

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

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Legislative Document

No. 2141

S.P. 837

In Senate, January 9, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.  
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator TITCOMB of Cumberland  
Cosponsored by Representative ANDERSON of Woodland.

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STATE OF MAINE

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

---

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

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(EMERGENCY)



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

4  
6           Whereas, the orderly management of the State's underground  
oil storage tanks by the small and independent businesses that  
own these tanks demands immediate attention prior to the  
8 commencement of the construction season; and

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

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

18           **Sec. 1. 38 MRSA §550, sub-§1, as repealed and replaced by PL**  
20 **1991, c. 66, Pt. A, §18, is amended to read:**

22           **1. Report and remove.** Reports within 2 hours and promptly  
removes the discharge in accordance with the rules and orders of  
the board or commissioner; and

24           **Sec. 2. 38 MRSA §550, sub-§1-A is enacted to read:**

26           **1-A. Discharges.** Discharges 25 gallons of oil or less  
28 above the surface of the ground, and that discharge does not  
reach ground water or surface water of the State and that person  
30 fully cleans up the discharge within 24 hours of discovery; and

32           **Sec. 3. 38 MRSA §562-A, sub-§4-A is enacted to read:**

34           **4-A. Contamination.** "Contamination" means the presence of  
36 one of the following:

38           **A. Any specific chemical species in ground water in excess**  
**of primary drinking water standards adopted by the**  
40 **Department of Human Services, Bureau of Health under Title**  
**22, section 2611, or, if no primary drinking water standards**  
42 **exist for the applicable chemical species, maximum exposure**  
**guidelines adopted by the Department of Human Services,**  
44 **Bureau of Health; or**

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

50           **Sec. 4. 38 MRSA §562-A, sub-§6, as enacted by PL 1989, c. 865,**  
**§2, is amended to read:**

2           6.   **Discharge.** "Discharge" means any spilling, leaking,  
pumping, pouring, emitting, escaping, emptying or dumping that  
4           constitutes contamination.

6           **Sec. 5. 38 MRSA §562-A, sub-§§16-A and 16-B** are enacted to  
read:

8           **16-A. Private drinking water supply.** "Private drinking  
9           water supply" means a connection to a source of potable water  
10           from which a single, site-specific demand entity receives its  
11           water supply. A single ground water well from which the owner of  
12           the well receives water is an example of a private water supply.

14           **16-B. Public drinking water supply.** "Public drinking water  
15           supply" means a source of potable water from which more than one  
16           demand entity receives its water supply. A single ground water  
17           well from which more than one demand entity receives its water  
18           supply is an example of a public water supply.

20           **Sec. 6. 38 MRSA §563-B, sub-§1,** as amended by PL 1989, c. 865,  
§9, is further amended to read:

22           **1. Investigation and removal.** Procedures, methods, means  
23           and equipment to be used in the investigation of discharges and  
24           the removal of oil and petroleum pollutants;. The rules must  
25           require that the department:

28           A. Locate the precise source of the contamination prior to  
29           requiring an owner or operator of a facility to engage in  
30           initial response or corrective actions;

32           B. Allow the facility from which a prohibited discharge has  
33           occurred to return to service while corrective actions are  
34           being undertaken;

36           C. Require the use of hydrogeological or geophysical  
37           studies, engineers or geologists only in sensitive  
38           geological areas where the extent and amount of the  
39           discharge can not be quantified or the direction of the  
40           migration of the discharge can not be determined; and

42           D. Respond to any and all reports, plans or other  
43           requirements placed on responsible parties in the same  
44           amount of time required of owners or operators to submit  
45           reports, plans or other requirements to the department;

46           **Sec. 7. 38 MRSA §563-B, sub-§2,** as enacted by PL 1987, c. 491,  
47           §10, is amended to read:

50           **2. Inventory analyses; precision testing; leak detection**  
51           **methods.** Procedures and methods to be used in conducting  
52           statistical inventory analyses, underground oil storage facility

precision testing and other leak detection methods;. The rules must allow owners or operators of facilities:

A. To check the accuracy of statistical inventory data by rerunning analyses before inconclusive reports are considered to be a failure of the tank or piping;

B. To check for failures in any mechanical and electronic devices before the reports or indications, or lack of indications, of devices are considered to determine a failure of the tank or piping;

C. To engage in procedures under paragraphs A and B before the rules require the precision testing of facility components; and

D. To ensure the accuracy of failed or inconclusive precision tests of facility components before the department may order the excavation of the facility or any portion of the facility;

**Sec. 8. 38 MRSA §564, sub-§1-B,** as enacted by PL 1989, c. 865, §10, is amended to read:

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

A. Overfill and spill prevention equipment must be installed upon replacement of existing tanks that are to be removed pursuant to section 563-A.

