

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1502, L.D. 2114, Bill, "An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection's Bureau of Hazardous Materials and Solid Waste Control"

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, serious inequities exist between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund statutes as a result of emergency legislation effective April 1990, which preclude the Department of Environmental Protection from dealing equitably with claimants with respect to medical expenses, drinking water and other issues; and

Whereas, it is necessary that these inequities be resolved in order to prevent any injustice or hardship to the citizens of Maine; and

Whereas, there is a need to facilitate reimbursements to the Maine Hazardous Waste Fund to ensure adequate resources for the operation of hazardous waste management and response programs; 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Sec. 1. 32 MRSA §10006, sub-§3, ¶A, as amended by PL 1989, c. 845, §6, is repealed.

COMMITTEE AMENDMENT

2 Sec. 2. 32 MRSA §10006, sub-§3, ¶¶B and C, as enacted by PL
4 1989, c. 312, §4, are amended to read:

6 B. A Class 2 underground oil storage tank installer may
8 install or remove any type of underground oil storage tank,
10 with the exception of field-constructed, ~~heavy underground~~
 oil storage ~~of~~ tanks and impressed-current
 ~~cathodically-protected~~ cathodically protected tanks.

12 C. A Class 3 underground storage tank installer may only
14 install or remove underground oil storage tanks for the
16 storage of #2 heating oil. Class 3 installers are not
 certified to install or remove field-constructed underground
 oil storage tanks, heavy oil storage or impressed-current
 ~~cathodically-protected~~ cathodically protected tanks.

18 Sec. 3. 32 MRSA §10006, sub-§3, ¶D, as amended by PL 1989, c.
20 845, §6, is repealed.

22 Sec. 4. 32 MRSA §10006, sub-§4, as enacted by PL 1989, c. 312,
 §4, is amended to read:

24 4. Proper underground gasoline storage tank remover
26 certification class required. No person may remove or advertise
 to remove an underground gasoline storage tank unless the person
28 is certified in accordance with this chapter or for fire-fighting
 personnel, Title 38, section 566-A, subsection 5.

30 Sec. 5. 32 MRSA §10010, sub-§3-A, ¶A, as amended by PL 1989,
32 c. 845, §8, is repealed.

34 Sec. 6. 32 MRSA §10010-C is enacted to read:

36 §10010-C. Examination of fire-fighting personnel
38 Fire-fighting personnel may apply to the board to be
40 examined on their ability to supervise the removal of underground
42 oil storage tanks storing Class 1 liquids pursuant to Title 38,
 section 566-A, subsection 5. The board shall provide the
 commissioner with completed applications and examination results
 and may adopt rules to administer this section.

44 Sec. 7. 32 MRSA §10011, sub-§1, as amended by PL 1987, c. 410,
46 §14, is further amended to read:

48 1. Requirement fees. Only a person satisfying the
50 requirements of section 10010, subsections 1 and 2, may apply for
 examination in such ~~a~~ the manner as prescribed by the board
 prescribes. The application shall must be accompanied by the

2 nonrefundable fee prescribed by section 10012. A person who
3 fails either part of the applicable examination specified in
4 section 10010, subsection 3 ~~or~~, 4, or 5 may apply for
reexamination upon payment of the prescribed fee.

6 **Sec. 8. 38 MRSA §341-G, sub-§1**, as enacted by PL 1989, c. 890,
Pt. A, §13 and affected by §40, is amended to read:

8
10 1. **Transfer funds.** The amount transferred from each fund
11 must be proportional to that fund's contribution to the total
12 special revenues received by the department under chapter 2,
13 subchapter 2; ~~section sections~~ 551, ~~section-569~~, 569-A and 569-B;
14 and chapter 13, subchapter 4. Any funds received by the board
from the General Fund must be credited towards the amount owed by
the Maine Environmental Protection Fund, chapter 2, subchapter 2.

16 **Sec. 9. 38 MRSA §542, sub-§3-A** is enacted to read:

18
20 3-A. Coastal waters. "Coastal waters" means all waters of
the State within the rise and fall of the tide and within the
22 marine limits of the jurisdiction of the State but does not
include areas above any fishway or dam when the fishway or dam is
24 the dividing line between tidewater and fresh water.

26 **Sec. 10. 38 MRSA §548, last ¶**, as affected by PL 1989, c. 890,
Pt. A, §40 and amended by Pt. B, §114, is further amended to read:

28 Any unexplained discharge of oil within state jurisdiction
30 or discharge of oil occurring in waters beyond state jurisdiction
that for any reason penetrates within state jurisdiction must be
32 removed by or under the direction of the commissioner. Any
expenses involved in the removal or cleanup of discharges,
34 including the restoration of water supplies contaminated by
discharges from interstate pipelines and other discharges
36 prohibited by section 543, whether by the person causing--the
~~discharge--the--person~~ reporting the discharge, the commissioner
or the commissioner's agents or contractors, must be paid in the
38 first instance from the Maine Coastal and Inland Surface Oil
Clean-up Fund and any reimbursements due that fund must be
40 collected in accordance with section 551.

42 **Sec. 11. 38 MRSA §551, sub-§2**, as affected by PL 1989, c. 890,
Pt. A, §40 and amended by Pt. B, §117, is further amended to read:

44
46 2. **Third-party damages.** Any person, claiming to have
suffered property damage or actual economic damages ~~to--real~~
~~estate--or--personal--property--or~~, including, but not limited to,
48 loss of income and medical expenses arising from physical bodily

injury, directly or indirectly as a result of a discharge of oil, prohibited by section 543, including all discharges of oil from interstate pipelines, hereinafter in this subsection called the claimant, may apply within 6 12 months after the occurrence of such a discharge to coastal waters and for other surface discharges within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to be have been suffered as a result of such that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The ~~board~~ commissioner may, upon petition and for good cause shown, waive the ~~6-months'~~ time limitation for filing damage claims.

