

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 836

H.P. 618 House of Representatives, March 18, 1987
Reference to the Committee on Energy and Natural
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative SIMPSON of Casco.

Cosponsored by Representatives JACQUES of Waterville,
HOGLUND of Portland, and HOLLOWAY of Edgecomb.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Establish a Comprehensive Ground
Water Protection Plan.

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

Sec. 1. 22 MRSa c. 601, sub-c. III-A is enacted
to read:

SUBCHAPTER III-A

WATER WELL INFORMATION ACT

§2632. Definitions

As used in this subchapter, unless the context
indicated otherwise, the following terms have the
following meanings.

1 1. Well. "Well" means any hole drilled by any
2 method for the purpose of extracting water from below
3 the ground.

4 2. Well drilling contractor. "Well drilling
5 contractor" means any person, company, firm, partner-
6 ship or corporation engaged in the business of
7 drilled water well construction.

8 §2633. Exclusions

9 Wells for which data reports are already required
10 by any state agency are exempt from the reporting re-
11 quirements of this subchapter.

12 §2634. Water well information documentation

13 1. Well completion reports. Within 45 days af-
14 ter completion of any well or dry hole or the enlarg-
15 ing or deepening of an existing well, a well drilling
16 contractor shall submit to the Maine Geological Sur-
17 vey a report, on forms designed and provided by the
18 Maine Geological Survey. The report shall contain
19 information as may be required by the Maine Geologi-
20 cal Survey, including, but not limited to, location,
21 construction and ownership of the well, materials en-
22 countered and well yield.

23 The Maine Geological Survey may request additional
24 information pertaining to collecting of scientific
25 data related to natural resources.

26 2. Violation. Any well drilling contractor who
27 engages in the drilling of water wells but who does
28 not submit well completion reports on a timely basis
29 as required by this subchapter is in violation of
30 this subchapter.

31 §2635. Compliance with other laws and rules

32 Notwithstanding this subchapter, all wells are to
33 be constructed and maintained in accordance with all
34 other laws and rules in effect.

35 §2636. Penalties

1 Any person, company, firm, partnership or corpo-
2 ration, who willfully violates any standard or provi-
3 sion of this subchapter, commits a civil violation
4 for which a forfeiture of not more than \$500 may be
5 adjudged. In addition to other civil remedies, the
6 court may issue an injunction.

7 Sec. 2. 23 MRSA §3659 is enacted to read:
8 §3659. Protection of private water supplies

9 In the event a land owner believes that a private
10 water supply on his land has been destroyed or ren-
11 dered unfit for human consumption by a political sub-
12 division constructing, reconstructing or maintaining
13 a public highway under its jurisdiction, the owner
14 may apply in writing to the political subdivision for
15 a determination of the alleged cause and assessment
16 of damages.

17 1. Application presented within 2 years. If the
18 claim is founded on construction or reconstruction,
19 the owner must present the application within 2 years
20 after completion of the work as that date appears in
21 the records of the political subdivision. The appli-
22 cation shall set forth:

- 23 A. The name and address of the owner;
- 24 B. The name and address of any lien holder;
- 25 C. The owner's source of title;
- 26 D. The location of the property;
- 27 E. A description of the damage; and
- 28 F. The cause to which the damage is attributed.

29 2. Written response. Within 90 days upon re-
30 ceipt of the owner's application, the political sub-
31 division shall forward to the owner a written re-
32 sponse.

33 3. Offer of settlement. If the political subdi-
34 vision determines that any damage to the privately
35 owned water supply was caused by the political subdi-

1 vision constructing, reconstructing or maintaining
2 the public highway, the political subdivision shall
3 set forth in its response an offer of settlement.
4 The political subdivision shall in its response con-
5 sider the necessity for the installation or replace-
6 ment of piping, tanks, pumps, heating systems or oth-
7 er related fixtures. In its offer of settlement, a
8 political subdivision may consider the following rem-
9 edies:

10 A. Replacing the water supply;

11 B. Repairing the damage to the water supply;

12 C. Paying a designated sum of money; and

13 D. Purchasing the realty served by the water
14 supply.

15 4. If the landowner and political subdivision
16 are unable to agree on the cause of the problem to
17 the water supply or to the terms of settlement, the
18 landowner may file an action in Superior Court in the
19 county or counties where the land is located.

20 A. The complaint must be filed within one year
21 after receiving a written response by the municipi-
22 ality.

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

26 C. Damages to the property shall be based on the
27 difference between the fair market value of the
28 property before the water supply was destroyed or
29 rendered unfit and the fair market value of the
30 property after the water supply was destroyed or
31 rendered unfit or based on the cost to cure the
32 damage, whichever amount is less.

33 5. Limitations on liability. A political subdivi-
34 vision shall not be liable:

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

- 1 B. If the private water supply is located within
2 100 feet of any septic system;
- 3 C. If the location of the private water supply
4 does not provide for adequate surface drainage;
5 or
- 6 D. If the private water supply prior to the con-
7 struction, reconstruction or maintenance was con-
8 taminated or polluted by another source to the
9 degree that the contamination or pollution ren-
10 dered it unfit for human consumption.

11 Sec. 3. 38 MRSa §404 is enacted to read:

12 §404. Ground water rights

13 1. Definitions. As used in this section, unless
14 the context indicates otherwise, the following terms
15 have the following meanings.

16 A. "Beneficial domestic use" means any ground
17 water use for household purposes essential to
18 health and safety, whether provided by individual
19 wells or through public supply systems.

