

MAINE STATE LEGISLATURE

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L.D. 2141

(Filing No. S- 613)

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STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 837, L.D. 2141, Bill, "An Act to Amend Maine's Underground Oil Storage Tank Laws"

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

Sec. 1. 38 MRSA §562-A, sub-§16-A is enacted to read:

16-A. Public drinking water supply. "Public drinking water supply" has the same meaning as "public water system" in Title 22, section 2601, subsection 8. For purposes of defining a sensitive geologic area in this subchapter, an underground oil storage facility's water supply that meets the criteria of Title 22, section 2601, subsection 8 solely because beverages for public sale or consumption are made at that facility is not considered a public drinking water supply.

Sec. 2. 38 MRSA §563-B, sub-§1, as amended by PL 1989, c. 865, §9, is further amended to read:

1. Investigation and removal. Procedures, methods, means and equipment to be used in the investigation of discharges and the removal of oil and petroleum pollutants. The rules:

A. Must allow the facility from which a prohibited discharge has occurred to return to service while corrective action is taken unless the commissioner determines that a return to service would result in a threat to public health and safety;

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2 B. Upon abandonment or replacement of an underground tank
3 or facility, must require site assessment to be conducted or
4 supervised by a state certified geologist or registered
5 professional engineer only when that tank or facility is
6 located in a sensitive geologic area; and

7 C. May not require site assessments for a farm or
8 residential tank of 1,100 gallons or less capacity used for
9 storing motor fuel for the sole use of the owner or operator
10 of the facility.

11 **Sec. 3. 38 MRSA §563-B, sub-§2, as enacted by PL 1987, c. 491,**
12 **§10, is amended to read:**

13 **2. Inventory analyses; precision testing; leak detection**
14 **methods.** Procedures and methods to be used in conducting
15 statistical inventory analyses, underground oil storage facility
16 precision testing and other leak detection methods. The rules
17 must allow owners or operators of facilities undergoing routine
18 monitoring in the absence of any other evidence of a leak:

19 A. To check the accuracy of complete statistical inventory
20 data within 75 days of receipt by the commissioner of the
21 initial statistical analysis by rerunning analyses before
22 inconclusive reports are considered to be a failure of the
23 tank or piping;

24 B. To check for failures in any mechanical and electronic
25 monitoring devices within 3 working days of an indication of
26 failure before it is considered a failure of the tank or
27 piping;

28 C. To engage in procedures under paragraphs A and B before
29 requiring the precision testing of facility components; and

30 D. To check the accuracy of a failed or inconclusive
31 precision test of facility components before the
32 commissioner may order the excavation of the facility or any
33 portion of the facility. An owner or operator is allowed 2
34 weeks to schedule a repeat of the precision test.

35 **Sec. 4. 38 MRSA §564, sub-§1-B, as enacted by PL 1989, c. 865,**
36 **§10, is amended to read:**

37 **1-B. Overfill and spill prevention equipment.** Overfill and
38 spill prevention equipment is required for all new, replacement
39 and existing facilities. ~~The board may adopt a~~ A phase-in
40 schedule for existing facilities to meet this requirement is as
41 follows.

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2 A. Overfill and spill prevention equipment must be
3 installed in new and replacement underground oil storage
4 tanks at the time the underground oil storage tank is
5 installed.

6 B. Overfill and spill prevention equipment must be
7 retrofitted on existing tanks constructed of cathodically
8 protected steel, fiberglass or other noncorrosive material
9 approved by the department by December 22, 1998, pursuant to
10 40 Code of Federal Regulations, 280.20 and 280.21.

12 **Sec. 5. 38 MRSA §564, sub-§2-A, ¶H,** as enacted by PL 1991, c.
13 66, Pt. B, §5, is amended to read:

14 H. Reporting to the commissioner any of the following
15 indications of a possible leak or discharge of oil:

18 (1) Unexplained differences in daily inventory
19 reconciliation values that, over a 30-day period,
20 exceed .5% of the product delivered;

22 (2) Unexplained losses detected through statistical
23 analysis of inventory records;

24 (3) Detection of product in a monitoring well or by
25 other leak detection methods;

28 (4) Failure of a tank or piping precision test,
29 hydrostatic test or other tank or piping tightness test
30 approved by the department; and

32 (5) Discovery of oil off site on or under abutting
33 properties, including nearby utility conduits, sewer
34 lines, buildings, drinking water supplies and soil; ~~and.~~

36 ~~(6) Notwithstanding this paragraph, any actual leaks~~
37 ~~or discharges of oil that occur on the premises,~~
38 ~~including, but not limited to, spills, overfills and~~
39 ~~leaks, whether or not cleaned up;~~

