

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1507

H.P. 1113 House of Representatives, May 11, 1987
Reference to the Committee on Energy and Natural
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative WILLEY of Hampden.

Cosponsored by Senators SEWALL of Lincoln, USHER of
Cumberland, and Representative HEPBURN of Skowhegan.

STATE OF MAINE

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

AN ACT to Amend the Underground Oil Storage
Facilities and Ground Water Protection
Law.

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

Sec. 1. 10 MRSA §963-A, sub-§10, ¶¶H and I, as
enacted by PL 1985, c. 344, §7, are amended to read:

H. Any pollution-control project; or

I. Any water supply system project; or

Sec. 2. 10 MRSA §963-A, sub-§10, ¶J is enacted
to read:

1 J. Any underground oil storage facility replace-
2 ment project.

3 **Sec. 3. 10 MRSA §963-A, sub-§§49-A and 49-B are**
4 **enacted to read:**

5 49-A. Underground oil storage facility. "Under-
6 ground oil storage facility" means the same as set
7 forth in Title 38, section 562, subsection 13.

8 49-B. Underground oil storage facility replace-
9 ment project. "Underground oil storage facility re-
10 placement project" means the removal, disposal or re-
11 placement of all or any part of an underground oil
12 storage facility which is used for marketing and dis-
13 tribution of oil, petroleum products or their by-
14 products to persons or entities other than the owner
15 of the facility.

16 **Sec. 4. 10 MRSA §1023-D is enacted to read:**

17 §1023-D. Underground Oil Storage Facility Replace-
18 ment Fund

19 1. Creation. The Underground Oil Storage Facili-
20 ty Replacement Fund is created and established under
21 the jurisdiction and control of the authority.

22 2. Sources of money. There shall be paid into
23 the fund the following:

24 A. All money appropriated for inclusion in the
25 fund;

26 B. Subject to any pledge, contract or other ob-
27 ligation, all interest, dividends or other pecu-
28 niary gains from investment of money of the fund;

29 C. Subject to any pledge, contract or other ob-
30 ligations, any money which the authority receives
31 in repayment of advances from the fund; and

32 D. Any other money available to the authority
33 and directed by the authority to be paid into the
34 fund.

1 3. Application of fund. Money in the fund may
2 be applied to carry out any power of the authority
3 under or in connection with section 1026-F, includ-
4 ing, but not limited to, pledge or transfer and de-
5 posit money in the fund as security for and to apply
6 money in the fund in payment of principal, interest
7 and other amounts due on insured loans. Money in
8 the fund may be used for direct loans for all or part
9 of underground oil storage facility replacement
10 projects when the authority determines that:

11 A. The facility is leaking or removal is re-
12 quired by applicable law within 2 years from the
13 date of application to the authority for a loan;

14 B. The applicant demonstrates a reasonable like-
15 lihood that it will not be able to obtain the
16 funds necessary to undertake all or any part of
17 the project from any other source, including a
18 loan insured under section 1026-F;

19 C. There is a reasonable likelihood that the ap-
20 plicant will be able to repay the loan; and

21 D. The project will assist in creating or re-
22 taining jobs, providing a more healthy environ-
23 ment.

24 The authority, pursuant to Title 5, chapter 375, sub-
25 chapter II, shall adopt rules for determining eligi-
26 bility, feasibility, terms, conditions and security
27 for the loans. Money in the fund not needed current-
28 ly to meet the obligations of the authority as pro-
29 vided in this section may be invested in such a man-
30 ner as permitted by law.

31 4. Accounts within fund. The authority may di-
32 vide the fund into such separate accounts as it de-
33 termines are necessary or convenient for carrying out
34 this section, including, but not limited to, accounts
35 reserved for direct loan funds.

36 5. Revolving fund. The fund shall be a nonlaps-
37 ing, revolving fund. All money in the fund shall be
38 continuously applied by the authority to carry out
39 this section and section 1026-F.

1 **Sec. 5. 10 MRSA §1024, sub-§1, as repealed and**
2 **replaced by PL 1985, c. 714, §13, is amended to read:**

