

MAINE STATE LEGISLATURE

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**STATE OF MAINE
SENATE
114TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT " A" to S.P. 632, L.D. 1725, Bill, "An Act to Amend Maine's Underground Oil Storage Law"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 1990 construction season will begin before the 90-day waiting period for enactment is over; and

Whereas, the Department of Environmental Protection's backlog of unresolved contaminated wells from leaking underground oil storage facilities will continue to increase; and

Whereas, drinking water supplies contaminated by leaking underground oil storage facilities pose a serious threat to the public health and the environment and need to be replaced with clean, potable water sources; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 38 MRSA §562, as amended by PL 1989, c. 312, §16 and c. 546, §10, is repealed.

Sec. 2. 38 MRSA §562-A is enacted to read:

2
4 §562-A. Definitions

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

8 1. Ancillary equipment. "Ancillary equipment" means
devices including, but not limited to, piping, fittings, flanges,
10 valves and pumps used to distribute, meter or control the flow of
oil to an underground storage tank.

12 2. Applicant. "Applicant" means the owner or operator of
14 an underground oil storage facility that may have a discharge of
oil and who is seeking coverage of eligible clean-up costs and
16 3rd-party damage claims from the fund.

18 3. Barrel. "Barrel" means 42 United States gallons at 60°
Fahrenheit.

20 4. Cathodic protection tester. "Cathodic protection
22 tester" means an underground storage tank installer certified by
the Maine Board of Underground Storage Tank Installers or a
24 person certified by the commissioner pursuant to section 567-A.

26 5. Corrosion expert. "Corrosion expert" means a person who
is certified by the commissioner pursuant to section 567-A, as
28 qualified to engage in the practice of corrosion control on
buried or submerged metal piping systems and metal tanks.

30 6. Discharge. "Discharge" means any spilling, leaking,
32 pumping, pouring, emitting, escaping, emptying or dumping.

34 7. Double-walled tank. "Double-walled tank" means an
underground oil storage tank providing no less than 300°
36 secondary containment, interstitial space monitoring and
secondary containment for pressurized product delivery pipe
38 connections.

40 8. Existing underground oil storage facility or existing
underground oil storage tank. "Existing underground oil storage
42 facility" or "existing underground oil storage tank" means any
facility or tank, as defined in subsections 21 and 22, fully
44 installed as of the effective date of this Act, the location of
which has not changed.

46 9. Fund. "Fund" means the Ground Water Oil Clean-up Fund.

48 10. Gasoline. "Gasoline" means a volatile, highly
50 flammable liquid with a flashpoint of less than 100° Fahrenheit
obtained from the fractional distillation of petroleum.

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11. Heavy oil. "Heavy oil" means forms of oil that must be heated during storage, including, but not limited to, #5 and #6 oils.

12. Leak. "Leak" means a loss or gain of 0.1 gallons or more per hour at a pressure of 4 pounds per square inch gauge, as determined by a precision test or other tank and piping tightness test of similar precision approved by the department.

13. Motor fuel. "Motor fuel" means oil that is motor gasoline, aviation gasoline, #1 or #2 diesel fuel or any grade of gasohol typically used in the operation of a vehicle or motor engine.

14. Occurrence. "Occurrence" means a contamination incident or prohibited discharge associated with one or more tanks or piping at an underground oil storage facility within one year.

15. Oil. "Oil" means oil, oil additives, petroleum products and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

16. Person. "Person" means any natural person, firm, association, partnership, corporation, trust, the State and any agency of the State, governmental entity, quasi-governmental entity, the United States and any agency of the United States and any other legal entity.

17. Responsible party. "Responsible party" means any one or more of the following persons:

A. The owner or operator of the underground oil storage facility where a prohibited discharge has occurred;

B. The person to whom the underground oil storage facility is registered where a prohibited discharge has occurred;

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

D. Any person who owned or operated the underground oil storage facility from the time any oil arrived at that facility.

18. Secondary containment. "Secondary containment" means a system installed so that any material that is discharged or has leaked from the primary containment is prevented from reaching

2 the soil or ground water outside the system for the anticipated
3 period of time necessary to detect and recover the discharged
4 material. That system may include, but is not limited to,
5 impervious liners compatible to the products stored,
6 double-walled tanks or any other method approved by the
7 department that is technically feasible and effective.

8 19. Sensitive geologic areas. "Sensitive geologic areas"
9 means significant ground water aquifers and primary sand and
10 gravel recharge areas, as defined in section 482, located within
11 1,000 feet of a public drinking water supply and within 300 feet
12 of a private drinking water supply.

14 20. Underground gasoline storage tank. "Underground
15 gasoline storage tank" means a single tank or container, 10% or
16 more of which is underground, together with associated piping and
17 dispensing facilities and that is used, or intended to be used,
18 for the storage or supply of gasoline. The term does not include
19 multiple tanks or containers that are situated on or above the
20 surface of a floor and in such a manner that they may be readily
21 inspected. An underground gasoline storage tank is a type of
22 underground oil storage facility.

24 21. Underground oil storage facility. "Underground oil
25 storage facility," also referred to as "facility," means any
26 underground oil storage tank or tanks, as defined in subsection
27 22, together with associated piping and dispensing facilities
28 located under any land at a single location and used, or intended
29 to be used, for the storage or supply of oil, as defined in this
30 subchapter. Underground oil storage facility also includes
31 piping located under any land at a single location associated
32 with above ground storage tanks and containing 10% or more of the
33 facility's overall volume capacity.

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

44 Sec. 3. 38 MRSA §563, sub-§2, as amended by PL 1987, c. 491,
45 §7, is further amended to read:

48 2. Information required for registration. The owner or
49 operator of an underground oil storage facility shall provide the
50 department commissioner with the following information on a form
51 in triplicate to be developed and provided by the department
52 commissioner; one copy to be submitted to the department

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2 commissioner, one copy to be promptly submitted upon completion
to the fire department in whose jurisdiction the underground tank
4 is located and one copy to be retained by the owner or operator:

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

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

12 C. ~~A description of the~~ The location of the facility shown
14 on a United States Geologic Survey topographic map for
facilities located in rural areas or in relation to the
16 nearest intersection for facilities located in urban areas
and the location of the tank or tanks at that facility;

18 D. Whether the location of any tank at the facility is
within 1,000 feet of a public drinking water supply or
20 within 300 feet of a private drinking water supply;

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

24 F. The type of tank or tanks and piping at the facility and
the type of product stored or contained in the tank or tanks
26 and piping;

28 G. For new, replacement or retrofitted tanks facilities,
the name of the installer, the expected date of installation
30 or retrofit, the nature of any emergency pursuant to
subsection 1, paragraph A, if applicable, and a description
32 or plan showing the layout of the facility or tank,
including, ~~for tanks in sensitive geologic areas,~~ the form
34 of secondary containment, monitoring wells other forms of
leak detection or equipment to be installed pursuant to
36 section 564, subsection 1, paragraph G A and, where when
applicable, the method of retrofitting leak detection
38 pursuant to section 564, subsection 1 or 1-A; and

40 H. For existing facilities and tanks, the best estimate of
the age and type of tank or tanks at the facility; and

42 I. Expiration date of tank manufacturer's warranty.

44 ~~For existing tanks, the information required for registration~~
46 ~~shall be submitted to the department in accordance with this~~
~~subsection on or before February 1, 1986~~ The owner or operator
48 shall comply with the requirements of paragraph C by January 1,
50 1991.

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2 **Sec. 4. 38 MRSA §563, sub-§3**, as amended by PL 1987, c. 402, Pt. A, §199, is further amended to read:

4 **3. Amended registration required.** The owner or operator of an underground oil storage facility shall file an amended registration form with the department commissioner immediately upon any change in the information required pursuant to subsection 2, including any modifications to the facility or a change of ownership. The board may establish, by rule, a late registration period not to exceed 10 business days in duration. No A fee may not be charged for filing an amended registration.

12 **Sec. 5. 38 MRSA §563, sub-§4**, as enacted by PL 1985, c. 496, Pt. A, §14, is repealed and the following enacted in its place:

16 **4. Registration fees.** The owner or operator of an underground oil storage facility shall pay an annual fee to the department of \$35 for each tank located at the facility, except that single family homeowners are not required to pay a fee for a tank at their personal residence. Annual payments must be paid on or before January 1st of each calendar year.