A. If ~~When~~ a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the 3rd-party damage claim process as an interested party. A responsible party shall provide written notification to the department of the responsible party's intent to join within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, the determination of the amount of the claim and award is binding in any subsequent action for reimbursement to the fund. If a claimant has not been compensated for 3rd-party damages by the responsible party and the claimant, the responsible party and the commissioner ~~and--the--person causing--the--discharge--can~~ agree as to the amount of the damage claim, ~~or if the responsible party does not join as an interested party or in-the-case-where~~ when the person causing the discharge responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the ~~discharger,--if~~ responsible party, and the claimant and the commissioner ~~can~~ agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same amount of the claim from the Maine Coastal and Inland Surface Oil Clean-up Fund.

B. If the claimant, the responsible party and the commissioner ~~and--the--person--causing--the--discharge--can~~ are not able to agree as to the amount of the damage claim, ~~or in-the-case-where-the-person-causing-the-discharge~~ if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the ~~discharger,--if~~ responsible party, and the claimant and

2 the commissioner can are not able to agree as to the amount
of the damage claim, the claim shall ~~forthwith~~ be
4 ~~transmitted for action to the Board of Arbitration~~ as
provided in this subchapter is subject to subsection 3-A.

6 C. ~~Third-party~~ Third-party damage claims shall must be
stated in their entirety in one application. Damages omitted
8 from any claim at the time the award is made shall ~~be deemed~~
are waived unless the damage or injury was not known at the
10 time of the claim.

12 D. Damage claims arising under this subchapter shall ~~be~~
that are a result of a prohibited discharge to coastal
14 waters are recoverable only in the manner provided under
this subchapter, it being the intent of the Legislature that
16 the remedies provided in this subchapter for discharges to
coastal waters are exclusive.

18 E. Awards from the fund on damage claims shall may not
20 include any amount which the claimant has recovered, on
account of the same damage, by way of settlement with the
22 responsible party or the responsible party's representatives
or judgment of ~~the federal courts~~ a court of competent
24 jurisdiction against the ~~person causing or otherwise~~
responsible ~~for the discharge~~ party to the extent these
26 amounts are duplicative.

28 F. A claimant shall take all reasonable measures to prevent
and minimize damages suffered by the claimant as a result of
30 a discharge of oil. Reasonable measures include title
searches and site assessments for the acquisition of
32 commercial or industrial properties.

34 G. The remedies provided for ~~3rd-party~~ damage claims
compensated under this subchapter are nonexclusive for
36 damages that are not a result of prohibited discharges to
coastal waters. A court awarding damages to a claimant as a
38 result of a discharge of oil to surface waters prohibited by
section 543 shall reduce damages awarded by any amounts
40 received from the fund to the extent these amounts are
duplicative.

42 H. Payments from the fund for 3rd-party damage claims may
44 not exceed \$200,000 per claimant except when the damages are
a result of a discharge to coastal waters.

46 I. A 3rd-party damage claim for damages to real estate may
48 not include the devaluation of the real estate associated
with the loss of a water supply if the commissioner finds
50 under section 548 that a public or private water supply is

2 available and if that water supply best meets the criteria
3 of that section and the property owner did not agree to be
4 served by that public or private water supply.

5 J. A responsible party is not eligible for compensation
6 under this subsection for costs, expenses or damages related
7 to the specific discharge for which the responsible party is
8 determined responsible.

9 K. Prior to forwarding a claim to the hearing examiner
10 under subsection 3-A, the commissioner may require that the
11 amount of the claim be finalized.

12 L. Third-party damage claims may not include expenditures
13 for the preparation and prosecution of the damage claim,
14 such as legal fees or real estate appraisal fees.

15 **Sec. 12. 38 MRS §551, sub-§2-B is enacted to read:**

16 2-B. Claimant contact. When the commissioner becomes aware
17 of a claimant under subsection 2, the commissioner shall send a
18 letter by certified mail to inform that person of the 3rd-party
19 damage claims process under subsection 2. The letter must
20 contain the name and telephone number of a contact person
21 available to explain the claims procedure.

22 **Sec. 13. 38 MRS §551, sub-§3, as amended by PL 1985, c. 496,**
23 **Pt. A, §13, is repealed.**

24 **Sec. 14. 38 MRS §551, sub-§3-A is enacted to read:**

25 3-A. Determination of disputed 3rd-party damage claims.
26 The commissioner shall establish a disputed claims processing
27 capability within the department to hear and determine claims
28 filed under this subchapter that are not agreed upon by the
29 claimant and the commissioner and any responsible party who has
30 joined as an interested party.

31 A. An independent hearing examiner appointed by the
32 commissioner shall hear and determine any disputed 3rd-party
33 damage claims. The parties to the hearing are the
34 commissioner and the claimant.

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

38 C. Hearings before the hearing examiner are informal and
39 the rules of evidence applicable to judicial proceedings are
40 not binding. The hearing examiner may administer oaths and

2 require by subpoena the attendance and testimony of
4 witnesses and the production of books, records and other
6 evidence relative or pertinent to the issues presented to
8 the hearing examiner for determination.

10 D. Determinations made by the hearing examiner are final
12 and those determinations may be subject to review by a
14 Justice of the Superior Court, but only as to matters
16 related to abuse of discretion by the hearing examiner. The
18 commissioner or a claimant seeking review of a hearing
20 examiner's determination must file an appeal in the Superior
22 Court within 30 days of the determination.

24 E. The commissioner shall certify the amount of the damage
26 award, if any, after determination by the hearing examiner
28 and shall certify the name of the claimant to the Treasurer
30 of State.

32 **Sec. 15. 38 MRSA §551, sub-§4, ¶B, as amended by PL 1985, c.**
34 **496, Pt. A, §13, is repealed.**

36 **Sec. 16. 38 MRSA §551, sub-§4, ¶E is enacted to read:**

38 E. When the commissioner projects that the fund balance
40 will reach \$6,000,000, the commissioner shall provide a
42 15-day notice that the per barrel fees assessed under this
44 subsection will be suspended. The \$6,000,000 fund limit may
46 be exceeded to accept transfer fees assessed or received
48 after the 15-day notice has been issued. Following any
50 suspension of fees assessed under this subsection, the
commissioner shall provide a 15-day advance notice to
licensees before fees are reimposed.

Sec. 17. 38 MRSA §551, sub-§5, ¶A, as affected by PL 1989, c.
890, Pt. A, §40 and amended by Pt. B, §121, is further amended to
read:

A. Administrative expenses, personnel expenses and
equipment costs of the commissioner related to the
enforcement of this subchapter and any loans to the Ground
Water Oil Clean-up Fund made pursuant to section 569 569-A
or 569-B;

Sec. 18. 38 MRSA §551, sub-§5, ¶G, as amended by PL 1989, c.
868, §6, is repealed.

