

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1725

S.P. 632

In Senate, June 5, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

Joy J. O'Brien
JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KANY of Kennebec.

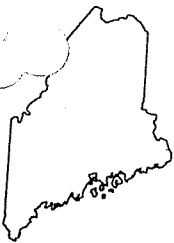
Cosponsored by Representative LORD of Waterboro, Representative MICHAUD of East Millinocket and Representative JACQUES of Waterville.

STATE OF MAINE

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

An Act to Amend Maine's Underground Oil Storage Law.

(After Deadline)



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

5 Whereas, the 90-day period may not terminate before the end
6 of the 1989 construction season; and

7 Whereas, the Department of Environmental Protection's
8 backlog of unresolved contaminated wells from leaking underground
9 oil storage facilities will increase substantially in that time;
10 and

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

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

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

25 **Sec. 1. 38 MRSA §562**, as amended by PL 1987, c. 787, §13, is
26 repealed and the following enacted in its place:

29 §562. Definitions

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

33 1. Barrel. "Barrel" means 42 United States gallons at 60
34 degrees Fahrenheit.

37 2. Board. "Board" means the Board of Environmental
38 Protection.

39 3. Cathodic protection tester. "Cathodic protection
40 tester" means an underground storage tank installer certified by
41 the Maine Board of Underground Oil Storage Tank Installers, or a
42 person who can otherwise demonstrate to the department's
43 satisfaction an understanding of the principles and measurements
44 of all common types of cathodic protection systems as applied to
45 buried metal piping and tank systems. At a minimum, such persons
46 must have education and experience in soil resistivity, stray
47 current, structure-to-soil potential and component electrical
48 isolation measurements of buried metal piping and tank systems.

51 4. Corrosion expert. "Corrosion expert" means a person who
52 is approved by the department by reason of thorough knowledge of

1 the physical sciences and the principles of engineering and
3 mathematics acquired by professional education and related
5 practical experience and is qualified to engage in the practice
7 of corrosion control on buried or submerged metal piping systems
9 and metal tanks. Such a person must be accredited as being
11 qualified by the National Association of Corrosion Engineers or
13 be a Maine registered professional engineer who has certification
15 or licensing that includes education and experience in corrosion
17 control of buried or submerged metal piping systems and metal
19 tanks.

21 5. Department. "Department" means the Commissioner of
23 Environmental Protection or the commissioner's staff.

25 6. Discharge. "Discharge" means any spilling, leaking,
27 pumping, pouring, emitting, escaping or dumping.

29 7. Double walled tank. "Double walled tank" means an
31 underground oil storage tank providing no less than 300 degree
33 secondary containment, interstitial space monitoring and
35 secondary containment for pressurized product delivery pipe
37 connections.

39 8. Existing underground oil storage facility or tank.
41 "Existing underground oil storage facility" and "existing
43 underground oil storage tank" means any such facility or tank, as
45 defined in subsections 18 and 19, fully installed as of July 1,
47 1989, and the location of which has not changed.

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

51 10. Heavy oil. "Heavy oil" means forms of oil, petroleum
53 products and petroleum by-products which must be heated during
55 storage, including, but not limited to, #5 and #6 oils.

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

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

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

1 14. Person. "Person" means any natural person, firm,
2 association, partnership, corporation, trust, the State and any
3 agency of the State, governmental entity, quasi-governmental
4 entity, the United States and any agency of the United States and
5 any other legal entity.

7 15. Responsible party. "Responsible party" means any one or
8 more of the following persons:

9
10 A. The owner or operator of the underground oil storage
11 facility where a prohibited discharge has occurred;

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

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

18 D. Any person who owned or operated the underground oil
19 storage facility from the time any oil, petroleum products
20 or their by-products arrived there.

21
22 16. Secondary containment. "Secondary containment" means a
23 system installed so that any material that is discharged or has
24 leaked from the primary containment is prevented from reaching
25 the soil or ground water outside the system for the anticipated
26 period of time necessary to detect and recover the discharged
27 material. Such a system may include, but is not limited to,
28 impervious liners, double walled tanks or any other method
29 demonstrated to the satisfaction of the department to be
30 technically feasible and effective.

31
32 17. Sensitive geologic areas. "Sensitive geologic areas"
33 means significant ground water aquifers and primary sand and
34 gravel recharge areas, as defined in section 482, locations
35 within 1,000 feet of a public drinking water supply and locations
36 within 300 feet of a private drinking water supply.