42 The rules may not require the reporting of any leak or
43 discharge of oil above ground of 10 gallons or less that
44 occurs on the premises, including, but not limited to,
45 spills, overfills and leaks, when those leaks or discharges
46 do not reach ground water or surface waters of the State and
47 are cleaned up within 24 hours of discovery, provided that a
48 written log is maintained at the facility or the owner's
49 place of business in this State. For each discharge the log
50 must record the date of discovery, its source, the general
51 location of the discharge at the facility, the date and
52 method of cleanup and the signature of the facility owner or
operator certifying the accuracy of the log;

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2 **Sec. 6. 38 MRSA § 566-A, sub-§1-A** is enacted to read:

4 **1-A. Abandoned tanks brought back into service.**
6 Underground oil storage tanks and facilities that have been out
8 of service for a period of more than 12 months may be brought
 back into service if the owner can demonstrate to the
 commissioner's satisfaction that:

10 A. The facility is in compliance with this subchapter;

12 B. The underground oil storage tank and piping have
14 successfully passed precision testing; and

16 C. The underground oil storage tank and piping are
18 constructed of fiberglass, cathodically protected steel or
 other equally noncorrosive material approved by the
 commissioner.

20 **Sec. 7. 38 MRSA §568, sub-§6** is enacted to read:

22 **6. Reimbursement.** If the commissioner requires an
24 underground oil storage facility owner or operator to remove or
26 close an underground oil storage facility upon evidence of a leak
28 and if after investigation that facility is found not to be the
30 source of a leak, the commissioner shall immediately reimburse
32 that facility owner or operator from the fund for the documented
 costs of that removal. The facility owner or operator may be
 reimbursed for damages resulting from the removal, such as loss
 of income, through the 3rd-party damage claim process in section
 569.

34 **Sec. 8. Clean-up standards for remediation.** The Commissioner of
36 Environmental Protection shall develop illustrative standards for
38 cleanup and remediation of oil contaminated soil and ground water
 to include specific clean up standards for various contamination
 scenarios, taking into consideration background levels of
 contamination. In no case may the most stringent standard exceed:

40 1. The primary drinking water regulations adopted by the
42 Department of Human Services, Bureau of Health under the Maine
44 Revised Statutes, Title 22, section 2611 or, if no primary
 drinking water regulations exist, maximum exposure guidelines
 adopted by the Commissioner of Human Services; or

46 2. Total gasoline or total heating oil hydrocarbon
48 concentrations in soil exceeding 5 and 10 parts per million
 respectively.

50 The Commissioner of Environmental Protection shall report to the
 joint standing committee of the Legislature having jurisdiction

over natural resource matters by February 15, 1993 on the Department of Environmental Protection's experience in applying these standards.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

Costs associated with additional rulemaking and for reimbursement to underground oil storage facility owners for removal of certain underground oil storage tanks when the facility is not the source of the leak can be absorbed by the Department of Environmental Protection utilizing existing budgeted resources.'

STATEMENT OF FACT

This amendment replaces the original bill. It defines a public drinking water supply to be consistent with the statutory definition used by the Department of Human Services. Sensitive geologic areas are defined in some cases by their proximity to public drinking water supplies. Section 1 exempts convenience stores that serve coffee and other beverages from the definition of public water supply for the purposes of defining a sensitive geologic area. These facilities will not be required to remove their nonconforming underground oil storage tanks on an expedited schedule.

Section 2 allows a gas station to open for business during remediation work for a leak if there is no threat to public health or safety. It also limits site assessments for a tank removal performed by a professional geologist or engineer to those removals occurring in sensitive geologic areas. Small underground oil storage facilities for farm or home use are not required to undergo site assessment upon removal.

This amendment also allows underground oil storage tank facility owners or operators to recheck their monitoring data, gauging and monitoring equipment as well as inconclusive precision tests done as part of routine monitoring.

Section 4 delays the requirement for existing underground oil storage tanks to be retrofitted with overflow and spill prevention equipment. The delay makes state law consistent with federal requirements.

This amendment enacts in statute a provision in the Department of Environmental Protection's rules that exempts an

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owner or operator from reporting an aboveground spill of less than 10 gallons under certain circumstances.

Under current law, an underground oil storage tank that has been out of service for more than 12 months can not be brought back into service and must be removed without regard to how well-constructed or new it is. This amendment allows underground oil storage tanks that meet certain criteria to be brought back into service.

This amendment requires the Commissioner of Environmental Protection to reimburse immediately an underground oil storage facility owner or operator for the cost of the tank removal if that person was required to remove an underground oil storage tank and the facility was not the source of the leak. Those owners are eligible for loss of income and other damages through the 3rd-party damage claim process.

The amendment requires the Commissioner of Environmental Protection to develop standards for the cleanup and remediation of oil contaminated soil and ground water under various scenarios and report to the Legislature on the implementation of those standards.

The amendment also adds a fiscal note to the bill.

Reported by Senator Titcomb for the Committee on Energy and Natural Resources. Reproduced and Distributed Pursuant to Senate Rule 12.

(3/10/92)

(Filing No. S-613)