3 **1. Request for funds.** If at any time the money
4 in the Mortgage Insurance Fund and the money in the
5 Loan Insurance Reserve Fund, exclusive of the money
6 pledged or assigned as security for specific obliga-
7 tions of the authority, is insufficient to meet ex-
8 penses and obligations of the authority, as these ex-
9 penses and obligations are projected by the authority
10 to become due and payable, the authority shall in
11 writing request the Governor to provide the necessary
12 money. The Governor shall transfer sufficient money
13 to the Mortgage Insurance Fund or Loan Insurance Re-
14 serve Fund, as directed by the authority, from the
15 State Contingent Account or the proceeds of bonds of
16 the State issued pursuant to subsection 2. If at any
17 time the money in the Underground Oil Storage Facili-
18 ty Replacement Fund, exclusive of any amounts re-
19 ceived by law or rule for direct loans pursuant to
20 section 1023-D, subsection 3, is insufficient to meet
21 the expenses and obligations of the authority in-
22 curring pursuant to section 1026-F, as these expenses
23 and obligations are projected by the authority to be-
24 come due and payable, the authority shall in writing
25 request the Governor to provide the necessary money.
26 Within 30 days of receipt of the request, the Gover-
27 nor shall transfer sufficient money to the Under-
28 ground Oil Storage Facility Replacement Fund from the
29 State Contingent Account or the proceeds of bonds of
30 the State issued pursuant to subsection 2. Transfers
31 from the State Contingent Account under this section
32 shall not be subject to the limitations of Title 5,
33 section 1507.

34 **Sec. 6. 10 MRSA §1024, sub-§2, paragraph B, as**
35 **repealed and replaced by PL 1985, c. 714, §13, is**
36 **amended to read:**

37 **B.** In the amount required, but not exceeding in
38 the aggregate at any one time outstanding the
39 amount set forth in:

40 (1) The Constitution of Maine, Article IX,
41 Section 14-A, as it may be from time to time
42 amended, except that bonds issued under that
43 section and this subsection shall not exceed

1 in the aggregate at any one time outstanding
2 the principal amount of \$77,500,000
3 \$82,500,000; and

4 (2) The Constitution of Maine, Article IX,
5 Section 14-D, as it may be from time to time
6 amended, except that bonds issued under that
7 section and this subsection shall not exceed
8 in the aggregate at any one time outstanding
9 the principal amount of \$4,000,000;

10 Sec. 7. 10 MRSA §1025, first ¶, as amended by PL
11 1985, c. 714, §14, is further amended to read:

12 When, in the opinion of the authority, the action
13 is necessary to safeguard the Mortgage Insurance Fund
14 or, Loan Insurance Reserve Fund or Underground Oil
15 Storage Facility Replacement Fund and to maintain in-
16 come from eligible projects, the authority may, in
17 addition to its other powers:

18 Sec. 8. 10 MRSA §1026-F is enacted to read:

19 §1026-F. Mortgage insurance for underground oil
20 storage facility replacement projects

21 1. Insurance. In addition to its other powers
22 under this chapter, subject to the limitations of
23 this subchapter, except sections 1026-B to 1026-D,
24 the authority may insure up to 100% of mortgage pay-
25 ments with respect to mortgage loans for underground
26 oil storage facility replacement projects when the
27 authority determines that:

28 A. The facility is leaking or removal is re-
29 quired by applicable law;

30 B. The applicant demonstrates a reasonable like-
31 lihood that it will not be able to obtain a loan
32 for the project on reasonable terms without in-
33 urance pursuant to this section;

34 C. The applicant demonstrates a reasonable like-
35 lihood that it will be able to repay the insured
36 loan; and

1 D. The project will assist in creating or re-
2 taining jobs, providing a more healthy environ-
3 ment.

4 2. Limitation on mortgage insurance. The au-
5 thority shall not at any time have, in the aggregate
6 amount of principal and interest outstanding, mort-
7 gage insurance obligations pursuant to this section
8 exceeding \$5,000,000 less the outstanding balance of
9 any bonds issued under section 1024, subsection 2,
10 with respect to obligations incurred under this sec-
11 tion.

12 3. Mortgage eligibility. The authority, pursu-
13 ant to Title 5, chapter 375, subchapter II, may adopt
14 rules for determining eligibility, project feasibili-
15 ty, terms, conditions and security for insured mort-
16 gage loans under this section. Without limitation,
17 the authority may establish a system for giving pri-
18 ority to applicants for facilities based on when re-
19 moval or replacement is required by applicable law.
20 The authority may accept less than adequate collater-
21 al when necessary to ensure the replacement of under-
22 ground oil storage facilities required to be replaced
23 under applicable law.

