

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1391

H.P. 1039

House of Representatives, April 30, 1993

**An Act to Regulate the Aboveground Storage of Oil and the
Transportation of Oil in Inland Areas.**

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative JACQUES of Waterville.
Cosponsored by Senator LAWRENCE of York and
Representatives: ANDERSON of Woodland, COLES of Harpswell, GOULD of Greenville,
LORD of Waterboro, MICHAUD of East Millinocket, MITCHELL of Freeport, TARDY of
Palmyra, Senators: CIANCHETTE of Somerset, LUDWIG of Aroostook, TITCOMB of
Cumberland.

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

4 PART A

6 Sec. A-1. 38 MRSA §570-K, as enacted by PL 1991, c. 494,
§16, is repealed.

8 Sec. A-2. 38 MRSA c. 3, sub-c. IV is enacted to read:

10 SUBCHAPTER IV

12 ABOVEGROUND OIL STORAGE FACILITIES AND

14 INLAND OIL DISCHARGE PREVENTION AND POLLUTION CONTROL

16 §572. Findings; purpose

18 The Legislature finds that significant and increasing
20 quantities of oil are being stored in aboveground storage
22 facilities; that leaks, spills and unlicensed discharges from
24 these facilities pose a significant threat to the quality of the
26 waters of the State, including groundwater and surface water
28 resources; that the protection of the quality of these waters is
of the highest importance; and that their protection requires
proper design and installation of new and replacement aboveground
oil storage facilities, the reasonable upgrading of existing
facilities, the proper abandonment of facilities, as well as
operating, maintenance and monitoring procedures for existing,
new and replacement facilities.

30
32 The Legislature intends by the enactment of this subchapter
34 to exercise the police power of the State through the Department
36 of Environmental Protection by conferring upon the department the
38 power to deal with the hazards and threats of danger and damage
40 posed by the transportation and other handling of oil in inland
42 areas of the State and the storage and handling of oil in
44 aboveground facilities and related activities; to require the
prompt containment and removal of pollution occasioned thereby;
to provide procedures whereby persons suffering damage from these
occurrences may be promptly made whole; to provide funds for the
investigation, mitigation and removal of discharges or threats of
discharge of oil from aboveground storage facilities or the
transportation or other handling of oil, including the
restoration of contaminated water supplies; and to guarantee the
prompt payment of reasonable damage claims resulting therefrom.

46
48 The Legislature further finds that preservation of the
50 groundwater and surface water resources and of the public uses
52 referred to in this subchapter are of grave public interest and
concern to the State in promoting its general welfare, preventing
disease, promoting health and providing for the public safety and
that the State's interest in this preservation outweighs any

2 burdens of absolute liability imposed by the Legislature in this
4 subchapter upon those engaged in the transportation and other
6 handling of oil in inland areas of the State and in the storage
8 of oil, petroleum products and their by-products in aboveground
10 storage facilities.

12 **§572-A. Definitions**

14 As used in this subchapter, unless the context otherwise
16 indicates, the following terms have the following meanings.

18 **1. Aboveground oil storage facility.** "Aboveground oil
20 storage facility," also referred to as a "facility," means any
22 aboveground oil storage tank or tanks with an individual tank
24 capacity exceeding 660 gallons or an aggregate tank capacity
26 exceeding 1320 gallons, together with associated piping, transfer
28 and dispensing facilities located over any land or waters of the
30 State at a single location for more than 4 months per year and
32 used or intended to be used for the storage or supply of oil.
34 Piping located under any land at a single location associated
36 with aboveground storage tanks and containing 10% or more of the
38 facility's overall volume capacity is not included as a part of
40 an aboveground oil storage facility, but rather as an underground
42 oil storage facility as defined by section 562-A. Oil terminal
44 facilities, as defined in section 542, subsection 7 and propane
46 facilities are not included in this definition and are not
48 regulated under this subchapter.

30 **2. Aboveground oil storage tank.** "Aboveground oil storage
32 tank," also referred to as a "tank," means any aboveground
34 container with a capacity exceeding 660 gallons, less than 10% of
36 which is beneath the surface of the ground, that is used or
38 intended to be used for the storage or supply of oil. Tanks
40 situated upon or above the surface of a floor and in such a
42 manner that they may be readily inspected are included in this
44 definition.

38 **3. Applicant.** "Applicant" means the owner or operator of
40 an aboveground oil storage facility that may have a discharge of
42 oil who is seeking coverage of eligible clean-up costs and
44 3rd-party damage claims from the fund.

44 **4. Barrel.** "Barrel" means 42 United States gallons at 60°
46 Fahrenheit.

46 **5. Discharge.** "Discharge" means any spilling, leaking,
48 pumping, pouring, emitting, escaping, emptying or dumping.

48 **6. Existing aboveground oil storage facility or tank.**
50 "Existing aboveground oil storage facility" or "existing
aboveground oil storage tank" means any facility or tank fully

installed as of the effective date of rules established in section 573.

7. Fund. "Fund" means the Maine Inland Surface Oil Clean-up Fund.

8. Leak. "Leak" means the discharge or release of oil from a transport vehicle or from any component of an aboveground oil storage facility, whether or not it is contained within the facility's containment area.

9. Leak detection. "Leak detection" means equipment and procedures for the detection of leaks of oil into areas protected by secondary containment.

10. Oil. "Oil" means oil, oil additives, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

11. Person. "Person" means any natural person, firm, association, partnership, corporation, trust, the State and any agency of the State, governmental entity, quasi-governmental entity, the United States and any agency of the United States and any other legal entity.

12. 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 aboveground 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.

13. Responsible party. "Responsible party" means any one or more of the following persons:

A. The owner or operator of an aboveground oil storage facility where a prohibited discharge has occurred;

B. The person to whom an aboveground oil storage facility where a prohibited discharge has occurred is registered;

C. Any person other than those identified in paragraph A or B who caused the prohibited discharge of oil or who had custody or control of the oil at the time of the prohibited discharge; or

2 D. Any person who owned or operated an aboveground oil
3 storage facility from the time any oil petroleum products or
4 their by-products arrived.

5 "Responsible party" does not include a person who can demonstrate
6 by a preponderance of the evidence that that person neither knew
7 nor had reason to know of the existence of an aboveground oil
8 storage facility.

10 14. Retail facility. "Retail facility" means any facility
11 that sells motor vehicle fuel directly to the public.

12 15. Secondary containment. "Secondary containment" means a
13 system installed so that any material that is discharged or has
14 leaked from the primary containment is prevented from reaching
15 the soil or groundwater outside the system for the anticipated
16 period of time necessary to detect and recover the discharged
17 material. Such a system may include, but is not limited to,
18 impervious dikes and liners, double-walled piping or other
19 methods demonstrated to the satisfaction of the commissioner to
20 be technically feasible and effective.