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

22 C. "Preexisting use" means any use which was un-
23 dertaken by a public water supplier, a landowner
24 or lawful land occupant or a predecessor in in-
25 terest of either of them, at any time during the
26 period of 3 years prior to the commencement of
27 the use which resulted in the interference.

28 2. Cause of action created. Subject to the lim-
29 itations of subsection 3, and except as provided by
30 Title 23, section 652, a person is liable for the
31 withdrawal of ground water, including use in heat
32 pump systems, of ground water which causes interfe-
33 rence with the preexisting beneficial domestic use of
34 ground water by a landowner or lawful land occupant.

35 3. Limitations. The liability imposed under
36 subsection 2 shall be in compensatory damages only,
37 to be recovered in an action brought by the landowner

1 or other lawful land occupant whose ground water use
2 has been interfered with, against the person whose
3 subsequent use has caused the interference.

4 A. The damages shall be limited to the follow-
5 ing:

6 (1) All costs necessary to restore the
7 landowner or lawful land occupant to a sta-
8 tus which is reasonably equivalent in terms
9 of quantity and quality of ground water,
10 made available on a similarly accessible and
11 economic basis;

12 (2) Compensatory damages for loss or damage
13 to property, including without limitation,
14 the loss of habitability of residence,
15 caused to the landowner or lawful land occu-
16 pant by reason of the interference, prior to
17 restoration of the status provided for in
18 subparagraph (1); and

19 (3) Reasonable costs, including expert wit-
20 ness fees and attorney fees, incurred in
21 initiating and prosecuting an action when
22 necessary to secure a judgment granting the
23 relief provided for under this chapter.

24 B. The rights afforded by this chapter shall be
25 in addition to, and shall not be in derogation
26 of, any other rights, whether arising under stat-
27 ute or common law, which any person may have to
28 seek redress against any other person for ground
29 water interference or contamination.

30 Sec. 4. 38 MRS A §421-A is enacted to read:

31 §421-A. Required closing of solid waste disposal fa-
32 cilities located over sand and gravel aqui-
33 fers

34 1. Placement of solid waste disposal facility.
35 No public or private solid waste disposal facility
36 may overlie a sand and gravel aquifer or the recharge
37 area to a sand and gravel aquifer.

1 A. "Sand and gravel aquifer" means a surficial
2 geological formation such as an esker, outwash
3 plain, glaciomarine delta, kame, stratified mo-
4 rairie or other deposits commonly consisting of
5 sand or gravel, such as those identified by the
6 Maine Geological Survey.

7 2. Determination of boundaries. Any person,
8 corporation, municipality or state agency proposing
9 to establish a solid waste disposal facility after
10 January 1, 1987, may apply to the commissioner for a
11 determination that the boundaries of the proposed ar-
12 ea are suitably removed from a sand and gravel
13 aquifer and from the recharge area to a sand and
14 gravel aquifer.

15 3. Overlying aquifer or recharge area. Any sol-
16 id waste disposal facility which overlies a sand and
17 gravel aquifer or the recharge area to a sand and
18 gravel aquifer shall be discontinued.

19 A. The Board of Environmental Protection may es-
20 tablish, by order or on its own initiative and
21 after notice to the affected party, a schedule
22 and standards for discontinuance and closure of
23 any such facility.

24 Sec. 5. 38 MRSA §451-A, sub-§1-A is enacted to
25 read:

26 1-A. Time schedule. An owner or operator of a
27 salt or sand-salt storage area shall not be deemed in
28 violation of any ground water classification or re-
29 classification adopted on or after January 1, 1980,
30 at any time or times prior to October 1, 1996, with
31 respect to discharges from those storage facilities
32 to the ground water if, by such time or times with
33 respect to any project necessary to achieve compli-
34 ance with the applicable classification, they have
35 completed all steps required by the schedules set
36 forth in this subchapter.

37 A. Preliminary plans and engineers' estimates
38 shall be completed and submitted to the depart-
39 ment on or before January 1, 1988.

1 B. Arrangements for administration and financing
2 shall be completed on or before January 1, 1990.

3 C. Detailed engineering and final plan formula-
4 tion shall be completed on or before January 1,
5 1992.

6 D. Review of final plans with the board shall be
7 completed and construction commenced on or before
8 January 1, 1994.

9 E. Construction shall be completed and in opera-
10 tion on or before January 1, 1996.

11 In no case may violations of the lowest ground water
12 classification be allowed. In addition, no viola-
13 tions of any ground water classifications adopted af-
14 ter January 1, 1980, may be allowed for more than 3
15 years from the date of an offer of a state grant for
16 the construction of the facilities or after January
17 1, 1996, whichever is earlier.

18 The board shall not issue time schedule variances un-
19 der this section to owners or operators of salt or
20 sand-salt storage areas.

21 An owner or operator of a salt or sand-salt storage
22 area who is in compliance with this section shall not
23 be required to be licensed for the discharge of
24 pollutants from the salt or sand-salt storage area in
25 accordance with section 413.

26 Sec. 6. 38 MRSA §562, sub-§10, ¶C, as enacted by
27 PL 1985, c. 496, Pt. A, §14, is amended to read:

28 C. Any person other than those identified in
29 paragraph A or B who caused the prohibited dis-
30 charge of oil or who had custody or control of
31 the oil at the time of the prohibited discharge.

