

MAINE STATE LEGISLATURE

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L.D. 836

(Filing No. H-350)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836,
Bill, "AN ACT to Establish a Comprehensive Ground Water Protection Plan."

Amend the Bill by striking out all of the title and inserting in its place the following: 'AN ACT to Provide Comprehensive Protection for Ground Water.'

Further amend the Bill by striking out everything after the enacting clause and inserting in its place the following:

'Sec. 1. 23 MRSA §3659 is enacted to read:

§3659. Protection of private water supplies

In the event a land owner believes that a private water supply on his land has been destroyed or rendered unfit for human consumption by a political subdivision constructing, reconstructing or maintaining a public highway under its jurisdiction, the owner may apply in writing to the political subdivision for a determination of the alleged cause and assessment of damages.

1. Application presented within 2 years. If the claim is founded on construction or reconstruction, the owner shall present the application within 2 years after completion of the work as that date appears in the records of the political subdivision. The application shall set forth:

- A. The name and address of the owner;
- B. The name and address of any lien holder;
- C. The owner's source of title;

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

- 1 D. The location of the property;
- 2 E. A description of the damage; and
- 3 F. The cause to which the damage is attributed.

4 2. Written response. Within 90 days upon receipt
5 of the owner's application, the political subdivision
6 shall forward a written response to the owner.

7 3. Offer of settlement. If the political subdivi-
8 vision determines that any damage to the privately
9 owned water supply was caused by the political subdivi-
10 vision constructing, reconstructing or maintaining
11 the public highway, the political subdivision shall
12 set forth in its response an offer of settlement. The
13 political subdivision in its response shall consider
14 the necessity for the installation or replacement of
15 pipng, tanks, pumps, heating systems or other relat-
16 ed fixtures. In its offer of settlement, a political
17 subdivision may consider the following remedies:

- 18 A. Replacing the water supply;
- 19 B. Repairing the damage to the water supply;
- 20 C. Paying a designated sum of money; and
- 21 D. Purchasing the realty served by the water
22 supply.

23 4. Action filed. If the landowner and political
24 subdivision are unable to agree on the cause of the
25 problem to the water supply or to the terms of set-
26 tlement, the landowner may file an action in Superior
27 Court in the county or counties where the land is lo-
28 cated.

- 29 A. The complaint shall be filed within one year
30 after receiving a written response by the munici-
31 pality.

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 B. The case shall be determined by a referee and
2 the court shall appoint one or more referees pur-
3 suant to the Maine Rules of Civil Procedure.

4 C. Damages to the property shall be based on the
5 difference between the fair market value of the
6 property before the water supply was destroyed or
7 rendered unfit and the fair market value of the
8 property after the water supply was destroyed or
9 rendered unfit or based on the cost to cure the
10 damage, whichever amount is less.

11 5. Limitations on liability. A political subdivi-
12 vision shall not be liable:

13 A. If the private water supply is located within
14 the right-of-way limits of the highway;

15 B. If the location of the private water supply
16 does not provide for adequate surface drainage,
17 provided that surface drainage problems caused by
18 the construction, reconstruction or maintenance
19 of a public highway by the political subdivision
20 do not relieve the political subdivision of lia-
21 bility under this section; or

22 C. If the private water supply prior to the con-
23 struction, reconstruction or maintenance was con-
24 taminated or polluted by another source to the
25 degree that the contamination or pollution ren-
26 dered it unfit for human consumption.

27 **Sec. 2. 32 MRSA §10002, sub-§7, as enacted by PL**
28 **1985, c. 496, Pt. A, §2, is amended to read:**

29 7. Underground oil storage tank installer. "Un-
30 derground oil storage tank installer" means a person
31 certified under this chapter to install underground
32 oil storage tanks and to remove underground oil stor-
33 age tanks.

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 **Sec. 3. 38 MRSA §349, sub-§3, as amended by PL**
2 **1985, c. 746, §12, is further amended to read:**

3 **3. Falsification and tampering.** Notwithstanding
4 **Title 17-A, section 4-A, any person who knowingly**
5 **makes any false statement, representation or certifi-**
6 **cation in any application, record, report, plan or**
7 **other document filed or required to be maintained by**
8 **any provision of law administered by the department,**
9 **or by any rule, regulation, license, permit, approval**
10 **or decision of the board or commissioner, or who**
11 **tampers with or renders inaccurate any monitoring de-**
12 **VICES or method required by any provision of law, or**
13 **any rule, regulation, license, permit, approval or**
14 **decision of the board or who fails to comply with any**
15 **information submittal required by the commissioner**
16 **pursuant to section 568, subsection 3, or section**
17 **1364, subsection 3, shall, upon conviction, be sub-**
18 **ject to a fine of not more than \$10,000, or by im-**
19 **prisonment for not more than 6 months, or both.**

20 **Sec. 4. 38 MRSA §404 is enacted to read:**

21 §404. Ground water rights

22 1. Definitions. As used in this section, unless
23 the context indicates otherwise, the following terms
24 have the following meanings.