37
38 18. Underground oil storage facility. "Underground oil
39 storage facility," also referred to as "facility," means any
40 underground oil storage tank or tanks, as defined in subsection
41 19, together with associated piping and dispensing facilities
42 located under any land at a single location and used, or intended
43 to be used, for the storage or supply of oil, as defined in this
44 subchapter. Underground oil storage facility also includes
45 piping located under any land at a single location associated
46 with above ground storage tanks and containing 10% or more of the
47 facility's overall volume capacity.

1 19. Underground oil storage tank. "Underground oil storage
2 tank," also referred to as "tank," means any container, 10% or
3 more of which is beneath the surface of the ground and which is
4 used, or intended to be used, for the storage, use, treatment,
5 collection, capture or supply of oil as defined in this
6 subchapter, but does not include any tanks situated in an
7 underground area if these tanks or containers are situated upon
8 or above the surface of a floor and in such a manner that they
9 may be readily inspected.

11 **Sec. 2. 38 MRSA §563, sub-§2, ¶G,** as amended by PL 1987, c.
12 491, §7, is further amended to read:

13 G. For new, replacement or retrofitted tanks facilities,
14 the name of the installer, the expected date of installation
15 or retrofit, the nature of any emergency pursuant to
16 subsection 1, paragraph A, if applicable, and a description
17 or plan showing the layout of the facility or tank,
18 including, ~~for tanks in sensitive geologic areas,~~ the form
19 of secondary containment, ~~monitoring wells~~ other forms of
20 leak detection or equipment to be installed pursuant to
21 section 564, subsection 1, ~~paragraph paragraphs~~ paragraphs C, D-1 and E
22 and, where when applicable, the method of retrofitting leak
23 detection pursuant to section 564, subsection 2; and

24 **Sec. 3. 38 MRSA §563, sub-§2, ¶H,** as enacted by PL 1985, c.
25 496, Pt. A, §14, is amended to read:

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

28 **Sec. 4. 38 MRSA §563, sub-§2, ¶I** is enacted to read:

29 I. Expiration date of manufacturer's warranty.

30 **Sec. 5. 38 MRSA §563, sub-§3,** as amended by PL 1987, c. 402,
31 Pt. A, §199, is further amended to read:

32 3. Amended registration and reregistration required. The
33 owner or operator of an underground oil storage facility shall
34 file an amended registration form with the department immediately
35 upon any change in the information required pursuant to
36 subsection 2. No fee may be charged for filing an amended
37 registration. In addition, the owner or operator of an
38 underground oil storage facility shall file a reregistration form
39 with the department when the facility is modified or a change of
40 ownership occurs.

41 **Sec. 6. 38 MRSA §563, sub-§5,** as repealed and replaced by PL
42 1987, c. 491, §8, is repealed and the following enacted in its
43 place:
44

1 5. Penalty for failure to register or reregister. Any
2 person who has not submitted the reregistration form in
3 accordance with subsection 3 shall pay a penalty of \$100. This
4 does not preclude the department from seeking civil penalties
5 from any person who fails to register a facility or tank. The
6 board may establish, by rule, a late registration period not to
7 exceed 10 business days in duration during which time no penalty
8 may be assessed.

9
10 Sec. 7. 38 MRSA §563, sub-§§7 and 8 are enacted to read:

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

15 8. Certification of proper installation. Owners of new and
16 replacement facilities shall ensure that the installer provides
17 certification to the department, within 30 days of completion of
18 installation, that the materials and methods used comply with
19 applicable installation standards of this subchapter.

20 Sec. 8. 38 MRSA §563-B, sub-§1, as enacted by PL 1987, c. 491,
21 §10, is amended to read:

22 1. Investigation and removal. Procedures, methods, means
23 and equipment to be used in the investigation of discharges and
24 the removal of oil and petroleum pollutants;

25 Sec. 9. 38 MRSA §564, as amended by PL 1987, c. 491, §11, is
26 further amended to read:

27 §564. Regulation of underground oil storage facilities used to
28 store motor fuels and in the marketing and distribution of
29 oil

30 The board shall adopt rules necessary to minimize, to the
31 extent practicable, the potential for discharges of oil from
32 underground oil storage facilities and tanks used to store motor
33 fuel or used in the marketing and distribution of oil to others.
34 These rules are limited to the following requirements.