22 **Sec. 6. 38 MRSA §563, sub-§5**, as repealed and replaced by PL 1987, c. 491, §8, is repealed and the following enacted in its place:

26 **5. Penalty for failure to submit amended registration.** Any person who has not submitted an amended registration form in accordance with subsection 3 shall pay a late fee of \$100. This does not preclude the commissioner from seeking civil penalties from any person who fails to register a facility or tank.

32 **Sec. 7. 38 MRSA §563, sub-§§7 and 8** are enacted to read:

34 **7. Supplier notification requirement.** Any person who sells a tank intended to be used as an underground oil storage tank shall notify the purchaser in writing of the purchaser's obligations under this section.

38 **8. Certification of proper installation.** Owners of new and replacement facilities shall ensure that the installer provides certification to the commissioner, within 30 days of completion of installation, that the materials and methods used comply with the applicable installation standards of this subchapter.

40 **Sec. 8. 38 MRSA §563-A, sub-§1-A** is enacted to read:

42 **1-A. Exception.** Airport aviation fuel hydrant piping systems are exempt from the schedule in subsection 1 provided that corrosion-induced leaks have not occurred and the system is

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2 not located in a sensitive geologic area. Owners and operators
3 of airport aviation fuel hydrant piping systems must meet all
4 applicable requirements of section 564 and of this subchapter.

6 **Sec. 9. 38 MRSA §563-B, sub-§1**, as enacted by PL 1987, c. 491,
7 §10, is amended to read:

8 1. **Investigation and removal.** Procedures, methods, means
9 and equipment to be used in the investigation of discharges and
10 the removal of oil and petroleum pollutants;

12 **Sec. 10. 38 MRSA §564**, as amended by PL 1989, c. 312, §17 and
13 c. 593, §1, is further amended to read:

14 **§564. Regulation of underground oil storage facilities used to**
15 **store motor fuels or used in the marketing and**
16 **distribution of oil**

18 The board shall adopt rules necessary to minimize, to the
19 extent practicable, the potential for discharges of oil from
20 underground oil storage facilities and tanks used to store motor
21 fuel or used in the marketing and distribution of oil to others.
22 These rules must ensure that requirements and standards governing
23 facilities under this section assure that the State's program
24 meets requirements under the United States Resource Conservation
25 and Recovery Act, Subtitle I, as amended. These rules are
26 limited to the following requirements.

28 1. **Design and installation standards for new and**
29 **replacement facilities.** Design and installation standards for
30 new and replacement facilities are as follows.

32 A. All new and replacement tanks shall, piping and below
33 ground ancillary equipment must be constructed of
34 fiberglass, cathodically protected steel or other equally
35 noncorrosive material approved by the Department--of
36 Environmental---Protection department. All new and
37 replacement tanks must include secondary containment,
38 monitoring of the interstitial spaces for all piping shall
39 be--constructed--of--fiberglass--cathodically--protected--steel
40 or--other--noncorrosive--material--approved--by--the--Department--of
41 Environmental---Protection and below ground ancillary
42 equipment except for suction piping systems installed in
43 accordance with subsection 1-A. Both tanks and piping must
44 be constructed of materials compatible with the product to
45 be stored. Anchoring is required of tanks when located in a
46 site where the ground water is expected to reach the bottom
47 of the tank or in a 100-year flood plain.

50 B. All new and replacement facilities shall must be
51 installed in accordance with the equipment manufacturer's
52 specifications and nationally accepted standards and by an

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2 underground oil storage tank installer who has been properly
3 certified pursuant to Title 32, chapter 104-A, and shall
4 must be registered with the department commissioner prior to
5 installation pursuant to section 563. Underground gasoline
6 storage tanks may be removed by an underground gasoline
7 storage tank remover who has been properly certified
8 pursuant to Title 32, chapter 104-A. New and replacement
9 impressed current cathodic protection systems must be
10 designed by a corrosion expert.

11 ~~G.--For new and replacement facilities in sensitive geologic~~
12 ~~areas or in the shoreland area, as defined in section 435,~~
13 ~~the owner shall install one of the following:~~

14 (1) ~~Secondary containment of all underground oil~~
15 ~~storage facility components;~~

16 (2) ~~Continuous electronic monitoring for free product~~
17 ~~in those monitoring wells installed in the excavated~~
18 ~~area around the tank or tanks, and additional wells~~
19 ~~with electronic monitoring to detect a leak or~~
20 ~~discharge of oil from the piping;~~

21 (3) ~~Continuous electronic monitoring in the~~
22 ~~unsaturated zone of all elements of the facility, using~~
23 ~~sufficient sampling points to detect a leak or~~
24 ~~discharge of oil from any point in the facility;~~ or

25 (4) ~~A reasonable number of monitoring wells located~~
26 ~~around the tank or around the perimeter of the facility~~
27 ~~sufficiently sampled and tested to detect any discharge~~
28 ~~of oil or contamination of ground water from a facility.~~

29 ~~D.--The requirements set forth in paragraph B for new and~~
30 ~~replacement facilities in sensitive geologic areas may not~~
31 ~~be imposed solely due to the proximity of an underground oil~~
32 ~~storage tank to a private drinking water supply where the~~
33 ~~tank and private drinking water supply are located at the~~
34 ~~same site and are owned, operated or utilized by the same~~
35 ~~person or persons. In addition, the board shall adopt rules~~
36 ~~to provide for exemptions from the requirements of paragraph~~
37 ~~G in circumstances where the facility is to be installed~~
38 ~~over a polluted aquifer where no unreasonable additional~~
39 ~~harm to public health and safety or to the environment can~~
40 ~~occur.~~

41 1-A. Leak detection standards and procedures for existing
42 facilities. Facility owners shall implement one of the leak
43 detection methods listed in this subsection or properly abandon a
44 facility in accordance with section 566-A. The leak detection
45 system must be capable of detecting a leak within 30 days with a
46 probability of detection of 95%. Facility owners shall retrofit

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leak detection for facilities with pressurized piping by December 1, 1990, and facilities with suction piping by December 1, 1991. Leak detection methods are as follows:

A. Monthly reconciliation of daily product inventory data and an annual precision test of all tanks and piping. Pressurized piping must be retrofitted with an in-line leak detector; or

B. Installation of one of the following leak detection systems:

(1) Secondary containment of all underground oil storage facility components or secondary containment for the tank and single-walled containment for suction piping sloped evenly to the tank and equipped with a single check valve under the pump;

(2) Continuous monitoring for free product in monitoring wells installed in the excavated area around the tank or tanks, and to detect a leak or discharge of oil from the piping not installed in accordance with subparagraph (1), one of the following:

(a) Continuous vapor monitoring;

(b) Annual tightness testing;

(c) Secondary containment with interstitial space monitoring; or

(d) Other methods of leak detection approved by the department;

(3) Continuous vapor monitoring in the unsaturated zone of all elements of the facility, using sufficient sampling points to detect a leak or discharge of oil from any point in the facility;

(4) Manual ground water sampling capable of detecting the presence of at least 1/8 inch of free product on top of the ground water table in a reasonable number of ground water monitoring wells installed in the excavated area, and to detect a leak or discharge of oil from the product piping not installed in accordance with subparagraph (1), one of the following:

(a) Continuous vapor monitoring;

(b) Annual tightness testing;

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- 2 (c) Secondary containment with interstitial space
 monitoring; or
- 4 (d) Other methods of leak detection approved by
 the department;
- 6
- 8 (5) Automatic tank gauging that can detect a 0.2
 gallon per hour loss, and to detect a leak or discharge
 of oil from product piping not installed in accordance
10 with subparagraph (1), one of the following:
- 12 (a) Continuous vapor monitoring;
- 14 (b) Annual tightness testing;
- 16 (c) Secondary containment with interstitial space
 monitoring; or
- 18 (d) Other methods of leak detection approved by
20 the department; or
- 22 (6) Other leak detection systems approved by the
 department that can detect a 0.2 gallon per hour leak
24 rate or a leak of 150 gallons in 30 days with a 95%
 probability of detecting a leak and a 5% chance of
26 false alarm.

28 Ground water monitoring for the detection of leaks may only
 be used to meet the requirements of this paragraph where the
30 ground water table is never less than 20 feet from the
 ground surface and the hydraulic conductivity of the soils
32 between the tank and monitoring wells is not less than 0.01
 centimeters per second.

34 New and replacement piping must be equipped with leak detection.
36 Pressurized piping must be equipped with an automated in-line
 leak detector and be monitored by a leak detection system listed
38 in paragraph B. Suction piping must be installed to operate at
 less than atmospheric pressure, sloped to drain back into the
40 tank with a loss of suction and installed with only one check
 valve located below and as close as practical to the suction
42 pump. Product piping that does not meet these suction piping
 criteria must be monitored by a leak detection system listed in
44 paragraph B.