25 A. "Beneficial domestic use" means any ground
26 water used for household purposes essential to
27 health and safety, whether provided by individual
28 wells or through public supply systems.

29 B. "Ground water" means all the waters found be-
30 neath the surface of the earth.

31 C. "Preexisting use" means any use which was un-
32 dertaken by a public water supplier, a landowner
33 or lawful land occupant or a predecessor in in-
34 terest of either of them, at any time during the
35 period of 3 years prior to the commencement of

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 the use which resulted in the interference.

2 2. Cause of action created. Subject to the limi-
3 tations of subsection 3 and except as provided by Ti-
4 tle 23, section 652, a person is liable for the with-
5 drawal of ground water, including use of ground water
6 in heat pump systems, when the withdrawal is in ex-
7 cess of beneficial domestic use for a single-family
8 home and when the withdrawal causes interference with
9 the preexisting beneficial domestic use of ground wa-
10 ter by a landowner or lawful land occupant.

11 3. Limitations. The liability imposed under sub-
12 section 2 shall be in compensatory damages only, to
13 be recovered in an action brought by the landowner or
14 other lawful land occupant whose ground water use has
15 been interfered with, against the person whose subse-
16 quent use has caused the interference.

17 A. The damages shall be limited to the follow-
18 ing:

19 (1) All costs necessary to restore the
20 landowner or lawful land occupant to a sta-
21 tus which is reasonably equivalent in terms
22 of quantity and quality of ground water,
23 made available on a similarly accessible and
24 economic basis;

25 (2) Compensatory damages for loss or damage
26 to property, including, without limitation,
27 the loss of habitability of residence,
28 caused to the landowner or lawful land occu-
29 pant by reason of the interference, prior to
30 restoration of the status provided for in
31 subparagraph (1); and

32 (3) Reasonable costs, including expert wit-
33 ness and attorney fees, incurred in initiat-
34 ing and prosecuting an action when necessary
35 to secure a judgment granting the relief
36 provided for under this chapter.

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 B. The rights afforded by this chapter shall be
2 in addition to, and not in derogation of, any
3 other rights, whether arising under statute or
4 common law, which any person may have to seek re-
5 dress against any other person for ground water
6 interference or contamination.

7 **Sec. 5. 38 MRSA §562, sub-§10, ¶C,** as enacted by
8 PL 1985, c. 496, Pt. A, §14, is amended to read:

9 C. Any person other than those identified in
10 paragraph A or B who caused the prohibited dis-
11 charge of oil or who had custody or control of
12 the oil at the time of the prohibited discharge.

13 **Sec. 6. 38 MRSA §563, sub-§1, ¶A,** as enacted by
14 PL 1985, c. 496, Pt. A, §14, is amended to read:

15 A. No person may install, or cause to be in-
16 stalled, a new or replacement underground oil
17 storage tank facility without first having regis-
18 tered the tank facility with the department in
19 accordance with the requirements of subsection 2,
20 and having paid the registration fee in accord-
21 ance with the requirements of subsection 4, at
22 least 5 business days prior to installation. If
23 compliance with this time requirement is impossi-
24 ble due to an emergency situation, the owner or
25 operator of the facility at which the new or re-
26 placement tank facility is to be installed shall
27 inform the department as soon as the emergency
28 becomes known.

29 The owner or operator of the facility shall also
30 promptly submit upon completion a copy of the
31 registration form to the fire department in whose
32 jurisdiction the underground tank is will be lo-
33 cated.

34 The owner or operator shall make available a copy
35 of the facility's registration at that facility

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 for inspection by the department and authorized
2 municipal officials.

3 **Sec. 7. 38 MRSA §563, sub-§2, ¶G,** as enacted by
4 PL 1985, c. 4496, Pt. A, §14, is amended to read:

5 G. For new and, replacement or retrofitted
6 tanks, the name of the installer, the expected
7 date of installation or retrofit, the nature of
8 any emergency pursuant to subsection 1, paragraph
9 A, if applicable, and a description or plan show-
10 ing the layout of the facility or tank, includ-
11 ing, for tanks in sensitive geologic areas, the
12 form of secondary containment, monitoring wells
13 or equipment to be installed pursuant to section
14 564, subsection 1, paragraph C and, where appli-
15 cable, the method of retrofitting; and

16 **Sec. 8. 38 MRSA §563, sub-§5,** as amended by PL
17 1985, c. 626, §2, is repealed and the following en-
18 acted in its place:

19 5. Payment for failure to register or to pay an-
20 annual registration fee. Any person liable for the fee
21 imposed by subsection 4 shall pay 3 times the fee
22 specified in subsection 4 if the initial fee payment
23 and registration form has not been submitted to the
24 department on or before May 1, 1986, or if the annual
25 registration fee has not been submitted on or before
26 January 1st of each calendar year. This does not pre-
27 clude the department from seeking civil penalties
28 from any person who fails to register a facility or
29 tank. The owner or operator of an underground oil
30 storage facility not used in the marketing and dis-
31 tribution of oil shall pay a fee of \$50 for each tank
32 that is not registered by May 1, 1986, except that
33 the board may establish, by rule, an annual late reg-
34 istration period not to exceed 10 business days in
35 duration during which time no registration fee may be
36 assessed.