35 1. Design and installation standards for new and
36 replacement facilities. Design and installation standards for new
37 and replacement facilities are as follows.

38 A. All new and replacement tanks shall be constructed of
39 fiberglass, cathodically protected steel or other equally
40 noncorrosive material approved by the Department of
41 Environmental Protection. All new and replacement piping
42 shall be constructed of fiberglass, cathodically protected
43 steel or other noncorrosive material approved by the

1 Department of Environmental Protection. All below ground
3 ancillary equipment shall be constructed of cathodically
5 protected steel or noncorrosive materials approved by the
7 department. Both tanks and piping shall be constructed of
9 materials compatible with the product to be stored.
11 Anchoring shall be required of tanks when located in a site
13 with a high ground water table or in a 100-year flood plain.

15 B. All new and replacement facilities shall be installed in
17 accordance with the manufacturer's specifications and
19 nationally accepted standards, and by an underground oil
21 storage tank installer who has been properly certified
23 pursuant to Title 32, chapter 104-A, and shall be registered
25 with the department prior to installation pursuant to
27 section 563. New and replacement impressed current cathodic
29 protection systems must be designed by a corrosion expert
31 approved by the department.

33 C. For new and replacement facilities in in-sensitive-geologic
35 areas, the owner shall install at the time of installation,
37 a leak detection system capable of detecting a leak within
39 30 days with a probability of 95%. Those systems shall
41 include one of the following:

43 (1) Secondary containment of all underground oil
45 storage facility components or secondary containment
47 for the tank and suction piping sloped to the tank;

49 (2) Continuous electronic monitoring for free product
51 in those monitoring wells installed in the excavated
53 area around the tank or tanks, and additional wells
55 with electronic monitoring to detect a leak or
57 discharge of oil from the piping;

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

67 (4) A Manual ground water sampling capable of
69 detecting the presence of at least 1/8 inch of free
71 product on top of the ground water table in a
73 reasonable number of ground water monitoring wells
75 located installed in the excavated area around the tank
77 or around the perimeter of the facility, sampled tanks
79 with additional wells and tested that are sufficient to
81 detect any discharge of oil or contamination of ground
83 water from a facility. another form of
85 department-approved leak detection monitoring the
87 piping;

89

1 (5) Automatic tank gauging that can detect a 0.2
3 gallon per hour loss and a department approved method
 of leak detection for all piping; or

5 (6) Other leak detection systems approved by the
7 department that can detect a 0.2 gallon per hour leak
9 rate or a leak of 150 gallons in 30 days with a 95%
 probability of detecting a leak and a 5% chance of
 false alarm.

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

17 ~~D. The requirements set forth in paragraph B for new and~~
19 ~~replacement facilities in sensitive geologic areas may not~~
21 ~~be imposed solely due to the proximity of an underground oil~~
23 ~~storage tank to a private drinking water supply where the~~
25 ~~tank and private drinking water supply are located at the~~
27 ~~same site and are owned, operated or utilized by the same~~
29 ~~person or persons. In addition, the board shall adopt rules~~
 ~~to provide for exemptions from the requirements of paragraph~~
 ~~C in circumstances where the facility is to be installed~~
 ~~over a polluted aquifer where no unreasonable additional~~
 ~~harm to public health and safety or to the environment can~~
 ~~occur.~~

31 D-1. New and replacement piping shall be equipped with leak
33 detection. Pressurized piping shall be equipped with an
35 automated in-line leak detector and be monitored by a leak
37 detection system listed in paragraph C. Suction piping
 shall be installed to operate at less than atmospheric
 pressure, sloped to drain back into the tank with a loss of
 suction and installed with only one check valve located
 below and as close as practical to the suction pump.

39 E. For new and replacement facilities installed after
41 October 1, 1991, the owner shall install secondary
43 containment of all underground oil storage facility
45 components or secondary containment for all tanks and
 suction piping systems installed in accordance with
 paragraph D-1.

47 F. The board shall adopt rules exempting farm facilities
49 consisting of a tank with a capacity of 550 gallons or less
51 from the leak detection requirements set forth in paragraph
 C for new and replacement facilities if the owner conducts
 monthly manual tank gauging and the tank is not for
 commercial uses other than agriculture.

