons
21 suffering damage from these occurrences may be
22 promptly made whole; to establish a fund to provide
23 for the investigation, mitigation and removal of dis-
24 charges or threats of discharge of oil from under-
25 ground storage facilities, including the restoration
26 of contaminated water supplies; and to guarantee the
27 prompt payment of reasonable damage claims resulting
28 therefrom.

29 The Legislature further finds that preservation
30 of the ground water resources and of the public uses
31 referred to in this subchapter is of grave public in-
32 terest and concern to the State in promoting its gen-
33 eral welfare, preventing disease, promoting health
34 and providing for the public safety and that the
35 State's interest in this preservation outweighs any
36 burdens of absolute liability imposed by the Legisla-
37 ture in this subchapter upon those engaged in the
38 storage of oil, petroleum products and their by-
39 products in underground storage facilities.

40 §562. Definitions

41 As used in this subchapter, unless the context
42 otherwise indicates, the following terms have the
43 following meanings.

- 1 1. Barrel. "Barrel" means 42 United States gal-
2 lons at 60 degrees Fahrenheit.
- 3 2. Board. "Board" means the Board of Environmen-
4 tal Protection.
- 5 3. Department. "Department" means the Commis-
6 sioner of Environmental Protection or his staff.
- 7 4. Discharge. "Discharge" means any spilling,
8 leaking, pumping, pouring, emitting, escaping,
9 emptying or dumping.
- 10 5. Existing underground oil storage facility or
11 tank. "Existing underground oil storage facility" and
12 "existing underground oil storage tank" means any
13 such facility or tank, as defined in subsections 13
14 and 14, fully installed as of March 1, 1985, and the
15 location of which has not changed.
- 16 6. Fund. "Fund" means the Ground Water Oil
17 Clean-up Fund.
- 18 7. Leak. "Leak" means a loss or gain of .05 gal-
19 lons or more per hour at a pressure of 4 pounds per
20 square inch gauge, as determined by a precision test.
- 21 8. Oil. "Oil" means oil, petroleum products and
22 their by-products of any kind and in any form includ-
23 ing, but not limited to, petroleum, fuel oil, sludge,
24 oil refuse, oil mixed with other waste, crude oils
25 and all other liquid hydrocarbons regardless of spe-
26 cific gravity.
- 27 9. Person. "Person" means any natural person,
28 firm, association, partnership, corporation, trust,
29 the State and any agency of the State, governmental
30 entity, quasi-governmental entity, the United States
31 and any agency of the United States and any other le-
32 gal entity.
- 33 10. Responsible party. "Responsible party" means
34 any one or more of the following persons:
- 35 A. The owner or operator of the underground oil
36 storage facility where a prohibited discharge has
37 occurred;

1 B. The person to whom the underground oil stor-
2 age facility where a prohibited discharge has oc-
3 curred is registered;

4 C. Any person other than those identified in
5 paragraph A or B who caused the discharge of oil
6 or who had custody or control of the oil at the
7 time of the discharge.

8 11. Secondary containment. "Secondary contain-
9 ment" means a system installed so that any material
10 that is discharged or has leaked from the primary
11 containment is prevented from reaching the soil or
12 ground water outside the system for the anticipated
13 period of time necessary to detect and recover the
14 discharged material. Such a system may include, but
15 is not limited to, impervious liners, double walled
16 tanks, impervious soil treatments or any other method
17 demonstrated to the satisfaction of the department to
18 be technically feasible and effective.

19 12. Sensitive geologic areas. "Sensitive
20 geologic areas" means significant ground water aquif-
21 ers and primary sand and gravel recharge areas, as
22 defined in section 482, locations within 1,000 feet
23 of a public drinking water supply and locations with-
24 in 300 feet of a private drinking water supply.

25 13. Underground oil storage facility. "Under-
26 ground oil storage facility," also referred to as
27 "facility," means any underground oil storage tank or
28 tanks, as defined in subsection 14, together with as-
29 sociated piping and dispensing facilities located un-
30 der any land at a single location and used, or in-
31 tended to be used, for the storage or supply of oil,
32 as defined in this subchapter.

33 14. Underground oil storage tank. "Underground
34 oil storage tank," also referred to as "tank," means
35 any container, 10% or more of which is beneath the
36 surface of the ground and which is used, or intended
37 to be used, for the storage or supply of oil as de-
38 defined in this subchapter, but does not include any
39 tanks situated in an underground area if these tanks
40 or containers are situated upon or above the surface
41 of a floor and in such a manner that they may be
42 readily inspected.

1 §563. Registration of underground oil storage tanks

2 1. Prohibition on unregistered tanks. The fol-
3 lowing prohibition on unregistered tanks applies.

4 A. No person may install, or cause to be in-
5 stalled, a new or replacement underground oil
6 storage tank without first having registered the
7 tank with the department in accordance with the
8 requirements of subsection 2, and having paid the
9 registration fee in accordance with the require-
10 ments of subsection 4, at least 5 business days
11 prior to installation. If compliance with this
12 time requirement is impossible due to an emergen-
13 cy situation, the owner or operator of the facil-
14 ity at which the new or replacement tank is to be
15 installed shall inform the department as soon as
16 the emergency becomes known.

17 The owner or operator of the facility shall also
18 promptly submit upon completion a copy of the
19 registration form to the fire department in whose
20 jurisdiction the underground tank is located.

21 B. No person may operate, maintain or store oil
22 in an underground oil storage facility after May
23 1, 1986, unless each underground oil storage tank
24 at that facility is registered with the depart-
25 ment.