24 Sec. 9. 10 MRSA §1029, sub-§2, ¶A, as amended by
25 PL 1985, c. 714, §27, is further amended to read:

26 A. Make the payment at the time and in the man-
27 ner provided by the applicable contract or agree-
28 ment, charging the payment to the Mortgage Insur-
29 ance Fund or, Loan Insurance Reserve Fund, or, in
30 the case of payments required under agreements
31 issued pursuant to section 1026-F, to the Under-
32 ground Oil Storage Facility Replacement Fund;

33 Sec. 10. 10 MRSA §1030, as amended by PL 1985,
34 c. 344, §53, is further amended to read:

35 §1030. Incontestability

36 Any mortgage insurance commitment or contract ex-
37 ecuted and delivered by the authority under this sub-
38 chapter shall be conclusive evidence of the eligibil-
39 ity of the mortgage for insurance subject to satis-
40 faction of any conditions set forth in the mortgage

1 insurance contract or commitment and that the re-
2 quirements of sections 1026-A, ~~1026-B~~, ~~1026-C~~, ~~1026-D~~
3 ~~and 1026-E~~ to 1026-F have, to the extent determined
4 applicable by the authority, been satisfied or made
5 conditions of the mortgage insurance commitment or
6 contract, and the validity of any mortgage insurance
7 commitment or contract so executed and delivered
8 shall be incontestable in the hands of an insured ex-
9 cept for fraud or misrepresentation on the part of
10 the insured.

11 Sec. 11. 38 MRSA §349, sub-§3, as amended by PL
12 1985, c. 746, §12, is further amended to read:

13 3. Falsification and tampering. Notwithstanding
14 Title 17-A, section 4-A, any person who knowingly
15 makes any false statement, representation or certifi-
16 cation in any application, record, report, plan or
17 other document filed or required to be maintained by
18 any provision of law administered by the department,
19 or by any rule, regulation, license, permit, approval
20 or decision of the board or commissioner, or who
21 tampers with or renders inaccurate any monitoring de-
22 vices or method required by any provision of law, or
23 any rule, regulation, license, permit, approval or
24 decision of the board or who fails to comply with any
25 information submittal required by the commissioner
26 pursuant to section 568, subsection 3, or section
27 1364, subsection 3, shall, upon conviction, be sub-
28 ject to a fine of not more than \$10,000, or by im-
29 prisonment for not more than 6 months, or both.

30 Sec. 12. 38 MRSA §562, sub-§10, ¶C, as enacted
31 by PL 1985, c. 496, Pt. A, §14, is amended to read:

32 C. Any person other than those identified in
33 paragraph A or B who caused the prohibited dis-
34 charge of oil or who had custody or control of
35 the oil at the time of the prohibited discharge.

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

38 A. No person may install, or cause to be in-
39 stalled, a new or replacement underground oil
40 storage tank without first having registered the
41 tank with the department in accordance with the

1 requirements of subsection 2, and having paid the
2 registration fee in accordance with the require-
3 ments of subsection 4, at least 5 business days
4 prior to installation. If compliance with this
5 time requirement is impossible due to an emergen-
6 cy situation, the owner or operator of the facil-
7 ity at which the new or replacement tank is to be
8 installed shall inform the department as soon as
9 the emergency becomes known.

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

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

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

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

32 Sec. 15. 38 MRSA §563, sub-§5, as amended by PL
33 1985, c. 626, §2, is further amended to read:

34 5. Payment for failure to register or to pay an-
35 annual registration fee. Any person liable for the fee
36 imposed by subsection 4 shall pay a \$10 late payment
37 fee in addition to the fee specified in subsection 4,
38 if the initial fee payment and registration form has
39 not been submitted to the department on or before
40 February 17, 1986, but is submitted on or before May
41 17, 1986.

1 Any person liable for the fee imposed by subsection 4
2 shall pay a late fee of 3 times the fee specified in
3 subsection 4 if the appropriate initial fee payment
4 and registration form has not been submitted to the
5 department on or before May 1, 1986, or if the annual
6 registration fee has not been submitted on or before
7 January 1st of each calendar year. This does not
8 preclude the department from seeking civil penalties
9 from any person who fails to register a facility or
10 tank.

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

15 Sec. 16. 38 MRS.A §563, sub-§6 is enacted to
16 read:

17 6. Providing notice. Prior to the sale or
18 transfer of any real estate where an underground oil
19 storage facility is located, the owner of such real
20 estate shall file a written notice with the purchaser
21 or transferee prior to the sale or transfer. The no-
22 tice shall disclose the existence of the underground
23 oil storage facility, its registration number or num-
24 bers, the real estate where the facility is located,
25 whether or not the facility has been abandoned in
26 place pursuant to section 566 and that the facility
27 is subject to regulation, including registration re-
28 quirements, by the department under this subchapter.