1 G. New, replacement and existing facilities shall be
3 required to provide overfill and spill prevention equipment.

5 1-A. Leak detection standards and procedures for existing
7 facilities. The board's rules shall require facility owners to
9 implement one of the following leak detection methods listed in
11 this subsection or properly abandon a facility in accordance with
13 section 566-A. The board's rules shall require facility owners
15 to retrofit leak detection for facilities with pressurized piping
17 by December 1, 1990, and for facilities with suction piping by
19 December 1, 1991. Leak detection methods are as follows:

21 A. Retrofitting of leak detection systems listed in
23 subsection 1, paragraphs C and D-1; or

25 B. Monthly reconciliation of daily product inventory data
27 and an annual precision test of all tanks and piping.
29 Pressurized piping shall also be retrofitted with an in-line
31 leak detector.

33 2. Monitoring, maintenance and operating procedures for
35 existing, new and replacement facilities and tanks. The board's
37 rules may require:

39 A. Collection of inventory data for each day that oil is
41 being added to or withdrawn from the facility or tank,
43 reconciliation of the data, with monthly summaries, and
45 retention of records containing all such data for a period
47 of at least 3 years either at the facility or at the
49 facility owner's place of business;

51 B. Annual statistical inventory analysis, the results of
53 which shall be reported to the department. Annual
55 statistical inventory analysis is not required for double
57 walled tanks equipped with interstitial space monitors;

59 C. ~~Annual--voltage~~ Voltage readings for cathodically
61 protected systems by a qualified cathodic protection tester
63 6 months after installation and annually thereafter;

65 D. Monthly inspections by a qualified cathodic protection
67 tester of the rectifier meter on impressed current systems;

69 E. Precision testing of any tanks and hydrostatic testing
71 of all piping showing evidence of a possible leak. Results
73 of all tests conducted shall be submitted to the department
75 by the facility owner and the person who conducted the test;

77 E-1. Proper calibration, operation and maintenance of leak
79 detection devices;

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

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

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

13 (2) Unexplained losses detected through statistical
15 analysis of inventory records;

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

21 (4) Failure of a tank precision test or hydrostatic
pipe test or other department-approved tank or piping
23 tightness test;

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

29 (6) Notwithstanding this paragraph, any actual leaks
or discharges of oil which occur on the premises,
31 including, without limitation, spills and overfills and
leaks, whether or not cleaned up;

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

35 I. Owners and operators, upon request by the department, to
37 sample their underground oil tanks, to maintain records of
all sampling results at the facility or the facility owner's
39 place of business and to furnish records of all such
sampling results to the department or, upon a 24-hour
41 notice, to permit the department to inspect and copy those
records; and

43 J. After a 24-hour notice, owners and operators to permit
45 the department and its designated representatives, including
its contractors, access to all underground oil storage
47 facilities for all purposes connected with administering
this chapter, including, without limitation, for sampling
49 the contents of underground oil tanks and monitoring wells.
Owners and operators are not to be held responsible for any
51 damage to property as a result of the department's pursuit
of the information allowed under this subchapter.

1 The requirements in paragraphs A and B do not apply to a
3 ~~double-walled-tank-containing-interstitial-space-monitoring-which~~
4 ~~has-been~~ facilities installed and is operated in accordance with
5 ~~the-requirements-of-this-subchapter,-including-rules-adopted~~
6 ~~under-this-subchapter,-and-utilizing-double-walled-piping-or-a~~
7 ~~product-delivery-system-using-a-suction-pump-or-other-system~~
8 ~~approved-by-the-department-which-has-been-installed~~ subsection 1
9 and is operated in accordance with the requirements of this
10 subchapter, ~~including-rules-adopted-under-this-subchapter.~~

11
12 3. Replacement of tanks at facilities where leaks have been
13 detected. If replacement or removal is required as a result of a
14 corrosion induced leak in an unprotected steel tank, the owner or
15 operator of the facility may either replace all other tanks and
16 piping at that facility not meeting the design and installation
17 standards promulgated pursuant to subsection 1 or comply with the
18 following:

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

23 B. Perform a statistical inventory analysis of the entire
24 facility and submit the results of that analysis to the
25 department. If a statistical inventory analysis of the
26 entire facility had been performed within 60 days prior to
27 the required replacement, then the results of that analysis
28 may be submitted to the department instead. If the results
29 of the statistical inventory analysis indicate evidence of a
30 leak at the facility or that the inventory data is not
31 available or is not sufficiently reliable to make a
32 determination that the facility is or is not leaking, the
33 department may require that all remaining tanks and piping
34 at the facility be precision tested, except that precision
35 testing shall not be required where it can be demonstrated
36 that the same tanks and piping passed a precision test
37 conducted within the previous 6 months; and

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

43 Results of all precision tests conducted pursuant to paragraph B
44 shall be submitted to the department, and all tanks and piping
45 found to be leaking shall be removed pursuant to section 566
46 566-A, or repaired to the satisfaction of the department.