26 2. Information required for registration. The
27 owner or operator of an underground oil storage tank
28 shall provide the department with the following in-
29 formation on a form in triplicate to be developed and
30 provided by the department; one copy to be submitted
31 to the department, one copy to be promptly submitted
32 upon completion to the fire department in whose ju-
33 isdiction the underground tank is located and one
34 copy to be retained by the owner or operator:

35 A. The name, address and telephone number of the
36 owner of the underground oil storage tank to be
37 registered;

38 B. The name, address and telephone number of the
39 person having responsibility for the operation of
40 the tank to be registered;

1 C. A description of the location of the facility
2 and the location of the tank or tanks at that fa-
3 ility;

4 D. Whether the location of any tank at the fa-
5 ility is within 1,000 feet of a public drinking
6 water supply or within 300 feet of a private
7 drinking water supply;

8 E. The size of the tank to be registered;

9 F. The type of tank or tanks and piping at the
10 facility and the type of product stored or con-
11 tained in the tank or tanks and piping;

12 G. For new and replacement tanks, the name of
13 the installer, the expected date of installation,
14 the nature of any emergency pursuant to subsec-
15 tion 1, paragraph A, if applicable, and a de-
16 scription or plan showing the layout of the fa-
17 ility or tank, including, for tanks in sensitive
18 geologic areas, the form of secondary contain-
19 ment, monitoring wells or equipment to be in-
20 stalled pursuant to section 564, subsection 1,
21 paragraph C; and

22 H. For existing facilities and tanks, the best
23 estimate of the age and type of tank or tanks at
24 the facility.

25 For existing tanks, the information required for reg-
26 istration shall be submitted to the department in ac-
27 cordance with this subsection on or before February
28 1, 1986.

29 3. Amended registration required. The owner or
30 operator of an underground oil storage tank shall
31 file an amended registration form with the department
32 immediately upon any change in the information re-
33 quired pursuant to subsection 2. No fee may be
34 charge for filing an amended registration.

35 4. Registration fees. The owner or operator of
36 an underground oil storage facility used in the mar-
37 keting and distribution of oil shall pay an annual
38 fee to the department of \$25 for each tank with a ca-
39 capacity less than or equal to 6,000 gallons and \$50
40 for each tank with a capacity in excess of 6,000 gal-

1 lons located at the facility. The initial fee pay-
2 ment shall accompany the initial registration form.
3 Annual payments thereafter shall be paid on or before
4 January 1st of each calendar year.

5 5. Payment for failure to register or to pay an-
6 ual registration fee. Any person liable for the fee
7 imposed by subsection 4 shall pay a \$10 late payment
8 fee in addition to the fee specified in subsection 4,
9 if the initial fee payment and registration form has
10 not been submitted to the department on or before
11 February 1, 1986, but is submitted on or before May
12 1, 1986.

13 Any person liable for the fee imposed by subsection 4
14 shall pay 3 times the fee specified in subsection 4
15 if the appropriate fee payment and registration form
16 has not been submitted to the department on or before
17 May 1, 1986.

18 The owner or operator of an underground oil storage
19 tank not used in the marketing and distribution of
20 oil shall pay a fee of \$50 for each tank that is not
21 registered by May 1, 1986.

22 §564. Regulation of underground oil storage facili-
23 ties used in the marketing and distribution of
24 oil

25 The board shall adopt rules necessary to mini-
26 mize, to the extent practicable, the potential for
27 discharges of oil from underground oil storage facil-
28 ities and tanks used in the marketing and distribu-
29 tion of oil to others. These rules are limited to
30 the following requirements.

31 1. Design and installation standards for new and
32 replacement tanks. Design and installation standards
33 for new and replacement tanks are as follows.

34 A. All new and replacement tanks shall be con-
35 structed of fiberglass or cathodically protected
36 steel.

37 B. All new and replacement tanks shall be in-
38 stalled by an underground oil storage tank in-
39 staller who has been properly certified pursuant
40 to Title 32, chapter 105, and shall be registered

1 with the department prior to installation pursu-
2 ant to section 563.

3 C. For new and replacement tanks in sensitive
4 geologic areas, the owner shall install one of
5 the following:

6 (1) Secondary containment of all under-
7 ground oil storage facility components;

8 (2) Continuous electronic monitoring for
9 free product in those monitoring wells in-
10 stalled in the excavated area around the
11 tank or tanks, and additional wells with
12 electronic monitoring to detect a leak or
13 discharge of oil from the piping;

14 (3) Continuous electronic monitoring in the
15 unsaturated zone of all elements of the fa-
16 ility, using sufficient sampling points to
17 detect a leak or discharge of oil from any
18 point in the facility; or

19 (4) A reasonable number of monitoring wells
20 located, sampled and tested that are suffi-
21 cient to detect any discharge of oil or con-
22 tamination of ground water.

23 D. The requirements set forth in paragraph B for
24 new and replacement tanks in sensitive geologic
25 areas may not be imposed solely due to the prox-
26 imity of an underground oil storage tank to a
27 private drinking water supply where the tank and
28 private drinking water supply are located at the
29 same site and are owned, operated or utilized by
30 the same person or persons. In addition, the
31 board shall adopt rules to provide for exemptions
32 from the requirements of paragraph C in circum-
33 stances where the tank is to be installed over a
34 polluted aquifer where no unreasonable additional
35 harm to public health and safety or to the envi-
36 ronment can occur.