Sec. 19. 38 MRSA §551, as amended by PL 1991, c. 454, §§8 to
12 and affected by §14, is further amended by adding at the end a
new paragraph to read:

2 For purposes of subsections 2 and 3-A, the term "responsible
3 party" means any person discharging oil in the manner prohibited
4 under section 543 or any person who is liable as a licensee to
5 the extent provided in section 552, subsection 1.

6 **Sec. 20. 38 MRSA §566-A, sub-§4**, as affected by PL 1989, c.
7 890, Pt. A, §40 and amended by Pt. B, §145, is further amended to
8 read:

10 **4. Commissioner role.** If the owner of an underground oil
11 storage facility or tank fails to properly abandon the facility
12 or tank within a reasonable time period, the commissioner may
13 undertake the abandonment. The commissioner shall collect any
14 reimbursement due the Ground Water Oil Clean-up Fund in
15 accordance with section 569 569-A or 569-B.

16 **Sec. 21. 38 MRSA §566-A, sub-§5**, as amended by PL 1991, c. 88,
17 §2, is further amended to read:

20 **5. Qualified personnel.** All abandoned facilities and tanks
21 used for the storage of Class 1 liquids that require removal must
22 be removed under the direct, on-site supervision of an
23 underground oil storage tank installer certified pursuant to
24 Title 32, chapter 104-A, or of certified fire-fighting personnel,
25 except for underground gasoline storage tanks removed pursuant to
26 subsection 6. The Board of Underground Oil Storage Tank
27 Installers may examine and upon passage of the examination the
28 commissioner may certify fire-fighting personnel to supervise the
29 removal of Class 1 underground oil storage facilities upon
30 passage of the examination for an underground gasoline storage
31 tank remover. Fire-fighting personnel may only supervise the
32 removal of an underground facility or tank:

34 **A.** Within the municipality with which they are affiliated
35 or within the jurisdiction that the municipality with which
36 they are affiliated has a compact; and

38 **B.** If the fire-fighting personnel have written
39 authorization from the municipality with which they are
40 affiliated.

42 **Sec. 22. 38 MRSA §568, sub-§1**, as repealed and replaced by PL
43 1991, c. 66, Pt. A, §28, is amended to read:

44 **1. Removal.** Any person discharging or suffering a
45 discharge of oil to ground water in the manner prohibited by
46 section 543 and any responsible party shall immediately undertake
47 to remove that discharge to the commissioner's satisfaction.
48 Notwithstanding this requirement, the commissioner may order the
49 removal of that discharge pursuant to subsection 3, or may
50

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2 undertake the removal of that discharge and retain agents and
3 contractors for that purpose who shall operate under the
4 direction of the commissioner. Any unexplained discharge of oil
5 to ground water within state jurisdiction must be removed by or
6 under the direction of the commissioner. Any expenses involved
7 in the removal of discharges, whether by the person causing the
8 discharge, the person reporting the discharge, the commissioner
9 or the commissioner's agents or contractors, may be paid in the
10 first instance from the Ground Water Oil Clean-up Fund, including
11 any expenses incurred by the State under subsection 3, and any
12 reimbursements due that fund must be collected in accordance with
13 section 569 569-A or 569-B.

14 **Sec. 23. 38 MRSA §568-A, sub-§2,** as amended by PL 1991, c.
15 494, §12, is further amended to read:

16 **2. Deductibles.** Applicants eligible for coverage by the
17 fund under subsection 1 ~~must~~ shall pay the initial costs for
18 expenses resulting from cleaning up and compensating eligible
19 3rd-party damages from a discharge prohibited under section 543
20 on a per occurrence basis according to the following schedule:

	Number of facilities owned by facility owner	Costs paid by applicant
26	1	\$2,500
	2 to 5	5,000
28	6 to 10	10,000
	11 to 30	50,000
30	over 30	100,000

32 The commissioner shall pay any eligible additional costs up to
33 \$1,000,000 associated with activities under section 569 569-A,
34 subsection 5 g, paragraphs B, D and I J resulting from a
35 discharge from the fund. The commissioner may pay any costs
36 eligible for coverage by the fund above \$1,000,000 from the fund
37 but the commissioner shall recover these expenditures from the
38 responsible party pursuant to section 569 569-A.

40 **Sec. 24. 38 MRSA §568-A, sub-§5,** as enacted by PL 1989, c.
41 865, §15 and affected by §§24 and 25, is amended to read:

42 **5. Uncompensated 3rd-party damage claims.** If within 12
43 months of a claim, a person designated as a responsible party by
44 the commissioner refuses to pay 3rd-party damage claims not
45 covered by the fund, the commissioner may pay these claims from
46 the fund pursuant to section 569 569-A, subsection 2-A 2 or
47 section 569-B, subsection 2. Any amount so paid must be
48 recovered from the responsible party pursuant to section 569
49 569-A or 569-B.

2 Sec. 25. 38 MRSA §569, as amended by PL 1991, c. 433, §§4 to
6 and affected by §7 and amended by c. 439, §6 and c. 494, §§13
4 and 14, is repealed.

6 Sec. 26. 38 MRSA §§569-A and 569-B are enacted to read:

8 §569-A. Ground Water Oil Clean-up Fund

10 The Ground Water Oil Clean-up Fund is established to be used
12 by the department as a nonlapsing, revolving fund for carrying
14 out the purposes of this subchapter. The balance in the fund is
16 limited to \$15,000,000. To this fund are credited all
18 registration fees, fees for late payment or failure to register,
20 penalties, transfer fees, reimbursements, assessments and other
22 fees and charges related to this subchapter. To this fund are
24 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.

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

36 Money in the fund not needed currently to meet the
38 obligations of the department in the exercise of its
40 responsibilities under this subchapter and not on loan to the
42 Maine Coastal and Inland Surface Oil Clean-up Fund must be
deposited with the Treasurer of State to the credit of the fund
and may be invested as provided by law. Interest received on
that investment must be credited to the fund.