37 **Sec. 9. 38 MRSA §563, sub-§6** is enacted to read:

1 6. Providing notice. Prior to the sale or trans-
2 fer of any real estate where an underground oil stor-
3 age facility is located, the owner of the real estate
4 shall file a written notice with the purchaser or
5 transferee. The notice shall disclose the existence
6 of the underground oil storage facility, its regis-
7 tration number or numbers, the real estate where the
8 facility is located, whether or not the facility has
9 been abandoned in place pursuant to section 566-A and
10 that the facility is subject to regulation, including
11 registration requirements, by the department under
12 this subchapter.

13 **Sec. 10. 38 MRSA §§563-A and 563-B are enacted**
14 **to read:**

15 §563-A. Prohibition of nonconforming underground oil
16 storage facilities and tanks

17 1. Compliance schedule. No person may operate,
18 maintain or store oil in a registered underground oil
19 storage facility or tank which is not constructed of
20 fiberglass, cathodically protected steel or other
21 noncorrosive material approved by the department af-
22 ter:

23 A. October 1, 1989, if that facility or tank is
24 more than 15 years old and is located in a sensi-
25 tive geological area;

26 B. October 1, 1991, if that facility or tank is
27 more than 25 years old or if that facility or
28 tank is more than 15 years old and is located in
29 a sensitive geological area;

30 C. October 1, 1994, if that facility or tank is
31 more than 20 years old or if that facility or
32 tank is more than 15 years old and is located in
33 a sensitive geological area; and

34 D. October 1, 1997.

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 2. Consideration of sensitive geological areas.
2 For the purposes of this section, an underground oil
3 storage facility is not subject to subsection 1, par-
4 agraph A, regarding sensitive geological areas if the
5 board finds that:

6 A. The applicant has demonstrated that:

7 (1) The facility is located in a municipal-
8 ity with a population of more than 10,000;

9 (2) All persons within 500 feet of the fa-
10 cility are served by a public drinking water
11 supply;

12 (3) The facility is not located within
13 2,000 feet of any source of supply of a pub-
14 lic drinking water supply system; and

15 (4) The facility is not located within 300
16 feet of any source of supply of a private
17 drinking water supply system.

18 3. Violations. After reasonable notice and hear-
19 ing, if the board finds that an owner of an under-
20 ground oil storage facility has failed to correct any
21 violations of this subchapter, the board may impose
22 on the owner a schedule that provides for the early
23 application of any or all of the prohibitions con-
24 tained in subsection 1.

25 4. Presumption of age. If the age of the under-
26 ground oil storage facility or tank cannot be deter-
27 mined, it shall be presumed to be 20 years old as of
28 October 1, 1989.

29 5. Abandonment. All underground oil storage fa-
30 ilities subject to the prohibitions in this section
31 and section 563, subsection 1, shall be properly
32 abandoned in accordance with section 566-A prior to
33 the applicable prohibition dates.

1 6. Rules. The board may adopt rules necessary to
2 administer this section.

3 7. Report to Legislature. The department shall
4 report to the joint standing committee of the Legis-
5 lature having jurisdiction over natural resources on
6 or before January 1, 1989, on the progress made
7 toward achieving the compliance schedule established
8 by this section.

9 §563-B. Regulatory powers of department

10 In addition to the rule-making authorities other-
11 wise set forth in this subchapter, the board may
12 adopt rules related to the following matters:

13 1. Removal. Procedures, methods, means and
14 equipment to be used in the removal of oil and petro-
15 leum pollutants;

16 2. Inventory analyses; precision testing; leak
17 detection methods. Procedures and methods to be used
18 in conducting statistical inventory analyses, under-
19 ground oil storage facility precision testing a and
20 other leak detection methods;

21 3. Hearings. Hearings related to clean-up or-
22 ders issued pursuant to section 568; and

23 4. Third-party damage claims. Procedures to be
24 used in filing and processing of 3rd-party damage
25 claims.

26 Sec. 11. 38 MRSA §564, sub-§2, as enacted by PL
27 1985, c. 496, Pt. A, §14, is amended to read:

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

31 A. Collection of inventory data for each day

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

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

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 (3) Detection of product in a monitoring
2 well; and

3 (4) Failure of a tank precision test or
4 hydrostatic pipe test.