37 2. Monitoring, maintenance and operating proce-
38 dures for existing, new and replacement facilities
39 and tanks. The board's rules may require:

- 1 A. Collection of inventory data for each day
2 that oil is being added to or withdrawn from the
3 facility or tank, reconciliation of the data,
4 with monthly summaries, and retention of records
5 containing all such data for a period of at least
6 3 years either at the facility or at the facility
7 owner's place of business;
- 8 B. Annual statistical inventory analysis, the
9 results of which shall be reported to the depart-
10 ment;
- 11 C. Annual voltage readings for cathodically pro-
12 ected systems;
- 13 D. Monthly inspections of the rectifier meter on
14 impressed current systems;
- 15 E. Precision testing of any tanks and
16 hydrostatic testing of all piping showing evi-
17 dence of a possible leak. Results of all tests
18 conducted shall be submitted to the department by
19 the facility owner and the person who conducted
20 the test;
- 21 F. Evidence of financial responsibility for tak-
22 ing corrective action and for compensating 3rd
23 parties for bodily injury and property damage
24 caused by sudden and nonsudden accidental dis-
25 charges from an underground oil storage facility
26 or tank; and
- 27 G. Reporting to the department any of the fol-
28 lowing indications of a possible leak or dis-
29 charge of oil:
- 30 (1) Unexplained differences in daily inven-
31 tory reconciliation values which, over a
32 30-day period, exceed .5% of the product de-
33 livered;
- 34 (2) Unexplained losses detected through
35 statistical analysis of inventory records;
- 36 (3) Detection of product in a monitoring
37 well; and
- 38 (4) Failure of a tank precision test or
39 hydrostatic pipe test.

1 3. Replacement of tanks at facilities where
2 leaks have been detected. If replacement is required
3 as a result of a corrosion induced leak in an unpro-
4 ected steel tank, the owner or operator of the fa-
5 ility may either replace all other tanks and piping
6 at that facility not meeting the design and installa-
7 tion standards promulgated pursuant to subsection 1
8 or comply with the following:

9 A. Remove all bare steel and asphalt-coated
10 steel tanks at the facility that are more than 20
11 years old;

12 B. Perform a statistical inventory analysis of
13 the entire facility and submit the results of
14 that analysis to the department. If a statisti-
15 cal inventory analysis of the entire facility had
16 been performed within 60 days prior to the re-
17 quired replacement, then the results of that
18 analysis may be submitted to the department in-
19 stead. If the results of the statistical inven-
20 tory analysis indicate evidence of a leak at the
21 facility or that the data is not sufficiently re-
22 liable to make a determination that the facility
23 is or is not leaking, the department may require
24 that all remaining tanks and piping at the facil-
25 ity be precision tested, except that precision
26 testing shall not be required where it can be
27 demonstrated that the same tanks and piping
28 passed a precision test conducted within the pre-
29 vious 6 months; and

30 C. Install a minimum of 2 ground water monitor-
31 ing wells, as deemed necessary by the department
32 to monitor the facility, unless all remaining
33 tanks and piping at the facility were installed
34 in accordance with the standards promulgated pur-
35 suant to subsection 1.

36 Results of all precision tests conducted pursuant to
37 paragraph B shall be submitted to the department, and
38 all tanks and piping found to be leaking shall be re-
39 moved pursuant to section 566, or repaired to the
40 satisfaction of the department.

41 4. Sampling of monitoring wells. Where a moni-
42 toring well is installed at an underground oil stor-
43 age facility used for the marketing and distribution

1 of oil, the owner or operator shall be required to
2 sample that well at least every 6 months; to maintain
3 records of all sampling results at the facility or at
4 the facility owner's place of business; and to report
5 to the department any sampling results showing evi-
6 dent of a possible leak or discharge of oil.

7 §565. Regulation of underground oil storage facili-
8 ties used for consumption on the premises or
9 by the owner or operator

10 The board shall adopt rules necessary to mini-
11 mize, to the extent practicable, the potential for
12 discharges of oil from underground oil storage facili-
13 ties not used in the marketing and distribution of
14 oil to others. These rules shall apply to all under-
15 ground oil storage tanks that are used for consump-
16 tion on the premises or by the owner or operator of
17 the facility, including tanks installed temporarily
18 at a construction site; all residential home heating
19 oil tanks regardless of size; all tanks owned or op-
20 erated by the State, any of its agencies and instru-
21 mentalities or any political subdivision; and all
22 other tanks and facilities that are not governed by
23 the requirements of section 564. These rules are
24 limited to the following requirements.

25 1. Design and installation standards for new and
26 replacement tanks. Design and installation standards
27 for new and replacement tanks are as follows.

28 A. The installation of new or replacement tanks
29 constructed of bare steel or asphalt-coated steel
30 is prohibited.

31 B. All new and replacement tanks shall be in-
32 stalled by an underground oil storage tank in-
33 staller who has been properly certified pursuant
34 to Title 32, chapter 105, and shall be registered
35 with the department prior to installation pursu-
36 ant to section 563.

37 C. The installation of monitoring wells shall be
38 required for new and replacement tanks with a ca-
39 capacity in excess of 1,100 gallons where physical-
40 ly or technically practicable.

1 2. Testing requirements and reporting of leaks
2 for existing, new and replacement facilities and
3 tanks. Testing requirements and reporting of leaks
4 for existing, new and replacement facilities and
5 tanks are as follows.

6 A. The owner or operator shall be required to
7 report promptly upon discovery to the department
8 any evidence of a leak or discharge of oil.

9 B. Existing underground oil storage tanks that
10 are used for storing motor fuels for consumptive
11 use shall be precision tested for leaks when they
12 are 20 years old, except that the owner or opera-
13 tor may elect to install monitoring wells as an
14 alternative to precision testing. If, after rea-
15 sonable inquiry has been made, the age of a tank
16 is unknown, it shall be presumed to be 15 years
17 old as of May 1, 1986, for purposes of compliance
18 with this requirement. All such tanks shall be
19 retested every 5 years thereafter until aban-
20 doned. Results of the precision tests shall be
21 submitted to the department and all tanks and
22 pipng found to be leaking shall be removed pur-
23 suant to section 566 or repaired to the depart-
24 ment's satisfaction.

25 C. Where a monitoring well is installed at a fa-
26 ility governed by this section, the owner or op-
27 erator of the facility shall be required to sam-
28 ple that well at least every 6 months; to main-
29 tain records of all sampling results at the fa-
30 ility or at the facility owner's place of busi-
31 ness; and to report to the department any sam-
32 pling results showing evidence of a possible leak
33 or discharge of oil.