44 A 3rd-party commercial risk pool account is established
46 within the fund to pay 3rd-party damage claims for claims
48 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
8, paragraphs D, E and F associated with those claims. The
commissioner may retain consultants to administer these funds.

2 1. Research and development. The Legislature may allocate
4 not more than \$100,000 per year of the amount then currently in
6 the fund to be devoted to research and development in the causes,
8 effects and removal of pollution caused by oil on ground waters
10 of the State. These allocations must be made in accordance with
12 section 570-A.

14 2. Third-party damages. Any person claiming to have
16 suffered property damage or actual economic damages, including,
18 but not limited to, loss of income and medical expenses directly
20 or indirectly as a result of a discharge of oil to ground water
22 prohibited by section 543, in this subsection called the
24 "claimant," may apply to the commissioner within 2 years after
26 the occurrence or discovery of the injury or damage, whichever
28 date is later, stating the amount of damage alleged to have been
30 suffered as a result of that discharge. The commissioner shall
32 prescribe appropriate forms and details for the applications.
34 The commissioner may contract with insurance professionals to
36 process claims. The commissioner, upon petition and for good
38 cause shown, may waive the 2-year limitation for filing damage
40 claims. For claims made on discharges eligible for coverage by
42 the 3rd-party commercial risk pool account, the commissioner
44 shall pay the first \$100,000 per claimant out of the 3rd-party
46 commercial risk pool account as long as funds are available. The
48 commissioner shall pay any claims that exceed \$100,000 or
50 available money in the 3rd-party commercial risk pool account
from the fund.

30 A. When a responsible party is known, the commissioner
32 shall send by certified mail to the responsible party notice
34 of claim and written notice of the right to join the claims
36 proceeding as an interested party. A responsible party
38 shall provide written notification of intent to join to the
40 department within 10 working days of receipt of this
42 notice. If the responsible party joins as an interested
44 party and formally agrees in writing to the amount of the
46 damage claim, any determination of the amount of the claim
48 and award is binding in any subsequent action for
50 reimbursements to the fund. If a claimant is not
compensated for 3rd-party damages by the responsible party
or the expenses are above the applicant's deductible and the
claimant, the responsible party and the commissioner agree
as to the amount of the damage claim, or if the responsible
party does not join as an interested party or when the
responsible party is not known after the commissioner has
exercised reasonable efforts to ascertain the responsible
party, and the claimant and the commissioner agree as to the
amount of the damage claim, the commissioner shall certify
the amount of the claim and the name of the claimant to the
Treasurer of State and the Treasurer of State shall pay the
amount of the claim from the fund.

2 B. If the claimant, the responsible party and the
4 commissioner are not able to agree as to the amount of the
6 damage claim, or if the responsible party does not join as
8 an interested party in a timely manner or when the
10 responsible party is not known after the commissioner has
 exercised reasonable efforts to ascertain the responsible
 party, and the claimant and the commissioner are not able to
 agree as to the amount of the damage claim, the claim is
 subject to subsection 4.

12 C. A claimant shall take all reasonable measures to prevent
14 and minimize damages suffered by the claimant as a result of
16 a discharge of oil. Reasonable measures include title
 searches and site assessments for the acquisition of
 commercial or industrial properties.

18 D. Third-party damage claims must be stated in their
20 entirety in one application. Damages omitted from any claim
22 at the time the award is made are waived unless the damage
 or injury was not known at the time of the claim.

24 E. Awards from the fund on damage claims may not include
26 any amount the claimant has recovered on account of the same
28 damage by way of settlement with the responsible party or
 the responsible party's representative or judgment of a
 court of competent jurisdiction against the person causing
 or otherwise responsible for the discharge.

30 F. It is the intent of the Legislature that the remedies
32 provided for 3rd-party damage claims compensated under this
34 subchapter are nonexclusive. A court awarding damages to a
36 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.

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

42 H. A 3rd-party damage claim for damages to real estate may
44 not include the devaluation of the real estate associated
46 with the loss of a water supply if the commissioner finds
48 under section 568, subsection 2 that a public or private
 water supply is available and best meets the criteria of
 that subsection and the property owner did not agree to be
 served by that public or private water supply.

50 I. A responsible party is not eligible for compensation
 under this subsection for costs, expenses or damages related

2 to the specific discharge for which the responsible party is
3 deemed responsible.

4 J. Prior to forwarding a claim to the hearing examiner
5 under subsection 4, the commissioner may require that the
6 amount of the claim be finalized.

8 K. Third-party damage claims may not include expenditures
9 for the preparation and prosecution of the damage claim such
10 as legal fees or real estate appraisal fees.

12 3. Claimant contact. When the commissioner becomes aware
13 of a claimant under subsection 2, the commissioner shall send a
14 letter by certified mail to inform that person of the 3rd-party
15 damage claims process under subsection 2. The letter must
16 contain the name and telephone number of a contact person
17 available to explain the claims procedure.

18 4. Determination of disputed 3rd-party damage claims. The
19 commissioner shall establish a disputed claims processing
20 capability within the department to hear and determine claims
21 filed under this subchapter that are not agreed upon by the
22 claimant and the commissioner.

24 A. An independent hearing examiner appointed by the
25 commissioner shall hear and determine any disputed 3rd-party
26 damage claims. The parties to the hearing are the
27 commissioner and the claimant.

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

34 C. Hearings before the hearing examiner are informal and
35 the rules of evidence prevailing on judicial proceedings are
36 not binding. The hearing examiner may administer oaths and
37 require by subpoena the attendance and testimony of
38 witnesses and the production of books, records and other
39 evidence relative or pertinent to the issues presented to
40 the hearing examiner for determination.

42 D. Determinations made by the hearing examiner are final
43 and those determinations may be subject to review by a
44 Justice of the Superior Court, but only as to matters
45 related to abuse of discretion by the hearing examiner. A
46 claimant seeking review of a hearing examiner determination
47 shall file an appeal in the Superior Court within 30 days of
48 the determination.

2 E. The commissioner shall certify the amount of the damage
3 award, if any, after determination by the hearing examiner
4 and shall certify the name of the claimant to the Treasurer
5 of State.

6 5. Funding. Funding for the Ground Water Oil Clean-up Fund
7 is as follows.