5 The requirements in paragraphs A and B do not apply
6 to a double-walled tank containing interstitial space
7 monitoring which has been installed and is operated
8 in accordance with the requirements of this subchap-
9 ter, including rules adopted under this subchapter,
10 and utilizing double-walled piping or a product de-
11 livery system using a suction pump or other system
12 approved by the department which has been installed
13 and is operated in accordance with the requirements
14 of this subchapter, including rules adopted under
15 this subchapter.

16 **Sec. 12. 38 MRSA §565, sub-§2, ¶B, as enacted by**
17 **PL 1985, c. 496, Pt. A, §14, is amended to read:**

18 **B. Existing-underground** Underground oil storage
19 tanks that are used for storing motor fuels for
20 consumptive use shall be precision tested for
21 leaks every 5 years until abandonment when they
22 are 20 15 years old, except that the owner or op-
23 erator may elect to install monitoring wells as
24 an alternative to precision testing. ~~If, after~~
25 ~~reasonable inquiry has been made, the age of a~~
26 ~~tank is unknown, it shall be presumed to be 15~~
27 ~~years old as of May 17, 1986, for purposes of com-~~
28 ~~pliance with this requirement. All such tanks~~
29 ~~shall be retested every 5 years thereafter until~~
30 ~~abandoned.~~ Results of the precision tests shall
31 be submitted promptly to the department and all
32 tanks and piping found to be leaking shall be re-
33 moved pursuant to section 566 566-A or repaired
34 to the department's satisfaction.

35 **Sec. 13. 38 MRSA §566, as amended by PL 1985, c.**
36 **626, §7, is repealed.**

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 lowing for the granting of a variance from the re-
2 quirement of removal where abandonment by removal is
3 not physically possible or practicable due to circum-
4 stances other than those listed in this subsection.
5 The board shall adopt rules setting forth the proper
6 procedures for abandonment of underground oil storage
7 facilities and tanks, including acceptable methods of
8 disposing of the removed tanks and procedures for
9 abandonment in place where removal of a tank or other
10 component of a facility is deemed not physically pos-
11 sible or practicable.

12 4. Departmental role. If the owner of an under-
13 ground oil storage facility or tank fails to properly
14 abandon the facility or tank within a reasonable time
15 period, the department may undertake the abandonment.
16 The department shall collect any reimbursement due
17 the Ground Water Oil Clean-up Fund in accordance with
18 section 569.

19 5. Qualified personnel. All abandoned facilities
20 and tanks used for the storage of Class 1 liquids
21 that require removal shall be removed under the di-
22 rection of an underground oil storage tank installer
23 certified pursuant to Title 32, chapter 104-A, or of
24 professional firefighting personnel. The certified
25 installer need not be present at the site at the time
26 of the tank's or facility's removal.

27 Sec. 15. 38 MRSa §568, as enacted by PL 1985, c.
28 496, Pt. A, §14, is repealed and the following en-
29 acted in its place:

30 §568. Cleanup and removal of prohibited discharges

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

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 section 3, or the department may undertake the remov-
2 al of that discharge and retain agents and contrac-
3 tors for that purpose who shall operate under the di-
4 rection of the department. Any unexplained discharge
5 of oil, petroleum products or their by-products to
6 ground water within state jurisdiction shall be re-
7 moved by or under the direction of the department.
8 Any expenses involved in the removal of discharges,
9 whether by the person causing the same, the person
10 reporting the same or the department by itself or
11 through its agents or contractors, may be paid in the
12 first instance from the Ground Water Oil Clean-up
13 Fund and any reimbursements due that fund shall be
14 collected in accordance with section 569.

15 2. Restoration of water supplies. The depart-
16 ment may clean up any discharge of oil and take tem-
17 porary and permanent remedial actions at locations
18 threatened or affected by the discharge of oil, in-
19 cluding restoring or replacing water supplies contam-
20 inated or threatened by oil, petroleum products or
21 their by-products, using the most cost-effective al-
22 ternative that is technologically feasible and reli-
23 able and which effectively mitigates or minimizes
24 damage to and provides adequate protection of the
25 public health, welfare and the environment. When the
26 remedial action taken includes the installation of a
27 public water supply, the fund may be used to pay
28 costs of operation and maintenance of the water sup-
29 ply for a period not exceeding 5 years. The depart-
30 ment shall consult with the affected party prior to
31 selecting the alternative to be implemented.