1 4. Sampling of monitoring wells. Where a monitoring well
2 is installed at an underground oil storage facility storing motor
3 fuel or used for the marketing and distribution of oil, the owner
4 or operator shall be required to sample that well at least every
5 6-months monthly; to maintain records of all sampling results at
6 the facility or at the facility owner's place of business; and to
7 report to the department any sampling results showing evident
8 evidence of a possible leak or discharge of oil.

9
10 5. Mandatory facility replacement. Upon the expiration
11 date of a manufacturer's warranty for a tank installed in
12 accordance with subsection 1, the tank and its associated piping
13 shall be removed from service and properly abandoned in
14 accordance with section 566-A.

15 6. Compliance with federal regulations. The board may
16 adopt rules to ensure that requirements and standards governing
17 facilities falling under this section are no more stringent than
18 federal regulations promulgated under the United States Resource
19 Conservation and Recovery Act, Subtitle I.

20 **Sec. 10. 38 MRSA §565**, as amended by PL 1987, c. 491, §12, is
21 further amended to read:

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

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

37 1. **Design and installation standards for new and**
38 **replacement facilities.** Design and installation standards for new
39 and replacement tanks are as follows.

40 A. The installation of new or replacement tanks and piping
41 constructed of bare steel or asphalt-coated steel is
42 prohibited. All below ground ancillary equipment shall be
43 constructed of cathodically protected steel or noncorrosive
44 materials approved by the department.

1 B. All new and replacement facilities shall be installed by
3 an underground oil storage tank installer who has been
5 properly certified pursuant to Title 32, chapter 104-A, and
shall be registered with the department prior to
installation pursuant to section 563.

7 B-1. New and replacement facilities with a capacity in
9 excess of 1,100 gallons shall prevent overfills and spills
11 by the installation of overfill catchment basins, the use of
automatic shut-off devices or the use of an automatic alarm
when the tank is 90% full.

13 C. The installation of monitoring wells or other forms of
15 leak detection approved by the department shall be required
17 for new and replacement facilities with a capacity in excess
19 of 1,100 gallons where physically or technically
practicable. Monitoring-wells Other forms of leak detection
shall not be required where double wall walled tanks
equipped with interstitial space monitors are utilized.

21 2. Testing requirements and reporting of leaks for
23 existing, new and replacement facilities and tanks. Testing
25 requirements and reporting of leaks for existing, new and
replacement facilities and tanks are as follows.

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

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

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

49 D. For leak detection devices other than monitoring wells
51 installed at a facility governed by this section, the owner
or operator of the facility shall be required to test for
leaks at least once every 6 months; to maintain records of

1 all testing results at the facility or at the facility
2 owner's place of business; and to report to the department
3 any test results showing evidence of a possible leak or
4 discharge of oil.

5
6 **Sec. 11. 38 MRSA §566-A, sub-§§2 and 3, as enacted by PL 1987,**
7 **c. 491, §14, are amended to read:**

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

17
18 **3. Rulemaking.** The board shall adopt rules allowing for the
19 granting of a variance from the requirement of removal where
20 abandonment by removal is not physically possible or practicable
21 due to circumstances other than those listed in this subsection.
22 The board shall adopt rules setting forth the proper procedures
23 for abandonment of underground oil storage facilities and tanks,
24 including requirements and procedures to conduct a site
25 assessment of discharges of oil prior to completion of
26 abandonment at facilities storing motor fuel or used in the
27 marketing and distribution of oil and acceptable methods of
28 disposing of the removed tanks and procedures for abandonment in
29 place where removal of a tank or other component of a facility is
30 deemed not physically possible or practicable.