21 16. Sensitive geologic areas. "Sensitive geologic areas"
22 means significant groundwater aquifers and primary sand and
23 gravel recharge areas, as defined in section 562-A, subsection
24 19, locations within 1,000 feet of a public drinking water supply
25 and locations within 300 feet of a private drinking water supply.

26 17. Site assessment. "Site assessment" means a
27 determination of the occurrence of a prohibited leak or discharge
28 of oil, and of the presence or absence of oil contamination in
29 the soils or the waters of the State. Site assessments are
30 limited to the aboveground oil storage facility and must use
31 cost-effective, reliable and technically feasible investigation
32 techniques.

33 **§573. Registration of transportation of oil in inland areas**

34 Effective October 1, 1988, any person who transports more
35 than 25 barrels of oil into this State at any one time by rail or
36 highway must register annually with the commissioner and pay the
37 fee established in section 578, subsection 5, paragraph C.

38 **§574. Registration of aboveground oil storage tanks**

39 1. Prohibition on unregistered tanks. Unregistered
40 aboveground oil storage tanks are prohibited as follows.

41 A. A person may not install, or cause to be installed, a
42 new or replacement aboveground oil storage facility unless
43 that person has registered the facility with the
44 commissioner in accordance with the requirements of
45 the commissioner.

2 subsection 2 and has paid the registration fee in accordance
4 with the requirements of subsection 4 at least 5 business
6 days prior to installation. If compliance with this time
8 requirement is impossible due to an emergency situation, the
10 owner or operator of the facility at which the new or
12 replacement facility is to be installed shall inform the
14 commissioner as soon as the emergency becomes known.

16 The owner or operator shall make available a copy of the
18 facility's registration at that facility for inspection by
20 the commissioner and authorized municipal officials.

22 B. A person may not operate, maintain or store oil in an
24 aboveground oil storage facility after July 1, 1994 unless
26 each aboveground oil storage tank at that facility is
28 registered with the commissioner.

30 C. A person may not deliver oil to an unregistered
32 aboveground oil storage tank after July 1, 1994.

34 2. Information required for registration. The owner or
36 operator of an aboveground oil storage facility shall provide the
38 commissioner with the following information on a form in
40 triplicate to be developed and provided by the commissioner:

42 A. The name, address and telephone number of the owner of
44 the aboveground oil storage tank to be registered;

46 B. The name, address and telephone number of the person
48 having responsibility for the operation of the tank to be
50 registered;

52 C. The location of the facility shown on a United States
Geological Survey topographic map for facilities located in
rural areas or in relation to the nearest intersection for
facilities located in urban areas and the location of the
tank or tanks at that facility;

D. Whether the location of any tank at the facility is
within 1,000 feet of a public drinking water supply or
within 300 feet of a private drinking water supply;

E. The size of the tank to be registered;

F. The type of tank or tanks and piping at the facility and
the type of product stored or contained in the tank or tanks
and piping;

G. For new, replacement or retrofitted facilities, the name
of the installer, the expected date of installation or
retrofit, the nature of any emergency pursuant to subsection
1, paragraph A, if applicable, and a description or plan

2 showing the layout of the facility or tank, including the
3 form of secondary containment, other forms of leak detection
4 or equipment to be installed and, when applicable, the
5 method of retrofitting leak detection as required by rules
6 adopted pursuant to section 575; and

7 H. The expiration date of tank manufacturer's warranty.

8
9 One copy of the registration form must be submitted to the
10 commissioner; one copy must be promptly submitted upon completion
11 to the fire department in whose jurisdiction the aboveground tank
12 is located; and one copy must be retained by the owner or
13 operator.

14
15 3. Amended registration required. The owner or operator of
16 an aboveground oil storage facility shall file an amended
17 registration form with the commissioner immediately upon any
18 change in the information required pursuant to subsection 2,
19 including any modifications to the facility or a change of
20 ownership. The board may establish, by rule, a late registration
21 period not to exceed 10 business days in duration. A fee may not
22 be charged for filing an amended registration.

23
24 4. Registration fees. The owner or operator of an
25 aboveground oil storage facility shall pay an annual fee to the
26 department of \$115 for each tank located at the facility, except
27 that an owner of a single-family home is not required to pay a
28 fee for a tank at that personal residence. Annual payments must
29 be paid on or before January 1st of each calendar year.

30
31 5. Penalty for failure to submit amended registration. A
32 person who has not submitted an amended registration form in
33 accordance with subsection 3 shall pay a late fee of \$100. The
34 penalty imposed by this section is cumulative and this section
35 does not preclude the commissioner from seeking civil penalties
36 from any person who fails to register a facility or tank.

37
38 6. Providing notice. Prior to the sale or transfer of any
39 real estate where an aboveground oil storage facility is or has
40 been located, the owner of the real estate shall file a written
41 notice with the purchaser or transferee. The notice must
42 disclose the existence of the aboveground oil storage facility,
43 its registration number or numbers, the real estate where the
44 facility is or was located, and that the facility is subject to
45 regulation, including registration requirements, by the
46 department under this subchapter.

47
48 7. Supplier notification requirement. Any person who sells
49 a tank intended to be used as an aboveground oil storage tank
50 shall notify the purchaser in writing of the purchaser's
51 obligations under this section.

52

2 **§574-A. Reporting of leaks, spills and discharges**

4 **1. Reporting.** Every owner or operator of an aboveground
6 oil storage facility shall report to the commissioner any
evidence of a leak, spill or discharge of oil immediately upon
discovery.

8 **2. Evidence of a leak.** Evidence of a leak includes, but is
10 not limited to, any of the following:

12 **A. A positive analysis for oil or evidence of oil in a**
groundwater monitoring well or monitoring results from any
leak detection equipment or method indicating a possible
14 leak, release or discharge;

16 **B. Any sheen or other visual or olfactory evidence of oil**
found in a monitoring well, surface water, or in water or
18 soil in a tank foundation or piping excavation or a test pit;

20 **C. Failure of a piping line or tank tightness test that has**
been approved by the commissioner;

22 **D. Reduced flow in a remote pumping system equipped with an**
24 in-line leak detector;

26 **E. Pump hesitation, vibration, meter skipping or air**
elimination, attributable to a loss of prime for product
28 lines that operate under a suction system;

30 **F. Discovery of oil on or under properties abutting a**
facility, including nearby utility conduits, sewer lines,
32 buildings, drinking water supplies, groundwater and soil;

34 **G. Evidence of the presence of oil or water entering into**
the interstitial space of secondary spill containment or
36 leak detection systems, as specified by the tank piping or
leak detection equipment manufacturer's instructions; or

38 **H. Any actual leaks or discharges of oil found on the**
40 premises, including, but not limited to, spills, overfills
and leaks, whether or not cleaned up.

