

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1675

H.P. 1150

House of Representatives, April 24, 1991

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

A handwritten signature in cursive script that reads "Ed Pert".

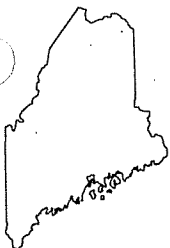
EDWIN H. PERT, Clerk

Presented by Representative JACQUES of Waterville.
Cosponsored by Representative ANDERSON of Woodland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Clarify the Laws Pertaining to Underground Oil Storage Tanks.



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

2
4 **Sec. 1. 38 MRSA §562-A, sub-§7-A** is enacted to read:

6 **7-A. Environmental assessment.** "Environmental assessment"
8 means determining the extent to which a prohibited discharge may
10 have affected the soil in and around the facility, including a
12 plan based on a realistic assessment of the potential exposure
14 and adverse effects upon humans, wildlife or ecological systems
16 as well as a consideration of economic reasonableness and
18 engineering feasibility, to mitigate the impact of that
20 discharge, if that discharge has occurred.

22 **Sec. 2. 38 MRSA §563-A, sub-§1**, as affected by PL 1989, c.
24 890, Pt. A, §40 and amended by Pt. B, §136 and c. 926, §2, is
26 repealed and the following enacted in its place:

28 **1. Compliance schedule.** Except as provided in subsections
30 1-A and 1-B, a person may not operate, maintain or store oil in a
32 registered underground oil storage facility or tank that is not
34 constructed of fiberglass, cathodically protected steel or other
36 noncorrosive material approved by the department after:

38 A. October 1, 1989, if that facility or tank is more than
40 15 years old and is located in a sensitive geological area;

42 B. October 1, 1991, if that facility or tank is more than
44 25 years old or if that facility or tank is more than 15
46 years old and is located in a sensitive geological area;

48 C. October 1, 1994, if that facility or tank is more than
50 20 years old or if that facility or tank is more than 15
 years old and is located in a sensitive geological area; and

D. October 1, 1997.

If a person who is otherwise required to remove an underground
 oil storage facility or tank in accordance with the time period
 prescribed by paragraphs A to D is unable to secure financing for
 that removal or is unable to obtain the services of a certified
 underground oil storage tank installer or remover as required
 under section 566-A, the deadlines for removing underground oil
 storage tanks and facilities contained in paragraphs A to D must
 be waived or extended for as long as necessary to obtain the
 financing or services.

Sec. 3. 38 MRSA §568, as amended by PL 1989, c. 865, §14 and
 affected by c. 890, Pt. A, §40 and amended by Pt. B, §146, is
 repealed and the following enacted in its place:

§568. Cleanup and removal of prohibited discharges

2 1. Removal. Any person discharging or suffering a
3 discharge of oil to ground water in the manner prohibited by
4 section 543 and any responsible party shall immediately undertake
5 to remove that discharge to the commissioner's satisfaction.
6 Notwithstanding this requirement, the commissioner may order the
7 removal of that discharge pursuant to subsection 3, or may
8 undertake the removal of that discharge and retain agents and
9 contractors for that purpose who shall operate under the
10 direction of the commissioner. Any unexplained discharge of oil
11 to ground water within state jurisdiction must be removed by or
12 under the direction of the commissioner. Any expenses involved
13 in the removal of discharges, whether by the person causing the
14 discharge, the person reporting the discharge, the commissioner
15 or the commissioner's agents or contractors, may be paid in the
16 first instance from the Ground Water Oil Clean-up Fund, including
17 any expenses incurred by the State under subsection 3, and any
18 reimbursements due that fund must be collected in accordance with
19 section 569.

20
21 2. Restoration of water supplies. The commissioner may
22 clean up any discharge of oil and take temporary and permanent
23 remedial actions at locations threatened or affected by the
24 discharge of oil, including restoring or replacing water supplies
25 contaminated or threatened by oil with alternatives the
26 commissioner finds are cost effective, technologically feasible
27 and reliable and that effectively mitigate or minimize damage to
28 and provide adequate protection of the public health, welfare and
29 the environment. When the remedial action taken includes the
30 installation of a public water supply, the fund may be used to
31 pay costs of operation, maintenance and depreciation of the water
32 supply for a period not exceeding 20 years. The commissioner
33 shall consult with the affected party prior to selecting the
34 alternative to be implemented.