46 1-B. Overfill and spill prevention equipment. Overfill and
 spill prevention equipment is required for all new, replacement
48 and existing facilities. The board may adopt a phase-in schedule
 for existing facilities to meet this requirement.

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2 **2. Monitoring, maintenance and operating procedures for**
3 **existing, new and replacement facilities and tanks. The board's**
4 **rules may must require:**

6 A. Collection of inventory data for each day that oil is
7 being added to or withdrawn from the facility or tank,
8 reconciliation of the data, with monthly summaries, and
9 retention of records containing all such data for a period
10 of at least 3 years either at the facility or at the
11 facility owner's place of business;

12 B. Annual statistical inventory analysis, the results of
13 which shall must be reported to the department
14 commissioner. Annual statistical inventory analysis is not
15 required for double-walled tanks equipped with interstitial
16 space monitors;

18 C. ~~Annual--voltage~~ Voltage readings for cathodically
19 protected systems by a cathodic protection tester 6 months
20 after installation and annually thereafter;

22 D. Monthly inspections by a cathodic protection tester of
23 the rectifier meter on impressed current systems;

24 E. Precision testing of any tanks and hydrostatic-testing
25 of ~~ef--all~~ piping showing evidence of a possible leak. Results
26 of all tests conducted shall must be submitted to the
27 department commissioner by the facility owner and the person
28 who conducted the test;

30 E-1. Proper calibration, operation and maintenance of leak
31 detection devices;

34 F. Evidence of financial responsibility for taking
35 corrective action and for compensating 3rd parties for
36 bodily injury and property damage caused by sudden and
37 nonsudden accidental discharges from an underground oil
38 storage facility or tank; and

40 G. Reporting to the department commissioner any of the
41 following indications of a possible leak or discharge of oil:

42 (1) Unexplained differences in daily inventory
43 reconciliation values which, over a 30-day period,
44 exceed .5% of the product delivered;

46 (2) Unexplained losses detected through statistical
47 analysis of inventory records;

50 (3) Detection of product in a monitoring well or by
51 other leak detection methods; and

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2 (4) Failure of a tank or piping precision test or,
hydrostatic pipe test, or other tank or piping
tightness test approved by the department;

4
6 (5) Discovery of oil off site on or under abutting
properties, including nearby utility conduits, sewer
lines, buildings, drinking water supplies and soil; and

8
10 (6) Notwithstanding this paragraph, any actual leaks
or discharges of oil that occur on the premises,
including, but not limited to, spills, overfills and
12 leaks, whether or not cleaned up;

14 H. Compatibility of the materials from which the facility
is constructed and the product to be stored;

16
18 I. Owners and operators, upon request by the commissioner,
to sample their underground oil tanks, to maintain records
of all monitoring and sampling results at the facility or
20 the facility owner's place of business and to furnish
records of all monitoring and sampling results to the
22 commissioner or to permit the commissioner or the
commissioner's representative to inspect and copy those
24 records; and

26 J. Owners and operators to permit the commissioner or the
commissioner's designated representatives, including
28 contractors, access to all underground oil storage
facilities for all purposes connected with administering
30 this subchapter, including, but not limited to, for sampling
the contents of underground oil tanks and monitoring wells.
32 This right of access is to be in addition to any other
granted by law.

34
36 ~~The requirements in paragraphs A and B do not apply to a
double-walled tank containing interstitial space monitoring which
has been installed and is operated in accordance with the
38 requirements of this subchapter, including rules adopted under
this subchapter, and utilizing double-walled piping or a product
40 delivery system using a suction pump or other system approved by
the department which has been installed and is operated in
42 accordance with the requirements of this subchapter, including
rules adopted under this subchapter.~~

44
46 3. Replacement of tanks at facilities where leaks have been
detected. If replacement or removal is required as a result of a
48 corrosion induced leak in an unprotected steel tank, the owner or
operator of the facility may either replace all other tanks and
50 piping at that facility not meeting the design and installation
standards promulgated pursuant to subsection 1 or comply with the
following:

52

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2 A. Remove all bare steel and asphalt-coated steel tanks and
all piping which that is not constructed of noncorrosive
4 material or is not cathodically protected against corrosion
at the facility that are more than 20 years old;

6 B. Perform a statistical inventory analysis of the entire
7 facility and submit the results of that analysis to the
8 department commissioner. If a statistical inventory
analysis of the entire facility had been performed within 60
10 days prior to the required replacement, then the results of
that analysis may be submitted to the department
12 commissioner instead. If the results of the statistical
inventory analysis indicate evidence of a leak at the
14 facility or that the inventory data is not available or is
not sufficiently reliable to make a determination that the
16 facility is or is not leaking, the department commissioner
may require that all remaining tanks and piping at the
18 facility be precision tested, except that precision testing
shall is not be required where when it can be demonstrated
20 that the same tanks and piping passed a precision test
conducted within the previous 6 months; and

22 C. Install a minimum of 2 ground water monitoring wells, as
24 deemed necessary by the department commissioner to monitor
the facility, unless all remaining tanks and piping at the
26 facility were installed in accordance with the standards
promulgated pursuant to subsection 1.

28 Results of all precision tests conducted pursuant to paragraph B
30 shall must be submitted to the department commissioner, and all
tanks and piping found to be leaking shall must be removed
32 pursuant to section 566 566-A, or repaired to the satisfaction of
the department commissioner.

34 4. Sampling of monitoring wells. Where When a monitoring
36 well is installed at an underground oil storage facility storing
motor fuel or used for the marketing and distribution of oil, the
38 owner or operator shall -be is required to sample that well at
least every-6-months weekly; to maintain records of all sampling
40 results at the facility or at the facility owner's place of
business; and to report to the department commissioner any
42 sampling results showing evident evidence of a possible leak or
discharge of oil.

44 5. Mandatory facility replacement. Upon the expiration
46 date of a manufacturer's warranty for a tank installed in
accordance with subsection 1, the tank and its associated piping
48 must be removed from service and properly abandoned in accordance
with section 566-A.

50

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2 **Sec. 11. 38 MRSA §565**, as amended by PL 1989, c. 312, §18 and
c. 593, §2, is further amended to read:

4 **§565. Regulation of underground oil storage facilities used for**
6 **consumption on the premises or by the owner or operator**

8 The board shall adopt rules necessary to minimize, to the
10 extent practicable, the potential for discharges of oil from
underground oil storage facilities not used to store motor fuels
12 or in the marketing and distribution of oil to others. These
rules shall apply to all underground heating oil storage
14 facilities that are used for consumption on the premises or by
the owner or operator of the facility, ~~including tanks installed~~
16 ~~temporarily at a construction site; all residential home heating~~
~~oil tanks regardless of size; all facilities owned or operated by~~
18 ~~the State, any of its agencies and instrumentalities or any~~
~~political subdivision;~~ and all other tanks and facilities that
are not governed by the requirements of section 564. These rules
are limited to the following requirements.

20 1. **Design and installation standards for new and**
22 **replacement facilities.** Design and installation standards for
new and replacement tanks are as follows.

24 A. The installation of new or replacement tanks and piping
26 constructed of bare steel or asphalt-coated steel is
prohibited. All new and replacement facilities must include
28 secondary containment and continuous monitoring of the
interstitial space for all tanks, piping and ancillary
30 equipment. All below ground ancillary equipment must be
constructed of fiberglass, cathodically protected steel or
32 equally noncorrosive materials approved by the department.

34 B. All new and replacement facilities shall must be
36 installed by an underground oil storage tank installer who
has been properly certified pursuant to Title 32, chapter
104-A, and shall must be registered with the department
38 commissioner prior to installation pursuant to section 563.
Underground gasoline storage tanks may be removed by an
40 underground gasoline storage tank remover who has been
properly certified pursuant to Title 32, chapter 104-A.

42 B-1. New and replacement facilities with a capacity in
44 excess of 1,100 gallons must prevent overfills and spills by
the installation of overflow catchment basins, the use of
46 automatic shut-off devices or the use of an automatic alarm
when the tank is 90% full.