31
32 **Sec. 12. 38 MRSA, §568, sub-§1, as amended by PL 1987, c. 787,**
33 **§14, is further amended to read:**

34
35 **1. Removal.** Any person discharging or suffering a
36 discharge of oil, petroleum products or their by-products to
37 ground water in the manner prohibited by section 543 shall
38 immediately undertake to remove that discharge to the
39 department's satisfaction. Notwithstanding this requirement, the
40 commissioner may order the removal of that discharge pursuant to
41 subsection 3, or the department may undertake the removal of that
42 discharge and retain agents and contractors for that purpose who
43 shall operate under the direction of the department. Any
44 unexplained discharge of oil, petroleum products or their
45 by-products to ground water within state jurisdiction shall be
46 removed by or under the direction of the department. Any expenses
47 involved in the removal of discharges, whether by the person
48 causing the same, the person reporting the same or the department
49 by itself or through its agents or contractors, may shall be paid
50 ~~in-the-first-instance~~ from the Ground Water Oil Clean-up Fund and
51 ~~any-reimbursements-due-that-fund-shall-be-collected-in-accordance~~
~~with-section-569.~~

1
3 **Sec. 13. 38 MRSA §568, sub-3, ¶¶C to E** are enacted to read:

5 C. The department, after initial investigation and
7 preliminary determination that a discharge is likely to have
9 occurred, shall issue a first response clean-up order. The
11 first response clean-up order shall direct the responsible
13 party to cease the discharge immediately, take action to
15 prevent further discharge and mitigate or terminate this
17 threat.

19 D. Within 90 days of issuance of a first response clean-up
21 order, the department shall issue a final clean-up order.
23 The final clean-up order may include temporary and permanent
25 remedial action at the location threatened or affected by
27 the discharge. The final clean-up order may be amended by
the department during the course of the clean-up action.

29 E. Upon completion of the clean-up activity, the department
31 shall issue a letter to the responsible party or parties
33 indicating compliance with the clean-up order issued and
35 shall terminate any further remedial action on a
37 site-by-site basis. When more than one parcel of land has
39 been affected by a discharge, the department shall issue a
41 letter of compliance for each parcel, notwithstanding that
43 further remedial action will be ongoing on adjacent parcels.

45 **Sec. 14. 38 MRSA §568, sub-§4, ¶A,** as enacted by PL 1987, c.
47 735, §71, is amended to read:

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

39 **Sec. 15. 38 MRSA §568, sub-§4, ¶¶C and D** are enacted to read:

41 C. Notwithstanding paragraphs A and B, a person who
43 violates any provision of the laws or regulations
administered by the department shall be subject to the fines
and penalties in section 349.

45 D. Any person who is convicted under section 349,
47 subsection 1, of violating any provision of this subchapter
49 shall not be eligible for the payments provided for under
section 569, subsection 5, paragraph I.

51 **Sec. 16. 38 MRSA §568, sub-§5,** as enacted by PL 1987, c. 491,
§15, is amended to read:

1
3 **5. Acquisition of property; authority.** The department may
5 acquire, by purchase, lease, condemnation, donation or otherwise,
7 any real property or any interest in real property that ~~the board~~
9 ~~in its discretion determines, by 2/3 majority vote, is which it~~
11 deems necessary to conduct a for purposes of undertaking remedial
13 action under this subchapter actions in response to a discharge
15 of oil, including, but not limited to, actions to prevent further
17 discharge and to mitigate or terminate the threat of a discharge
19 of oil; actions to clean up and remove oil from waters of the
21 site; and replacement of water supplies contaminated by or at
23 imminent risk of contamination by a discharge of oil. There shall
25 be no cause of action to compel the board to acquire. The
27 department may exercise the right of eminent domain to take and
29 hold real property for these purposes, in the manner described in
31 Title 35-A, sections 6502 to 6512, and may transfer or convey to
33 any person that real property or any interest in that real
35 property under this subchapter once acquired.

37 ~~A. The board may use the authority in this subsection for a~~
39 ~~remedial action only if, before an interest in real estate~~
41 ~~is acquired under this subsection, the municipality in which~~
43 ~~the interest to be acquired is located assures the board~~
45 ~~through a contract or other legal agreement that the~~
47 ~~municipality will accept transfer of the interest following~~
49 ~~completion of the remedial action.~~

51 **Sec. 17. 38 MRSA §569, first ¶,** as amended by PL 1987, c. 521,
53 §11, is further amended to read:

55 The Ground Water Oil Clean-up Fund is established to be used
57 by the department as a nonlapsing, revolving fund for carrying
59 out the purposes of this subchapter. The fund shall be limited
61 to \$15,000,000. To this fund shall be credited all registration
63 fees, fees for late payment or failure to register, penalties,
65 transfer fees, reimbursements and other fees and charges related
67 to this subchapter. ~~To this fund shall be charged any and all~~
69 ~~expenses of the department related to this subchapter, including~~
71 ~~administrative expenses, payment of 3rd party damages covered by~~
73 ~~this subchapter, costs of removal of discharges of oil and costs~~
75 ~~of cleanup of discharges, including, but not limited to,~~
77 ~~restoration of water supplies and any obligations of the State~~
79 ~~pursuant to Title 10, section 1024, subsection 1.~~

81 **Sec. 18. 38 MRSA §569, sub-§2-A,** as enacted by PL 1987, c.
83 491, §17, is amended to read:

85 **2-A. Third-party damages.** Any person claiming to have
87 suffered actual damages ~~to real estate or personal property or~~
89 ~~loss of income directly or indirectly~~ as a result of a discharge
91 of oil to ground water prohibited by section 543, in this
93 subsection called the claimant, may apply within 6 months after

1 the occurrence or discovery of the discharge to the board stating
2 the amount of damage alleged to be suffered as a result of that
3 discharge. The board shall prescribe appropriate forms and
4 details for the applications. The board, upon petition and for
5 good cause shown, may waive the 6-month limitation for filing
6 damage claims.

7
8 A. If the claimant and the board are able to agree as to
9 the amount of the damage claim, the board shall certify the
10 amount of the claim and the name of the claimant to the
11 Treasurer of State and the Treasurer of State shall pay the
12 amount of the claim from the Ground Water Oil Clean-up Fund.

13
14 B. If the claimant and the board are not able to agree as to
15 the amount of the damage claim, the board shall forthwith
16 transmit the claim for action to the department as provided
17 in this subchapter.

18
19 C. A claimant shall take all reasonable measures to
20 minimize damages suffered by the claimant as a result of a
21 discharge of oil.

22
23 D. Third-party damage claims shall be stated in their
24 entirety in one application. Damages omitted from any claim
25 at the time the award is made shall be deemed waived.

26
27 E. Damage claims arising under this subchapter are
28 recoverable only in the manner provided under this
29 subchapter. It is the intent of the Legislature that the
30 remedies provided for such damage claims in this subchapter
31 are exclusive.

32
33 F. Awards from the fund on damage claims shall not include
34 any amount which the claimant has recovered, on account of
35 the same damage, by way of settlement with or judgment of a
36 court of competent jurisdiction against the person causing
37 or otherwise responsible for the discharge.

38
39 **Sec. 19. 38 MRSA §569, sub-§4**, as repealed and replaced by PL
40 1987, c. 769, Pt. A, §177, is amended to read:

41
42 **4. Funding.** A fee of ~~3¢~~ 23¢ per barrel of gasoline and ~~2¢~~
43 21¢ per barrel of refined petroleum products and their
44 by-products other than gasoline and liquid asphalt, including #6
45 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, shall
46 be assessed on the transfer of those products by oil terminal
47 facility licensees, as defined in section 542, subsection 7.
48 These fees shall be paid monthly by the oil terminal facility
49 licensees on the basis of records certified to the department.
50 All such transfer fees shall be credited to the Ground Water Oil
51 Clean-up Fund upon receipt by the department.

1 **Sec. 20. 38 MRSA §569, sub-§4-A** is enacted to read:

3 **4-A. Over-the-road and over-the-rail oil transportation**
4 **fees.** Any person who is required to register with the department
5 pursuant to section 545-B and who first transports oil in the
6 State shall pay fees, which shall be determined on the basis of
7 23¢ per barrel of gasoline and 21¢ per barrel of refined
8 petroleum products and their by-products other than gasoline and
9 liquid asphalt, including #6 fuel oil, #2 fuel oil, kerosene, jet
10 fuel and diesel fuel transported by the registrant during the
11 period of registration. Fees shall be paid monthly by the
12 registrant on the basis of record certified to the department.
13 Fees shall be paid to the department and upon receipt by it
14 credited to the Ground Water Oil Clean-up Fund. The registrant
15 shall make available to the department and its authorized
16 representatives all documents relating to the oil transported by
17 the registrant during the period of registration. This
18 subsection shall not apply to waste oil which is transported into
19 the State in any motor vehicle which has a valid license issued
20 by the department for the transportation of waste oil pursuant to
21 section 1319-O and which is subject to fees established under
22 section 1319-I.