29 Sec. 17. 38 MRS.A §§563-A and 563-B are enacted
30 to read:

31 §563-A. Prohibition of nonconforming underground oil
32 storage facilities and tanks

33 No person may operate, maintain or store oil in
34 an underground oil storage facility or tank which is
35 not constructed of fiberglass, cathodically protected
36 steel or other noncorrosive material approved by the
37 department after:

38 1. October 1, 1989. October 1, 1989, if that
39 facility or tank is more than 30 years old or if that
40 facility or tank is more than 15 years old and lo-
41 cated in a sensitive geologic area;

1 2. October 1, 1991. October 1, 1991, if that
2 facility or tank is more than 25 years old or if that
3 facility or tank is more than 15 years old and is lo-
4 cated in a sensitive geologic area;

5 3. October 1, 1994. October 1, 1994, if that
6 facility or tank is more than 20 years old or if that
7 facility or tank is more than 15 years old and is lo-
8 cated in a sensitive geologic area; or

9 4. October 1, 1997. October 1, 1997, if that
10 facility is more than 15 years old.

11 For purposes of this section, an underground oil
12 storage facility is not located in a sensitive
13 geologic area if a public water supply system pro-
14 vides service to anyone located within 500 feet of
15 the facility and the facility is located at least
16 1,000 feet from any source of supply of a public wa-
17 ter supply system and at least 300 feet from the
18 source of supply of a private water supply system.
19 The owner of the underground oil storage facility or
20 tank shall certify to the department that the facili-
21 ty or tank is not located in a sensitive geologic ar-
22 ea. If the department establishes that the facility
23 is located within 300 feet of an uncontaminated
24 aquifer, the department shall provide a written re-
25 sponse to the owner which stipulates that the tank or
26 facility is located in a sensitive geologic area and
27 must conform to the appropriate prohibitions con-
28 tained in subsections 1 to 4.

29 If, after reasonable notice and hearing, the
30 board determines that an owner of an underground oil
31 storage facility has engaged in repeated or serious
32 violations of this subchapter, the board may impose
33 on the owner a schedule which provides for the early
34 application of any or all of the prohibitions con-
35 tained in subsections 1 to 4.

36 If the age of the underground oil storage facili-
37 ty or tank cannot be determined, it shall be presumed
38 to be 20 years old on October 1, 1989.

39 All underground oil storage facilities and tanks
40 subject to the prohibitions in this section shall be
41 properly abandoned in accordance with section 566
42 prior to the applicable prohibition dates.

1 §563-B. Regulatory powers of department

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

5 1. Removal. Procedures, methods, means and
6 equipment to be used in the removal of oil and petro-
7 leum pollutants;

8 2. Inventory analyses; precision testing; leak
9 detection methods. Procedures and methods to be used
10 in conducting statistical inventory analyses, under-
11 ground oil storage facility precision testing and
12 other leak detection methods;

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

15 4. Third-party damage claims. Procedures to be
16 used in filing and processing of 3rd-party damage
17 claims.

18 Sec. 18. 38 MRSA §564, sub-§2, as enacted by PL
19 1985, c. 496, Pt. A, §14, are amended to read:

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

23 A. Collection of inventory data for each day
24 that oil is being added to or withdrawn from the
25 facility or tank, reconciliation of the data,
26 with monthly summaries, and retention of records
27 containing all such data for a period of at least
28 3 years either at the facility or at the facility
29 owner's place of business;

30 B. Annual statistical inventory analysis, the
31 results of which shall be reported to the depart-
32 ment;

33 C. Annual voltage readings for cathodically pro-
34 TECTED systems;

35 D. Monthly inspections of the rectifier meter on
36 impressed current systems;

1 E. Precision testing of any tanks and
2 hydrostatic testing of all piping showing evi-
3 dence of a possible leak. Results of all tests
4 conducted shall be submitted to the department by
5 the facility owner and the person who conducted
6 the test;

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

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

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

20 (2) Unexplained losses detected through
21 statistical analysis of inventory records;

22 (3) Detection of product in a monitoring
23 well; and

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

26 The requirements in paragraphs A and B do not apply
27 to a double-walled tank containing interstitial space
28 monitoring which has been installed and is operated
29 in accordance with the requirements of this subchap-
30 ter, including rules adopted under this subchapter.

31 **Sec. 19. 38 MRSA §565, sub-§2, ¶B, as enacted by**
32 **PL 1985, c. 496, Pt. A, §14, is amended to read:**

33 B. ~~Existing--underground~~ Underground oil storage
34 tanks that are used for storing motor fuels for
35 consumptive use shall be precision tested for
36 leaks every 5 years until abandonment when they
37 are ~~20~~ 15 years old, except that the owner or op-
38 erator may elect to install monitoring wells as

1 an alternative to precision testing. ~~If, after~~
2 ~~reasonable inquiry has been made, the age of a~~
3 ~~tank is unknown, it shall be presumed to be 15~~
4 ~~years old as of May 1, 1986, for purposes of com-~~
5 ~~pliance with this requirement. All such tanks~~
6 ~~shall be retested every 5 years thereafter until~~
7 ~~abandoned.~~ Results of the precision tests shall
8 be submitted promptly to the department and all
9 tanks and piping found to be leaking shall be re-
10 moved pursuant to section 566 or repaired to the
11 department's satisfaction.