48 ~~C. The installation of monitoring wells shall be required~~
50 ~~for new and replacement facilities with a capacity in excess~~
~~of 1,100 gallons where physically or technically~~

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2 practicable, ~~Monitoring wells shall not be required where~~
3 ~~double wall tanks equipped with interstitial space monitors~~
4 ~~are utilized.~~

6 D. ~~For new and replacement facilities in sensitive geologic~~
7 ~~areas or in the shereiland area, as defined in section 435,~~
8 ~~the owner shall install one of the following:~~

10 (1) ~~Secondary containment of all underground oil~~
11 ~~storage facility components, or~~

12 (2) ~~A reasonable number of monitoring wells located~~
13 ~~around the tank or around the perimeter of the facility~~
14 ~~sufficiently sampled and tested to detect any discharge~~
15 ~~of oil or contamination of ground water from a facility.~~

18 2. Testing requirements and reporting of leaks for
19 existing, new and replacement facilities and tanks. Testing
20 requirements and reporting of leaks for existing, new and
21 replacement facilities and tanks are as follows.

22 A. The owner or operator shall ~~be~~ is required to report
23 promptly upon discovery to the department commissioner any
24 evidence of a leak or discharge of oil.

26 B. ~~Underground oil storage tanks that are used for storing~~
27 ~~motor fuels for consumptive use shall be precision tested~~
28 ~~for leaks every 5 years until abandonment when they are 15~~
29 ~~years old, except that the owner or operator may elect to~~
30 ~~install monitoring wells as an alternative to precision~~
31 ~~testing. Results of the precision tests shall be submitted~~
32 ~~promptly to the department and all tanks and piping found to~~
33 ~~be leaking shall be removed pursuant to section 566-A or~~
34 ~~repaired to the department's satisfaction.~~

36 C. Where When a monitoring well is installed at ~~a~~ an
37 existing facility governed by this section, the owner or
38 operator of the facility shall ~~be~~ is required to sample that
39 well at least every 6 months; to maintain records of all
40 sampling results at the facility or at the facility owner's
41 place of business; and to report to the department
42 commissioner any sampling results showing evidence of a
43 possible leak or discharge of oil.

44 D. For leak detection devices other than monitoring wells
45 installed at an existing facility governed by this section,
46 the owner or operator of the facility is required to test
47 for leaks at least once every 6 months; to maintain records
48 of all testing results at the facility or at the facility
49 owner's place of business; and to report to the commissioner
50 any test results showing evidence of a possible leak or
51 discharge of oil.

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2 **Sec. 12. 38 MRSA §566-A, sub-§§2 and 3, as enacted by PL 1987,**
c. 491, §14, are amended to read:

4 **2. Notice of intent.** The owner or operator of an
6 underground oil storage facility or tank or, if the owner or
operator is unknown, the current owner of the property where the
8 facility or tank is located shall provide written notice of an
intent to abandon an underground oil storage facility or tank to
10 the department commissioner and the fire department in whose
jurisdiction the underground oil facility or tank is located at
12 least 10 30 days prior to abandonment.

14 **3. Rulemaking.** The board shall adopt rules allowing for
the granting of a variance from the requirement of removal where
16 abandonment by removal is not physically possible or practicable
due to circumstances other than those listed in this subsection.
18 The board shall adopt rules setting forth the proper procedures
for abandonment of underground oil storage facilities and tanks,
20 including requirements and procedures to conduct a site
assessment for the presence of discharges of oil prior to
completion of abandonment at facilities storing motor fuel or
used in the marketing and distribution of oil and acceptable
24 methods of disposing of the removed tanks and procedures for
abandonment in place where removal of a tank or other component
26 of a facility is deemed determined not physically possible or
practicable.

28 **Sec. 13. 38 MRSA §567-A is enacted to read:**

30 **§567-A. Certifications**

32 **1. Cathodic protection tester.** The commissioner may
34 certify a person as a cathodic protection tester on finding that
the person understands the principles and measurements of all
36 common types of cathodic protection systems as applied to buried
metal piping and tank systems. At a minimum, these persons must
38 have education and experience in soil resistivity, stray current,
structure-to-soil potential and component electrical isolation
40 measurements of buried metal piping and tank systems.

42 **2. Corrosion expert.** The commissioner may certify a person
44 as a corrosion expert on finding that the person has a thorough
knowledge of the physical sciences and the principles of
46 engineering and mathematics acquired by professional education
and related practical experience and is qualified to engage in
48 the practice of corrosion control on buried or submerged metal
piping systems and metal tanks. That person must be accredited
50 as being qualified by the National Association of Corrosion
Engineers or be a professional engineer registered in this State

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2 who has certification or licensing that includes education and
 3 experience in corrosion control of buried or submerged metal
 4 pipng systems and metal tanks.

5 **Sec. 14. 38 MRSA §568**, as amended by PL 1987, c. 787, §14, is
 6 further amended to read:

7 **§568. Cleanup and removal of prohibited discharges**

8
 9
 10 1. **Removal.** Any person discharging or suffering a
 11 discharge of oil, ~~petroleum products or their by products~~ to
 12 ground water in the manner prohibited by section 543 and any
 13 responsible party shall immediately undertake to remove that
 14 discharge to the department's commissioner's satisfaction.
 15 Notwithstanding this requirement, the commissioner may order the
 16 removal of that discharge pursuant to subsection 3, or the
 17 department may undertake the removal of that discharge and retain
 18 agents and contractors for that purpose who shall operate under
 19 the direction of the department commissioner. Any unexplained
 20 discharge of oil, ~~petroleum products or their by products~~ to
 21 ground water within state jurisdiction shall must be removed by
 22 or under the direction of the department commissioner. Any
 23 expenses involved in the removal of discharges, whether by the
 24 person causing the same discharge, the person reporting the same
 25 or discharge, the department ~~by itself~~ commissioner or through
 26 its the commissioner's agents or contractors, may be paid in the
 27 first instance from the Ground Water Oil Clean-up Fund, including
 28 any expenses incurred by the State under subsection 3, and any
 29 reimbursements due that fund shall must be collected in
 30 accordance with section 569.

31
 32 2. **Restoration of water supplies.** The department
 33 commissioner may clean up any discharge of oil and take temporary
 34 and permanent remedial actions at locations threatened or
 35 affected by the discharge of oil, including restoring or
 36 replacing water supplies contaminated or threatened by oil,
 37 ~~petroleum products or their by products, using the most with~~
 38 alternatives the commissioner finds are cost-effective
 39 ~~alternative that is,~~ technologically feasible and reliable and
 40 which that effectively mitigates mitigate or minimises minimize
 41 damage to and provides provide adequate protection of the public
 42 health, welfare and the environment. When the remedial action
 43 taken includes the installation of a public water supply, the
 44 fund may be used to pay costs of operation, maintenance and
 45 depreciation of the water supply for a period not exceeding 20
 46 years. The department commissioner shall consult with the
 47 affected party prior to selecting the alternative to be
 48 implemented.

49
 50 3. **Issuance of clean-up orders.** The department
 51 commissioner may investigate and sample sites where an oil
 52 discharge has or may have occurred to identify the source and

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2 extent of the discharge. During the course of the investigation,
 3 the commissioner may require submission of information or
 4 documents, ~~which that~~ relate or may relate to the discharge under
 5 investigation, from any person who the department commissioner
 6 has reason to believe may be a responsible party. If the
 7 department commissioner finds, after investigation, that a
 8 discharge of oil has occurred and may create a threat to public
 9 health or the environment, including, but not limited to,
 10 contamination of a water supply, the commissioner may issue a
 11 clean-up order requiring the responsible party to cease the
 12 discharge immediately or to take action to prevent further
 13 discharge and to mitigate or terminate the threat of human
 14 exposure to contamination or to explosive vapors. In addition to
 15 other actions, the commissioner may, as part of any clean-up
 16 order, require the responsible party to provide temporary
 17 drinking water and water treatment systems approved by the
 18 commissioner, to sample and analyze wells and to compensate
 19 3rd-party damages resulting from the discharge. The commissioner
 20 may also order that the responsible party take temporary and
 21 permanent remedial actions at locations threatened or affected by
 22 the discharge of oil, including a requirement that the
 23 responsible party restore or replace water supplies contaminated
 24 with oil, ~~petroleum products or their by-products using the most~~
 25 ~~cost-effective--alternative--that--is~~ with water supplies the
 26 commissioner finds are cost effective, technologically feasible
 27 and reliable and which that effectively mitigates mitigate or
 28 minimizes minimize damage to, and provides provide adequate
 29 protection of, the public health, welfare and the environment.
 30 Clean-up orders shall ~~only~~ may be issued only in compliance with
 31 the following requirements procedures.

32 A. Any orders issued under this section shall must contain
 33 findings of fact describing the manner and extent of oil
 34 contamination, the site of the discharge and the threat to
 35 the public health or environment.