32 Sec. 7. 38, MRSA §563, sub-§1, ¶A, as enacted by
33 PL 1985, c. 496, Pt. A, §14, is amended to read:

34 A. No person may install, or cause to be in-
35 stalled, a new or replacement underground oil
36 storage tank facility without first having regis-
37 tered the tank facility with the department in

1 accordance with the requirements of subsection 2,
2 and having paid the registration fee in accord-
3 ance with the requirements of subsection 4, at
4 least 5 10 business days prior to installation.
5 If compliance with this time requirement is im-
6 possible due to an emergency situation, the owner
7 or operator of the facility at which the new or
8 replacement ~~tank~~ facility is to be installed
9 shall inform the department as soon as the emer-
10 gency becomes known.

11 The owner or operator of the facility shall also
12 promptly submit upon completion a copy of the
13 registration form to the fire department in whose
14 jurisdiction the underground tank ~~is~~ will be lo-
15 cated.

16 The owner or operator shall make available a copy
17 of the facility's registration at that facility
18 for inspection by the department and authorized
19 municipal officials.

20 Sec. 8. 38 MRSA §563, sub-§2, ¶G, as enacted by
21 PL 1985, c. 496, Pt. A, §14, is amended to read:

22 G. For new and, replacement or retrofitted
23 tanks, the name of the installer, the expected
24 date of installation or retrofit, the nature of
25 any emergency pursuant to subsection 1, paragraph
26 A, if applicable, and a description or plan show-
27 ing the layout of the facility or tank, includ-
28 ing, for tanks in sensitive geologic areas, the
29 form of secondary containment, monitoring wells
30 or equipment to be installed pursuant to section
31 564, subsection 1, paragraph C and, where appli-
32 cable, the method of retrofitting; and

33 Sec. 9. 38 MRSA §563, sub-§5, as amended by PL
34 1985, c. 626, §2, is repealed and the following en-
35 acted in its place:

36 5. Payment for failure to register or to pay an-
37 annual registration fee. Any person liable for the fee
38 imposed by subsection 4 shall pay 3 times the fee
39 specified in subsection 4 if the initial fee payment
40 and registration form has not been submitted to the
41 department on or before May 1, 1986, or if the annual

1 registration fee has not been submitted on or before
2 January 1st of each calendar year.

3 The owner or operator of an underground oil storage
4 facility not used in the marketing and distribution
5 of oil shall pay a fee of \$50 for each tank that is
6 not registered by May 1, 1986.

7 Sec. 10. 38 MRSA §§563-A and 563-B are enacted
8 to read:

9 §563-A. Prohibition of nonconforming underground oil
10 storage facilities and tanks

11 1. Sensitive geologic areas. No person may op-
12 erate, maintain or store oil in an underground oil
13 storage facility or tank which is not in conformance
14 with sections 564 and 565 after July 1, 1989, if the
15 facility or tank is located in a sensitive geologic
16 area. The facility of tank shall be properly aban-
17 doned pursuant to section 566 on or before July 1,
18 1989.

19 2. All other areas. In other areas of the
20 State, no person may operate, maintain or store oil
21 in an underground oil storage facility or tank that
22 is more than 15 years old as of July 1, 1987, and is
23 not in conformance with sections 564 and 565. The
24 facility or tank shall be properly abandoned pursuant
25 to section 566 no later than July 1, 1992. If, after
26 reasonable inquiry has been made, the age of a facil-
27 ity or tank is unknown, it shall be presumed to be 15
28 years old.

29 §563-B. Regulatory powers of the department

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

33 1. Removal of oil and petroleum pollutants.
34 Procedures, methods, means and equipment to be used
35 in the removal of oil and petroleum pollutants;

36 2. Underground oil storage facility precision
37 testing. Procedures and methods to be used in con-
38 ducting statistical inventory analyses, underground

1 oil storage facility precision testing and other leak
2 detection methods; and

3 3. Filing and processing of 3rd-party damage
4 claims. Procedures to be used in filing and process-
5 ing of 3rd-party damage claims.

6 Sec. 11. 38 MRSA §564, sub-§2, ¶¶E and G, as en-
7 acted by PL 1985, c. 496, Pt. A, §14, are amended to
8 read:

9 F. Evidence of financial responsibility for tak-
10 ing corrective action and for compensating 3rd
11 parties for bodily injury and property damage
12 caused by sudden and nonsudden accidental dis-
13 charges from an underground oil storage facility
14 or tank; and

15 G. Reporting to the department any of the fol-
16 lowing indications of a possible leak or dis-
17 charge of oil:

18 (1) Unexplained differences in daily inven-
19 tory reconciliation values which, over a
20 30-day period, exceed .5% of the product de-
21 livered;

22 (2) Unexplained losses detected through
23 statistical analysis of inventory records;

24 (3) Detection of product in a monitoring
25 well; and

26 (4) Failure of a tank precision test or
27 hydrostatic pipe test; and

28 Sec. 12. 38 MRSA §564, sub-§2, ¶H is enacted to
29 read:

30 H. The requirements set forth in paragraphs A
31 and B do not apply to a double-walled tank con-
32 taining interstitial space monitoring which has
33 been installed and is operated in accordance with
34 the requirements of this subchapter, including
35 rules adopted under this subchapter.

1 Sec. 13. 38 MRSA §565, sub-§2, ¶B, as enacted by
2 PL 1985, c. 496, Pt. A, §14, is repealed and the fol-
3 lowing enacted in its place:

4 B. Underground oil storage tanks that are used
5 for storing motor fuels for consumptive use shall
6 be precision tested for leaks every 5 years until
7 abandonment as of July 1, 1987, except that the
8 owner or operator may elect to install monitoring
9 wells as an alternative to precision testing.
10 Results of the precision tests shall be submitted
11 promptly to the department and all tanks and pip-
12 ing found to be leaking shall be removed pursuant
13 to section 566 or repaired to the department's
14 satisfaction.