34 §566. Abandonment of underground oil storage facili-
35 ties and tanks

36 All underground oil storage facilities and tanks
37 that have been, or are intended to be, taken out of
38 service for a period of more than 12 months shall be
39 properly abandoned. Abandoned facilities and tanks
40 shall be removed, except where removal is not physi-
41 cally possible or practicable because the tank or
42 other component of the facility to be removed is:

1 1. Location. Located beneath a building or oth-
2 er permanent structure;

3 2. Size and type of construction. Of a size and
4 type of construction that it cannot be removed;

5 3. Inaccessible. Otherwise inaccessible to
6 heavy equipment necessary for removal; or

7 4. Position. Positioned in such a manner that
8 removal would endanger the structural integrity of
9 nearby tanks.

10 The board shall adopt rules allowing for the
11 granting of a variance from the requirement of remov-
12 al where abandonment by removal is not physically
13 possible or practicable due to circumstances other
14 than those listed in subsections 1 to 4.

15 Notice of an intent to abandon an underground oil
16 storage facility or tank shall be provided to the de-
17 partment at least 10 days prior to abandonment.

18 The board shall adopt rules setting forth the
19 proper procedures for abandonment of underground oil
20 storage facilities and tanks, including acceptable
21 methods of disposing of removed tanks and procedures
22 for abandonment in place where removal of a tank or
23 other component of a facility is deemed not physical-
24 ly possible or practicable.

25 §567. Certification of underground tank installers

26 No person may install an underground oil storage
27 facility or tank after May 1, 1986, without first
28 having been certified by the Board of Underground Oil
29 Storage Tank Installers, pursuant to Title 32, chap-
30 ter 105.

31 §568. Cleanup and removal of prohibited discharges

32 1. Removal. Any person discharging or suffering
33 a discharge of oil, petroleum products or their by-
34 products to ground water in the manner prohibited by
35 section 543 shall immediately undertake to remove
36 that discharge to the department's satisfaction.
37 Notwithstanding this requirement, the department may
38 undertake the removal of that discharge and may re-

1 tain agents and contractors for those purposes who
2 shall operate under the direction of the department.
3 Any unexplained discharge of oil, petroleum products
4 or their by-products to ground water within state ju-
5 risdiction shall be removed by or under the direction
6 of the department. Any expenses involved in the re-
7 moval of discharges, whether by the person causing
8 the same, the person reporting the same or the de-
9 partment by itself or through its agents or contrac-
10 tors, may be paid in the first instance from the
11 Ground Water Oil Clean-up Fund and any reimbursements
12 due that fund shall be collected in accordance with
13 section 569.

14 2. Restoration of water supplies. The depart-
15 ment may clean up any discharge of oil, including im-
16 plementing remedies to restore or replace water sup-
17 plies contaminated with oil, petroleum products or
18 their by-products, using the most cost-effective al-
19 ternative that is technologically feasible and reli-
20 able and which effectively mitigates or minimizes
21 damage to and provides adequate protection of the
22 public health, welfare and the environment. The de-
23 partment shall consult with the affected party prior
24 to selecting the alternative to be implemented.

25 3. Issuance of clean-up orders. If the depart-
26 ment finds, after investigation, that a discharge of
27 oil has occurred and may create a threat to public
28 health or the environment, including, but not limited
29 to, contamination of a water supply, the commissioner
30 may order the responsible party who has caused or
31 suffered the discharge to cease the discharge immedi-
32 ately or to take action to prevent further discharge
33 and to mitigate or terminate the threat. He may also
34 order that the responsible party take temporary and
35 permanent remedial actions at locations threatened or
36 affected by the discharge of oil, including a re-
37 quirement that responsible party restore or replace
38 water supplies contaminated with oil, petroleum
39 products or their by-products using the most
40 cost-effective alternative that is technologically
41 feasible and reliable and which effectively mitigates
42 or minimizes damage to, and provides adequate protec-
43 tion of, the public health, welfare and the environ-
44 ment. Clean-up orders shall only be issued in com-
45 pliance with the following requirements.

1 A. Any orders issued under this section shall
2 contain findings of fact describing the manner
3 and extent of oil contamination, the site of the
4 discharge and the threat to the public health or
5 environment.

6 B. A responsible party to whom such an order is
7 directed may apply to the board for a hearing on
8 the order. The hearing shall be held by the
9 board within 15 days after receipt of the appli-
10 cation. Within 7 days after the hearing, the
11 board shall make findings of fact and shall con-
12 tinue, revoke or modify the order. The decision
13 of the board may be appealed to the Superior
14 Court in accordance with the Maine Administrative
15 Procedure Act, Title 5, chapter 375, subchapter
16 VII.

17 4. Enforcement; penalties. Any person who
18 causes, or is responsible for, a discharge to ground
19 water in violation of section 543 shall not be sub-
20 ject to any fines or civil penalties for the dis-
21 charge if that person promptly reports and removes
22 that discharge in accordance with the rules and or-
23 ders of the department and the board.

24 §569. Ground Water Oil Clean-up Fund

25 The Ground Water Oil Clean-up Fund is established
26 to be used by the department as a nonlapsing, revolv-
27 ing fund for carrying out the purposes of this sub-
28 chapter. To this fund shall be credited all regis-
29 tration fees, fees for late payment or failure to
30 register, penalties, transfer fees, reimbursements
31 and other fees and charges related to this subchap-
32 ter. To this fund shall be charged any and all ex-
33 penditures of the department related to this subchapter,
34 including administrative expenses, payment of 3rd
35 party damages covered by this subchapter, costs of
36 removal of discharges of oil and costs of cleanup of
37 discharges, including, but not limited to, restora-
38 tion of water supplies.