36 B. A responsible party to whom such an order is directed
 37 may apply to the board for a hearing on the order if the
 38 application is made within 10 working days after receipt of
 39 the order by a responsible party. The board shall appoint
 40 an independent hearing examiner to hold a hearing shall-be
 41 held-by-the-board-within-15-working-days-as-soon-as-possible
 42 after receipt of the application. The nature of the hearing
 43 before-the-board-shall must be an appeal. At the hearing,
 44 all witnesses shall must be sworn and the department
 45 commissioner shall first establish the basis for the order
 46 and for naming the person to whom the order was directed.
 47 The burden of going forward shall then shift shifts to the
 48 person appealing to demonstrate, based upon a preponderance
 49 of the evidence, that the order should be modified or
 50 rescinded. Within 7 days after the hearing, the board
 51 hearing examiner shall make findings of fact. The board

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2 shall vote to accept, reject or modify the findings of the
 4 hearing examiner at the next regularly scheduled board
 6 meeting and shall continue, revoke or modify the
 8 commissioner's order. The decision of the board may be
appealed to the Superior Court in accordance with the Maine
Administrative Procedure Act, Title 5, chapter 375,
subchapter VII.

10 **4. Enforcement; penalties; punitive damages.** Enforcement,
 12 penalties and punitive damages are as follows.

14 A. Any person who causes, or is responsible for, a
 16 discharge to ground water in violation of section 543 shall
 18 is not be subject to any fines or penalties for a violation
of section 543 for the discharge if that person promptly
reports and removes that discharge in accordance with the
rules and orders of the department and the board.

20 B. Any responsible party who fails without sufficient cause
 22 to undertake removal or remedial action promptly in
 24 accordance with a clean-up order issued pursuant to
 26 subsection 3 is not eligible for coverage under the fund
pursuant to section 568-A, subsection 1, and may be liable
to the State for punitive damages in an amount at least
equal to, and not more than 3 times, the amount of any sums
expended from the fund in addition to reasonable attorney's
fees as a result of such failure to take prompt action.

28 C. Notwithstanding paragraphs A and B, a person who
 30 violates any laws or rules administered by the department
 32 under this subchapter is subject to the fines and penalties
in section 349.

34 ~~5.-- Acquisition of property; authority. The department may~~
 36 ~~acquire, by purchase, lease, condemnation, donation or otherwise,~~
 38 ~~any real property or any interest in real property that the board~~
 40 ~~in its discretion determines, by 2/3 majority vote, is necessary~~
~~to conduct a remedial action under this subchapter. There shall~~
~~be no cause of action to compel the board to acquire any interest~~
~~in real property under this subchapter.~~

42 ~~A.-- The board may use the authority in this subsection for a~~
 44 ~~remedial action only if, before an interest in real estate~~
 46 ~~is acquired under this subsection, the municipality in which~~
 48 ~~the interest to be acquired is located assures the board~~
~~through a contract or other legal agreement that the~~
~~municipality will accept transfer of the interest following~~
~~completion of the remedial action.~~

50 5-A. Land acquisition. Upon approval of the board by 2/3
 52 majority vote, the department may acquire by purchase, lease,
condemnation, donation or otherwise, any real property or any

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2 interest in real property, to undertake remedial actions in
response to a discharge of oil, including, but not limited to:

4 A. Actions to prevent further discharge and to mitigate or
terminate the threat of a discharge of oil;

6 B. Actions to clean up and remove oil from the site; and

8 C. Replacement of water supplies contaminated by or at
10 significant risk of contamination by a discharge of oil.

12 The department may exercise the right of eminent domain in the
14 manner described in Title 35-A, chapter 65, to take and hold real
16 property to provide drinking water supplies to replace those
18 contaminated by a discharge and to undertake soil and ground
water remediation to protect water supplies that are at
significant risk of contamination. The department may transfer
or convey to any person real property or any interest in real
property once acquired.

20 Sec. 15. 38 MRSA §568-A is enacted to read:

22 1. Eligibility for fund coverage. Eligibility for coverage
24 by the fund of clean-up costs and eligible 3rd-party damage costs
is governed by the following provisions.

26 A. The applicant must submit within 90 days of reporting
28 the discharge, a written request to the commissioner to be
covered by the fund. The request must include:

30 (1) A description of the discharge and the locations
32 threatened or affected by the discharge, to the extent
known;

34 (2) An agreement that the applicant shall pay the
36 initial costs of cleanup and 3rd-party damage claims up
to the deductible amount specified in subsection 2; and

38 (3) Documentation that the applicant is in substantial
40 compliance with the requirements of paragraph B.

42 B. An applicant is in substantial compliance when the
commissioner finds that the following requirements are met:

44 (1) The compliance schedule, in section 563-A, for
46 nonconforming facilities except that those facilities
48 or tanks required to be removed by October 1, 1989,
have until October 1, 1990, to be removed before they
are considered out of compliance;

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(2) Any outstanding consent agreement or clean-up order issued by the commissioner under section 568, subsection 3, regarding violations of this subchapter;

(3) Any outstanding court order or consent decree regarding violations of this subchapter;

(4) For motor fuel storage and marketing and retail facilities, the following requirements:

(a) Applicable design and installation or retrofitting requirements for leak detection as covered by section 564, subsections 1 and 1-A;

(b) Section 564, subsection 1-B, overfill and spill prevention equipment; and

(c) Section 564, subsection 2, paragraphs B to H, not including paragraph F;

(5) For consumptive use heating oil facilities:

(a) Section 565, subsection 1, if applicable; and

(b) Section 565, subsection 2; and

(6) For waste oil, and heavy oil and airport hydrant facilities with discharges that are not contaminated with hazardous constituents, compliance with rules adopted by the board regarding:

(a) Design and installation, if applicable;

(b) Retrofitting of leak detection and corrosion protection, if applicable;

(c) Overfill and spill prevention;

(d) Monitoring of cathodic protection systems;

(e) Testing requirements for tanks and piping on evidence of a leak;

(f) Maintenance of a leak detection system; and

(g) Reporting leaks.

The burden of proof is on the department to show a lack of substantial compliance. The commissioner shall make written findings of fact when making a determination under this

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2 paragraph. These findings are subject to appeal to the
board. The board's decision is subject to judicial review
pursuant to Title 5, chapter 375, subchapter VII.

4
 6 C. The facility for which the applicant is applying for
coverage is not owned or operated by the Federal Government.

8 D. In any one calendar year, an applicant may only apply
for coverage of clean-up costs and 3rd-party damage claims
 10 that total less than \$2,000,000 aggregate.

12 E. An applicant is not eligible for coverage under this
section if the applicant has any one or combination of the
 14 following relationships with an entity that owns or operates
an oil refinery:

16 (1) Is owned directly by or directly owns that entity:

18 (2) Is a franchisee of that entity:

20 (3) Is a member of a partnership or limited
 22 partnership that includes that entity:

24 (4) Is a subsidiary of that entity; or

26 (5) Is a parent corporation of that entity.

28 An applicant is not subject to this exclusion from coverage
if its sole relationship with the entity is a contractual
 30 agreement to purchase oil from the entity exclusively for
retail sale or for the applicant's consumption.

32 2. Deductibles. Applicants eligible for coverage by the
 34 fund under subsection 1, must pay the initial costs for expenses
resulting from cleaning up and compensating eligible 3rd-party
 36 damages from a discharge prohibited under section 543 on a per
occurrence basis according to the following schedule:

38	<u>Number of facilities</u>	<u>Costs paid by</u>
40	<u>owned</u>	<u>applicant</u>
42	<u>1</u>	<u>\$2,500</u>
	<u>2 to 5</u>	<u>5,000</u>
44	<u>6 to 10</u>	<u>10,000</u>
	<u>11 to 30</u>	<u>50,000</u>
46	<u>over 30</u>	<u>100,000</u>

48 The commissioner shall pay any eligible additional costs up to
\$1,000,000 associated with activities under section 569,
 50 subsection 5, paragraphs B, D and I, resulting from a discharge
from the fund. The commissioner may pay any costs eligible for

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2 coverage by the fund above \$1,000,000 from the fund but the
3 commissioner shall recover these expenditures from the
4 responsible party pursuant to section 569.

6 3. Exemptions from deductible. The commissioner may waive
7 the deductible requirement for an applicant's personal residence
8 if the commissioner determines that the applicant does not have
9 the financial resources to pay the deductible. The board shall
10 adopt rules to determine the standards to be used to assess an
11 applicant's ability to pay this deductible.