42 **§574-B. Prohibition of certain aboveground oil storage**
44 **facilities and tanks**

46 **1. Compliance schedule.** A person may not operate, maintain
48 or store oil in an aboveground oil storage tank or tank that is
not constructed in conformance with department rules adopted
under section 575 after:

50 **A. July 1, 1995, if that facility or tank:**
52

2 (1) Is located in a sensitive geologic area; or

4 (2) Was constructed after July 1, 1985 and has
6 underground piping not constructed of cathodically
 protected steel, fiberglass or other noncorrosive
 material approved by the commissioner; and

8 B. July 1, 2005, for all other facilities and tanks.

10 2. Exceptions. Exceptions to this section are permitted as
12 follows.

14 A. The compliance schedule in subsection 1 does not apply
16 to an existing facility that meets or has been upgraded to
18 meet the standards adopted under section 575, subsection 1
20 if the owner or operator of the facility can demonstrate to
22 the satisfaction of the commissioner, based on an inspection
 and evaluation by a professional engineer registered in this
 State, that the facility is structurally sound and able to
 continue to store oil without undue risk of failure or a
 discharge.

24 B. Existing facilities that are not constructed of
26 cathodically protected steel or a noncorrosive material and
28 that have components in contact with soil may be retrofitted
 with a cathodic protection system approved by the
 commissioner if it is not physically or technically feasible
 to replace the existing facility.

30 §574-C. Standards for aboveground oil storage facilities

32 1. Design and installation. Aboveground oil storage
34 facilities are subject to the following.

36 A. The design and installation of all new and replacement
38 aboveground oil storage facilities must be supervised by a
40 professional engineer registered in the State or otherwise
42 in compliance with Title 32; except that preengineered,
 motor fuel retail facilities must be installed by persons
 certified by the Board of Underground Oil Storage Tank
 Installers pursuant to Title 32, chapter 104-A.

44 B. All new and replacement aboveground oil storage tanks
46 for storing gasoline or other Class 1 liquids at retail
48 facilities must be approved by the State Fire Marshal and
 the local fire department in whose jurisdiction the tank is
 to be located.

50 2. Underground piping installation. All underground
52 piping, whether replacement or new, associated with an
 aboveground oil storage facility must be installed;

2 A. In accordance with section 564 or other applicable
4 design and installation rules adopted by the board; and

6 B. By persons certified by the Board of Underground Oil
8 Storage Tank Installers pursuant to Title 32, chapter 104-A.

10 3. Tank and piping integrity. Tank and piping integrity
12 evaluation or tightness testing must be conducted on the
14 following schedule:

16 A. Within 130 days of a new or replacement facility's
18 installation;

20 B. By July 1, 2003 and every 10 years thereafter for
22 facilities located on a sensitive geologic area; and

24 C. By July 1, 2008 and every 10 years thereafter for
26 facilities not located on sensitive geologic areas.

28 4. Environmental audits of compliance. Environmental
30 audits of compliance with this subchapter and rules adopted
32 pursuant to this subchapter must be conducted by an independent
34 engineer registered in accordance with Title 32 and submitted to
36 the commissioner by July 1, 1995 and every 3 years thereafter.

38 §575. Regulatory powers of the department

40 The board may adopt rules related to the following matters:

42 1. Design and installation standards. Design and
44 installation standards to minimize the potential of future
46 discharges from new and replacement facilities. The rules may
48 include the following:

50 A. Rules for compliance with applicable nationally accepted
52 public safety and industry codes and standards for design
54 and installation;

56 B. Rules for compatibility of the product to be stored and
58 construction materials;

60 C. Rules for corrosion protection for all facility
62 components in contact with soil and not fully inspectable;

64 D. Rules for piping design and installation;

66 E. Rules for standards for facilities in 100-year flood
68 plains, including the provision of anchoring and flotsam
70 protection measures at replacement or upgraded facilities;

2 F. Rules for overflow and spill prevention and containment;
3 and

4 G. Rules for installation, maintenance and monitoring of
5 leak detection equipment;

6

7 2. Operation, maintenance and monitoring requirements for
8 new, replacement, existing and upgraded aboveground oil storage
9 facilities. Operation, maintenance and monitoring requirements
10 for new, replacement, existing and upgraded aboveground oil
11 storage facilities. The rules may include requirements for:

12

13 A. Spill prevention control and countermeasure plans and
14 procedures;

15

16 B. Monitoring of all product transfers;

17

18 C. Daily facility and periodic comprehensive facility
19 inspections;

20

21 D. Monitoring of leak detection systems;

22

23 E. Testing of cathodic protection systems;

24

25 F. Tank and piping integrity evaluation or tightness
26 testing;

27

28 G. Maintenance and availability to department personnel and
29 their agents and municipal officials of inspection, leak
30 detection monitoring, cathodic protection monitoring, tank
31 tightness testing and repair records;

32

33 H. Evidence of financial responsibility for taking
34 corrective actions and compensating 3rd parties for bodily
35 injury and property damage caused by sudden and nonsudden
36 accidental discharges. The board may defer adopting rules
37 governing financial responsibility, if pollution liability
38 insurance or other financial assurance mechanisms are not
39 reasonably available, until such time as circumstances
40 change; and

41

42 I. Replacement of nonconforming tanks and piping when
43 corrosion-induced leaks have occurred;

44

45 3. Site assessment. Site assessment prior to facility
46 upgrade or replacement to determine the possible presence and
47 extent of oil discharges and environmental contamination by oil;

48

49 4. Closure. Closure requirements for facilities subject to
50 the prohibitions of this subchapter that have been or are
51 intended to be taken out of service for a period of more than 36
52 consecutive months, including requirements for leaving a facility

2 temporarily out of service for up to 36 months, for site
3 assessments, for remediation plans and for allowing the
4 commissioner to undertake abandonment and seek reimbursement of
5 the department's costs when the facility owner or operator fails
6 to properly undertake abandonment;

7 5. Hearings. Hearings related to clean-up orders issued
8 pursuant to section 576, subsection 3; and

9 6. Third-party damage claims. Procedures to be used in
10 filing and processing of 3rd-party damage claims.

11 **§575-A. Emergency proclamation; Governor's powers**

12
13 When a disaster or catastrophe exists or appears imminent
14 arising from the discharge of oil from an aboveground oil storage
15 tank, the Governor may declare an emergency as provided in
16 section 547.