15 Sec. 14. 38 MRSA §566, first ¶, as enacted by PL
16 1985, c. 496, Pt. A, §14, is amended to read:

17 All underground oil storage facilities and tanks
18 that have been, or are intended to be, taken out of
19 service for a period of more than 12 months shall be
20 properly abandoned by the owner or operator of the
21 facility or tank, or, if the owner or operator is un-
22 known, by the current owner of the property where the
23 facility or tank is located. Abandoned facilities
24 and tanks shall be removed, except where removal is
25 not physically possible or practicable because the
26 tank or other component of the facility to be removed
27 is:

28 Sec. 15. 38, MRSA §566, next to the last para-
29 graph, as amended by PL 1985, c. 626, §7, is further
30 amended to read:

31 ~~Notice~~ Written notice of an intent to abandon an
32 underground oil storage facility or tank shall be
33 provided to the department and the fire department in
34 whose jurisdiction the underground tank is located at
35 least 10 days prior to abandonment by the owner or
36 operator of an underground oil storage facility or
37 tank or, if the owner or operator is unknown, by the
38 current owner of the property where the facility or
39 tank is located.

40 Sec. 16. 38 MRSA §568, as enacted by PL 1985, c.
41 496, Pt. A, §14, is amended to read:

1 §568. Cleanup and removal of prohibited discharges

2 1. Removal. Any person discharging or suffering
3 a discharge of oil, petroleum products or their by-
4 products to ground water in the manner prohibited by
5 section 543 shall immediately undertake to remove
6 that discharge to the department's satisfaction.
7 Notwithstanding this requirement, the department may
8 order the removal of that discharge pursuant to sub-
9 section 3 or undertake the removal of that discharge
10 itself and may retain agents and contractors for
11 ~~these purposes~~ that purpose who shall operate under
12 the direction of the department. Any unexplained
13 discharge of oil, petroleum products or their by-
14 products to ground water within state jurisdiction
15 shall be removed by or under the direction of the de-
16 partment. Any expenses involved in the removal of
17 discharges, whether by the person causing the same,
18 the person reporting the same or the department by
19 itself or through its agents or contractors, may be
20 paid in the first instance from the Ground Water Oil
21 Clean-up Fund and any reimbursements due that fund
22 shall be collected in accordance with section 569.

23 2. Restoration of water supplies. The depart-
24 ment may clean up any discharge of oil and take tem-
25 porary and permanent remedial actions at locations
26 threatened or affected by the discharge of oil, in-
27 cluding implementing remedies to restore or replace
28 restoring or replacing water supplies contaminated
29 with or threatened by oil, petroleum products or
30 their by-products, using the most cost-effective al-
31 ternative that is technologically feasible and reli-
32 able and which effectively mitigates or minimizes
33 damage to and provides adequate protection of the
34 public health, welfare and the environment. The de-
35 partment shall consult with the affected party prior
36 to selecting the alternative to be implemented.

37 3. Issuance of clean-up orders. If the depart-
38 ment finds, after investigation, that a discharge of
39 oil has occurred and may create a threat to public
40 health or the environment, including, but not limited
41 to, contamination of a water supply, the commissioner
42 may order the responsible party ~~who has caused or~~
43 ~~suffered the discharge to cease the discharge immedi-~~
44 ~~ately or to take action to prevent further discharge~~

1 and to mitigate or terminate the threat. He may also
2 order that the responsible party take temporary and
3 permanent remedial actions at locations threatened or
4 affected by the discharge of oil, including a re-
5 quirement that responsible party restore or replace
6 water supplies contaminated with oil, petroleum
7 products or their by-products using the most
8 cost-effective alternative that is technologically
9 feasible and reliable and which effectively mitigates
10 or minimizes damage to, and provides adequate protec-
11 tion of, the public health, welfare and the environ-
12 ment. Clean-up orders shall only be issued in com-
13 pliance with the following requirements.

14 A. Any orders issued under this section shall
15 contain findings of fact describing the manner
16 and extent of oil contamination, the site of the
17 discharge and the threat to the public health or
18 environment.

19 B. A responsible party to whom such an order is
20 directed may apply to the board for a hearing on
21 the order if the application is made within 10
22 working days after receipt of the order by a re-
23 sponsible party. The hearing shall be held by
24 the board within 15 days after receipt of the ap-
25 plication. Within 7 days after the hearing, the
26 board shall make findings of fact and shall con-
27 tinue, revoke or modify the order. Within 15
28 working days after receipt of the application,
29 the board shall hold a hearing, make findings of
30 fact and continue, revoke or modify the order.
31 The nature of the hearing before the board shall
32 be an appeal. At the hearing, all witnesses
33 shall be sworn and the department shall first es-
34 tablish the basis for the order and for naming
35 the person to whom the order was directed. The
36 burden of going forward shall then shift to the
37 person appealing to demonstrate, based upon a
38 preponderance of the evidence, that the order
39 should be modified or rescinded. The decision
40 of the board may be appealed to the Superior
41 Court in accordance with the Maine Administrative
42 Procedure Act, Title 5, chapter 375, subchapter
43 VII.

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

8 5. Acquisition of property; authority. The de-
9 partment is authorized to acquire, by purchase,
10 lease, condemnation, donation or otherwise, any real
11 property or any interest in real property that the
12 board in its discretion determines, by 2/3 majority
13 vote, is necessary to conduct a remedial action under
14 this subchapter. There shall be no cause of action
15 to compel the board to acquire any interest in real
16 property under this subchapter.