12 **Sec. 20.** 38 MRSA §566, first ¶, as enacted by PL
13 1985, c. 496, Pt. A, §14, is amended to read:

14 All underground oil storage facilities and tanks
15 that have been, or are intended to be, taken out of
16 service for a period of more than 12 months shall be
17 properly abandoned by the owner or operator of the
18 facility or tank or, if the owner or operator is un-
19 known, by the current owner of the property where the
20 facility or tank is located. ~~Abandoned~~ All abandoned
21 facilities and tanks shall be removed by an under-
22 ground oil storage tank installer who has been prop-
23 erly certified pursuant to Title 32, chapter 105, ex-
24 cept where removal is not physically possible or
25 practicable because the tank or other component of
26 the facility to be removed is:

27 **Sec. 21.** 38 MRSA §566, 3rd ¶, as amended by PL
28 1985, c. 626, §7, is further amended to read:

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

38 **Sec. 22.** 38 MRSA §568, sub-§§1, 2 and 3, as en-
39 acted by PL 1985, c. 496, Pt. A, §14, are amended to
40 read:

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

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

40 3. Issuance of clean-up orders. The department
41 may investigate and sample sites where an oil dis-
42 charge has or may have occurred to identify the
43 source and extent of the discharge. During the
44 course of the investigation, the commissioner may re-
45 quire submission of information or documents, which

1 relate or may relate to the discharge under investi-
2 gation, from any person who the department has reason
3 to believe may be a responsible party. If the de-
4 partment finds, after investigation, that a discharge
5 of oil has occurred and may create a threat to public
6 health or the environment, including, but not limited to,
7 contamination of a water supply, the commissioner
8 may order the responsible party ~~who--has--caused--or~~
9 ~~suffered-the-discharge~~ to cease the discharge immedi-
10 ately or to take action to prevent further discharge
11 and to mitigate or terminate the threat. He may also
12 order that the responsible party take temporary and
13 permanent remedial actions at locations threatened or
14 affected by the discharge of oil, including a re-
15 quirement that the responsible party restore or re-
16 place water supplies contaminated with oil, petroleum
17 products or their by-products using the most
18 cost-effective alternative that is technologically
19 feasible and reliable and which effectively mitigates
20 or minimizes damage to, and provides adequate protec-
21 tion of, the public health, welfare and the environ-
22 ment. Clean-up orders shall only be issued in com-
23 pliance with the following requirements.

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

29 B. A responsible party to whom such an order is
30 directed may apply to the board for a hearing on
31 the order if the application is made within 10
32 working days after receipt of the order by a re-
33 sponsible party. The hearing shall be held by
34 the board within 15 working days after receipt of
35 the application. The nature of the hearing be-
36 fore the board shall be an appeal. At the hear-
37 ing, all witnesses shall be sworn and the depart-
38 ment shall first establish the basis for the or-
39 der and for naming the person to whom the order
40 was directed. The burden of going forward shall
41 then shift to the person appealing to demon-
42 strate, based upon a preponderance of the evi-
43 dence, that the order should be modified or re-
44 scinded. Within 7 days after the hearing, the
45 board shall make findings of fact and shall con-

1 tinue, revoke or modify the order. The decision
2 of the board may be appealed to the Superior
3 Court in accordance with the Maine Administrative
4 Procedure Act, Title 5, chapter 375, subchapter
5 VII.

6 **Sec. 23. 38 MRSA §568, sub-§5 is enacted to**
7 **read:**

8 5. Acquisition of property. The acquisition of
9 property shall be as follows.

10 A. The department may acquire, by purchase,
11 lease, condemnation, donation or otherwise, any
12 real property or any interest in real property
13 that the board in its discretion determines by
14 2/3 majority vote, is necessary to conduct a re-
15 medial action under this subchapter using the
16 most cost-effective alternative that is
17 technologically feasible and reliable and which
18 effectively mitigates or minimizes damage to, and
19 provides adequate protection of, the public
20 health, welfare and the environment. There may
21 be no cause of action to compel the board to ac-
22 quire any interest in real property under this
23 subchapter.