17
18 **§576. Cleanup and removal of prohibited discharges**

19
20 1. Removal. A person discharging or responsible for a
21 discharge of oil from aboveground oil storage facilities in the
22 manner prohibited by section 543 and a responsible party shall
23 immediately undertake to remove that discharge to the
24 commissioner's satisfaction. Notwithstanding this requirement,
25 the commissioner may order the removal of that discharge pursuant
26 to subsection 3 or may undertake the removal of that discharge
27 and retain agents and contractors for that purpose who shall
28 operate under the direction of the commissioner. An unexplained
29 discharge of oil to waters of the State must be removed by or
30 under the direction of the commissioner. Expenses incurred in
31 the removal of discharges, whether by the person causing the
32 discharge, the person reporting the discharge, the commissioner
33 or the commissioner's agents or contractors, may be paid in the
34 first instance from the Maine Inland Surface Oil Clean-up Fund,
35 including expenses incurred by the State under subsection 3, and
36 reimbursements due that fund must be collected in accordance with
37 section 578. The removal of discharges must be by the most
38 cost-effective alternative that is technically feasible and
39 reliable and that effectively mitigates or minimizes damages to,
40 and provides adequate protection of, the public health, welfare
41 and the environment.

42
43 2. Restoration of water supplies. The commissioner may
44 clean up a discharge of oil and take temporary and permanent
45 remedial actions at locations threatened or affected by the
46 discharge of oil, including restoring or replacing water supplies
47 contaminated or threatened by oil, with alternatives the
48 commissioner finds are cost-effective, technologically feasible
49 and reliable and that effectively mitigate or minimize damage to
50 and provide adequate protection of the public health, welfare and
51 the environment.

2 the environment. When the remedial action taken includes the
3 installation of a public water supply or the extension of mains
4 of an existing utility, the department's obligation is limited to
5 construction of those works that are necessary to furnish the
6 contaminated or potentially contaminated properties with a supply
7 of water sufficient for existing uses. The department is not
8 obligated to contribute to a utility's system development charge
9 or to provide works or water sources exceeding those required to
10 abate the threats or hazards posed by the discharge. The fund
11 may be used to pay costs of operation, maintenance and
12 depreciation of the works or water supply for a period not
13 exceeding 20 years. The commissioner shall consult with the
14 affected party before selecting the alternative to be implemented.

15 3. Issuance of clean-up orders. The commissioner may
16 investigate and sample sites where an oil discharge has or may
17 have occurred to identify the source and extent of the
18 discharge. During the course of the investigation, the
19 commissioner may require submission of information or documents
20 that relate or may relate to the discharge under investigation
21 from a person whom the commissioner has reason to believe may be
22 a responsible party. If the commissioner finds, after
23 investigation, that a discharge of oil has occurred and may
24 create a threat to public health or the environment, including,
25 but not limited to, contamination of a water supply, the
26 commissioner may issue a clean-up order requiring the responsible
27 party to cease the discharge immediately and to take action to
28 prevent further discharge and to mitigate or terminate the threat
29 of human exposure to contamination or to explosive vapors. In
30 addition to other actions, the commissioner may, as part of a
31 clean-up order, require the responsible party to provide
32 temporary drinking water and water treatment systems approved by
33 the commissioner, to sample and analyze wells and to compensate
34 3rd-party damages resulting from the discharge. The commissioner
35 may order that the responsible party take temporary and permanent
36 remedial actions at locations threatened or affected by the
37 discharge of oil, including a requirement that the responsible
38 party restore or replace water supplies contaminated with oil
39 with water supplies the commissioner finds cost-effective,
40 technologically feasible and reliable and that effectively
41 mitigate or minimize damage to and provide adequate protection of
42 public health, welfare and the environment. Clean-up orders may
43 be issued only in compliance with the following procedures.

44 A. Orders issued under this section must contain findings
45 of fact describing the manner and extent of oil
46 contamination, the site of the discharge and the threat to
47 the public health or environment.

48 B. A responsible party to whom such an order is directed
49 may apply to the board for a hearing on the order if the
50 application is made within 10 working days after receipt of
51 the order.

2 the order by a responsible party. The board shall appoint a
4 hearing examiner to hold a hearing as soon as possible after
6 receipt of the application. The nature of the hearing is an
8 appeal. At the hearing, all witnesses must be sworn and the
10 commissioner shall first establish the basis for the order
12 and for naming the person to whom the order was directed.
14 The burden of going forward then shifts to the person
16 appealing to demonstrate, based upon a preponderance of the
18 evidence, that the order should be modified or rescinded.
20 Within 7 days after the hearing, the hearing examiner shall
22 make findings of fact. The board shall vote to accept,
24 reject or modify the findings of the hearing examiner at the
26 next regularly scheduled board meeting and shall continue,
28 revoke or modify the commissioner's order. The decision of
30 the board may be appealed to the Superior Court in
32 accordance with Title 5, chapter 375, subchapter VII.

34 C. Upon completion of the clean-up activity, the
36 commissioner shall issue a letter to the responsible party
38 or parties indicating that the clean-up order has been
40 complied with for one or more parcels.

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

46 A. A person who causes or is responsible for a discharge to
48 waters and lands of the State in violation of section 543 is
50 not subject to fines or penalties for the discharge if that
52 person:

54 (1) Reports within 2 hours of discovery and promptly
56 removes that discharge in accordance with the rules and
58 orders of the commissioner and the board; and

60 (2) Reimburses the department for any disbursement
62 made from the fund in connection with the discharge
64 pursuant to section 578, subsection 7 within 30 days of
66 demand.

68 B. A responsible party who fails without sufficient cause
70 to undertake removal or remedial action promptly in
72 accordance with a clean-up order issued pursuant to
74 subsection 3 is not eligible for coverage under the fund
76 pursuant to section 577 and is liable to the State for
78 punitive damages in an amount at least equal to, and not
80 more than 3 times, the amount of any sums expended from the
82 fund in addition to reasonable attorney's fees.

84 C. Notwithstanding paragraphs A and B, a person who
86 violates any laws or rules administered by the department
88 under this subchapter is subject to the fines and penalties
90 provided by section 349.

2 5. Acquisition of property; authority. Upon approval of
3 the board by a 2/3 majority vote, the department may acquire by
4 purchase, lease, condemnation, donation or otherwise, any real
5 property or any interest in real property to undertake remedial
6 actions in response to a discharge of oil, including, but not
7 limited to:

8
9 A. Actions to prevent further discharge and to mitigate or
10 terminate the threat of a discharge of oil;

11
12 B. Actions to clean up and remove oil from the site; and

13
14 C. Replacement of water supplies contaminated by or at
15 significant risk of contamination by a discharge of oil.