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

26 Sec. 17. 38 MRSA §569, sub-§§2 and 4, as enacted
27 by PL 1985, c. 496, Pt. A, §14, are amended to read:

28 2. Third party damages. Any person claiming to
29 have suffered damages to real estate or personal
30 property or loss of income directly or indirectly as
31 a result of a discharge of oil to ground water pro-
32 hibited by section 543, hereinafter in this chapter
33 called the claimant, may apply within 6 months after
34 the occurrence or discovery of the discharge to the
35 board stating the amount of damage alleged to be suf-
36 fered as a result of that discharge. The board shall
37 prescribe appropriate forms and details for the ap-
38 plications. The board may, upon petition and for
39 good cause shown, waive the 6 months' limitation for
40 filing damage claims.

41 A. If the claimant, the board and the responsi-
42 ble party are able to agree as to the amount of

1 the damage claim, or in the case where the board
2 has exercised reasonable efforts but has been un-
3 able to identify the responsible party, if the
4 claimant and the board are able to agree as to
5 the amount of the damage claim, the board shall
6 certify the amount of the claim and the name of
7 the claimant to the Treasurer of State and the
8 Treasurer of State shall pay the same from the
9 Ground Water Oil Clean-up Fund.

10 B. If the claimant, the board and the responsi-
11 ble party are not able to agree as to the amount
12 of the damage claim, or in the case where the
13 board has exercised reasonable efforts but has
14 been unable to identify the responsible party, if
15 the claimant and the board are not able to agree
16 as to the amount of the damage claim, the claim
17 shall ~~forthwith~~ immediately be transmitted for
18 action to the Board of Arbitration as provided in
19 this subchapter.

20 C. Third party damage claims shall be stated in
21 their entirety in one application. Damages omit-
22 ted from any claim at the time the award is made
23 shall be deemed waived.

24 D. Damage claims arising under this subchapter
25 are recoverable only in the manner provided under
26 this subchapter; it being the intent of the Leg-
27 islatre that the remedies provided in this sub-
28 chapter are exclusive.

29 E. Awards from the fund on damage claims shall
30 not include any amount which the claimant has re-
31 covered, on account of the same damage, by way of
32 settlement with or judgment of the federal courts
33 against the person causing or otherwise responsi-
34 ble for the discharge.

35 4. Funding. A fee of 3¢ per barrel of gasoline
36 and 2¢ per barrel of refined petroleum products and
37 their by-products other than gasoline, including #6
38 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel
39 fuel, shall be assessed on the transfer of those
40 products by oil terminal facility licensees, as de-
41 defined by section 542, subsection 7. These fees shall
42 be paid monthly by the oil terminal facility licensee

1 on the basis of records certified to the department.
2 All such transfer fees shall be credited to the
3 Ground Water Oil Clean-up Fund upon receipt by the
4 department.

5 Sec. 18. 38 MRSa §569, sub-§6, as amended by PL
6 1985, c. 746, §24, is further amended to read:

7 6. Reimbursements to the Ground Water Oil
8 Clean-up Fund. The department shall seek recovery
9 for the use of the fund of all sums expended from the
10 fund, including overdrafts, for the purposes de-
11 scribed in subsection 5, paragraphs B, D, E and G, or
12 for other damage incurred by the State, in connection
13 with a prohibited discharge, including interest com-
14 puted at 15% a year from the date of expenditure, un-
15 less the department finds the amount involved too
16 small or the likelihood of success too uncertain.
17 Requests for reimbursement to the fund if not paid
18 within 30 days of demand shall be turned over to the
19 Attorney General for collection.

20 Sec. 19. 38 MRSa §570, as enacted by PL 1985, c.
21 496, Pt. A, §14, is amended to read:

22 §570. Liability

23 Because it is the intent of this subchapter to
24 provide the means for rapid and effective clean up
25 cleanup and to minimize direct damages as well as in-
26 direct damages and the proliferation of 3rd-party
27 claims, each responsible party ~~who permits or suffers~~
28 in connection with a prohibited discharge of oil is
29 jointly and severally liable to the State for all
30 disbursements made by it pursuant to section 569,
31 subsection 5, paragraphs B, D and E and G, or other
32 damage incurred by the State, including interest com-
33 puted at 15% a year from the date of expenditure.

34 In any ~~suit filed~~ administrative or judicial ac-
35 tion taken under this subchapter, to establish lia-
36 bility, it shall not be necessary for the State to
37 plead or prove negligence in any form or manner on
38 the part of the responsible party ~~causing or ether-~~
39 ~~wise responsible for the discharge.~~ The State need
40 only plead and prove the fact of the prohibited dis-
41 charge and that the discharge occurred at a facility

1 under the control of the responsible party causing
2 the discharge or was otherwise attributable to a re-
3 sponsible party as provided in this subchapter.

4 Sec. 20. 38 MRSA §570-F, first ¶, as enacted by
5 PL 1985, c. 496, Pt. A, §14, is amended to read:

6 Nothing ~~is~~ in this subchapter shall be construed
7 to authorize the Board of Environmental Protection to
8 require registration of or to regulate the installa-
9 tion or operation of underground tanks used for the
10 storage of propane.

11 Sec. 21. 38 MRSA §570-G is enacted to read:

12 §570-G. Construction

13 This subchapter being necessary for the general
14 welfare, the public health and the public safety of
15 the State and its inhabitants, shall be liberally
16 construed to effect the purposes set forth under this
17 subchapter. No rule or order of the board may be
18 stayed pending appeal under the provisions of this
19 subchapter.