12 4. Agreements. Any payments to or on behalf of applicants
13 for clean-up activities undertaken by the applicant must be
14 pursuant to a written agreement between the applicant and the
15 commissioner. The agreement must include, but is not limited to:

- 16 A. A plan and schedule for remedial actions;
- 17
- 18 B. A provision for enforcement of the agreement and
- 19 sanctions for nonperformance;
- 20
- 21 C. Provisions for cost accounting and reporting of costs
- 22 incurred in remediation activities; and
- 23
- 24 D. An agreement to clean up the site to the satisfaction of
- 25 the commissioner.
- 26

27 5. Uncompensated 3rd-party damage claims. If within 12
28 months of a claim, a person designated as a responsible party by
29 the commissioner refuses to pay 3rd-party damage claims not
30 covered by the fund, the commissioner may pay these claims from
31 the fund pursuant to section 569, subsection 2-A. Any amount so
32 paid must be recovered from the responsible party pursuant to
33 section 569.

34
35 **Sec. 16. 38 MRSA §569, as amended by PL 1989, c. 502, Pt. B,**
36 **§60 and c. 543, §6, is further amended to read:**

37 **§569. Ground Water Oil Clean-up Fund**

38
39
40
41 The Ground Water Oil Clean-up Fund is established to be used
42 by the department as a nonlapsing, revolving fund for carrying
43 out the purposes of this subchapter. To this fund shall-be are
44 credited all registration fees, fees for late payment or failure
45 to register, penalties, transfer fees, reimbursements,
46 assessments and other fees and charges related to this
47 subchapter. To this fund shall-be are charged any and all
48 expenses of the department related to this subchapter, including
49 administrative expenses, payment of 3rd-party 3rd-party damages
50 covered by this subchapter, costs of removal of discharges of oil

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2 and costs of cleanup of discharges, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1.

4 The ~~Board--of--Environmental--Protection~~ commissioner may authorize the borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund to carry out the provisions of subchapters II-A and II-B. All funds borrowed pursuant to this section shall must be repaid with interest to the fund of origin in as prompt a manner as revenues allow. ~~The~~ at a rate of interest shall ~~be~~ determined by the Treasurer of State, based on the average rate of interest earned on funds invested during the period of the loan.

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

24 A 3rd-party commercial risk pool account is established within the fund to pay 3rd-party damage claims for claims resulting from discharges from bare steel and noncathodically protected underground storage tanks used for commercial purposes up to \$100,000 per claimant including those costs in subsection 5, paragraphs D, E and E-1, associated with those claims. The commissioner may retain consultants to administer these funds.

32 1. **Research and development.** The Legislature may allocate not more than \$100,000 per year of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, ~~petroleum~~ products ~~and their by-products~~ on ground waters of the State. These allocations shall must be made in accordance with section 570-A.

40 2-A. **Third-party damages.** Any person claiming to have suffered actual economic damages ~~to--real--estate--or--personal~~ including, but not limited to, property ~~or~~ damage, loss of income and medical expenses directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the claimant, may apply within ~~6-months~~ 2 years after the occurrence or discovery of the discharge injury or damage, whichever date is later, to the ~~board~~ commissioner stating the amount of damage alleged to be suffered as a result of that discharge. The board shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The board, upon petition and for good cause shown, may waive the ~~6-month~~ 2-year

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2 limitation for filing damage claims. For claims made on
 4 discharges eligible for coverage by the 3rd-party commercial risk
 6 pool account, the commissioner shall pay the first \$100,000 per
 8 claimant out of the 3rd-party commercial risk pool account as
 10 long as funds are available. The commissioner shall pay any
 12 claims that exceed \$100,000 or available money in the 3rd-party
 14 commercial risk pool account from the fund.

16 A. If a claimant is not compensated for 3rd-party damages
 18 by the responsible party or the expenses are above the
 20 applicant's deductible and the claimant and the board are
 22 able to commissioner agree as to the amount of the damage
 24 claim, the board commissioner shall certify the amount of
 26 the claim and the name of the claimant to the Treasurer of
 28 State and the Treasurer of State shall pay the amount of the
 30 claim from the Ground Water Oil Clean-up Fund.

32 B. If the claimant and the board commissioner are not able
 34 to agree as to the amount of the damage claim, the board
 36 shall forthwith transmit the claim for action to the
 38 department as provided in this subchapter is subject to
 40 subsection 3-A.

42 C. A claimant shall take all reasonable measures to
 44 minimize damages suffered by the claimant as a result of a
 46 discharge of oil.

48 D. Third-party damage claims shall must be stated in their
 50 entirety in one application. Damages omitted from any claim
 : at the time the award is made shall be are deemed waived.

32 E. ~~Damage claims arising under this subchapter are~~
 34 ~~recoverable only in the manner provided under this~~
 36 ~~subchapter. It is the intent of the Legislature that the~~
 38 ~~remedies provided for such damage claims in this subchapter~~
 40 ~~are exclusive.~~

42 F. Awards from the fund on damage claims shall may not
 44 include any amount which the claimant has recovered, on
 46 account of the same damage, by way of settlement with or
 48 judgment of a court of competent jurisdiction against the
 50 person causing or otherwise responsible for the discharge.

44 G. It is the intent of the Legislature that the remedies
 46 provided for 3rd-party damage claims compensated under this
 48 subchapter are nonexclusive. A court awarding damages to a
 50 claimant as a result of a discharge of oil to ground water
prohibited by section 543 shall reduce damages awarded by
any amounts received from the fund to the extent these
amounts are duplicative.

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2 H. Payments from the fund for 3rd-party damage claims may not exceed \$200,000 per claimant.

4 3-A. Determination of disputed 3rd-party damage claims. The commissioner shall establish a claims processing capability within the department to hear and determine claims filed under this subchapter which are not agreed upon by the claimant and the board commissioner.

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

14 B. To the extent practical, all claims arising from or related to a common discharge shall must be heard and determined by the same hearing examiner.

18 C. Hearings before the hearing examiner shall--be are informal and the rules of evidence prevailing on judicial proceedings shall are not be binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination.

26 D. Determinations made by the hearing examiner shall--be are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters relating to abuse of discretion by the hearing examiner. A claimant seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination.

34 E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner, and shall certify the name of the claimant to the Treasurer of State, unless the commissioner has determined that the claimant is a responsible party, in which case the commissioner shall withhold certification shall-be-withheld until all claims that the department commissioner has against the responsible party with respect to the discharge have been satisfied.

44 ~~4. Funding. A fee of 9¢ per barrel of gasoline and 8¢ per barrel of refined petroleum products and their by products other than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, shall be assessed on the transfer of these products by oil terminal facility licensees, as defined in section 542, subsection 7. These fees shall be paid monthly by the oil terminal facility licensees on the basis of records certified to the department. All such transfer fees shall be credited to the Ground Water Oil Clean-up Fund upon~~

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receipt by the department, except that the amount of these fees in excess of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by-products, other than gasoline and liquid asphalt, shall be transferred by the department upon receipt as follows.

A. Sixty-two and one-half percent of the excess shall be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund.

B. Thirty-seven and one-half percent of the excess shall be transferred to the Maine State Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks located on owner-occupied or residential rental property, which facilities and tanks have been identified by the department as leaking or posing an environmental threat or as having been abandoned.

After an aggregate sum of \$5,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of \$3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to this subsection shall be reduced by 6¢ per barrel.

4-A. Funding. Funding for the Ground Water Oil Clean-up Fund is as follows.

A. Until January 1, 1994, and after January 1, 1998, a fee is assessed of 44¢ per barrel of gasoline; 25¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel; and 10¢ per barrel of #6 fuel oil. The fee is assessed on the first transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7, and on a person required to register with the commissioner under section 545-B, who first transports oil in the State. These fees must be paid monthly on the basis of records certified to the commissioner. This subsection does not apply to waste oil transported into the State in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and which is subject to fees established under section 1319-I.

B. After January 1, 1994, the fees assessed in paragraph A increase to 48¢ per barrel of gasoline and 27¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel

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oil, kerosene, jet fuel and diesel fuel. The fees assessed on #6 fuel oil remain at 10¢ per barrel. This paragraph is repealed on January 1, 1998.