32 3. Issuance of clean-up orders. The department
33 may investigate and sample sites where an oil dis-
34 charge has or may have occurred to identify the
35 source and extent of the discharge. During the course
36 of the investigation, the commissioner may require
37 submission of information or documents, which relate
38 or may relate to the discharge under investigation,
39 from any person who the department has reason to be-
40 lieve may be a responsible party. If the department

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 finds, after investigation, that a discharge of oil
2 has occurred and may create a threat to public health
3 or the environment, including, but not limited to,
4 contamination of a water supply, the commissioner may
5 order the responsible party to cease the discharge
6 immediately or to take action to prevent further dis-
7 charge and to mitigate or terminate the threat. The
8 commissioner may order that the responsible party
9 take temporary and permanent remedial actions at lo-
10 cations threatened or affected by the discharge of
11 oil, including a requirement that the responsible
12 party restore or replace water supplies contaminated
13 with oil, petroleum products or their by-products
14 using the most cost-effective alternative that is
15 technologically feasible and reliable and which ef-
16 fectively mitigates or minimizes damage to, and pro-
17 vides adequate protection of, the public health, wel-
18 fare and the environment. Clean-up orders shall only
19 be issued in compliance with the following require-
20 ments.

21 A. Any orders issued under this section shall
22 contain findings of fact describing the manner
23 and extent of oil contamination, the site of the
24 discharge and the threat to the public health or
25 environment.

26 B. A responsible party to whom such an order is
27 directed may apply to the board for a hearing on
28 the order if the application is made within 10
29 working days after receipt of the order by a re-
30 sponsible party. The hearing shall be held by
31 the board within 15 working days after receipt of
32 the application. The nature of the hearing before
33 the board shall be an appeal. At the hearing, all
34 witnesses shall be sworn and the department shall
35 first establish the basis for the order and for
36 naming the person to whom the order was directed.
37 The burden of going forward shall then shift to
38 the person appealing to demonstrate, based upon a
39 preponderance of the evidence, that the order
40 should be modified or rescinded. Within 7 days

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 after the hearing, the board shall make findings
2 of fact and shall continue, revoke or modify the
3 order. The decision of the board may be appealed
4 to the Superior Court in accordance with the
5 Maine Administrative Procedure Act, Title 5,
6 chapter 375, subchapter VII.

7 4. Enforcement; penalties. Any person who
8 causes, or is responsible for, a discharge to ground
9 water in violation of section 543 shall not be sub-
10 ject to any fines or civil penalties for the dis-
11 charge if that person promptly reports and removes
12 that discharge in accordance with the rules and or-
13 ders of the department and the board.

14 5. Acquisition of property; authority. The de-
15 partment may acquire, by purchase, lease, condemna-
16 tion, donation or otherwise, any real property or any
17 interest in real property that the board in its dis-
18 cretion determines, by 2/3 majority vote, is neces-
19 sary to conduct a remedial action under this subchap-
20 ter. There shall be no cause of action to compel the
21 board to acquire any interest in real property under
22 this subchapter.

23 A. The board may use the authority in this sub-
24 section for a remedial action only if, before an
25 interest in real estate is acquired under this
26 subsection, the municipality in which the inter-
27 est to be acquired is located assures the board
28 through a contract or other legal agreement that
29 the municipality will accept transfer of the in-
30 terest following completion of the remedial ac-
31 tion.

32 Sec. 16. 38 MRSA §569, sub-§2, as enacted by PL
33 1985, c. 496, Pt. A, §14, is repealed.

34 Sec. 17. 38 MRSA §569, sub-§2-A is enacted to
35 read:

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 2-A. Third-party damages. Any person claiming to
2 have suffered actual damages to real estate or per-
3 sonal property or loss of new income directly or in-
4 directly as a result of a discharge of oil to ground
5 water prohibited by section 543, in this subsection
6 called the claimant, may apply within 6 months after
7 the occurrence or discovery of the discharge to the
8 board stating the amount of damage alleged to be suf-
9 fered as a result of that discharge. The board shall
10 prescribe appropriate forms and details for the ap-
11 plications. The board, upon petition and for good
12 cause shown, may waive the 6-month limitation for
13 filing damage claims.

14 A. If the claimant and the board are able to
15 agree as to the amount of the damage claim, the
16 board shall certify the amount of the claim and
17 the name of the claimant to the Treasurer of
18 State and the Treasurer of State shall pay the
19 amount of the claim from the Ground Water Oil
20 Clean-up Fund.

21 B. If the claimant and the board are not able to
22 agree as to the amount of the damage claim, the
23 board shall forthwith transmit the claim for ac-
24 tion to the department as provided in this sub-
25 chapter.

26 C. A claimant shall take all reasonable measures
27 to minimize damages suffered by the claimant as a
28 result of a discharge of oil.

29 D. Third-party damage claims shall be stated in
30 their entirety in one application. Damages omit-
31 ted from any claim at the time the award is made
32 shall be deemed waived.

33 E. Damage claims arising under this subchapter
34 are recoverable only in the manner provided under
35 this subchapter. It is the intent of the Legisla-
36 ture that the remedies provided for such damage
37 claims in this subchapter are exclusive.

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 F. Awards from the fund on damage claims shall
2 not include any amount which the claimant has re-
3 covered, on account of the same damage, by way of
4 settlement with or judgment of a court of compe-
5 tent jurisdiction against the person causing or
6 otherwise responsible for the discharge.

