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H.P. 1258 House of Representatives, May 8, 1991

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

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative MICHAUD of East Millinocket.
Cosponsored by Representative JACQUES of Waterville, Senator TITCOMB of Cumberland and Representative LORD of Waterboro.

STATE OF MAINE

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

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

(EMERGENCY)

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

Whereas, the Department of Environmental Protection's underground storage tank program has been underway for a number of years; and

Whereas, this Act is necessary to make state law conform with federal law and clears up inconsistencies within the Maine Revised Statutes; 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-A, sub-§§2 and 19, as enacted by PL 1989, c. 865, §2, are amended to read:

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

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

Sec. 2. 38 MRSA §564, sub-§1, ¶A, as repealed and replaced by PL 1991, c. 66, Pt. B, §3, is amended to read:

A. All new and replacement tanks, piping and below ground ancillary equipment must be constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the department. All new and replacement tanks must include secondary containment, continuous monitoring of the interstitial spaces for all piping and below ground ancillary equipment except for suction piping systems installed in accordance with subsection 1-A. Both tanks and piping must be constructed of materials compatible with the product to be stored. Anchoring is required of tanks when located in a site where the ground water is expected to reach the bottom of the tank or in a 100-year flood plain.

Sec. 3. 38 MRSA §564, sub-§1-A, as enacted by PL 1989, c. 865, §10, is amended to read:

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

(c) Secondary containment with interstitial space monitoring; or

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

(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 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; or

(6) Other leak detection systems approved by the department that can detect a 0.2 gallon per hour leak 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.

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

~~New and replacement~~ Existing piping must be equipped with leak detection. Pressurized piping must be equipped with an automated in-line leak detector and be monitored by a leak detection system listed in paragraph A or B. Suction piping must 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. Product piping that does not meet these suction piping criteria must be monitored by a leak detection system listed in paragraph B.

Sec. 4. 38 MRSA §564, sub-§2-A, ¶J, as enacted by PL 1991, c. 66, Pt. B, §5, is amended to read:

J. 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 the facility owner's place of business and to furnish records of all monitoring and sampling results to the commissioner ~~or~~ and to permit the commissioner or the commissioner's representative to inspect and copy those records; and

Sec. 5. 38 MRSA §564, sub-§5, as enacted by PL 1989, c. 865, §10, is amended to read:

5. Mandatory facility replacement. Upon the expiration date of a manufacturer's warranty for a tank installed in accordance with subsection 1 or for an existing facility installed after 1985, the tank and its associated piping must be removed from service and properly abandoned in accordance with section 566-A.

Sec. 6. 38 MRSA §565, sub-§1, ¶B-1, as enacted by PL 1989, c. 865, §11, is amended to read:

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

Sec. 7. 38 MRSA §568, sub-§§2 and 3, as repealed and replaced by PL 1991, c. 66, Pt. A, §28, are amended to read:

2. Restoration of water supplies. The commissioner may clean up any discharge of oil and take temporary and permanent remedial actions at locations threatened or affected by the discharge of oil, including restoring or replacing water supplies contaminated or threatened by oil with alternatives 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. When the remedial action taken includes the installation of a public water supply or the extension of mains of an existing utility, the department's obligation is limited to construction of those works that are necessary to furnish the contaminated or potentially contaminated properties with a supply of water sufficient for existing uses. The department is not obligated to contribute to a utility's system development charge or to provide works or water sources exceeding those required to abate the threats or hazards posed by the discharge. The fund

may be used to pay costs of operation, maintenance and depreciation of the works or water supply for a period not exceeding 20 years. The commissioner shall consult with the affected party prior to selecting the alternative to be implemented.

3. Issuance of clean-up orders. The commissioner may investigate and sample sites where an oil discharge has or may have occurred to identify the source and extent of the discharge. During the course of the investigation, the commissioner may require submission of information or documents that relate or may relate to the discharge under investigation from any person who the commissioner has reason to believe may be a responsible party. If the commissioner finds, after investigation, that a discharge of oil has occurred and may create a threat to public health or the environment, including, but not limited to, contamination of a water supply, the commissioner may issue a clean-up order requiring the responsible party to cease the discharge immediately ~~or~~ and to take action to prevent further discharge and to mitigate or terminate the threat of human exposure to contamination or to explosive vapors. In addition to other actions, the commissioner may, as part of any clean-up order, require the responsible party to provide temporary drinking water and water treatment systems approved by the commissioner, to sample and analyze wells and to compensate 3rd-party damages resulting from the discharge. The commissioner may also order that the responsible party take temporary and permanent remedial actions at locations threatened or affected by 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.

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

B. A responsible party to whom such an order is directed may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by a responsible party. The board shall appoint an independent hearing examiner to hold a hearing as soon as possible after receipt of the application. The nature of the hearing must be an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order was directed. The burden of going forward

then shifts to the person appealing to demonstrate, based upon a preponderance of the 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.

Sec. 8. 38 MRSA §568, sub-§4, ¶¶A and B, as repealed and replaced by PL 1991, c. 66, Pt. A, §28, are amended to read:

A. Any person who causes, or is responsible for, a discharge to ground water in violation of section 543 is not 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~~ commissioner and the board.

B. Any responsible party who fails ~~without sufficient cause~~ to undertake removal or remedial action promptly in accordance with a clean-up order issued pursuant to 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 failure to take prompt action.

Sec. 9. 38 MRSA §568-A, sub-§1, ¶B, as enacted by PL 1989, c. 865, §15 and affected by §§24 and 25, is amended to read:

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

(1) The compliance schedule, in section 563-A, for nonconforming facilities except that those facilities 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;

(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 requirements in effect at the time of the 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 any rules adopted pursuant to that subsection; ~~and~~

(c) Section 564, subsection ~~2~~ 2-A, paragraphs B to ~~-H-~~ I, not including paragraph ~~-F-~~ G, and any rules adopted pursuant to that subsection; and

(d) Payment of any fees required under section 569, subsection 4-A, paragraph C;

(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 requirements in effect at the time of the 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 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.

Sec. 10. 38 MRSA §569, sub-§2-A, ¶I is enacted to read:

I. If the commissioner finds under section 568, subsection 2 that a public water supply is available and best meets the criteria of that subsection and the property owner does not agree to have that system installed, the 3rd-party damage claim for property damage may not exceed the value of the property with a public water supply installed.

Sec. 11. 38 MRSA §570-F, first ¶, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §154, is repealed and the following enacted in its place:

Nothing in this subchapter may be construed to authorize the department to require registration of or to regulate the installation or operation of underground tanks used:

1. Propane storage. For the storage of propane; or

2. Oil-water separator. As an oil-water separator, provided that the separator is used:

A. To treat storm water surface runoff; or

B. Solely for treatment and not storage of oil.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

STATEMENT OF FACT

Comprehensive changes to the State's underground oil storage tank program were enacted by the 114th Legislature in 1989. This bill corrects several technical errors that were enacted as part of those changes.