8
9 A. Until January 1, 1994 and after January 1, 1998, a fee
10 is assessed of 44¢ per barrel of gasoline; 25¢ per barrel of
11 refined petroleum products and their by-products other than
12 gasoline, liquid asphalt and #6 fuel oil, including #2 fuel
13 oil, kerosene, jet fuel and diesel fuel; and 10¢ per barrel
14 of #6 fuel oil. The fee is assessed on the first transfer
15 of those products by oil terminal facility licensees, as
16 defined in section 542, subsection 7, and on a person
17 required to register with the commissioner under section
18 545-B who first transports oil into the State. The fee is
19 not assessed on petroleum products that are exported from
20 this State. These fees must be paid monthly on the basis of
21 records certified to the commissioner. This subsection does
22 not apply to waste oil transported into the State in any
23 motor vehicle that has a valid license issued by the
24 department for the transportation of waste oil pursuant to
25 section 1319-O and is subject to fees established under
26 section 1319-I.

27
28 B. After January 1, 1994, the fees assessed in paragraph A
29 increase to 48¢ per barrel of gasoline and 27¢ per barrel of
30 refined petroleum products and their by-products other than
31 gasoline, liquid asphalt and #6 fuel oil, including #2 fuel
32 oil, kerosene, jet fuel and diesel fuel. The fee is not
33 assessed on petroleum products that are exported from this
34 State. The fees assessed on #6 fuel oil remain at 10¢ per
35 barrel. This paragraph is repealed on January 1, 1998.

36
37 C. The owner or operator of an underground oil storage
38 facility that stores motor fuel or is used in the marketing
39 and distribution of oil shall pay an annual fee of \$130 per
40 tank not constructed of fiberglass, cathodically protected
41 steel or other noncorrosive material. These funds must be
42 deposited in the 3rd-party commercial risk pool account. If
43 the funds in the account are inadequate to pay the claims,
44 costs and expenses for which payment from the account is
45 authorized, the board may increase the per tank assessment
46 up to \$500 per tank. Any shortfall in the account occurring
47 after the maximum assessment has been levied must be paid
48 out of the fund. Upon payment of the annual fee, the
49 commissioner shall issue a certificate of coverage for the
50 tank.

2 D. When the fund balance reaches \$15,000,000, the
4 collection of fees under paragraphs A and B abates. When
6 the commissioner projects that the fund balance will reach
8 \$15,000,000, the commissioner must provide a 15-day advance
10 notice of the abatement to persons assessed the fee under
12 paragraphs A and B. The \$15,000,000 fund limit may be
 exceeded to accept transfer fees assessed or received after
 the 15-day notice has been issued. When the fund balance is
 reduced to \$12,500,000, the fees assessed under paragraphs A
 and B are reimposed. The commissioner shall provide a
 15-day advance notice of the reimposition of those fees.

14 6. Allocation from Ground Water Oil Clean-up Fund. From
16 the fees assessed in subsection 5, 6¢ per barrel of gasoline,
18 refined petroleum products and their by-products, other than
 liquid asphalt, must be transferred by the department upon
 receipt as follows.

20 A. Sixty-two and one half percent of the 6¢ per barrel fee
22 must be transferred to the Finance Authority of Maine for
24 deposit in the Underground Oil Storage Replacement Fund, and
26 after \$3,000,000 has been transferred to the Maine State
 Housing Authority pursuant to paragraph B, 100% of the 6¢
 per barrel fee must be transferred to the Finance Authority
 of Maine.

28 B. Thirty-seven and one half percent of the 6¢ per barrel
30 fee must be transferred to the Maine State Housing Authority
32 for deposit in the Housing Opportunities for Maine Fund to
34 be used initially for loans and grants to finance the costs
36 of removal, disposal, replacement or abandonment of
38 underground oil storage facilities and tanks located on
40 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 \$3,000,000 has been transferred, the
 Maine State Housing Authority does not receive a percentage
 of the 6¢ per barrel fee.

42 After an aggregate sum of \$10,000,000 has been transferred to the
44 Finance Authority of Maine and an aggregate sum of \$3,000,000 has
46 been transferred to the Maine State Housing Authority pursuant to
 this subsection, the per barrel fee assessed pursuant to
 subsection 5 must be reduced by 6¢ per barrel.

48 7. Reimbursement for fees imposed on transfers out of
50 State. Any person who prior to October 9, 1991 has paid a fee
 assessed pursuant to subsection 5, paragraph A on petroleum
 products that were exported from this State must be reimbursed by

2 the department upon presentation of documentation of that payment
3 and transfer.

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

8 A. Administrative expenses, personnel expenses and
9 equipment costs of the department related to the
10 administration and enforcement of this subchapter and any
11 loans to the Maine Coastal and Inland Surface Oil Clean-up
12 Fund made pursuant to this section. Administrative
13 expenses, personnel expenses and equipment costs may not
14 exceed \$1,734,000 per fiscal year;

16 B. All costs involved in the removal of a prohibited
17 discharge, the abatement of pollution and the implementation
18 of remedial measures, including restoration of water
19 supplies, related to the discharge of oil to ground water
20 covered by this subchapter not paid by a responsible party
21 or an applicant for coverage by the fund;

22 C. Sums allocated to research and development in accordance
23 with this section;

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

30 E. Payment of costs of hearings, independent hearing
31 examiners and independent claims adjusters for 3rd-party
32 damage claims;

34 F. Payment of costs of the administration of the 3rd-party
35 commercial risk pool account;

36 G. Payment of costs of insurance by the State to extend or
37 implement the benefits of the fund;

40 H. Sums up to \$50,000 each year, which have been allocated
41 by the Legislature on a contingency basis in accordance with
42 section 570-A for payment of costs for studies of the
43 environmental impacts of discharges to ground water
44 prohibited by section 543 that may have adverse economic
45 effects and that occur subsequent to the allocation, when
46 the studies are considered necessary by the commissioner;

48 I. All costs associated with the Board of Underground Oil
49 Storage Tank Installers; and

50

2 J. Payments to or on behalf of applicants eligible for
3 coverage by the fund under section 568-A, subsection 1 for
4 expenses above the deductible specified in section 568-A,
5 subsection 2 incurred in commissioner-approved clean-up
6 activities and specified in an agreement under section
7 568-A, subsection 4.