7 **Sec. 18. 38 MRSA §569, sub-§3, as enacted by PL**
8 **1985, c. 496, Pt. A, §14, is repealed.**

9 **Sec. 19. 38 MRSA §569, sub-§3-A is enacted to**
10 **read:**

11 3. Determination of disputed 3rd-party damage
12 claims. The commissioner shall establish a claims
13 processing capability within the department to hear
14 and determine claims filed under this subchapter
15 which are not agreed upon by the claimant and the
16 board.

17 A. An independent hearing examiner appointed by
18 the commissioner shall hear and determine any
19 disputed 3rd-party damage claims.

20 B. To the extent practical, all claims arising
21 from or related to a common discharge shall be
22 heard and determined by the same hearing examin-
23 er.

24 C. Hearings before the hearing examiner shall be
25 informal and the rules of evidence prevailing on
26 judicial proceedings shall not be binding. The
27 hearing examiner may administer oaths and require
28 by subpoena the attendance and testimony of wit-
29 nesses, the production of books, records and oth-
30 er evidence relative or pertinent to the issues
31 presented to him for determination.

32 D. Determinations made by the hearing examiner
33 shall be final and those determinations may be
34 subject to review by a Justice of the Superior

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 Court, but only as to matters relating to abuse
2 of discretion by the hearing examiner. A claimant
3 seeking review of a hearing examiner determina-
4 tion shall file an appeal in the Superior Court
5 within 30 days of the determination.

6 E. The commissioner shall certify the amount of
7 the damage award, if any, after determination by
8 the hearing examiner, and shall certify the name
9 of the claimant to the Treasurer of State, unless
10 the commissioner has determined that the claimant
11 is a responsible party, in which case certifica-
12 tion shall be withheld until all claims that the
13 department has against the responsible party with
14 respect to the discharge have been satisfied.

15 **Sec. 20. 38 MRSA §569, sub-§4, as enacted by PL**
16 **1985, c. 496, Pt. A, §14, is amended to read:**

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 and liquid
20 asphalt, including #6 fuel oil, #2 fuel oil, kero-
21 sene, jet fuel and diesel fuel, shall be assessed on
22 the transfer of those products by oil terminal facil-
23 ity licensees, as defined in section 542, subsection
24 7. These fees shall be paid monthly by the oil ter-
25 минаl facility licensee licensees on the basis of
26 records certified to the department. All such trans-
27 fer fees shall be credited to the Ground Water Oil
28 Clean-up Fund upon receipt by the department.

29 **Sec. 21. 38 MRSA §569, sub-§6, as amended by PL**
30 **1985, c. 746, §24, is further amended to read:**

31 6. Reimbursements to the Ground Water Oil
32 Clean-up Fund. The department shall seek recovery
33 for the use of the fund of all sums expended from the
34 fund, including overdrafts, for the purposes de-
35 scribed in subsection 5, paragraphs B, D, E and G, or
36 for other damage incurred by the State, in connection
37 with a prohibited discharge, including interest com-

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 puted at 15% a year from the date of expenditure, un-
2 less the department finds the amount involved too
3 small or the likelihood of success too uncertain.
4 Requests for reimbursement to the fund if not paid
5 within 30 days of demand shall be turned over to the
6 Attorney General for collection.

7 **Sec. 22. 38 MRSA §570**, as enacted by PL 1985, c.
8 496, Pt. A, §14, is amended to read:

9 §570. Liability

10 Because it is the intent of this subchapter to
11 provide the means for rapid and effective ~~clean-up~~
12 cleanup and to minimize direct damages as well as in-
13 direct damages and the proliferation of 3rd-party
14 claims, each responsible party who permits or suf-
15 fers, or is connected with, a prohibited discharge of
16 oil is jointly and severally liable to the State for
17 all disbursements made by it pursuant to section 569,
18 subsection 5, paragraphs B, D and E and G, or other
19 damage incurred by the State, including interest com-
20 puted at 15% a year from the date of expenditure.

21 In any ~~suit-filed~~ administrative or judicial ac-
22 tion taken under this subchapter, to establish lia-
23 bility, it shall not be necessary for the State to
24 plead or prove negligence in any form or manner on
25 the part of the responsible party ~~causing-or-ther-~~
26 ~~wise-responsible-for-the-discharge~~. The State need
27 only plead and prove the fact of the prohibited dis-
28 charge and that the discharge occurred at a facility
29 under the control of the responsible party causing
30 the discharge or was otherwise attributable to a re-
31 sponsible party as provided in this subchapter.

32 **Sec. 23. 38 MRSA §570-F**, first ¶, as enacted by
33 PL 1985, c. 496, Pt. A, §14, is amended to read:

34 Nothing ~~is~~ in this subchapter shall be construed
35 to authorize the Board of Environmental Protection to
36 require registration of or to regulate the installa-

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 tion or operation of underground tanks used for the
2 storage of propane.