20 Sec. 22. 38 MRSA §1304-C is enacted to read:

21 §1304-C. Collection program for small quantities of
22 hazardous waste

23 1. Hazardous waste collection program. An Am-
24 nesty Days Program is established for the purpose of
25 collecting hazardous waste from households, schools
26 and state and local governmental agencies. In order
27 to raise public awareness, provide an educational
28 process and preserve the surface and ground waters of
29 the State, the Amnesty Days Program shall be carried
30 out in the following manner.

31 A. The department shall develop, administer and
32 supervise the Amnesty Days Program and shall con-
33 tract with a department-approved, bonded hazard-
34 ous waste handling firm for implementation of the
35 program. The waste collected shall be transport-
36 ed in accordance with all applicable require-
37 ments, including the use of a hazardous waste
38 manifest, for proper disposal at a federally ap-
39 proved facility.

1 B. The department shall specify the waste ac-
2 ceptable for collection, the manner of collection
3 and handling of the waste, the location of tempo-
4 rary collection centers and the maximum amounts
5 of hazardous waste to be accepted from any one
6 entity during the Amnesty Days Program.

7 C. The Amnesty Days Program shall be implemented
8 at no cost to households, state and local agen-
9 cies and primary and secondary schools until
10 funds appropriated through the Legislature for
11 this purpose have been exhausted.

12 D. Any person who generates more than 220 pounds
13 of hazardous waste in a calendar month may not
14 utilize the Amnesty Days Program to dispose of
15 his hazardous waste.

16 E. The department may accept any public or pri-
17 vate funds which may be available for carrying
18 out this program.

19 2. Technical assistance plan for small quantity
20 generators. The department shall formulate a plan to
21 assist persons who generate up to 1,000 kilograms of
22 hazardous waste in a calendar month in minimizing the
23 generation of hazardous waste and developing economi-
24 cal methods of properly transporting and disposing of
25 their hazardous waste.

26 The plan shall be completed by June 1, 1988, and
27 shall include:

28 A. A survey of businesses in this State which
29 utilize some form of hazardous waste recycling,
30 chemical substitution or other waste minimization
31 methods;

32 B. An assessment of available recycling or waste
33 minimization methods which may be reasonably
34 available to businesses in this State;

35 C. Methods by which small quantity generators
36 may reduce transportation costs for disposal of
37 hazardous waste through cooperative or cost-
38 sharing practices;

1 D. The feasibility of establishing a regional
2 collection or transfer facility network statewide
3 for small quantity generators, with the facili-
4 ties being owned, operated and serviced by pri-
5 uate industry; and

6 E. A directory of hazardous waste generators in
7 this State compiled by geographic regions and
8 Maine licensed hazardous waste transporters who
9 serve those regions.

10 Sec. 23. 38 MRSA §1319-I, sub-§3-A is enacted to
11 read:

12 3-A. Fee on certain hazardous material. Any
13 person who accepts the following materials in a sol-
14 id, semisolid or liquid state and in a quantity ex-
15 ceeding 10,000 pounds for each shipment shall pay a
16 fee of 0.1¢ a pound:

17 A. Ammonia;

18 B. Chlorine;

19 C. Hydrochloric acid;

20 D. Sodium hydroxide, caustic soda; and

21 E. Sulfuric acid.

22 No fee may be assessed when the hazardous material
23 listed in this subsection is accepted by public water
24 supply facilities or municipal waste water treatment
25 plants.

26 Sec. 24. 38 MRSA §1319-I, sub-§8, as enacted by
27 PL 1981, c. 478, §7, is repealed.

28 Sec. 25. Authorization for research. In accord-
29 ance with the provisions of the Maine Revised Stat-
30 utes, Title 38, section 551, subsection 1, the Legis-
31 lature authorizes a special study to be conducted
32 pertaining to the environmental and public health
33 threats from, and regulation of, above-ground facili-
34 ties that store petroleum products and other hazard-
35 ous materials.

1 Sec. 26. Appropriation. The following funds are
 2 appropriated from the General Fund to carry out the
 3 purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
4		
5	<u>ENVIRONMENTAL PROTECTION,</u>	
6	<u>DEPARTMENT OF</u>	
7	Positions	(2)
8	Personal Services	\$ 57,000
9	All Other	275,000
10	Capital Expenditures	2,000
11		
12	Total	<u>\$334,000</u>
		<u>\$335,500</u>

13 These funds will be
 14 used to establish
 15 the Amnesty Days
 16 Program in the Maine
 17 Revised Statutes,
 18 Title 38, section
 19 1304-C, which will
 20 collect hazardous
 21 waste from house-
 22 holds, schools and
 23 state and local gov-
 24 ernment agencies.
 25 The funds will also
 26 be used in the tech-
 27 nical assistance
 28 plan.

29 Sec. 27. Appropriation. The following funds are
 30 appropriated from the General Fund to carry out the
 31 purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
32		
33	<u>ENVIRONMENTAL PROTECTION,</u>	
34	<u>DEPARTMENT OF</u>	
35	Maine Coastal and Inland	
36	Surface Oil Clean-up	
37	Fund	
38	Positions	(1)
39	Personal Services	\$29,642
		(1)
		\$31,047

1	All Other	20,358	18,953
2	Capital Expenditures	1,000	1,000
3			
4	Total	<u>\$51,000</u>	<u>\$51,000</u>

5 Sec. 28. Appropriation. The following funds are
6 appropriated from the General Fund to carry out the
7 purposes of this Act.