35 3. Issuance of clean-up orders. The commissioner may
36 investigate and sample sites where an oil discharge has or may
37 have occurred to identify the source and extent of the
38 discharge. During the course of the investigation, the
39 commissioner may require submission of information or documents
40 that relate or may relate to the discharge under investigation
41 from any person who the commissioner has reason to believe may be
42 a responsible party. If the commissioner finds, after
43 investigation, that a discharge of oil has occurred and may
44 create a threat to public health or the environment, including,
45 but not limited to, contamination of a water supply, the
46 commissioner may issue a clean-up order requiring the responsible
47 party to cease the discharge immediately or to take action to
48 prevent further discharge and to mitigate or terminate the threat
49 of human exposure to contamination or to explosive vapors. In
50 addition to other actions, the commissioner may, as part of any

2 clean-up order, require the responsible party to provide
4 temporary drinking water and water treatment systems approved by
6 the commissioner, to sample and analyze wells and to compensate
8 3rd-party damages resulting from the discharge. The commissioner
10 may also order that the responsible party take temporary and
12 permanent remedial actions at locations threatened or affected by
14 the discharge of oil, including a requirement that the
responsible party restore or replace water supplies contaminated
with oil with water supplies the commissioner finds are cost
effective, technologically feasible and reliable and that
effectively mitigate or minimize damage to, and provide adequate
protection of, the public health, welfare and the environment.
Clean-up orders may be issued only in compliance with the
following procedures.

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

22 B. A responsible party to whom such an order is directed
24 may apply to the board for a hearing on the order if the
26 application is made within 10 working days after receipt of
28 the order by a responsible party. The board shall appoint
30 an independent hearing examiner to hold a hearing as soon as
32 possible after receipt of the application. The nature of
34 the hearing must be an appeal. At the hearing, all
36 witnesses must be sworn and the commissioner shall first
38 establish the basis for the order and for naming the person
40 to whom the order was directed. The burden of going forward
42 then shifts to the person appealing to demonstrate, based
upon a preponderance of evidence, that the order should be
modified or rescinded. Within 7 days after the hearing, the
hearing examiner shall make findings of fact. The board
shall vote to accept, reject or modify the findings of the
hearing examiner at the next regularly scheduled board
meeting and shall continue, revoke or modify the
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.

44 C. Upon completion of the clean-up activity, the department
46 shall issue a letter to the responsible party or parties,
48 indicating that the clean-up order has been complied with
50 and that no further remedial action is required. When more
than one parcel of land has been affected by a discharge,
the department shall issue a letter of compliance for each
parcel regardless of further remedial action continuing to
take place on adjacent parcels.

2. 4. Enforcement; penalties; punitive damages. Enforcement,
4 penalties and punitive damages are as follows.

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

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

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

44 5. Land acquisition. Upon approval of the board by 2/3
46 majority vote, the department may acquire by purchase, lease,
48 condemnation, donation or otherwise, any real property or any
50 interest in real property, to undertake remedial actions in
response to a discharge of oil, including, but not limited to:

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

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

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

The department may exercise the right of eminent domain in the
manner described in Title 35-A, chapter 65, to take and hold real
property to provide drinking water supplies to replace those
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.

50 Sec. 4. 38 MRSA §568-A, sub-§1, ¶A, as enacted by PL 1989, c.
865, §15 and affected by §§24 and 25, is amended to read:

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

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

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

14 (3) Documentation that the applicant is in substantial
compliance with the ~~requirements--of--paragraph--B-~~
16 following requirements:

18 (a) The compliance schedule in section 563-A for
20 nonconforming facilities except that those
22 facilities or tanks required to be removed by
24 October 1, 1989 have until October 1, 1991 to be
26 removed before they are considered out of
compliance, unless the compliance schedule is
waived or extended pursuant to section 563-A,
subsection 1;

28 (b) Any outstanding consent agreement or clean-up
order issued by the commissioner under section
30 568, subsection 3, regarding violations of this
subchapter;

32 (c) Any outstanding court order or consent decree
34 regarding violations of this subchapter;

36 (d) For motor fuel storage and marketing and
retail facilities:

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

44 (ii) Overfill and spill prevention equipment
46 under section 564, subsection 1-B, and any
rules adopted pursuant to that subsection; and

48 (iii) Under section 564, subsection 2,
50 paragraphs B to H, not including paragraph F,
and any rules adopted pursuant to that
subsection;

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50
52

(e) For consumptive use heating oil facilities:

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

(ii) Section 565, subsection 2; and

(f) 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:

(i) Design and installation, if applicable;

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

(iii) Overfill and spill prevention;

(iv) Monitoring of cathodic protection systems;

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

(vi) Maintenance of a leak detection system; and

(vii) Reporting leaks.

The burden of proof to show a lack of substantial compliance is on the department. The commissioner shall make written findings of fact when making a determination under this paragraph. These findings are subject to appeal to the board. The board's decision is subject to judicial review pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

The commissioner shall, within 30 days of receipt of the applicant's request for coverage by the fund submitted pursuant to subsection 1, paragraph A issue an order approving or denying the applicant's request. Failure to issue an order within this period constitutes an automatic approval of the applicant's request for coverage by the fund.

Sec. 5. 38 MRSA §568-A, sub-§1, ¶B, as enacted by PL 1989, c. 865, §15 and affected by §§24 and 25, is repealed.

Sec. 6. 38 MRSA §569, first ¶, as amended by PL 1989, c. 865, §16 and affected by §§24 and 25, is further amended to read:

2 The Ground Water Oil Clean-up Fund is established to be used
4 by the department as a nonlapsing, revolving fund for carrying
6 out the purposes of this subchapter. The fund must be limited to
8 \$15,000,000. When the fund reaches \$15,000,000 the collection of
10 fees, as prescribed under subsections 4 and 4-A, abates until the
12 fund balance is reduced to \$12,500,000, at which point those fees
14 must be reimposed until the fund reaches \$15,000,000. To this
16 fund are credited all registration fees, fees for late payment or
18 failure to register, penalties, transfer fees, reimbursements,
assessments and other fees and charges related to this
subchapter. To this fund are charged any and all expenses of the
department related to this subchapter, including administrative
expenses, payment of 3rd-party damages covered by this
subchapter, costs of removal of discharges of oil 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.

20 **Sec. 7. 38 MRSA §569, sub-§4-A, ¶A,** as enacted by PL 1989, c.
22 865, §16 and affected by §§24 and 25, is further amended to read:

24 A. Until January 1, 1994, and after January 1, 1998, a fee
26 is assessed of 44¢ per barrel of gasoline; 25¢ per barrel of
28 refined petroleum products and their by-products other than
30 gasoline, liquid asphalt and #6 fuel oil, including #2 fuel
32 oil, kerosene, jet fuel and diesel fuel; and 10¢ per barrel
34 of #6 fuel oil. The fee is assessed on the first intrastate
36 transfer of those products by oil terminal facility
38 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 1319-0 and
which is subject to fees established under section 1319-I.

40 **Sec. 8. 38 MRSA §569, sub-§4-C** is enacted to read:

42 **4-C. Reimbursement for fees imposed on intrastate**
44 **transfers.** Any person who, prior to the effective date of this
46 **section, has paid an import fee that was assessed on an**
interstate transfer pursuant to subsection 4 or 4-A must be
reimbursed by the department upon presentation of documentation
of that payment and transfer.

2

STATEMENT OF FACT

4

This bill:

6

1. Defines environmental assessment;

8

2. Provides for a waiver or extension of the deadline for removal of tanks when the owner is unable to secure financing or the services of an underground tank installer or remover;

10

12

3. Requires the Department of Environmental Protection to issue a letter indicating compliance with a clean-up order once the cleanup has been completed;

14

16

4. Clarifies the standards for eligibility for the Ground Water Protection Fund;

18

5. Makes technical changes in the codification of the law;

20

6. Provides a deadline by which the department must render its determination of an applicant's eligibility for fund coverage;

22

24

7. Provides for a cap on the Ground Water Oil Clean-up Fund;

26

8. Clarifies that the assessment of the import fee applies only to the first intrastate and not interstate transfers of oil; and

28

30

9. Provides for reimbursement of import fees paid on interstate transfers of oil.

32