C. The owner or operator of an underground oil storage facility that stores motor fuel or is used in the marketing and distribution of oil shall pay an annual fee of \$130 per tank not constructed of fiberglass, cathodically protected steel or other noncorrosive material. These funds must be deposited in the 3rd-party commercial risk pool account. If the funds in the account are inadequate to pay the claims, costs and expenses for which payment from the account is authorized, the board may increase the per tank assessment up to \$500 per tank. Any shortfall in the account occurring after the maximum assessment has been levied must be paid out of the fund. Upon payment of the annual fee, the commissioner shall issue a certificate of coverage for the tank.

4-B. Allocation from Ground Water Oil Clean-up Fund. From the fees assessed in subsection 4-A, 6¢ per barrel of gasoline, refined petroleum products and their by-products, other than liquid asphalt, must be transferred by the department upon receipt as follows.

A. Sixty-two and one half percent of the 6¢ per barrel fee must be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund.

B. Thirty-seven and one half percent of the 6¢ per barrel fee must be transferred to the Maine State Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks located on owner-occupied or residential rental property, which facilities and tanks have been identified by the department as leaking or posing an environmental threat or as having been abandoned.

After an aggregate sum of \$5,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of \$3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to subsection 4-A must be reduced by 6¢ per barrel.

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

A. Administrative expenses, personnel expenses and equipment costs of the department related to the

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2 administration and enforcement of this subchapter and any
3 loans to the Maine Coastal and Inland Surface Oil Clean-up
4 Fund made pursuant to this section. Administrative
5 expenses, personnel expenses and equipment costs may not
6 exceed \$1,734,000 per fiscal year;

7 B. All costs involved in the removal of a prohibited
8 discharge, the abatement of pollution and the implementation
9 of remedial measures including restoration of water
10 supplies, related to the discharge of oil, ~~---petroleum~~
11 ~~products--and--their--by--products--~~ to ground water covered by
12 this subchapter not paid by a responsible party or an
13 applicant for coverage by the fund;

14 C. Sums allocated to research and development in accordance
15 with this section;

16 D. Payment of the ~~3rd-party~~ 3rd-party damage claims awarded
17 in accordance with this section that are not paid by the
18 responsible party or applicant for coverage by the fund;

19 E. Payment of costs of ~~arbitration~~ hearings, independent
20 hearing examiners and arbitrators independent claims
21 adjusters for 3rd-party damage claims;

22 E-1. Payment of costs of the administration of the
23 3rd-party commercial risk pool account;

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

26 G. Sums up to \$50,000 each year, which have been allocated
27 by the Legislature on a contingency basis in accordance with
28 section 570-A for payment of costs for studies of the
29 environmental impacts of discharges to ground water
30 prohibited by section 543 which that may have adverse
31 economic effects and which that occur subsequent to the
32 allocation, when the studies are deemed necessary by the
33 commissioner; and

34 H. All costs associated with the Board of Underground Oil
35 Storage Tank Installers; and

36 I. Payments to or on behalf of applicants eligible for
37 coverage by the fund under section 568-A, subsection 1, for
38 expenses above the deductible specified in section 568-A,
39 subsection 2, incurred in commissioner-approved clean-up
40 activities and specified in an agreement under section
41 568-A, subsection 4.

42 5-A. Reporting mechanism. If the potential liabilities of
43 the fund exceed projected income for the fund, the commissioner

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shall notify the joint standing committee of the Legislature having jurisdiction over energy and natural resources within 30 days of determining that a shortfall will occur and submit recommendations for revising coverage of the fund or generating the needed income.

6. Reimbursements to the Ground Water Oil Clean-up Fund. The department commissioner shall seek recovery for the use of the fund of all sums greater than \$1,000,000 per occurrence, expended from the fund pursuant to subsection 5, paragraph I, for an applicant for coverage by the fund found by the commissioner to be eligible under section 568-A, subsection 1, and all sums expended from the fund when no applicant was found by the commissioner to be eligible under section 568-A, subsection 1, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E and G and I, or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the department commissioner finds the amount involved too small or the likelihood of success too uncertain. Requests for reimbursement to the fund if not paid within 30 days of demand shall must be turned over to the Attorney General for collection.

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

A. An act of war; or

~~B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 568, or~~

C. An act of God, which shall ~~mean~~ means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

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

8. Extinguishing the 3rd-party commercial risk pool account. When all claims against the 3rd-party commercial risk pool account have been extinguished and, in the judgment of the commissioner, provision for payment of any potential 3rd-party claims against the account have been made, the commissioner shall refund any excess funds in the account to those persons who paid an annual fee into the account. The commissioner shall make refunds in the proportion that the owner's or operator's total

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2 contribution bears to the total contributions to the fund. Two
3 years after notice to the operator's or owner's last address,
4 unclaimed funds in the 3rd-party commercial risk pool account
5 escheat to the State if the party has made no claim for refund.

6 When the State Auditor performs an annual postaudit of the Ground
7 Water Oil Clean-up Fund, the auditor shall prepare a separate
8 audit report of the 3rd-party commercial risk pool account. The
9 report must be maintained by the commissioner and made available
10 upon request to participants in the account.

12 Sec. 17. 38 MRSA §570, as repealed and replaced by PL 1987,
13 c. 735, §72, is amended to read:

14 **§570. Liability**

16 Because it is the intent of this subchapter to provide the
17 means for rapid and effective cleanup and to minimize direct
18 damages as well as indirect damages and the proliferation of
19 3rd-party claims, each responsible party is jointly and severally
20 liable for all disbursements made by the State pursuant to
21 section 569, subsection 5, paragraphs B, D, E and G and I, or
22 other damage incurred by the State, including interest computed
23 at 15% a year from the date of expenditure, except for costs
24 found by the commissioner to be eligible for coverage under the
25 fund. The commissioner shall demand reimbursement of costs and
26 payment of damages that are not eligible for coverage by the fund
27 to be recovered under this section and payment shall must be made
28 promptly by the responsible party or parties upon whom the demand
29 is made. If payment is not received by the State within 30 days
30 of the demand, the Attorney General may file suit in the Superior
31 Court and, in addition to relief provided by other law, may seek
32 punitive damages as provided in section 568. Notwithstanding the
33 time limits stated in this paragraph, neither a demand nor other
34 recovery efforts against one responsible party may relieve any
35 other responsible party of liability.

36 In any suit filed under this section, the State need not
37 prove negligence in any form or matter by a defendant. The State
38 need only prove the fact of the prohibited discharge and that a
39 defendant is a responsible party, as defined in section 562.

40 A person who would otherwise be a responsible party shall is
41 not be subject to liability under this section, if that person
42 can establish by a preponderance of the evidence that the
43 liability pursuant to this section for which that person would
44 otherwise be responsible, was caused solely by:

- 45 1. Act of God. An act of God; or
46 2. Act of war. An act of war.

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2 ~~3.--Act or omission.--An act or omission of a 3rd party who~~
 3 ~~is not that person's employee, agent or lessee.--A 3rd party may~~
 4 ~~include a subsequent owner or operator of the facility.--A person~~
 5 ~~seeking relief from liability for the acts or omissions of a 3rd~~
 6 ~~party shall also demonstrate by a preponderance of the evidence~~
 7 ~~that that person exercised due care with respect to the oil and~~
 8 ~~underground oil storage facility concerned, taking into~~
 9 ~~consideration the characteristics of that oil and facility, in~~
 10 ~~light of all relevant facts and circumstances and that that~~
 11 ~~person took precautions against foreseeable acts or omissions of~~
 12 ~~any such 3rd party and the consequences that could foreseeably~~
 13 ~~result from such acts or omissions, or~~

14 ~~4.--Combination.--Any combination of subsections 1 to 3.~~

16 **Sec. 18. 38 MRSA §570-A**, as enacted by PL 1985, c. 496, Pt.
 17 A, §14, is amended to read:

18

19 **§570-A. Budget approval**

20

21 The department commissioner shall submit its budget
 22 recommendations for disbursements from the fund in accordance
 23 with section 569, subsection 5, paragraphs A, C, F and G and H
 24 for each biennium. The budget shall must be submitted in
 25 accordance with Title 5, sections 1663 to 1666. The State
 26 Controller shall authorize expenditures ~~therefrom~~ from the fund
 27 as approved by the commissioner. Expenditures pursuant to
 28 section 569, ~~subsections~~ subsection 5, paragraphs B, D and E,
 29 E-1 and I may be made as authorized by the State Controller
 30 following approval by the commissioner.