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

33 **Sec. 24. 38 MRSA §569, sub-§2, as enacted by PL**
34 **1985. c. 496, Pt. A, §14, is repealed.**

35 **Sec. 25. 38 MRSA §569, sub-§2-A is enacted to**
36 **read:**

37 2-A. Third-party damages. Any person claiming
38 to have suffered actual damages to real estate or
39 personal property or loss of business income directly
40 or indirectly as a result of a discharge of oil to

1 ground water prohibited by section 543, in this sub-
2 section called the claimant, may apply within 6
3 months after the occurrence or discovery of the dis-
4 charge to the board stating the amount of damage al-
5 leged to be suffered as a result of that discharge.
6 The board shall prescribe appropriate forms and de-
7 tails for the applications. The board may, upon pe-
8 tion and for good cause shown, waive the 6 months'
9 limitation for filing damage claims. For the pur-
10 poses of this subsection, "damages to real estate"
11 means damages to real estate as a result of or aris-
12 ing out of the presence of oil on or beneath that
13 real estate.

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 in this subchap-
37 ter are exclusive.

38 F. Awards from the fund on damage claims shall
39 not include any amount which the claimant has re-
40 covered, on account of the same damage, by way of
41 settlement with or judgment of a court of compe-

1 tent jurisdiction against the person causing or
2 otherwise responsible for the discharge.

3 **Sec. 26. 38 MRSA §569, sub-§3, as enacted by PL**
4 **1985, c. 496, Pt. A, §14, is repealed.**

5 **Sec. 27. 38 MRSA §569, sub-§3-A is enacted to**
6 **read:**

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

13 A. The commissioner or a hearing examiner ap-
14 pointed by the commissioner shall hear and deter-
15 mine any disputed 3rd-party damage claims.

16 B. To the extent practical, all claims arising
17 from or related to a common discharge shall be
18 heard and determined by means of a single pro-
19 ceeding.

20 C. Hearings before the commissioner or hearing
21 examiner shall be informal and the rules of evi-
22 dence prevailing on judicial proceedings shall
23 not be binding. The commissioner or hearing ex-
24 aminer may administer oaths and require by sub-
25 poena the attendance and testimony of witnesses,
26 the production of books, records and other evi-
27 dence relative or pertinent to the issues pre-
28 sentated to him for determination.

29 D. Determinations made by the commissioner or
30 hearing examiner shall be final and those deter-
31 minations may be subject to review by a Justice
32 of the Superior Court, but only as to matters re-
33 lating to abuse of discretion by the commissioner
34 or hearing examiner. A claimant seeking review
35 of a commissioner or hearing examiner determina-
36 tion shall file an appeal in the Superior Court
37 within 30 days of the determination.

38 E. The commissioner shall certify the amount of
39 the damage award, if any, after determination by

1 the commissioner or hearing examiner, and shall
2 certify the name of the claimant to the Treasurer
3 of State, unless the commissioner has determined
4 that the claimant is a responsible party, in
5 which case certification shall be withheld until
6 all claims that the department has against the
7 responsible party with respect to the discharge
8 have been satisfied.

9 **Sec. 28. 38 MRSA §569, sub-§4, as enacted by PL**
10 **1985, c. 496, Pt. A, §14, is amended to read:**

11 4. Funding. A fee of 3¢ per barrel of gasoline
12 and 2¢ per barrel of refined petroleum products and
13 their by-products other than gasoline, including #6
14 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel
15 fuel, shall be assessed on the transfer of those
16 products by oil terminal facility licensees, as de-
17 fined in section 542, subsection 7. These fees shall
18 be paid monthly by the oil terminal facility licensee
19 on the basis of records certified to the department.
20 All such transfer fees shall be credited to the
21 Ground Water Oil Clean-up Fund upon receipt by the
22 department.

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

25 6. Reimbursements to the Ground Water Oil
26 Clean-up Fund. The department shall seek recovery
27 for the use of the fund of all sums expended from the
28 fund, including overdrafts, for the purposes de-
29 scribed in subsection 5, paragraphs B, D, E and G, or
30 for other damage incurred by the State, in connection
31 with a prohibited discharge, including interest com-
32 puted at 15% a year from the date of expenditure, un-
33 less the department finds the amount involved too
34 small or the likelihood of success too uncertain.
35 Requests for reimbursement to the fund if not paid
36 within 30 days of demand shall be turned over to the
37 Attorney General for collection.

38 **Sec. 30. 38 MRSA §570, as enacted by PL 1985, c.**
39 **496, Pt. A, §14, is amended to read:**

40 §570. Liability

1 Because it is the intent of this subchapter to
2 provide the means for rapid and effective clean up
3 and to minimize direct damages as well as indirect
4 damages and the proliferation of 3rd-party claims,
5 each responsible party ~~who permits or suffers in con-~~
6 nection with a prohibited discharge of oil is jointly
7 and severally liable to the State for all disburse-
8 ments made by it pursuant to section 569, subsection
9 5, paragraphs B, D and, E and G, or other damage in-
10 curred by the State, including interest computed at
11 15% a year from the date of expenditure.