B. Overfill and spill prevention equipment must be installed in tanks that are in compliance with section 563-A by December 31, 1998, pursuant to 40 Code of Federal Regulations, 280.20 and 280.30 (1991).

C. Overfill and spill prevention equipment must be installed in new and replacement tanks at the time the tank is installed.

**Sec. 9. 38 MRSA §564, sub-§2-A, ¶H,** as enacted by PL 1991, c. 66, Pt. B, §5, is amended to read:

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

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

- 2 (2) Unexplained losses detected through statistical
- 3 analysis of inventory records;
- 4
- 5 (3) Detection of product in a monitoring well or by
- 6 other leak detection methods;
- 7
- 8 (4) Failure of a tank or piping precision test,
- 9 hydrostatic test or other tank or piping tightness test
- 10 approved by the department; and
- 11
- 12 (5) Discovery of oil off site on or under abutting
- 13 properties, including nearby utility conduits, sewer
- 14 lines, buildings, drinking water supplies and soil; and.
- 15
- 16 ~~(6) Notwithstanding this paragraph, any actual leaks~~
- 17 ~~or discharges of oil that occur on the premises,~~
- 18 ~~including, but not limited to, spills, overfills and~~
- 19 ~~leaks, whether or not cleaned up;~~
- 20

Except that any actual leak or discharge of oil above ground of 25 gallons or less that occurs on the premises, including, but not limited to, spills, overfills and leaks, when those leaks or discharges do not reach ground water or surface waters of the State and are cleaned up within 24 hours of discovery, need not be reported to the commissioner;

28 **Sec. 10. 38 MRSA §566-A, sub-§1, ¶¶C and D,** as enacted by PL  
1987, c. 491, §14, are amended to read:

30 C. Otherwise inaccessible to heavy equipment necessary for  
32 removal; or

34 D. Positioned in such a manner that removal will endanger  
36 the structural integrity of nearby tanks; or

38 **Sec. 11. 38 MRSA §566-A, sub-§1, ¶E** is enacted to read:

40 E. Brought back into service by the owner after 12 months  
42 of being out of service after the tank and piping have  
44 successfully passed precision testing of the tanks and  
46 hydrostatic testing of the piping.

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

#### 48 STATEMENT OF FACT

50 This bill defines contamination of public and private water  
supplies.

2 The bill also defines the extent to which the Department of  
Environmental Protection may engage in rulemaking for the  
4 purposes of guiding the cleanup and remediation of sites at which  
contamination has occurred by directing the department to place  
6 the maximum emphasis of its actions on sensitive geological areas  
to protect potable water supplies. This section also stipulates  
8 the steps that allow tank owners or operators to verify the  
veracity of data received from leak detection equipment or  
10 devices in a sequential process prior to allowing the department  
to require the excavation of a facility.

12 The bill also requires the Board of Environmental  
Protections to adopt a phase-in schedule for the installation of  
14 overfill and spill prevention equipment on a schedule based on  
the mandatory tank removal schedule and the regulations of the  
16 United States Environmental Protection Agency.

18 The bill also creates a 25-gallon minimum spill reporting  
standard in conformance with 40 Code of Federal Regulations,  
20 280.53 of the United States Environmental Protection Agency.

22 The bill also allows owners of facilities held out of  
service for more than 12 months to bring those facilities back  
24 into service after the facilities have successfully passed  
precision and hydrostatic tests to ensure their integrity.  
26 Current law mandates their removal notwithstanding the integrity  
of these facilities and the fact that the facilities conform to  
28 all other standards of current law.

30 The bill also establishes a 25-gallon minimum spill  
reporting standard for the oil discharge and pollution prevention  
32 law in the same manner as the bill does for the underground tank  
law.