39 The Board of Environmental Protection may autho-
40 rize the borrowing of funds by and between the Maine
41 Coastal and Inland Surface Oil Clean-up Fund and the
42 Ground Water Oil Clean-up Fund to carry out the pro-
43 visions of subchapters II-A and II-B. All funds bor-

1 rowed pursuant to this section shall be repaid with
2 interest to the fund of origin in as prompt a manner
3 as revenues allow. The rate of interest shall be de-
4 termined by the Treasurer of State, based on the av-
5 erage rate of interest earned on funds invested dur-
6 ing the period of the loan.

7 Money in the fund, not needed currently to meet
8 the obligations of the department in the exercise of
9 its responsibilities under this subchapter and not on
10 loan to the Maine Coastal and Inland Surface Oil
11 Clean-up Fund, shall be deposited with the Treasurer
12 of State to the credit of the fund and may be in-
13 vested in such a manner as is provided for by law.
14 Interest received on that investment shall be cred-
15 ited to the Ground Water Oil Clean-up Fund.

16 1. Research and development. The Legislature
17 may allocate not more than \$100,000 per year of the
18 amount then currently in the fund to be devoted to
19 research and development in the causes, effects and
20 removal of pollution caused by oil, petroleum
21 products and their by-products on ground waters of
22 the State. These allocations shall be made in ac-
23 cordance with section 570-A.

24 2. Third party damages. Any person claiming to
25 have suffered damages to real estate or personal
26 property or loss of income directly or indirectly as
27 a result of a discharge of oil to ground water pro-
28 hibited by section 543, hereinafter called the claim-
29 ant, may apply within 6 months after the occurrence
30 of the discharge to the board stating the amount of
31 damage alleged to be suffered as a result of that
32 discharge. The board shall prescribe appropriate
33 forms and details for the applications. The board
34 may, upon petition and for good cause shown, waive
35 the 6 months' limitation for filing damage claims.

36 A. If the claimant, the board and the responsi-
37 ble party are able to agree as to the amount of
38 the damage claim, or in the case where the board
39 has exercised reasonable efforts but has been un-
40 able to identify the responsible party, if the
41 claimant and the board are able to agree as to
42 the amount of the damage claim, the board shall
43 certify the amount of the claim and the name of
44 the claimant to the Treasurer of State and the

1 Treasurer of State shall pay the same from the
2 Ground Water Oil Clean-up Fund.

3 B. If the claimant, the board and the responsi-
4 ble party are not able to agree as to the amount
5 of the damage claim, or in the case where the
6 board has exercised reasonable efforts but has
7 been unable to identify the responsible party, if
8 the claimant and the board are not able to agree
9 as to the amount of the damage claim, the claim
10 shall forthwith be transmitted for action to the
11 Board of Arbitration as provided in this subchap-
12 ter.

13 C. Third party damage claims shall be stated in
14 their entirety in one application. Damages omit-
15 ted from any claim at the time the award is made
16 shall be deemed waived.

17 D. Damage claims arising under this subchapter
18 are recoverable only in the manner provided under
19 this subchapter; it being the intent of the Leg-
20 islature that the remedies provided in this sub-
21 chapter are exclusive.

22 E. Awards from the fund on damage claims shall
23 not include any amount which the claimant has re-
24 covered, on account of the same damage, by way of
25 settlement with or judgment of the federal courts
26 against the person causing or otherwise responsi-
27 ble for the discharge.

28 3. Board of Arbitration. The Board of Arbitra-
29 tion shall consist of 3 persons, one to be chosen by
30 the person determined in the first instance by the
31 board to be the responsible party, one to be chosen
32 by the board to represent the public interest and one
33 person chosen by the first 2 appointed members to
34 serve as a neutral arbitrator. The determination by
35 the board of a responsible party is not an appealable
36 order. The neutral arbitrator shall serve as chair-
37 man. If the 2 arbitrators fail to agree upon, select
38 and name the neutral arbitrator within 10 days after
39 their appointment, then the board shall request the
40 American Arbitration Association to utilize its pro-
41 cedures for the selection of the neutral arbitrator.

42 A. No member of the board may serve as an arbi-
43 trator.

1 B. The person determined by the board to be the
2 responsible party shall appoint an arbitrator
3 within such period of time as the board may by
4 rule prescribe. In the event that the responsi-
5 ble party shall fail to select its arbitrator
6 within 10 days after receipt of notice from the
7 board that such selection is necessary, the board
8 shall request the American Arbitration Association
9 to select an arbitrator to represent the in-
10 terest of that party in the arbitration proceed-
11 ings.

12 In the case where a responsible party has not
13 been identified, the board shall request the
14 American Board of Arbitration to appoint an arbi-
15 trator to represent the interest of the unknown
16 party.

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

20 D. Hearings before Boards of Arbitrators shall
21 be informal and the rules of evidence prevailing
22 in judicial proceedings shall not be binding.
23 The Board of Arbitration may administer oaths and
24 require by subpoena the attendance and testimony
25 of witnesses, the production of books, records
26 and other evidence relative or pertinent to the
27 issues presented to them for determination.

28 E. Determinations made by a majority of the
29 Board of Arbitration shall be final and those de-
30 terminations may be subject to review by a Jus-
31 tice of the Superior Court, but only as to mat-
32 ters relating to abuse of discretion by the Board
33 of Arbitration. A party seeking review of a
34 Board of Arbitration determination must file an
35 appeal in the Superior Court within 30 days of
36 the Board of Arbitration determination.

37 F. Representation on the Board of Arbitration
38 shall not be deemed an admission of liability for
39 the discharge.

40 G. If the final determination of the Board of
41 Arbitration includes a damage award, the Board of
42 Arbitration shall certify the amount of the dam-

1 age award and the name of the claimant to receive
2 the award to the Treasurer of State. The Trea-
3 asurer of State shall pay that amount to the
4 claimant from the Ground Water Oil Clean-up Fund
5 no sooner than 35 days after the date of the fi-
6 nal determination of the Board of Arbitration.
7 If the determination of the Board of Arbitration
8 is appealed pursuant to paragraph E, the Treasur-
9 er of State shall withhold payment of the damage
10 award until a final judgment on the appeal is en-
11 tered, at which time the Treasurer of State shall
12 pay any damage awards according to the terms of
13 the final judicial judgment, with interest at the
14 commercial rate as established by the Treasurer
15 of State calculated from the date of the Board of
16 Arbitration's final determination.