12 In any ~~suit-filed~~ administrative or judicial ac-
13 tion taken under this subchapter, to establish lia-
14 bility, it shall not be necessary for the State to
15 plead or prove negligence in any form or manner on
16 the part of the responsible party ~~causing or other-~~
17 wise responsible for the discharge. The State need
18 only plead and prove the fact of the prohibited dis-
19 charge and that the discharge occurred at a facility
20 under the control of the responsible party causing
21 the discharge or was otherwise attributable to a re-
22 sponsible party as provided in this subchapter.

23 Sec. 31. 38 MRSA §570-F, as enacted by PL 1985,
24 c. 496, Pt. A, §14, is amended to read:

25 §570-F. Special provisions

26 Nothing ~~is~~ in this subchapter ~~shall~~ may be con-
27 strued to authorize the Board of Environmental Pro-
28 tection to require registration of or to regulate the
29 installation or operation of underground tanks used
30 for the storage of propane.

31 The board shall adopt rules for underground oil
32 storage tanks for storing waste oil. These rules
33 shall not be limited by the provisions of subchapter
34 II-B.

35 Sec. 32. 38 MRSA §570-G is enacted to read:

36 §570-G. Construction

37 This subchapter is necessary for the general wel-
38 fare, public health and safety of the State and its
39 inhabitants, and shall be liberally construed to ef-

1 fect the purposes set forth in this subchapter. No
2 rule or order of the department may be stayed pending
3 appeal under this subchapter.

4 STATEMENT OF FACT

5 This bill amends the Underground Oil Storage Fa-
6 cilities and Ground Water Protection Law and estab-
7 lishes a schedule mandating removal of all under-
8 ground oil storage facilities which do not conform to
9 current standards by October 1, 1997. In addition,
10 the bill amends the Finance Authority of Maine Act by
11 creating an Underground Oil Storage Facility Replace-
12 ment Fund under the jurisdiction of the Finance Au-
13 thority of Maine which may be used for direct loans
14 to assist in removal of underground storage tanks, as
15 well as backing mortgage insurance issued by the au-
16 thority on up to 100% of a loan from a lender for re-
17 moval or replacement of an underground oil storage
18 facility.

19 Sections 1 and 2 make underground oil storage fa-
20 cility replacement projects, defined in section 3,
21 eligible projects under the Finance Authority of
22 Maine Act.

23 Section 3 limits the facilities for which financ-
24 ing is available to those used for marketing and dis-
25 tribution of oil.

26 Section 3 also defines "underground oil storage
27 facility replacement project."

28 Section 4 creates the Underground Oil Storage Fa-
29 cility Replacement Fund and provides that the money
30 in the fund may be used to pay obligations of the au-
31 thority incurred under section 8 of the bill, as well
32 as to make direct loans for replacement of facilities
33 when the applicant cannot obtain funds necessary to
34 undertake the project from any other source.

35 Section 5 allows the authority to request money
36 from the Governor if the amounts in the fund not re-
37 served for other uses are insufficient to meet the
38 expenses and obligations of the authority incurred

1 pursuant to section 8 of the bill. The Governor will
2 be obligated to transfer sufficient money to the fund
3 from the State Contingent Account or the proceeds of
4 the bonds of the State within 30 days of receipt of
5 the request for funds.

6 Section 6 increases the amount of bonds currently
7 authorized to be issued to fund obligations of the
8 authority under its various insurance programs by an
9 additional \$5,000,000 for the program.

10 Section 7 adds conforming language to existing
11 sections of the law.

12 Section 8 permits the authority to issue mortgage
13 insurance for up to 100% of loans for underground oil
14 storage facility replacement, limiting the aggregate
15 amount of the liability under that section to
16 \$5,000,000 at any one time. The section recognizes
17 that loans for underground oil tank removal may not
18 be available to many owners of marketing and distri-
19 bution facilities in the State because of lack of
20 collateral, perceived environmental hazards or other
21 reasons.

22 Section 9 adds conforming language to an existing
23 section of the law.

24 Section 10 adds language to be consistent with
25 section 8.

26 Section 11 specifies the penalty which may be ap-
27 plied against a party who fails to comply with the
28 commissioner's information requests relating to oil
29 discharges.

30 Section 12 inserts the word "prohibited" that was
31 unintentionally omitted from the Maine Revised Stat-
32 utes, Title 38, section 562, subsection 10, paragraph
33 C. It will make that paragraph consistent with para-
34 graphs A and B.

35 Section 13 requires that underground tank facili-
36 ties keep a copy of their registration on-site so
37 that they can easily be made available to department
38 and municipal officials during compliance inspec-
39 tions.