8 9. Reporting mechanism. If the potential liabilities of
9 the fund exceed projected income for the fund, the commissioner
10 shall notify the joint standing committee of the Legislature
11 having jurisdiction over energy and natural resources matters
12 within 30 days of determining that a shortfall will occur and
13 submit recommendations for revising coverage of the fund or
14 generating the needed income.

15 10. Reimbursements to fund. The commissioner shall seek
16 recovery for the use of the fund of all sums greater than
17 \$1,000,000 per occurrence expended from the fund pursuant to
18 subsection 8, paragraph J for an applicant for coverage by the
19 fund found by the commissioner to be eligible under section
20 568-A, subsection 1 and all sums expended from the fund when no
21 applicant was found by the commissioner to be eligible under
22 section 568-A, subsection 1; including overdrafts, for the
23 purposes described in subsection 8, paragraphs B, D, E, H and J
24 or for other damage incurred by the State, in connection with a
25 prohibited discharge, including interest computed at 15% a year
26 from the date of expenditure, unless the commissioner finds the
27 amount involved too small or the likelihood of success too
28 uncertain. If a request for reimbursement to the fund is not
29 paid within 30 days of demand, the commissioner shall refer the
30 request to the Attorney General or to a collection agency, agent
31 or attorney retained by the department with the approval of the
32 Attorney General in conformance with Title 5, section 191 for
33 collection.

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

38 A. An act of war; or

39 B. An act of God, which means an unforeseeable act
40 exclusively occasioned by the violence of nature without the
41 interference of any human agency.

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

2 12. Extinguishing the 3rd-party commercial risk pool
3 account. When all claims against the 3rd-party commercial risk
4 pool account have been extinguished and, in the judgment of the
5 commissioner, provision for payment of any potential 3rd-party
6 claims against the account have been made, the commissioner shall
7 refund any excess funds in the account to those persons who paid
8 an annual fee into the account. The commissioner shall make
9 refunds in the proportion that the owner's or operator's total
10 contribution bears to the total contributions to the fund. Two
11 years after notice to the operator's or owner's last address,
12 unclaimed funds in the 3rd-party commercial risk pool account
13 escheat to the State if the party has made no claim for refund.

14
15 When the State Auditor performs an annual postaudit of the Ground
16 Water Oil Clean-up Fund, the auditor shall prepare a separate
17 audit report of the 3rd-party commercial risk pool account. The
18 report must be maintained by the commissioner and made available
19 upon request to participants in the account.

20 13. Repeal date. This section is repealed on December 31,
21 1999.

22
23 **§569-B. Ground Water Oil Clean-up Fund**

24
25 The Ground Water Oil Clean-up Fund is established to be used
26 by the department as a nonlapsing, revolving fund for carrying
27 out the purposes of this subchapter. To this fund are credited
28 all registration fees, fees for late payment or failure to
29 register, penalties, transfer fees, reimbursements and other fees
30 and charges related to this subchapter. To this fund are charged
31 any and all expenses of the department related to this
32 subchapter, including administrative expenses, payment of
33 3rd-party damages covered by this subchapter, costs of removal of
34 discharges of oil and costs of cleanup of discharges, including,
35 but not limited to, restoration of water supplies and any
36 obligations of the State pursuant to Title 10, section 1024,
37 subsection 1.

38
39 The commissioner may authorize the borrowing of funds by and
40 between the Maine Coastal and Inland Surface Oil Clean-up Fund
41 and the Ground Water Oil Clean-up Fund to carry out the
42 provisions of subchapters II-A and II-B. All funds borrowed
43 pursuant to this section must be repaid with interest to the fund
44 of origin in as prompt a manner as revenues allow at a rate of
45 interest determined by the Treasurer of State based on the
46 average rate of interest earned on funds invested during the
47 period of the loan.

2 Money in the fund not needed currently to meet the
3 obligations of the department in the exercise of its
4 responsibilities under this subchapter and not on loan to the
5 Maine Coastal and Inland Surface Oil Clean-up Fund must be
6 deposited with the Treasurer of State to the credit of the fund
7 and may be invested as provided by law. Interest received on
8 that investment must be credited to the fund.

9
10 1. Research and development. The Legislature may allocate
11 not more than \$100,000 per year of the amount then currently in
12 the fund to be devoted to research and development in the causes,
13 effects and removal of pollution caused by oil, petroleum
14 products and their by-products on ground waters of the State.
15 These allocations must be made in accordance with section 570-A.

16 2. Third-party damages. Any person claiming to have
17 suffered actual damages to real estate or personal property or
18 loss of income directly or indirectly as a result of a discharge
19 of oil to ground water prohibited by section 543, in this
20 subsection called the "claimant," may apply to the commissioner
21 within 6 months after the occurrence or discovery of the
22 discharge stating the amount of damage alleged to have been
23 suffered as a result of that discharge. The commissioner shall
24 prescribe appropriate forms and details for the applications. The
25 board, upon petition and for good cause shown, may waive the
26 6-month limitation for filing damage claims.

27 A. If the claimant and the commissioner are able to agree
28 as to the amount of the damage claim, the commissioner shall
29 certify the amount of the claim and the name of the claimant
30 to the Treasurer of State and the Treasurer of State shall
31 pay the amount of the claim from the Ground Water Oil
32 Clean-up Fund.

33 B. If the claimant and the commissioner are not able to
34 agree as to the amount of the damage claim, the commissioner
35 shall forthwith transmit the claim for action to the
36 department as provided in this subchapter.

37 C. A claimant shall take all reasonable measures to
38 minimize damages suffered by the claimant as a result of a
39 discharge of oil.

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

43 E. Damage claims arising under this subchapter are
44 recoverable only in the manner provided under this
45 subchapter. It is the intent of the Legislature that the
46 subchapter.

2 remedies provided for such damage claims in this subchapter
3 are exclusive.

4 F. Awards from the fund on damage claims may not include
5 any amount that the claimant has recovered on account of the
6 same damage by way of settlement with or judgment of a court
7 of competent jurisdiction against the person causing or
8 otherwise responsible for the discharge.