16
17 The department may exercise the right of eminent domain in
18 the manner described in Title 35-A, sections 6502 to 6512, to
19 take and hold real property, to provide drinking water supplies,
20 to replace water supplies contaminated by a discharge, to
21 undertake soil and groundwater remediation and to protect water
22 supplies at significant risk of contamination. The department
23 may transfer or convey to any person that real property or any
24 interest in that real property once acquired.

25 **§577. Fund coverage requirements**

26
27 1. Eligibility for fund coverage. Eligibility for coverage
28 by the fund of clean-up costs and eligible 3rd-party damage costs
29 is governed by the following provisions.

30
31 A. The applicant must submit within 90 days of reporting
32 the discharge a written request to the commissioner to be
33 covered by the fund. The request must include:

34
35 (1) A description of the discharge and the locations
36 threatened or affected by the discharge, to the extent
37 known;

38
39 (2) An agreement that the applicant shall pay the
40 initial costs of cleanup and 3rd-party damage claims up
41 to the deductible amount specified in subsection 2; and

42
43 (3) Documentation that the applicant is in compliance
44 with the requirements of paragraph B.

45
46 Within 90 days of receipt of an applicant's completed request for
47 coverage by the fund submitted pursuant to this subsection, the
48 commissioner shall issue an order approving or denying the
49 applicant's request. Failure to issue an order within this
50 period constitutes approval of the applicant's request for
51 coverage by the fund.

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

6 (1) The compliance schedule in section 574-C for
8 upgrading and replacement of non-conforming existing
10 aboveground oil storage facilities;

12 (2) An outstanding consent agreement or clean-up order
14 issued by the commissioner under section 543; section
16 548; section 568, subsection 3; or section 576,
18 subsection 3, regarding violations of subchapter II-A
20 or II-B or this subchapter;

22 (3) An outstanding court order or consent decree
24 regarding violations of subchapter II-A or II-B or this
26 subchapter;

28 (4) The following requirements for new, replacement,
30 existing and upgraded aboveground oil storage
32 facilities:

34 (a) Applicable design and installation
36 requirements in effect at the time of the
38 installation, or retrofitting requirements for
40 leak detection as established in rules adopted by
42 the board pursuant to section 575;

44 (b) Applicable operation, maintenance and
46 monitoring requirements for new, replacement,
48 existing and upgraded aboveground oil storage
50 facilities as established in rules adopted by the
52 board pursuant to section 575;

(c) Applicable site assessment requirements as
established in rules adopted by the board pursuant
to section 575;

(d) Applicable closure requirements as
established in rules adopted by the board pursuant
to section 575;

(e) The removal requirements of sections 548 and
576; and

(f) Payment of fees required under section 574,
subsection 1, paragraph A and section 574,
subsection 4.

The burden of proof is on the department to show a lack of
compliance. The commissioner shall make written findings of
fact when making a determination under this paragraph.

2 These findings are subject to appeal to the board. The
3 board's decision is subject to judicial review pursuant to
4 Title 5, chapter 375, subchapter VII.

5 C. The facility for which the applicant is applying for
6 coverage may not be owned or operated by the Federal
7 Government.

8 D. In one calendar year, an applicant may apply only for
9 coverage of clean-up costs and 3rd-party damage claims that
10 total less than \$2,000,000 aggregate per facility owner.
11 This limit includes claims made in subsequent years on those
12 discharges.

13 E. An applicant is not eligible for coverage under this
14 section if the applicant has one or a combination of the
15 following relationships with an entity that owns or operates
16 an oil refinery:

17 (1) Is owned directly by or directly owns that entity;

18 (2) Is a franchisee of that entity;

19 (3) Is a member of a partnership or limited
20 partnership that includes that entity;

21 (4) Is a subsidiary of that entity; or

22 (5) Is a parent corporation of that entity.

23 An applicant is not subject to this exclusion from coverage
24 if its sole relationship with the entity is a contractual
25 agreement to purchase oil from the entity exclusively for
26 retail sale or for the applicant's consumption.

27 2. Deductibles. Applicants eligible for coverage by the
28 fund under subsection 1 shall pay the initial costs for eligible
29 expenses resulting from cleaning up and compensating eligible
30 3rd-party damages from a discharge prohibited under section 543
31 on a per-occurrence basis according to the following schedule:

<u>Total storage for individual</u>	<u>Costs paid by</u>
<u>facility (gallons)</u>	<u>applicant</u>
<u>10,000 or less</u>	<u>\$2,500</u>
<u>10,001 - 20,000</u>	<u>\$5,000</u>
<u>20,001 - 50,000</u>	<u>\$10,000</u>
<u>50,001 - 250,000</u>	<u>\$50,000</u>
<u>250,000 or more</u>	<u>\$100,000</u>

32 The commissioner shall pay eligible additional costs up to
33 \$1,000,000 associated with activities from section 578,
34 subsection 6, paragraphs B, D, and H resulting from a

2 discharge from the fund. The commissioner may pay costs
4 eligible for coverage by the fund above \$1,000,000 from the
6 fund, but the commissioner shall recover these expenditures
8 from the responsible party pursuant to section 578,
10 subsection 7.

12 3. Exemptions from deductible. The commissioner may waive
14 the deductible requirement for an applicant's personal residence
16 if the commissioner determines that the applicant does not have
18 the financial resources to pay the deductible. The board may
20 adopt rules to determine the standards to be used to assess an
22 applicant's ability to pay this deductible.

24 4. Agreements. Payments to or on behalf of applicants for
26 clean-up activities undertaken by the applicant must be pursuant
28 to a written agreement between the applicant and the
30 commissioner. The agreement must include, but is not limited to:

32 A. A plan and schedule for remedial actions;

34 B. A provision for enforcement of the agreement and
36 sanctions for nonperformance;

38 C. Provisions for cost accounting and reporting of
40 costs incurred in remediation activities; and

42 D. An agreement to clean up the site to the
44 satisfaction of the commissioner.

46 5. Uncompensated 3rd-party damage claims. If, within 12
48 months of a claim, a person designated as a responsible party by
50 the commissioner refuses to pay 3rd-party damage claims not
covered by the fund, the commissioner may pay these claims from
the fund pursuant to section 578, subsection 2. The amount paid
must be recovered from the responsible party pursuant to section
578.