23 **Sec. 21. 38 MRSA §569, sub-§5, ¶A**, as enacted by PL 1985, c.
24 496, Pt. A, §14, is amended to read:

25 A. Administrative expenses, personnel expenses and
26 equipment costs of the department related to the enforcement
27 of this subchapter and any loans to the Maine Coastal and
28 Inland Surface Oil Clean-up Fund made pursuant to this
29 section. Administrative expenses, personnel expenses and
30 equipment costs shall not exceed \$1,650,000 per fiscal year;

31 **Sec. 22. 38 MRSA §569, sub-5, ¶G**, as amended by PL 1985, c.
32 626, §9, is further amended to read:

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

40 **Sec. 23. 38 MRSA §569, sub-5, ¶H**, as enacted by PL 1985, c.
41 626, §10, is amended to read:

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

44 **Sec. 24. 38 MRSA §569, sub-5, ¶I** is enacted to read:

1 I. Payments to or on behalf of responsible parties for
3 expenses incurred in department approved clean-up
5 activities. Periodic payments from the fund shall be made
7 within 30 days after application for payment unless an
9 independent hearing examiner, appointed by the commissioner,
11 has disallowed some or all of the claimed expenses as
13 unreasonable or excessive. Determinations made by the
 hearing examiner shall be 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 responsible party seeking review of a
 hearing examiner determination shall file an appeal in the
 Superior Court within 30 days of the determination.

15 **Sec. 25. 38 MRSA §569, sub-§6, as amended by PL 1987, c. 491,**
17 **§21, is further amended to read:**

19 6. Reimbursements to the Ground Water Oil Clean-up Fund.
21 The department shall not seek recovery for the use of the fund of
23 all sums expended from the fund, including overdrafts, for the
25 purposes described in subsection 5, paragraphs B, D, E and G, or
27 for other damage incurred by the State, in connection with a
29 prohibited discharge, including interest computed at 15% a year
31 from the date of expenditure, unless the department 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 be turned over to the Attorney
 General for collection. reimbursement of sums expended on or
 after December 31, 1986, from the fund from responsible parties
 except under the following circumstances:

33 A. The department shall not seek reimbursement from
35 responsible parties who own or operate 10 or fewer
37 underground oil storage facilities used in the marketing and
 distribution of oil, or who own underground oil storage
 facilities used for consumptive use on the premises;

39 B. The department shall seek reimbursement of \$5,000 per
41 incident per year, \$25,000 aggregate per year, from
43 responsible parties who own or operate between 11 and 20
 underground oil storage facilities used in the marketing and
 distribution of oil;

45 C. The department shall seek reimbursement of \$10,000 per
47 incident per year, \$50,000 aggregate per year, from
49 responsible parties who own or operate between 21 and 50
 underground oil storage facilities used in the marketing and
 distribution of oil; or

51 D. The department shall seek reimbursement of \$25,000 per
 incident per year, \$100,000 aggregate per year, from
 responsible parties who own or operate more than 51

1 underground oil storage facilities used in the marketing and
3 distribution of oil.

5 Sec. 26. 38 MRSA §569, sub-§7, as enacted by PL 1985, c. 496,
Pt. A, §14, is repealed.

7 Sec. 27. 38 MRSA §570, as repealed and replaced by PL 1987,
c. 735, §72, is repealed.

9
11 Sec. 28. 38 MRSA §570-F, 2nd ¶, as enacted by PL 1985, c. 496,
Pt. A, §14, is amended to read:

13 The board shall adopt rules for underground oil storage
15 tanks facilities for storing waste oil. The board may also
17 promulgate rules governing field constructed, airport hydrant and
heavy oil underground oil storage facilities. These rules shall
not be limited by the provisions of subchapter II-B.

19 **Emergency clause.** In view of the emergency cited in the
21 preamble, this Act shall take effect when approved.

23
25
27 **STATEMENT OF FACT**

29 This bill amends the State's current laws governing the
31 prevention of leaks and spills at underground oil storage
33 facilities to be as stringent as federal law and regulations.
35 Enactment will allow the Department of Environmental Protection
37 to apply to administer the federal program, thereby avoiding a
39 situation where underground tank owners and operators are
regulated by both state law and the United States Environmental
Protection Agency. This bill also provides greater protection of
ground water resources in sensitive geological areas and ground
water used as drinking water by requiring more stringent leak
detection. The bill provides the department with greater
authority to acquire property rights needed to clean up leaking
underground oil storage facilities and to develop replacement
drinking water systems.