17 4. Funding. A fee of 3¢ per barrel of gasoline
18 and 2¢ per barrel of refined petroleum products and
19 their by-products other than gasoline, including #6
20 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel
21 fuel, shall be assessed on the transfer of those
22 products by oil terminal facility licensees. These
23 fees shall be paid monthly by the oil terminal facil-
24 ity licensee on the basis of records certified to the
25 department. All such transfer fees shall be credited
26 to the Ground Water Oil Clean-up Fund upon receipt by
27 the department.

28 5. Disbursements from fund. Money in the Ground
29 Water Oil Clean-up Fund shall be disbursed for the
30 following purposes and no others:

31 A. Administrative expenses, personnel expenses
32 and equipment costs of the department related to
33 the enforcement of this subchapter and any loans
34 to the Maine Coastal and Inland Surface Oil
35 Clean-up Fund made pursuant to this section;

36 B. All costs involved in the removal of a pro-
37 hibited discharge, the abatement of pollution and
38 the implementation of remedial measures including
39 restoration of water supplies, related to the
40 discharge of oil, petroleum products and their
41 by-products to ground water covered by this sub-
42 chapter;

43 C. Sums allocated to research and development in
44 accordance with this section;

1 D. Payment of the 3rd party damage claims
2 awarded in accordance with this section;

3 E. Payment of costs of arbitration and arbitra-
4 tors;

5 F. Payment of costs of insurance by the State to
6 extend or implement the benefits of the fund; and

7 G. Sums up to \$50,000 each year, which have been
8 allocated by the Legislature on a contingency ba-
9 sis in accordance with section 570-A for payment
10 of costs for studies of the environmental impacts
11 of discharges to ground water prohibited by sec-
12 tion 543 which may have adverse economic effects
13 and which occur subsequent to the allocation,
14 when the studies are deemed necessary by the com-
15 missioner.

16 6. Reimbursements to the Ground Water Oil
17 Clean-up Fund. The department shall seek recovery to
18 the use of the fund of all sums expended from the
19 fund, including overdrafts, for the purposes de-
20 scribed in subsection 5, paragraphs B, D, E and G in
21 connection with a prohibited discharge, unless the
22 department finds the amount involved too small or the
23 likelihood of success too uncertain. Requests for
24 reimbursement to the fund if not paid within 30 days
25 of demand shall be turned over to the Attorney Gener-
26 al for collection.

27 7. Waiver of reimbursement. Upon petition of
28 any responsible party, the board may, after hearing,
29 waive the right to reimbursement to the fund if it
30 finds that the occurrence was the result of any of
31 the following:

32 A. An act of war;

33 B. An act of government, either state, federal
34 or municipal, except insofar as the act was pur-
35 suant to section 568; or

36 C. An act of God, which shall mean an
37 unforeseeable act exclusively occasioned by the
38 violence of nature without the interference of
39 any human agency.

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

7 §570. Liability

8 Because it is the intent of this subchapter to
9 provide the means for rapid and effective clean up
10 and to minimize direct damages as well as indirect
11 damages and the proliferation of 3rd-party claims,
12 each responsible party who permits or suffers a pro-
13 hibited discharge of oil is jointly and severally li-
14 able to the State for all disbursements made by it
15 pursuant to section 569, subsection 5, paragraphs B,
16 D and E, or other damage incurred by the State.

17 In any suit filed under this subchapter, to es-
18 tablish liability, it shall not be necessary for the
19 State to plead or prove negligence in any form or
20 manner on the part of the responsible party causing
21 or otherwise responsible for the discharge. The
22 State need only plead and prove the fact of the pro-
23 hibited discharge and that the discharge occurred at
24 a facility under the control of the responsible party
25 causing the discharge or was otherwise attributable
26 to a responsible party as provided in this subchap-
27 ter.

28 §570-A. Budget approval

29 The department shall submit its budget recommen-
30 dations for disbursements from the fund in accordance
31 with section 569, subsection 5, paragraphs A, C, F
32 and G for each biennium. The budget shall be submit-
33 ted in accordance with Title 5, sections 1663 to
34 1666. The State Controller shall authorize expendi-
35 tures therefrom as approved by the commissioner.
36 Expenditures pursuant to section 569, subsections 5,
37 paragraphs B, D and E may be made as authorized by
38 the State Controller following approval by the com-
39 missioner.

40 §570-B. Personnel and Equipment

1 The department shall establish and maintain at
2 such locations as it shall determine to be appropri-
3 ate, such employees and equipment as in its judgment
4 may be necessary to carry out this subchapter. The
5 commissioner, subject to the Personnel Law, may em-
6 ploy such personnel as may be necessary to carry out
7 the purposes of this subchapter and shall prescribe
8 the duties of those employees. The salaries of those
9 employees and the cost of that equipment shall be
10 paid from the Ground Water Oil Clean-up Fund estab-
11 lished by this subchapter.

12 §570-C. Municipal ordinances; powers limited

13 Nothing in this subchapter may be construed to
14 deny any municipality, by ordinance or by law, from
15 exercising police powers under any general or special
16 act, provided that ordinances and bylaws in further-
17 ance of the intent of this subchapter and promoting
18 the general welfare, public health and public safety
19 shall be valid unless in direct conflict with this
20 subchapter or any rule or order of the board adopted
21 under authority of this subchapter.