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

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

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

24 C. Hearings before the hearing examiner are informal and
25 the rules of evidence prevailing on judicial proceedings are
26 not binding. The hearing examiner may administer oaths and
27 require by subpoena the attendance and testimony of
28 witnesses and the production of books, records and other
29 evidence relative or pertinent to the issues presented to
30 the hearing examiner for determination.

32 D. Determinations made by the hearing examiner are final
33 and those determinations may be subject to review by a
34 Justice of the Superior Court, but only as to matters
35 related to abuse of discretion by the hearing examiner. A
36 claimant seeking review of a hearing examiner determination
37 shall file an appeal in the Superior Court within 30 days of
38 the determination.

40 E. The commissioner shall certify the amount of the damage
41 award, if any, after determination by the hearing examiner
42 and shall certify the name of the claimant to the Treasurer
43 of State, unless the commissioner has determined that the
44 claimant is a responsible party, in which case the
45 commissioner shall withhold certification until all claims
46 that the commissioner has against the responsible party with
47 respect to the discharge have been satisfied.

48 4. Funding. A fee of 9¢ per barrel of gasoline and 8¢ per
49 barrel of refined petroleum products and their by-products other
50

2 than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel
oil, kerosene, jet fuel and diesel fuel, is assessed on the
4 transfer of those products by oil terminal facility licensees, as
defined in section 542, subsection 7. These fees must be paid
6 monthly by the oil terminal facility licensees on the basis of
records certified to the commissioner and credited to the Ground
8 Water Oil Clean-up Fund upon receipt by the department, except
that the commissioner shall transfer the amount of these fees in
10 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, as follows.

12
14 A. Sixty-two and one half percent of the excess must be
transferred to the Finance Authority of Maine for deposit in
the Underground Oil Storage Replacement Fund.

16
18 B. Thirty-seven and one half percent of the excess must be
transferred to the Maine State Housing Authority for deposit
in the Housing Opportunities for Maine Fund to be used
20 initially for loans and grants to finance the costs of
removal, disposal, replacement or abandonment of underground
22 oil storage facilities and tanks located on owner-occupied
or residential rental property, which facilities and tanks
24 have been identified by the department as leaking or posing
an environmental threat or as having been abandoned.

26
28 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
30 this subsection, the per barrel fee assessed pursuant to this
subsection must be reduced by 6¢ per barrel.

32
34 5. Disbursements from fund. Money in the Ground Water Oil
Clean-up Fund must be disbursed for the following purposes and no
others:

36
38 A. Administrative expenses, personnel expenses and
equipment costs of the department related to the enforcement
of this subchapter and any loans to the Maine Coastal and
40 Inland Surface Oil Clean-up Fund made pursuant to this
section;

42
44 B. All costs involved in the removal of a prohibited
discharge, the abatement of pollution and the implementation
of remedial measures, including restoration of water
46 supplies, related to the discharge of oil, petroleum
products and their by-products to ground water covered by
48 this subchapter;

2 C. Sums allocated to research and development in accordance
3 with this section;

4 D. Payment of the 3rd-party damage claims awarded in
5 accordance with this section;

6 E. Payment of costs of arbitration and arbitrators;

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

9 G. Sums up to \$50,000 each year, which have been allocated
10 by the Legislature on a contingency basis in accordance with
11 section 570-A for payment of costs for studies of the
12 environmental impacts of discharges to ground water
13 prohibited by section 543 that may have adverse economic
14 effects and that occur subsequent to the allocation, when
15 the studies are considered necessary by the commissioner; and

16 H. All costs associated with the Board of Underground Oil
17 Storage Tank Installers.

18 6. Reimbursements to fund. The commissioner shall seek
19 recovery for the use of the fund of all sums expended from the
20 fund, including overdrafts, for the purposes described in
21 subsection 5, paragraphs B, D, E and G, or for other damage
22 incurred by the State, in connection with a prohibited discharge,
23 including interest computed at 15% a year from the date of
24 expenditure, unless the commissioner finds the amount involved
25 too small or the likelihood of success too uncertain. Requests
26 for reimbursement to the fund if not paid within 30 days of
27 demand must be turned over to the Attorney General for collection.

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

32 A. An act of war;

33 B. An act of government, either state, federal or
34 municipal, except insofar as the act was pursuant to section
35 568; or

36 C. An act of God, which means an unforeseeable act
37 exclusively occasioned by the violence of nature without the
38 interference of any human agency.

39 Upon such a finding by the board, immediate credit must be
40 entered for the party involved. The findings of the board are

2 conclusive, as it is the legislative intent that the waiver
3 provided in this subsection is a privilege conferred, not a right
4 granted.

5 8. Effective date. This section takes effect December 31,
6 1999.

7 **Sec. 27. 38 MRSA §570, first ¶,** as repealed and replaced by PL
8 1987, c. 735, §72, is amended to read:

9 Because it is the intent of this subchapter to provide the
10 means for rapid and effective cleanup and to minimize direct
11 damages as well as indirect damages and the proliferation of
12 3rd-party claims, each responsible party is jointly and severally
13 liable for all disbursements made by the State pursuant to
14 section 569 ~~569-D~~, subsection 5, paragraphs B, D, E and G, or
15 other damage incurred by the State, including interest computed
16 at 15% a year from the date of expenditure. The commissioner
17 shall demand reimbursement of costs and payment of damages to be
18 recovered under this section and payment shall must be made
19 promptly by the responsible party or parties upon whom the demand
20 is made. If payment is not received by the State within 30 days
21 of the demand, the Attorney General may file suit in the Superior
22 Court and, in addition to relief provided by other law, may seek
23 punitive damages as provided in section 568. Notwithstanding the
24 time limits stated in this paragraph, neither a demand nor other
25 recovery efforts against one responsible party may relieve any
26 other responsible party of liability.
27

28 **Sec. 28. Effective date.** That section of this Act that amends
29 the Maine Revised Statutes, Title 38, section 570, first
30 paragraph, as repealed and replaced by Public Law 1987, chapter
31 735, section 72, takes effect December 31, 1999.
32

33 **Sec. 29. 38 MRSA §570, first ¶,** as amended by PL 1989, c. 865,
34 §17 and affected by §§24 and 25, is further amended to read:

35 Because it is the intent of this subchapter to provide the
36 means for rapid and effective cleanup and to minimize direct
37 damages as well as indirect damages and the proliferation of
38 3rd-party claims, each responsible party is jointly and severally
39 liable for all disbursements made by the State pursuant to
40 section 569 ~~569-A~~, subsection 5 ~~8~~, paragraphs B, D, E, ~~G~~ H and I
41 J, or other damage incurred by the State, including interest
42 computed at 15% a year from the date of expenditure, except for
43 costs found by the commissioner to be eligible for coverage under
44 the fund. The commissioner shall demand reimbursement of costs
45 and payment of damages that are not eligible for coverage by the
46 fund to be recovered under this section and payment must be made
47 promptly by the responsible party or parties upon whom the demand
48
49
50

is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 30. Repeal. That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as amended by Public Law 1989, chapter 865, section 17 and affected by sections 24 and 25, is repealed December 31, 1999.