§578. Maine Inland Surface Oil Clean-up Fund

The Maine Inland Surface Oil Clean-up Fund is established to
be used by the department as a nonlapsing, revolving fund for
carrying out the purposes of this subchapter. The balance in the
fund is limited to \$6,000,000, which includes all funds credited
under this section. To this fund are credited all registration
fees, fees for late payment or failure to register, penalties,
reimbursements and other fees and charges related to this
subchapter. To this fund are charged all expenses of the
department related to this subchapter, including administrative
expenses, costs of removal of discharges, restoration of water
supplies and 3rd-party damages covered by this subchapter.

2 The commissioner may authorize the borrowing of funds by and
3 among the Maine Coastal Surface Oil Clean-up Fund, the Ground
4 Water Oil Clean-up Fund and the Maine Inland Surface Oil Clean-up
5 Fund to carry out the provisions of subchapters II-A and II-B and
6 this subchapter. All funds borrowed pursuant to this section
7 must be repaid with interest to the fund of origin in as prompt a
8 manner as revenues allow at a rate of interest determined by the
9 Treasurer of State based on the average rate of interest earned
10 on funds invested during the period of the loan.

11 Money in the fund not needed to meet the obligations of the
12 department in the exercise of its responsibilities under this
13 subchapter and not on loan to the Maine Coastal Surface Oil
14 Clean-up Fund or the Ground Water Oil Clean-up Fund must be
15 deposited with the Treasurer of State to the credit of the fund
16 and may be invested as provided by law. Interest received on that
17 investment must be credited to the fund.

18 **1. Research and development.** The Legislature may allocate
19 not more than \$100,000 per year from the fund to be devoted to
20 research and development in the causes, effects and removal of
21 pollution caused by oil. These allocations must be made in
22 accordance with section 580-A.

23 **2. Third-party damages.** Any person claiming to have
24 suffered property damage or actual economic damages, including,
25 but not limited to, loss of income and medical expenses arising
26 from physical bodily injury, directly or indirectly as a result
27 of a discharge of oil prohibited by section 543 including all
28 discharges of oil from aboveground oil storage facilities,
29 referred to in this subsection as the "claimant," may apply
30 within 2 years after the occurrence or discovery of the injury or
31 damage, whichever date is later, to the commissioner stating the
32 amount of damage alleged to have been suffered as a result of
33 that discharge. The commissioner shall prescribe appropriate
34 forms and details for the applications. The commissioner may
35 contract with insurance professionals to process claims. The
36 commissioner may, upon petition and for good cause shown, waive
37 the time limitation for filing damage claims.

38 **A.** When a responsible party is known, the commissioner
39 shall send by certified mail to the responsible party notice
40 of the claim and written notice of the right to resolve the
41 claims of damage outside of the 3rd-party damage claims
42 process. If a claimant has not been compensated for
43 3rd-party damages by the responsible party and the claimant
44 and the commissioner agree as to the amount of the damage
45 claim, the commissioner shall certify the amount of the
46 claim and the name of the claimant to the Treasurer of State
47 and the Treasurer of State shall pay the amount of the claim
48 from the Maine Inland Surface Oil Clean-up Fund.

2 B. If the claimant and the commissioner are not able to
4 agree as to the amount of the damage claim, the claim is
subject to subsection 4.

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

12 D. Damage claims arising under this subchapter that are a
14 result of a prohibited discharge to waters of the State are
recoverable only in the manner provided under this
16 subchapter. The remedies provided in this subchapter for
discharges to waters of the State are exclusive.

18 E. Awards from the fund on damage claims may not include
20 any amount the claimant has recovered, on account of the
same damage, by way of settlement with the responsible party
22 or the responsible party's representatives or judgment of a
court of competent jurisdiction against the responsible
party to the extent these amounts are duplicative.

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

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

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

44 I. A 3rd-party damage claim for damages to real estate may
not include the devaluation of the real estate associated
46 with the loss of a water supply if the commissioner finds
under section 576 that a public or private water supply is
48 available and that the water supply best meets the criteria
of that section and the property owner did not agree to be
50 served by that public or private water supply.

52 J. 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 determined responsible.

4 K. 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.

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

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

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

21 A. An independent hearing examiner appointed by the
22 commissioner shall hear and determine any disputed 3rd-party
23 damage claims. When a responsible party is known, the
24 commissioner shall send by certified mail to the responsible
25 party a copy of the 3rd-party damage claim and written
26 notice of the right to join the hearing before the hearing
27 examiner as an interested party. A responsible party shall
28 provide written notification to the department of the
29 responsible party's intent to join as an interested party
30 within 10 working days of receipt of this notice. If the
31 responsible party joins as an interested party, any
32 determination of the amount of the claim and award by the
33 independent hearing examiner is binding on the interested
34 party in any subsequent action for reimbursement to the
35 fund. The parties to the hearing are the commissioner, the
36 interested party, if any, and the claimant.

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

40 C. Hearings before the hearing examiner are informal and
41 the rules of evidence applicable to judicial proceedings are
42 not binding. The hearing examiner may administer oaths and
43 require by subpoena the attendance and testimony of
44 witnesses and the production of books, records and other
45 evidence relative or pertinent to the issues presented to
46 the hearing examiner for determination.

2 D. Determinations made by the hearing examiner are final
4 and binding on the parties and those determinations may be
6 subject to review pursuant to the Maine Administrative
8 Procedure Act. The party seeking review on a hearing
10 examiner's determination must file an appeal in Superior
12 Court within 30 days of the determination. Determinations
14 made by the hearing examiner must be accorded a presumption
16 of regularity and validity in a subsequent reimbursement
18 action, but this presumption may be rebutted by responsible
20 parties who do not become interested parties.

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

30 5. Funding. Funding for the Maine Inland Surface Oil
32 Clean-up Fund is as follows.

34 A. A fee is assessed of 1¢ per barrel of crude oil, 4¢ per
36 barrel of #6 fuel oil, 10¢ per barrel of gasoline and 6¢ per
38 barrel of all other refined petroleum products and their
40 by-products other than gasoline and #6 fuel oil, including
42 #2 fuel oil, kerosene, jet fuel, diesel fuel and liquid
44 asphalt. The fee is assessed on the first transfer of those
46 products by oil terminal facility licensees, as defined in
48 section 542, subsection 7. These fees must be paid monthly
50 on the basis of records certified to the commissioner.

52 B. Aboveground oil storage facility registration fees
54 required by section 574 must be paid to the commissioner and
56 upon receipt all but \$15 is credited to the Maine Inland Oil
58 Clean-up Fund. The remaining \$15 must be transferred to the
60 Bureau of the State Fire Marshal.