22 §570-D. Transition

23 Damage claims filed with the department on or be-
24 fore the effective date of this Act which, after the
25 enactment of this subchapter, would be controlled by
26 the provisions of this subchapter may proceed either
27 in the manner set forth herein or in the manner set
28 forth in subchapter II-A, at the choice of the claim-
29 ant. Reimbursement for any expenditures shall be
30 credited to the fund from which the expenditures were
31 made.

32 §570-E. Legislative review

33 Rules adopted by the board under this subchapter
34 shall be submitted for review by the joint standing
35 committee of the Legislature having jurisdiction over
36 energy and natural resources and, until December 1,
37 1987, to the joint standing committee of these Legis-
38 lature having jurisdiction over audit and program re-
39 view. In reviewing the rules promulgated by the
40 board under this subchapter, these legislative com-
41 mittees shall be guided by the provisions of Title 5,
42 chapter 377-A.

1 §570-F. Special provisions

2 Nothing in this subchapter shall be construed to
3 authorize the Board of Environmental Protection to
4 require registration of or to regulate the installa-
5 tion or operation of underground tanks used for the
6 storage of propane.

7 The board shall adopt rules for underground oil stor-
8 age tanks for storing waste oil. These rules shall
9 not be limited by the provisions of subchapter II-B.

10 Sec. 15. Borrowing from the Maine Coastal and
11 Inland Surface Oil Clean-up Fund. To provide for the
12 start-up of the Ground Water Oil Clean-up Fund, sub-
13 ject to the approval of the commissioner, the depart-
14 ment may borrow up to \$1,200,000 from the Maine
15 Coastal and Inland Surface Oil Clean-up Fund during
16 fiscal year 1985-86 to be expended for the purposes
17 set forth in the Maine Revised Statutes, Title 38,
18 chapter 3, subchapter II-B. Any money borrowed shall
19 be repaid with interest to the Maine Coastal and In-
20 land Surface Oil Clean-up Fund before June 30, 1987,
21 with the exception of \$250,000 in fiscal year 1986
22 and \$250,000 in fiscal year 1987 to be borrowed with-
23 out repayment. The rate of interest shall be deter-
24 mined by the Treasurer of State, based on the average
25 rate of interest earned on funds invested during the
26 period of the loan.

27 Sec. 16. Board study. The Board of Underground
28 Oil Storage Tank Installers established by the Maine
29 Revised Statutes, Title 32, chapter 105, may review
30 the need to establish a 2-tiered master-journeyman
31 professional classification system. If the board de-
32 termines the need for such a professional classifica-
33 tion system, then it shall submit its report to the
34 joint standing committee having jurisdiction over au-
35 dit and program review.

36 PART B

37 Adjustments to special revenues. In order to
38 provide for necessary adjustments of special revenue
39 accounts to implement the recommendations of the
40 joint standing committee having jurisdiction over au-
41 dit and program review, allocations are adjusted by
42 the amounts designated in the following tabulations.

1
2 ATTORNEY GENERAL, DEPARTMENT OF

3 Legal Assistance to
4 Other Agencies
5 Legislative Position Count (1.0)
6 Personal Services \$24,400
7 All Other 2,200
8 Subtotal \$26,600

9 Provides for the availa-
10 bility of funds to be used
11 for the funding of an as-
12 sistant attorney general
13 position for the purpose
14 of increasing recovery of
15 state expenditures on the
16 clean-up and restoration
17 of ground water and well
18 water. Funds will be
19 transferred from the
20 Ground Water Oil Clean-up
21 Fund to pay for the ser-
22 vices of an assistant at-
23 torney general position.

24 ENVIRONMENTAL PROTECTION,
25 DEPARTMENT OF

26 Maine Coastal and Inland
27 Surface Oil Clean-up Fund
28 Legislative Position Count (11.0)
29 Personal Services \$318,832
30 All Other 493,168
31 Capital Expenditures 95,000
32 Subtotal \$907,000

33 Provides for allocations
34 for the Maine Coastal and
35 Inland Surface Oil
36 Clean-up Fund to carry out
37 the provisions of the
38 Maine Revised Statutes,
39 Title 38, chapter 3, sub-
40 chapter II-A, which in-
41 cludes the clean-up and

1 restoration of oil contam-
2 inated coastal and inland
3 surface water.

4	Ground Water Oil Clean-up Fund	
5	Legislative Position Count	(13.0)
6	Personal Services	\$323,891
7	All Other	734,297
8	Capital Expenditures	<u>59,500</u>
9	Subtotal	\$1,117,688

10 Provides for allocations
11 from the Ground Water Oil
12 Clean-up Fund to carry out
13 the provisions of the
14 Maine Revised Statutes,
15 Title 38, chapter 3, sub-
16 chapter II-B, which in-
17 clude the clean-up and
18 restoration of oil contam-
19 inated ground water and
20 well water. Also provides
21 the authority for the De-
22 partment of Environmental
23 Protection to transfer
24 funds for the purpose of
25 supporting an assistant
26 attorney general position
27 to increase the recovery
28 of state expenditures.

29

30	TOTAL PART B	<u>\$2,051,288</u>
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31

PART C

32 Allocation. The following funds are allocated
33 from the Highway Fund to carry out the purposes of
34 this Act

35

1985-86

36

TRANSPORTATION, DEPARTMENT OF

37

Highway Maintenance - Summer

38

Personal Services

\$10,000

1	All Other	70,000
2	Capital Expenditures	1,500
3	Total	<u>\$81,500</u>

4 Provides funds for
5 6-month clerical po-
6 sition and contract
7 surveys in order to
8 comply with under-
9 ground storage tank
10 registration. All
11 funds not expended by
12 the Department of
13 Transportation for
14 this purpose shall
15 not be spent for any
16 other purpose and
17 shall lapse back to
18 the Highway Fund.
19 The Department of
20 Transportation shall
21 provide a report of
22 its expenditures to
23 the Joint Standing
24 Committees on Audit
25 and Program Review
26 and Transportation.