32 **Sec. 19. 38 MRSA §570-B**, as amended by PL 1985, c. 785, Pt.
 33 B, §179, is further amended to read:

34

35 **§570-B. Personnel and equipment**

36

37 The department commissioner shall establish and maintain at
 38 such appropriate locations ~~as it shall determine to be~~
 39 ~~appropriate, such~~ employees and equipment ~~as in its judgment may~~
 40 be necessary to carry out this subchapter. The commissioner,
 41 subject to the Civil Service Law, may employ such personnel as
 42 may be necessary to carry out the purposes of this subchapter and
 43 shall prescribe the duties of those employees. The salaries of
 44 those employees and the cost of that equipment shall must be paid
 45 from the Ground Water Oil Clean-up Fund established by this
 46 subchapter.

48 **Sec. 20. 38 MRSA §570-F, 2nd ¶**, as enacted by PL 1985, c. 496,
 49 Pt. A, §14, is amended to read:

50

51 The board shall adopt rules for underground oil storage
 52 tanks facilities for storing waste oil. The board shall also

promulgate rules governing field-constructed, airport hydrant and heavy oil underground oil storage facilities. These rules shall are not be limited by the provisions of subchapter II-B.

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

§570-H. Reporting requirements

The following reports are required.

1. Wrap-around insurance. On or before March 1, 1991, the Bureau of Insurance shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources on the availability of insurance to cover costs not covered by the Ground Water Oil Clean-up Fund. The report must include information on the cost of premiums and the characteristics of coverage.

2. Adequacy of fund. On or before February 15, 1992, the commissioner with the cooperation of the Bureau of Insurance, shall report to the joint standing committee of the Legislature with jurisdiction over energy and natural resources on the department's experience administering the fund, the 3rd-party commercial risk pool account, clean-up activities and 3rd-party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change.

3. Review of availability. By January 15, 1998, the agency of the State having jurisdiction over insurance matters shall review the availability of on-site clean-up and 3rd-party liability insurance for underground oil storage facilities. This assessment must include the identification of any gaps in the availability of coverage, costs of coverage and a review of funds in other states providing insurance coverage.

Sec. 22. Allocation. The following funds are allocated from the Ground Water Oil Clean-up Fund to carry out the purposes of this Act.

1990-91

ENVIRONMENTAL PROTECTION,
DEPARTMENT OF

Ground Water Oil Clean-up Fund

Positions	(15)
Personal Services	\$465,512
All Other	8,438,787
Capital Expenditures	199,000

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2 Provides funds for 3 Assistant Engineer
 3 positions, 3 Environmental Specialist IV
 4 positions, 2 Environmental Specialist III
 5 positions, 2 Geologist positions, 2 Oil and
 6 Hazardous Materials Specialist II positions,
 7 a Senior Geologist position, an Oil and
 8 Hazardous Materials Specialist I position, a
 9 Data Control Clerk position, general
 10 operating expenses, expected clean-up costs
 11 and 3rd-party liability expenses.

12 **DEPARTMENT OF ENVIRONMENTAL**
 13 **PROTECTION**
 14 **TOTAL** \$9,103,299

15 **ATTORNEY GENERAL, DEPARTMENT OF THE**
 16 **Administration - Attorney General**

17
 18
 19
 20
 21 Positions (2)
 22 Personal Services \$65,540
 23 All Other 3,000

24
 25 Provides funds for 2 Assistant Attorney
 26 General positions and related expenses to
 27 carry out this Act.

28 **DEPARTMENT OF THE ATTORNEY GENERAL**
 29 **TOTAL** \$68,540

30 **TOTAL ALLOCATIONS** \$9,171,839

31
 32 **Sec. 23. Applicability.** An applicant may only apply for
 33 coverage by the fund of discharges that have not had any
 34 expenditure of state funds for clean-up costs or 3rd-party damage
 35 claims as of April 1, 1990, or discharges that have had no
 36 clean-up orders issued as of April 1, 1990.

37
 38
 39 **Sec. 24. Effective date.** Sections 15 to 22 of this Act take
 40 effect July 1, 1990, except that part of section 16 that amends
 41 Title 38, section 569, subsections 4, 4-A and 4-B, which takes
 42 effect May 1, 1990.

43
 44 **Sec. 25. Repeal.** Sections 15 to 23 of this Act are repealed
 45 December 31, 1999.

46
 47 **Emergency clause.** In view of the emergency cited in the
 48 preamble, this Act takes effect when approved, except as
 49 otherwise indicated.
 50

FISCAL NOTE

2
4 Enactment of this bill would:

6 1. Result in an increase in Other Special Revenue to the
8 Department of Environmental Protection (Ground Water Oil Clean-up
10 Fund, account #04535.2) in the amount of \$764,320 for fiscal year
1989-90 and \$9,171,839 for fiscal year 1990-91. These increases
in dedicated revenue represent amounts the department anticipates
from:

12 A. The proposed increase to 44¢ per barrel of gasoline, 25¢
14 per barrel of refined petroleum products and an increase to
16 10¢ per barrel on #6 fuel oil. These provisions are
expected to result in \$7,483,750 of dedicated revenue
annually. Also, this bill enacts future increases in 1994;

18 B. An additional \$35 registration fee for all underground
20 tanks except for personal residence. The dedicated revenue
22 derived from the proposed fee on a projected 21,451 tanks
with an estimated 75% compliance rate will be approximately
\$563,089; and

24 C. A commercial risk pool account that assesses a risk
26 based fee of \$130 on bare steel tanks used for commercial
28 purposes. The increase in dedicated revenue based on 11,538
commercial steel tanks, with a projected compliance rate of
30 75%, is expected to be approximately \$1,125,000. It should
be understood that as bare steel tanks are replaced, the
revenue from this source will decrease;

32 2. Require an allocation of Other Special Revenue to the
34 Department of Environmental Protection (Ground Water Oil Clean-up
Fund, account #04535.2) in the amount of \$9,103,299 for fiscal
36 year 1990-91. This allocation would provide funds for required
staff, administrative expenses, expected clean-up costs and
38 3rd-party liability expenses; and

40 3. Require an allocation of Other Special Revenue to the
42 Department of the Attorney General in the amount of \$68,540 for
fiscal year 1990-91. This allocation would provide funds for 2
Assistant Attorney General positions.'

44
46 **STATEMENT OF FACT**

48 This amendment establishes a state fund to provide financial
50 coverage of the costs related to oil discharges for owners and
operators of underground storage tanks that are in substantial
52 compliance with state law.

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2 The first 13 sections of the amendment amend technical
3 requirements for the installation and operation of underground
4 storage tanks to bring them into conformance with federal
5 requirements and to ensure the installation of technically sound
6 and reliable underground storage tanks. As of the effective date
7 of this Act, all new and replacement underground oil tanks will
8 have secondary containment. These sections also add additional
9 requirements for piping associated with underground oil storage
10 facilities and overflow and spill prevention equipment. A
11 registration fee of \$35 is assessed on all underground oil
12 storage tanks, except those at a personal residence.

13 The next sections of the amendment amend the Ground Water
14 Oil Clean-up Fund to cover most of the clean-up costs and
15 expenses incurred by 3rd parties for damages for discharges from
16 underground oil storage facilities that are installed and
17 operated in compliance with state law.

18 This fund, augmented by an increase in the per barrel fee on
19 gasoline, petroleum products and their by-products, provides
20 coverage for owners and operators of underground oil storage
21 facilities to meet federal requirements for insurance coverage
22 for their facilities. Owners and operators are eligible for
23 coverage upon request, provided they are in substantial
24 compliance with installation, removal and maintenance
25 requirements for their facilities, the facilities are not owned
26 or operated by the Federal Government or the facility is not
27 owned or the owner is not in partnership with an entity that owns
28 refining capacity. An applicant for coverage by the fund must
29 pay a portion of the costs involved with remediating the
30 discharge, based on the number of facilities the applicant owns.
31 The Commissioner of Environmental Protection may waive the
32 deductibility requirements for homeowners if they can not afford
33 the deductible. Any costs paid by the fund that exceed
34 \$1,000,000, will be recovered from the responsible party.

35 Coverage for 3rd-party damage claims is expanded from
36 current law to include all economic damages resulting from the
37 discharge up to \$200,000 per claimant, and these awards are not
38 considered exclusive remedies.

39 A commercial risk pool account is enacted as part of this
40 amendment. This account would cover the first \$100,000 of any
41 3rd-party damage claims resulting from a leak from any bare steel
42 tanks or tanks not cathodically protected in commercial use.
43 Owners of these tanks are required to pay an increased
44 registration fee in addition to being liable for increased
45 assessments if the fund is not sufficient to cover all the
46 eligible costs.

50