62 C. A person who is required to register with the
64 commissioner pursuant to section 573 and who first
66 transports oil in Maine shall pay fees that are determined
68 on the basis of 1¢ per barrel of crude oil, 4¢ per barrel of
70 #6 fuel oil, 10¢ per barrel of gasoline and 6¢ per barrel of
72 all refined oil including #2 fuel oil, kerosene, jet fuel,
74 diesel fuel and liquid asphalt transported by the registrant
76 during the period of registration. Fees must be paid
78 monthly by the registrant on the basis of records certified
80 to the commissioner. Fees must be paid to the department
82 and upon receipt by the department credited to the Maine
84 Inland Surface Oil Clean-up Fund. The registrant shall make
86 available to the commissioner and the commissioner's
88 authorized representatives all documents relating to the oil
90 transported by the registrant during the period of
92 registration. This paragraph does not apply to waste oil

2 transported into the State in a motor vehicle that has a
3 valid license issued by the department for the
4 transportation of waste oil pursuant to section 1319-O and
5 is subject to fees established under section 1319-I.

6 6. Disbursements from fund. Money in the fund may be
7 disbursed for the following purposes:

8
9
10 A. Administrative expenses, personnel expenses and
11 equipment costs of the department related to the enforcement
12 of this subchapter and any loans to the Ground Water Oil
13 Clean-up Fund or the Maine Coastal Surface Oil Clean-up Fund
14 made pursuant to this section;

15
16 B. All costs, including without limitation, personnel
17 undertaking oil spill response activities and equipment
18 expenses involved in the removal of a prohibited discharge,
19 the abatement of pollution and the implementation of
20 remedial measures, including restoration of water supplies,
21 related to the discharge of oil covered by this subchapter,
22 not paid by a responsible party or an applicant for coverage
23 by the fund;

24 C. Sums allocated to research and development in accordance
25 with this section;

26
27
28 D. Payment of 3rd-party claims awarded in accordance with
29 this section;

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

33
34 F. Payment of costs of insurance by the State to extend or
35 implement the benefits of the fund;

36
37
38 G. Payment of costs for the collection of overdue
39 reimbursements;

40 H. Payments to or on behalf of applicants eligible for
41 coverage by the fund under section 577, subsection 1 for
42 expenses above the deductible specified in section 577,
43 subsection 2 incurred in commissioner-approved clean-up
44 activities and specified in an agreement under section 577,
45 subsection 4; and

46
47
48 I. Payment of costs for the collection of overdue
49 reimbursements.

50 7. Reimbursements to fund. The commissioner shall seek
51 recovery for the use of the fund of all sums greater than
52 \$1,000,000 per occurrence expended from the fund pursuant to

2 subsection 6, paragraph H for an applicant for coverage by the
3 fund found by the commissioner to be eligible under section 577,
4 subsection 1 and all sums expended from the fund when no
5 applicant was found by the commissioner to be eligible under
6 section 577, subsection 1, including overdrafts, for the purposes
7 described in subsection 6, paragraphs B, D, E and H or for other
8 damage incurred by the State, in connection with a prohibited
9 discharge, including interest computed at 15% a year from the
10 date of expenditure, unless the commissioner finds the amount
11 involved too small or the likelihood of success too uncertain.
12 Recoveries resulting from damage due to an oil pollution disaster
13 declared by the Governor pursuant to section 547 or 575-A must be
14 apportioned between the Maine Coastal Surface Oil Clean-up Fund,
15 the Inland Surface Oil Clean-up Fund and the General Fund so as
16 to repay the full costs to the General Fund of any bonds issued
as a result of the disaster.

18 Requests for reimbursement to the fund, if not paid within 30
19 days of demand, may be turned over to the Attorney General for
20 collection or may be submitted to a collection agency or agent or
21 an attorney retained by the department with the approval of the
22 Attorney General in conformance with Title 5, section 191. The
23 commissioner may file claims with appropriate federal agencies to
24 recover for the use of the fund all disbursements from the fund
25 in connection with a prohibited discharge.

26 Requests for reimbursement to the fund for disbursements pursuant
27 to subsection 6, paragraph B, if not paid within 60 days of
28 demand, are subject to a penalty not to exceed twice the total
29 amount of reimbursement requested. This penalty is in addition
30 to the reimbursement requested and any other fines or civil
31 penalties authorized by this Title.

34 **B. 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 any of the following:

38 A. An act of war; or

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

44 Upon such finding by the board immediate credit must be entered
45 for the party involved. The findings of the board are conclusive
46 and not subject to judicial review, as the waiver provided in
47 this subsection is a privilege conferred, not a right granted.

50 **§579. Liability**

2 Because this subchapter provides the means for rapid and
4 effective cleanup and the means to minimize direct damages as
6 well as indirect damages and the proliferation of 3rd-party
8 claims, each responsible party is jointly and severally liable
10 for all disbursements made by the State pursuant to section 578,
12 subsection 6, paragraphs B, D, E and H, or other damage incurred
14 by the State, including interest computed at 15% a year from the
16 date of expenditure. The commissioner shall demand reimbursement
18 of costs and payment of damages to be recovered under this
20 section and payment must be made promptly by the responsible
22 party or parties upon whom the demand is made. If payment is not
24 received by the State within 30 days of the demand, the Attorney
26 General may file suit in the Superior Court and, in addition to
28 relief provided by other law, may seek punitive damages as
30 provided in section 576. Notwithstanding the time limits stated
32 in this section neither a demand nor other recovery efforts
34 against one responsible party may relieve any other responsible
36 party of liability.

38 In any suit filed under this section the State need not
40 prove negligence in any form or matter by a defendant. The State
42 need only prove the fact of the prohibited discharge and that a
44 defendant is a responsible party, as defined in section 573.

46 A person who would otherwise be a responsible party is not
48 subject to liability under this section, if that person can
50 establish by a preponderance of the evidence that the liability
52 pursuant to this section for which that person would otherwise be
54 responsible, was caused solely by an act of God or an act of war.

56 **§580. Personnel and equipment**

58 The commissioner shall establish and maintain at such
60 locations as it determines to be appropriate, such employees and
62 equipment as in its judgment may be necessary to carry out this
64 subchapter. The commissioner, subject to the Civil Service Law,
66 may employ such personnel as may be necessary to carry out the
68 purposes of this subchapter and shall prescribe the duties of
70 those employees. The salaries of those employees and the cost of
72 that equipment must be paid from the Maine Inland Surface Oil
74 Clean-up Fund.