3 Sec. 24. 38 MRSA §570-G is enacted to read:

4 §570-G. Construction

5 This subchapter is necessary for the general wel-
6 fare, public health and public safety of the State
7 and its inhabitants and shall be liberally construed
8 to effect the purposes set forth under this subchap-
9 ter. No rule or order of the board may be stayed
10 pending appeal under this subchapter.

11 Sec. 25. 38 MRSA §1319-I, sub-§§1, 2, 3, 4 and
12 8, as amended, are repealed and the following enacted
13 in their place:

14 1. Fees for actions taken on the site of genera-
15 tion. Any person in the State who generates more than
16 1,000 kilograms of hazardous waste in any calendar
17 month shall pay a fee as follows:

18 A. For hazardous waste which is disposed of on
19 the site of generation in a licensed hazardous
20 waste disposal facility, 2.0¢ a pound; and

21 B. For hazardous waste which is stored on the
22 site of generation in a licensed hazardous waste
23 storage facility for more than 90 days, but less
24 than 6 calendar months, and for each time period
25 thereafter or 6 calendar months or portion there-
26 of, .5¢ a pound.

27 2. Fees for action taken off site of generation.
28 Any person who transports hazardous waste in the
29 State shall pay a fee as follows:

30 A. For hazardous waste which is transported off
31 the site to a licensed hazardous waste disposal
32 facility for disposal, 2.0¢ a pound; and

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 B. For hazardous waste which is transported off
2 the site to a licensed hazardous waste treatment
3 facility for treatment, storage facility for
4 storage or other licensed facility for handling,
5 including beneficial reuse, reclamation or
6 recycling, 1.5¢ a pound.

7 3. Fee for transportation into Maine from out of
8 state. If hazardous waste or waste oil is transported
9 into Maine from out of state, the person who first
10 transports the hazardous waste or waste oil into
11 Maine shall pay a fee equal to twice the amount indi-
12 cated by the schedules outlined in subsection 2 for
13 hazardous waste or subsection 5 for waste oil, as if
14 that person were the waste oil dealer.

15 The commissioner may waive up to 50% of the fee im-
16 posed under this subsection if the state from which
17 the hazardous waste or waste oil is transported to
18 Maine observes the same reciprocity with regard to
19 hazardous waste transported to that state from Maine.

20 4. Fee for failure to treat or dispose of haz-
21 ardous waste within 90 days from arrival. Any person
22 who owns or operates a hazardous waste treatment or
23 disposal facility and who does not treat or dispose
24 of the hazardous waste within 90 days from the date
25 the hazardous waste arrives at the hazardous waste
26 facility shall pay a fee according to the fee sched-
27 ule in subsections 1 and 2.

28 8. Limit on fees. No person may be required to
29 pay, for any calendar year, more than \$15,000 in fees
30 under subsection 1.

31 Sec. 26. Authorization for research. In accord-
32 ance with the Maine Revised Statutes, Title 38, sec-
33 tion 551, subsection 1, the Legislature authorizes a
34 special study to be conducted pertaining to the envi-
35 ronmental and public health threats from, and regula-
36 tion of, above-ground facilities that store petroleum
37 products and other hazardous materials.

1 **Sec. 27. Authorization for program development.**

2 The Legislature authorizes the Department of Environ-
3 mental Protection to develop a program plan to assist
4 persons who generate up to 1,000 kilograms of hazard-
5 ous waste in a calendar month, including household
6 hazardous waste, in minimizing the generation of haz-
7 ardous waste and developing economical methods of
8 properly collecting, transporting and disposing of
9 their hazardous waste.

10 The program plan shall be completed and submitted
11 to the joint standing committee of the Legislature
12 having jurisdiction over natural resources by January
13 1, 1989, and shall include:

14 1. Survey. A survey of businesses which utilize
15 some form of hazardous waste recycling, chemical sub-
16 stitution or other waste minimization methods;

17 2. Assessment. An assessment of practical
18 recycling or waste minimization methods that may be
19 available to businesses;

20 3. Transportation. Methods by which persons gen-
21 erating up to 1,000 kilograms of hazardous waste a
22 calendar month may reduce transportation costs for
23 disposal through cooperative or cost-sharing prac-
24 tices;

25 4. Regional collection. The feasibility of es-
26 tablishing a regional collection or transfer facility
27 networks statewide for persons generating up to 1,000
28 kilograms of hazardous waste per calendar month and
29 persons generating household hazardous waste, with
30 the facilities being owned, operated and serviced by
31 the public sector or private industry; and

32 5. Directory. A directory of hazardous waste
33 generators in the State compiled by geographic re-
34 gions and Maine-licensed hazardous waste transporters
35 who serve those regions.

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 **Sec. 28. Allocation.** The following funds are al-
 2 located from the Maine Coastal and Inland Surface Oil
 3 Clean-up Fund to carry out the purposes of section 26
 4 of this Act.