8 1987-88

9 CONSERVATION, DEPARTMENT OF

10 Maine Geological Survey

11	Positions	(1)
12	Personal Services	\$22,000
13	Funds to be used to	
14	hire a Clerk Typist	
15	III.	
16	All Other	4,000
17		
18	Total	<u>\$26,000</u>

19 STATEMENT OF FACT

20 Section 1. Drilled wells supply an
21 ever-increasing number of individual homes, municipi-
22 palities and commercial establishments with high
23 quality water. The purpose of section 1 is to secure
24 ground water and geologic information for the direct
25 use of the Maine Geological Survey in its programs of
26 investigation throughout the State, and indirect use
27 of numerous government agencies, groups and individu-
28 als involved with the use and protection of ground
29 water and related natural resources. This informa-
30 tion is vital to the State's ground water protection
31 effort and to the federally mandated Wellhead Protec-
32 tion Program. This section does not include regis-
33 tration of well drilling contractors nor does it pro-
34 vide for regulation of water well construction stan-
35 dards. This section is a recommendation of the
36 Ground Water Standing Committee and is endorsed by
37 the Maine Land and Water Resources Council.

1 Section 2. Section 2 is modeled on the Depart-
2 ment of Transportation well claims legislation, of
3 the Maine Revised Statutes, Title 23, section 652.
4 It is designed to provide the same protection for
5 those whose water supplies are contaminated by munic-
6 ipal highway construction and maintenance, most
7 notably road salting, as is currently provided by the
8 State for the same activities on state roads.

9 Section 3. Maine court decisions to date indi-
10 cate that Maine is one of the last states in the na-
11 tion which retains the English common law doctrine of
12 absolute ownership of ground water. This doctrine
13 permits any landowner to use ground water for any
14 purpose or to any extent, even when such use may in-
15 terfere with preexisting uses by other landowners of
16 reasonable quantities of ground water. Section 3 ad-
17 dresses the most important facet of this issue by al-
18 lowing residential landowners and those providing wa-
19 ter for residential landowners redress against new
20 ground water users who interfere with preexisting
21 beneficial domestic uses. In responding to this is-
22 sue, the Legislature recognizes that the use of
23 ground water for residential purposes, though it in-
24 volves relatively small quantities, is considered an
25 essential right and, as such, has priority over oth-
26 er, newer uses.

27 This section deals with the most pressing problem
28 in this area of the law. It protects those who have
29 used ground water at any time during the previous 3
30 years for domestic purposes by providing them with a
31 right of action against new uses which dry up their
32 wells. It exempts the Department of Transportation,
33 which is already covered for such incidents under the
34 Maine Revised Statutes, Title 23. Further, it limits
35 recoverable damages to the cost of restoration of the
36 water supply, cost of loss or damage to property from
37 the interference and court costs, including attorney
38 and expert witness fees, of bringing suit.

39 Section 4. There are now dozens of municipal
40 landfills located on sand and gravel aquifers. The
41 ease with which contaminated water flows through
42 these aquifer soils is often a 1,000 times greater
43 than through a fairly tight glacial till soil, which
44 are the kinds of sites most amenable to landfilling.

1 Sand and gravel aquifers are also a favorite source
2 of drinking water supplies, both public and private.
3 Landfills, by their very nature, pose a contamination
4 threat to ground water and this threat is greatest
5 over aquifers. It is clearly in the interest of the
6 State to remove these contamination sources from the
7 most vulnerable areas and sand and gravel aquifers
8 are, in fact, the most vulnerable areas.

9 This section empowers the Board of Environmental
10 Protection to require the phased closure of all solid
11 waste facilities located on sand and gravel aquifers,
12 such as those identified by the Maine Geological Sur-
13 vey. The facilities, by their very nature, are major
14 threats to ground water quality. It is the intent of
15 this section that the State exercise its police pow-
16 ers to prohibit the continued existence of these
17 threats, while promoting reasonable alternatives.

18 Section 5. The Maine Revised Statutes, Title 38,
19 section 413, requires anyone who discharges
20 pollutants into the waters of the State to first ob-
21 tain a license from the Board of Environmental Pro-
22 tection. In 1985, realizing that virtually all of
23 the salt storage areas in Maine were, and still are,
24 polluting ground water, the Maine Legislature enacted
25 Public Law 1985, chapter 479, requiring owners and
26 operators of sand and salt storage areas to register
27 those areas with the Department of Environmental Pro-
28 tection by January 1, 1986. The same law also re-
29 quired the Department of Environmental Protection to
30 prioritize all the salt storage areas by November
31 1987. Both requirements have now been met.

32 The original version of Public Law 1985, chapter
33 479, gave owners and operators of sand and salt stor-
34 age areas a 10-year period to bring their sand and
35 salt storage areas into compliance with the law. The
36 idea was to give municipalities time to raise the
37 funds needed to match 50%, matching state funds
38 which, in turn, were to become available upon approv-
39 al of a companion bond bill by the 112th Legislature
40 and the voters of Maine. Unfortunately, the bond
41 bill failed in the Joint Standing Committee on Appro-
42 priations and Financial Affairs. In response to that
43 development, the Legislature removed the 10-year com-
44 pliance date. By removing the compliance date, the

1 legal basis for deferring enforcement action under
2 the Maine Revised Statutes, Title 38, section 413,
3 was also removed. This section gives owners and op-
4 erators of sand and salt storage areas up to 9 years
5 to bring their areas into compliance. Assuming state
6 cost-share money becomes available, towns and coun-
7 ties could have time to raise matching funds and
8 build the necessary storage buildings.

9 Section 6. This section inserts the word "pro-
10 hibited" that was unintentionally omitted from the
11 Maine Revised Statutes, Title 38, section 562, sub-
12 section 10, paragraph C. It will make section 562,
13 subsection 10, paragraph C consistent with paragraphs
14 A and B.