1 Section 14 requires that an underground tank reg-
2 istration be modified whenever a tank is to be
3 retrofitted.

4 Section 15 replaces obsolete language relating to
5 penalties for the late submission of registrations
6 and fees.

7 Section 16 requires that a notice be given to the
8 purchaser or transferee prior to sale or transfer of
9 property where an underground oil storage facility is
10 located, disclosing the existence of the facility and
11 whether or not it has been abandoned in place.

12 Section 17 requires that no person may operate an
13 underground oil storage facility after October 1,
14 1997, unless it is constructed of noncorrosive mate-
15 rials and has the appropriate monitoring devices in
16 place.

17 Section 17 also gives the Board of Environmental
18 Protection some rule-making authority in the areas of
19 oil cleanup, leak detection methods, clean-up order
20 hearings and 3rd-party damage claims. Similar au-
21 thority is present in Title 38, chapter 3, subchapter
22 II-A for coastal and inland surface oil discharge ac-
23 tivities.

24 Section 18 provides that the board may waive dai-
25 ly inventory and annual statistical analyses require-
26 ments for properly installed and operated
27 double-walled tanks which already have the capability
28 of detecting an oil leak before it reaches the envi-
29 ronment. Daily product inventory may be an unneces-
30 sary requirement for double-walled tanks.

31 Section 19 requires periodic precision testing
32 for leaks in motor fuel tanks used to store products
33 for the tank owner's own use.

34 Sections 20 and 21 clarify responsibility for the
35 abandonment of underground tanks when their owners or
36 operators are not known. It also is intended to make
37 explicit that the burden of properly notifying and
38 abandoning an underground oil storage facility is
39 upon the owner or operator of that facility and that
40 those facilities may only be removed by certified un-
41 derground oil storage tank installers.

1 Section 22 clarifies that the department may re-
2 quire the removal of oil discharges, as well as re-
3 taining contractors to conduct the removal or clean-
4 up.

5 Section 22 also clarifies the department's exist-
6 ing authority to undertake clean-up activities and to
7 provide clean drinking water to owners of contami-
8 nated wells and to homes which have wells that are at
9 imminent risk of contamination. This allows the de-
10 partment to provide long-term adequate remedies for
11 an entire contaminated area at one time and reduces
12 construction and clean-up costs and 3rd-party damage
13 claims. It also limits allowable operation and main-
14 tenance expenses for public water supplies which may
15 be paid from the fund.

16 Section 22 deletes the phrase "who has caused or
17 suffered the discharge" which was unintentionally re-
18 tain during the drafting of this section. It is un-
19 necessary since the orders are directed at responsi-
20 ble parties, which is defined under Title 38, section
21 562. It also clarifies procedures for parties, who
22 appeal clean-up orders for oil discharge cleanups and
23 specifies that the commissioner may require submittal
24 of information which may aid in determining the
25 sources and extent of oil discharges.

26 Section 23 grants the department the authority to
27 acquire property rights under certain conditions in
28 order to develop clean drinking water supplies and to
29 undertake ground water clean-up activities.

30 Sections 24 and 25 allow claims to be filed with-
31 in 6 months of discovery of an underground oil dis-
32 charge of oil, since with ground water spills the ex-
33 act date of occurrence of a discharge is often not
34 known. It specifies when 3rd-party damage claims may
35 be filed and what may be claimed. It also
36 restructures how 3rd-party damage claims are pro-
37 cessed by eliminating boards of arbitration, and re-
38 quiring direct processing by the department. Past
39 experience in arbitrating 3rd-party damage claims
40 has demonstrated that boards of arbitration for un-
41 derground oil discharges are costly relative to the
42 amounts claimed, time-consuming and are an inappro-
43 priate mechanism for settling claims involving water
44 supplies and long-term oil clean-up remedies.

1 Sections 26 and 27 specify how disputed 3rd-party
2 damage claims are processed within the department.

3 Section 28 clarifies that the licensees referred
4 to in Title 38, section 569, subsection 4, means li-
5 censees as defined in Title 38, section 542, subsec-
6 tion 7.

7 Section 29 clarifies that the department is enti-
8 tled to recover all relevant damages or costs in-
9 curred by the State as a result of an oil discharge.

10 Section 30 is intended to clarify what costs re-
11 sponsible parties may be liable for as a result of
12 oil discharges.

13 Section 31 corrects a typographical error that
14 was present when the section was enacted.

15 Section 32 clarifies that Title 38, chapter 3,
16 subchapter II-B, is necessary for the public health
17 and general welfare of the State and its inhabitants.
18 This language is present in Title 38, chapter 3, sub-
19 chapter II-A, for coastal and inland surface oil dis-
20 charge activities.

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