	<u>1987-88</u>	<u>1988-89</u>
6 <u>ENVIRONMENTAL PROTECTION,</u>		
7 <u>DEPARTMENT OF</u>		
8 Maine Coastal and Inland		
9 Surface Oil Clean-up		
10 Fund		
11 Positions	(1)	(1)
12 Personal Services	\$29,642	\$31,047
13 All Other	20,358	18,953
14 Capital Expenditures	1,000	1,000
15		
16 Total	<u>\$51,000</u>	<u>\$51,000</u>

17 **Sec. 29. Allocation.** The following funds are al-
 18 located from the Hazardous Waste Fund to carry out
 19 the purposes of section 27 of this Act.

	<u>1987-88</u>	<u>1988-89</u>
21 <u>ENVIRONMENTAL PROTECTION,</u>		
22 <u>DEPARTMENT OF</u>		
23 Hazardous Waste Fund		
24 Positions	(1)	(1)
25 Personal Services	\$29,642	\$31,047
26 All Other	20,358	18,953
27 Capital Expenditures	1,000	1,000
28		
29 Total	<u>\$51,000</u>	<u>\$51,000</u>

30 **Sec. 30. Authorization for carry-over.** The Leg-

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 legislature authorizes the Department of Environmental
2 Protection to carry over until June 30, 1988, funds
3 appropriated for fiscal year 1985-86 from the General
4 Fund pursuant to Public Law 1985, chapter 501, Part
5 A, §1, to the Bureau of Water Quality Control for a
6 technical assistance program to municipalities for
7 assessing development impacts on local ground water
8 resources.'

9 FISCAL NOTE

10 Passage of this bill will result in an increase
11 in dedicated revenue to the Hazardous Waste Fund of
12 \$20,000 annually. The fiscal impact on other funds is
13 described adequately in the allocation section of the
14 bill.

15 STATEMENT OF FACT

16 The purpose of this new draft is to make a varie-
17 ty of technical corrections and to include several
18 substantive improvements to the original bill. The
19 most important of these changes concern the under-
20 ground tanks program administered by the Department
21 of Environmental Protection.

22 Section 1 of this amendment is similar to provi-
23 sions in the original bill.

24 Section 2 includes tank removal in the certifica-
25 tion description of tank installers.

26 Section 3 adds noncompliance with underground
27 tank clean-up orders to the general penalty provi-
28 sions of the Maine Revised Statutes, Title 38.

29 Sections 4 to 8 are similar to provisions in the
30 original bill.

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 Section 9 provides for notice to be given to pur-
2 chasers of property on which are located underground
3 oil storage facilities.

4 Section 10 establishes a realistic schedule for
5 bringing the State's underground oil storage tanks
6 into compliance with existing law. The schedule is
7 designed to protect public health, drinking water
8 supplies and the environment while making provisions
9 for practical constraints upon removal when the
10 threat to drinking water supplies is low.

11 Sections 11 and 12 are similar to provisions in
12 the original bill.

13 Sections 13 and 14 make a series of technical
14 changes and add the safety requirement that firemen
15 or certified tank installers certify the removal of
16 tanks that have been used for the storage of gasoline
17 or other Class 1 flammable liquids. These sections
18 also authorize the department to remove an under-
19 ground tank when the owner has failed to comply with
20 the removal schedules established by this amendment.

21 Section 15 is similar to section 22 in the origi-
22 nal bill.

23 Sections 16 to 19 change the procedures for han-
24 dling damage claims under the Ground Water Clean-up
25 Program. The amendment eliminates the current arbi-
26 tration process which has proven to be very slow due
27 to the requirement that responsible parties be iden-
28 tified prior to any arbitration of damages. The new
29 process involves only an independent hearing examiner
30 and the claimant. Approved claims are paid from the
31 Ground Water Oil Clean-up Fund. The department re-
32 mains responsible for recovery of damage claims from
33 the responsible party as is the case under existing
34 law.

35 Sections 20 to 24 are similar to provisions of

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 836

1 the original bill.

2 Sections 25 revises the existing fee schedule im-
3 posed on hazardous wastes to make it more consistent
4 with the way in which the industry measures quanti-
5 ties of these materials. This section also makes sev-
6 eral technical corrections.

7 Sections 26 and 28 are the same as sections 25
8 and 27 in the original bill.

9 Sections 27 and 29 require the Department of En-
10 vironmental Protection to develop an assistance pro-
11 gram for generators of small quantities of hazardous
12 waste. This program includes household hazardous
13 wastes, as well as the hazardous waste generated by
14 small businesses.

15 Section 30 authorizes the carry-over of \$20,000
16 previously appropriated to the Department of Environ-
17 mental Protection to assist municipalities in pro-
18 tecting their ground water resources.

19

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Reported by the Committee on Energy and Natural Resources
Reproduced and distributed under the direction of the Clerk of the
House
6/15/87 (Filing No. H-350)