15 Section 7. This section requires that under-
16 ground tank facilities keep a copy of their registra-
17 tion on-site so that it can easily be made available
18 to department and municipal officials during compli-
19 ance inspections.

20 Section 8. This section requires that an under-
21 ground tank registration be modified whenever a tank
22 is to be retrofitted.

23 Section 9. This section deletes obsolete lan-
24 guage and imposes a penalty for late annual registra-
25 tion fees.

26 Section 10. This section requires that no person
27 may operate an underground oil storage facility in a
28 sensitive geologic area after July 1, 1989, unless it
29 is constructed of noncorrosive materials and has the
30 appropriate monitoring devices in place. This sec-
31 tion also requires that all other underground storage
32 facilities or tanks that are 15 years of age or older
33 on July 1, 1987, be replaced with noncorrosive mate-
34 rials by July 1, 1992.

35 This section also gives the Department of Envi-
36 ronmental Protection rule-making authority in the ar-
37 eas of oil cleanup, leak detection methods and 3rd
38 party damage claims. Similar authority is present
39 for surface and inland oil discharge activities.

40 Sections 11 and 12. These sections eliminate

1 daily inventory and annual statistical analyses re-
2 quirements for double tanks which already have the
3 capability of detecting an oil leak before it reaches
4 the environment. Daily product inventory is an un-
5 necessary requirement for double-walled tanks.

6 Section 13. This section requires periodic test-
7 ing for leaks in motor fuel tanks used to store
8 products for the tank owner's own use.

9 Sections 14 and 15. These sections clarify re-
10 sponsibility for the abandonment of underground tanks
11 when its owner or operator is not known. It also is
12 intended to make explicit that the burden of properly
13 notifying and abandoning an underground oil storage
14 facility is upon the owner or operator of that facil-
15 ity.

16 Section 16. This section clarifies that the de-
17 partment may require the removal of oil discharges as
18 well as retaining contractors to conduct the removal
19 or cleanup.

20 This section also clarifies the department's ex-
21 isting authority to undertake clean-up activities and
22 to provide clean drinking water to owners of contami-
23 nated wells and to homes whose wells are at imminent
24 risk of contamination. This allows the department to
25 deal with the entire contamination problem at one
26 time and reduces construction costs.

27 Section 16 deletes the phrase "who has caused or
28 suffered the discharge" which was unintentionally re-
29 tained during the drafting of this section. It is
30 unnecessary since the orders are directed at respon-
31 sible parties, which is defined in the Maine Revised
32 Statutes, Title 38, section 562.

33 Section 16 grants the department the authority to
34 acquire property rights in order to develop clean
35 drinking water supplies and to undertake ground water
36 clean-up activities.

37 Section 17. This section allows claims to be
38 filed within 6 months of discovery of an underground
39 oil discharge since with ground water spills the ex-
40 act date of occurrence of a discharge is often not

1 known.

2 Section 17 also clarifies that the licensees re-
3 ferred to in the Maine Revised Statutes, Title 38,
4 section 569, subsection 4, means licensees as defined
5 by section 542, subsection 7.

6 Section 18. This section clarifies that the de-
7 partment is entitled to recover all relevant damages
8 or costs incurred by the State as a result of an oil
9 discharge.

10 Section 19. This section is intended to clarify
11 what costs responsible parties may be liable for as a
12 result of oil discharges.

13 Section 20. This section corrects a typographi-
14 cal error that was present when the section was en-
15 acted.

16 Section 21. This section clarifies that this
17 subchapter is necessary for the public health and
18 general welfare of the State and its inhabitants.

19 Sections 22 and 26. These sections establish a
20 collection program for nonregulated household waste
21 and other small quantities of hazardous waste. This
22 waste, if disposed of improperly, can cause signifi-
23 cant harm to human health and the environment.

24 Ground water and drinking water can become con-
25 taminated and unsafe to drink when hazardous waste is
26 taken to a landfill for municipal trash or poured on-
27 to the ground. Lakes and streams can become polluted
28 when hazardous waste is emptied into storm drains.
29 Sewer treatment systems can malfunction when hazard-
30 ous waste is flushed down household drains.

31 Periodic collection of household hazardous waste
32 and removal to a federally approved waste site by
33 specially trained personnel can reduce the potential
34 threat to human life and the environment. Increased
35 household hazardous waste education can provide Maine
36 citizens and businesses with safer nontoxic alterna-
37 tives to toxic household products.

38 These sections also authorize the department to

1 develop a plan to assist small quantities of genera-
2 tors to reduce the amount and toxicity of hazardous
3 waste produced and to find economically safe ways to
4 transport and dispose of the hazardous waste that is
5 produced.

6 Sections 23 and 24. These sections establish a
7 new fee to be levied upon recipients of certain haz-
8 ardous materials. The fees will be deposited in the
9 Maine Hazardous Waste Fund. Section 24 also repeals
10 the annual ceiling on fees imposed on generators of
11 hazardous waste.

12 Sections 25 and 27. In accordance with recommen-
13 dations from the State's standing committee on ground
14 water, the Department of Environmental Protection is
15 proposing to accomplish a special study pertaining to
16 the potential threat to ground water resources from
17 the above-ground storage of petroleum products and
18 other chemicals. Since a provision for the research
19 already exists within the laws governing the Maine
20 Coastal and Inland Surface Oil Clean-up Fund, this
21 Act will have no impact on General Fund expenditures.
22 The Legislature is required to approve the alloca-
23 tions for research.

24

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