Sec. 31. 38 MRSA §570-A, first ¶, as repealed and replaced by PL 1991, c. 66, Pt. A, §32, is amended to read:

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 569 569-A, subsection B, paragraphs A, C, E, G and H and I for each biennium. The budget must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures from the fund as approved by the commissioner. Expenditures pursuant to section 569 569-A, subsection B, paragraphs B, D, E, E-1 F and I J may be made as authorized by the State Controller following approval by the commissioner.

Sec. 32. 38 MRSA §608-A, as repealed and replaced by PL 1991, c. 66, Pt. A, §34 and c. 499, §20, is repealed and the following enacted in its place:

§608-A. Soil decontamination

Any rotary drum mix asphalt plant may process up to 10,000 cubic yards of soil contaminated by gasoline or #2 fuel oil per year without an air emissions license pursuant to section 590. This limit may be exceeded with written authorization from the commissioner. The plant owner or operator shall notify the commissioner at least 24 hours prior to processing the contaminated soil and specify the contaminating fuel and quantity, origin of the soil and fuel and the disposition of the contaminated soil. The owner or operator shall maintain records of these activities for 6 years.

Sec. 33. 38 MRSA §1318-A, sub-§2, as amended by PL 1989, c. 317, §1, is further amended to read:

2. State and municipalities to recover for expenditures for removal. Any person who permits, causes or is responsible for a prohibited discharge shall reimburse the State and municipalities for all costs incurred, including personnel costs, in removing

2 the discharge, including costs for ensuring public safety. Funds
4 recovered under this section shall must be deposited to the
6 account from which they were expended. Requests from the State
8 for reimbursement, if not paid within 30 days of demand, shall
may be turned over to the Attorney General for collection or may
be submitted to a collection agency or agent or an attorney
retained by the department with the approval of the Attorney
General pursuant to Title 5, section 191, or, for municipal cost,
to the District Attorney for collection.

10 **Sec. 34. 38 MRSA §1319-G, sub-§1,** as affected by PL 1989, c.
12 890, Pt. A, §40 and amended by Pt. B, §258, is further amended to
read:

14 **1. Recovery.** The commissioner shall seek recovery to the
16 use of the Maine Hazardous Waste Fund of all sums expended
18 therefrom from the fund, including overdrafts, for disbursements
20 made from the fund under section 1319-E, subsection 1, paragraphs
22 A, B and C, including interest computed at 10% a year from the
24 date of expenditure, unless the commissioner finds the amount too
26 small or the likelihood of recovery too uncertain. Requests by
the department for reimbursement must-be-referred to the Maine
Hazardous Waste Fund, if not paid within 30 days of demand, may
be turned over to the Attorney General for collection or may be
submitted to a collection agency or agent or an attorney retained
by the department with the approval of the Attorney General
pursuant to Title 5, section 191.

28 The commissioner may file a claim with or otherwise seek money
30 from federal agencies to recover to the use of the fund all
disbursements from the fund.

32 **Sec. 35. Transition.** Persons certified as Class 1 underground
34 oil storage tank installers on the effective date of this Act are
certified as Class 2 installers.

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

40 FISCAL NOTE

42 The Department of Environmental Protection will incur some
44 minor additional administrative costs to adopt rules for
46 underground tank installers. These costs can be absorbed within
the department's existing budgeted resources.

48 Streamlining the 3rd-party damage claims process could
50 result in savings in staff time and resources for the Department
of Environmental Protection. The exact cost savings can not be
determined at this time.

2 The additional workload and administrative costs associated
4 with the minimal number of new cases filed in the court system
6 will be absorbed within the budgeted resources of the Judicial
8 Department.'

STATEMENT OF FACT

10 This amendment replaces the original bill. The amendment
12 amends the underground oil and hazardous substances laws. It
14 provides for appropriate cross references between the Maine
16 Revised Statutes, Titles 32 and 38 and authorizes the Board of
18 Underground Storage Tank Installers to examine fire-fighting
personnel who want to supervise underground oil storage tank
removals. The Class 1 installer category is repealed and the
requirements are incorporated into a Class 2 certificate.

20 The amendment deletes the provision in current law that
22 requires the person causing a discharge to apply to the Maine
24 Coastal and Inland Surface Oil Clean-up Fund for expense
reimbursement.

26 The amendment defines "coastal waters" consistent with the
28 laws administered by the Department of Marine Resources. The
30 exclusivity of the Maine Coastal and Inland Surface Oil Clean-up
32 Fund is maintained for coastal discharges but eliminated for
34 inland discharges. Third-party damage claims continue to be
capped at \$200,000 for inland spills as proposed in the original
bill. Medical expenses are limited to those arising from
physical bodily injury. The claim period proposed in the
original bill is shortened to 12 months for coastal spills.

36 The Commissioner of Environmental Protection is required to
38 write to any person affected by oil discharges under the Maine
40 Coastal and Inland Surface Oil Clean-up Fund and the Ground Water
Oil Clean-up Fund to inform them of the 3rd-party damage claims
process.

42 The procedure for assessing fees under the Maine Coastal and
44 Inland Surface Oil Clean-up Fund once the fund reaches the
46 \$6,000,000 cap is changed. The commissioner is required to give
a 15-day notice before fees are abated or reimposed. A similar
provision is enacted for the Ground Water Oil Clean-up Fund.

48 The amendment also addresses a conflict in the statutes for
50 the Ground Water Oil Clean-up Fund and adds a fiscal note to the
bill.