27 **Emergency clause.** In view of the emergency cited
28 in the preamble, this Act shall take effect when ap-
29 proved.

30 STATEMENT OF FACT

31 PART A

32 Section 1 adds the Board of Underground Oil Stor-
33 age Tank Installers to the list of boards in the
34 Maine Revised Statutes, Title 5.

35 Section 2 establishes a certification program for
36 persons offering underground storage tank installa-
37 tion services to be administered by a new Board of
38 Underground Oil Storage Tank Installers.

39 Section 3 clarifies that the right of inspection
40 and entry by the Department of Environmental Protec-
41 tion employees includes the right to take samples and

1 to conduct tests to determine compliance with the
2 laws, orders and rules of the department and the
3 Board of Environmental Protection.

4 Section 4 clarifies the Legislature's intent to
5 include the storage, transportation and other han-
6 dling of oil within the scope of the Maine Revised
7 Statutes, Title 38, chapter 3, subchapters II-A and
8 II-B.

9 Section 5 states the Legislature's findings and
10 purpose regarding the transfer, transportation and
11 handling of oil on the seacoast and in inland areas
12 of the State.

13 Section 6 changes the name of the Maine Coastal
14 Protection Fund to the Maine Coastal and Inland Sur-
15 face Oil Clean-up Fund.

16 Section 7 repeals the Maine Revised Statutes, Ti-
17 tle 38, section 542, subsection 10-A as enacted by
18 Public Law 1983, chapter 785, section 10, which de-
19 fined underground oil storage facility. A new defi-
20 nition has been included in the new Title 38, chapter
21 3, subchapter II-B

22 Section 8 prohibits the discharge of oil into or
23 upon certain areas.

24 Section 9 repeals the Maine Revised Statutes, Ti-
25 tle 38, section 545-A, as enacted by Public Law 1983,
26 chapter 785, section 12, which authorized the Depart-
27 ment of Environmental Protection to issue permits for
28 underground tanks. This function has been changed to
29 registration in Title 38, chapter 3, subchapter II-B.

30 Section 10 repeals the Maine Revised Statutes,
31 Title 38, section 546, subsection 4, paragraphs I and
32 J, as enacted by Public Law 1983, chapter 785, sec-
33 tion 13, which authorized the Department of Environ-
34 mental Protection to issue rules relating to the de-
35 sign, installation, operation and abandonment of new
36 and replacement underground oil storage facilities.
37 The provisions of the new Title 38, chapter 3, sub-
38 chapter II-B now define the scope of the
39 departments's regulatory authority in these areas.

1 Section 11 authorizes the Department of Environ-
2 mental Protection to implement remedies to restore or
3 replace water supplies contaminated by a discharge of
4 oil in inland and coastal areas, including all dis-
5 charges by an interstate pipeline.

6 Section 12 deals with cost of personnel and
7 equipment needed to carry out this subchapter.

8 Section 13 clarifies that the Maine Coastal and
9 Inland Surface Oil Clean-up Fund shall be used to pay
10 3rd party damage claims to clean-up discharges of oil
11 to inland and coastal surface waters and to restore
12 or replace contaminated water supplies.

13 Section 14 states the Legislature's findings and
14 purpose and establishes a new Title 38, chapter 3,
15 subchapter II-B dealing with underground oil storage
16 facilities and ground water protection. This section
17 defines the scope of the Department of Environmental
18 Protection's authority to regulate existing, new and
19 replacement underground oil storage facilities. The
20 new subchapter divides the regulation of underground
21 tanks into 2 categories: Tanks used for marketing
22 and distribution and tanks used for consumption on
23 the premises or by the owner or operator. It re-
24 quires all tanks to be registered and to be installed
25 by certified tank installers. To carry out the pro-
26 visions of this subchapter, including the payment of
27 3rd party damage claims, the restoration and clean-up
28 of ground water and well water and the removal of
29 discharges of oil to ground water and well water, a
30 new Ground Water Oil Clean-up Fund is established.
31 This subchapter sets a license fee of 3¢ per barrel
32 on gasoline and 2¢ per barrel on all other refined
33 petroleum products and their by-products. In addi-
34 tion, Title 38, section 569 authorizes the borrowing
35 between funds subject to approval by the Board of En-
36 vironmental Protection.

37 Section 14 further provides an exemption for
38 propane and authorizes the board to promulgate rules
39 relating to the underground storage of waste oil.

40 Section 15 provides for an initial start-up loan
41 of up to \$1,200,000 from the Coastal and Inland Sur-
42 face Oil Clean-up Fund to the Ground Water Oil
43 Clean-up Fund of which \$250,000 in fiscal year 1986

1 and \$250,000 in fiscal year 1987 shall not be repaid
2 by the Ground Water Oil Clean-up Fund.

3 Section 16 authorizes the study of a 2-tiered
4 master-journeyman program for oil storage tank in-
5 stallers.

6 **PART B**

7 Part B makes adjustments to special revenues.
8 Funds will be transferred from the Ground Water Oil
9 Clean-up Fund to pay for the services of an assistant
10 attorney general position for the purpose of increas-
11 ing recovery of state expenditures on the clean-up
12 and restoration of ground water and well water. Part
13 B also provides for allocations for the Maine Coastal
14 and Inland Surface Oil Clean-up Fund to carry out the
15 provisions of the Maine Revised Statutes, Title 38,
16 chapter 3, subchapter II-B.

17 Total net increase in revenues annually to the
18 Maine Coastal and Inland Surface Oil Clean-up Fund
19 and the Ground Water Oil Clean-up Fund shall be ap-
20 proximately \$993,000 as a result of Title 38, section
21 551, subsection 4; Title 38, section 563, subsection
22 4; and Title 38, section 569, subsection 4.

23 **PART C**

24 Part C provides an \$81,500 allocation to the De-
25 partment of Transportation to carry out the provi-
26 sions of Title 38, chapter 3, subchapter II-B.

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