76 **§580-A. Budget approval**

78 The commissioner shall submit budget recommendations for
80 disbursements from the fund in accordance with section 578,
82 subsection 6, paragraphs A, C and F for each biennium. The
84 budget must be submitted in accordance with Title 5, sections
86 1663 to 1666. The State Controller shall authorize expenditures
88 from the budget as approved by the commissioner. Expenditures
90 pursuant to section 578, subsection 6, paragraphs B, D, E, G and

2 H may be made as authorized by the State Controller following
3 approval by the commissioner.

4 **§580-B. Municipal ordinances; powers limited**

6 Nothing in this subchapter may be construed to deny any
7 municipality, by ordinance or by law, from exercising police
8 powers under any general or special act. Ordinances and bylaws
9 in furtherance of the intent of this subchapter and promoting the
10 general welfare, public health and public safety are valid unless
11 in direct conflict with this subchapter or any rule or order of
12 the board adopted under authority of this subchapter.

14 **§580-C. Legislative review**

16 Rules adopted by the board under this subchapter must be
17 submitted for review by the joint standing committee of the
18 Legislature having jurisdiction over energy and natural
19 resources. In reviewing the rules promulgated by the board under
20 this subchapter, the joint standing committee having jurisdiction
21 over energy and natural resources matters must be guided by the
22 provisions of Title 5, chapter 377-A.

24 **§580-D. Construction**

26 This subchapter, being necessary for the general welfare,
27 the public health and the public safety of the State and its
28 inhabitants, must be liberally construed to effect the purposes
29 set forth under this subchapter. A rule or order of the board or
30 commissioner may not be stayed pending appeal under the
31 provisions of this subchapter.

32 **§580-E. Application**

34 Municipalities are exempt from the requirements of sections
35 574-A, 574-B and 574-D and any rules adopted by the board
36 pursuant to section 575 and do not qualify for coverage by the
37 fund established in section 578 of clean-up costs and eligible
38 3rd-party damage costs. A municipality may opt for coverage
39 under the fund. To qualify for coverage under the fund, a
40 municipality must comply with all the requirements of sections
41 574-A, 574-B and 574-D and all applicable rules and must pay the
42 appropriate fees.

44 **PART B**

46 **Sec. B-1.** 38 MRSA c. 3, sub-c. II-A, first 3 lines are repealed and
48 the following enacted in their place:

50 **SUBCHAPTER II-A**

52 **COASTAL OIL DISCHARGE PREVENTION AND POLLUTION CONTROL**

2 **Sec. B-2. 38 MRSA §541, 3rd ¶**, as amended by PL 1985, c. 496,
Pt. A, §5, is further amended to read:

4
6 The Legislature further finds and declares that the transfer
of oil, petroleum products and their by-products between vessels
and vessels and onshore facilities and vessels within the
8 jurisdiction of the State and state waters ~~and the transportation~~
~~and other handling of oil in inland areas of the State~~ are
10 hazardous undertakings; that spills, discharges and escape of
oil, petroleum products and their by-products occurring as a
12 result of procedures involved in the transfer, storage and other
handling of such products pose threats of great danger and damage
14 to the marine, estuarine, ~~inland surface water~~ and adjacent
terrestrial environment of the State; to owners and users of
16 shorefront property; to public and private recreation; to
citizens of the State and other interests deriving livelihood
18 from ~~marine and inland surface water related~~ marine-related
activities; and to the beauty of the Maine coast ~~and inland~~
20 waters; that such hazards have frequently occurred in the past,
are occurring now and present future threats of potentially
22 catastrophic proportions, all of which are expressly declared to
be inimical to the paramount interests of the State as set forth
24 in this subchapter and that such state interests outweigh any
economic burdens imposed by the Legislature upon those engaged in
26 transferring and other handling of oil, petroleum products and
their by-products and related activities.

28 **Sec. B-3. 38 MRSA §542, sub-§4-A**, as enacted by PL 1991, c.
30 380, §1, is repealed.

32 **Sec. B-4. 38 MRSA §542, sub-§5**, as amended by PL 1985, c. 496,
Pt. A, §6, is further amended to read:

34 **5. Fund.** "Fund" means the Maine Coastal and ~~Inland~~ Surface
36 Oil Clean-up Fund.

38 **Sec. B-5. 38 MRSA §544, sub-§2**, as affected by PL 1989, c.
890, Pt. A, §40 and amended by Pt. B, §109, is repealed.

40 **Sec. B-6. 38 MRSA §545-B**, as affected by PL 1989, c. 890, Pt.
42 A, §40 and amended by Pt. B, §112, is repealed.

44 **Sec. B-7. 38 MRSA §548, 2nd ¶**, as amended by PL 1991, c. 817,
§10, is further amended to read:

46
48 Any unexplained discharge of oil within state jurisdiction
or discharge of oil occurring in waters beyond state jurisdiction
that for any reason penetrates within state jurisdiction must be
50 removed by or under the direction of the commissioner. Any
expenses involved in the removal or cleanup of discharges,
52 including the restoration of water supplies contaminated by

2 discharges from interstate pipelines and other discharges
3 prohibited by section 543, whether by the person reporting the
4 discharge, the commissioner or the commissioner's agents or
5 contractors, must be paid in the first instance from the Maine
6 Coastal and--Inland Surface Oil Clean-up Fund and any
7 reimbursements due that fund must be collected in accordance with
8 section 551.

9
10 **Sec. B-8. 38 MRSA §549**, as affected by PL 1989, c. 890, Pt.
11 A, §40, and amended by Pt. B, §115, is further amended to read:

12 **§549. Personnel and equipment**

13
14 The commissioner shall establish and maintain at such ports
15 within the State, and other places as the commissioner
16 determines, employees and equipment necessary to carry out this
17 subchapter. The commissioner, subject to the Civil Service Law,
18 may employ personnel necessary to carry out the purposes of this
19 subchapter, and shall prescribe the duties of those employees.
20 The salaries of those employees and the cost of that equipment
21 must be paid from the Maine Coastal and--Inland Surface Oil
22 Clean-up Fund established by this subchapter. The commissioner
23 and the Director of the Maine Geological Survey shall
24 periodically consult with each other relative to procedures for
25 the prevention of oil discharges into the coastal waters of the
26 State from offshore drilling production facilities. Inspection
27 and enforcement employees of the department in their line of duty
28 under this subchapter shall have the powers of a constable.

29
30 **Sec. B-9. 38 MRSA §551**, as corrected by RR 1991, c. 2, §147,
31 is amended by repealing and replacing the headnote to read:

32 **§551. Maine Coastal Surface Oil Clean-up Fund**

33
34 **Sec. B-10. 38 MRSA §551, first ¶**, as amended by PL 1989, c.
35 500, §1, is further amended to read:

36
37 The Maine Coastal and--Inland Surface Oil Clean-up Fund is
38 established to be used by the department as a nonlapsing,
39 revolving fund for carrying out the purposes of this subchapter.
40 The fund shall--be is limited to \$6,000,000, ~~the--sum--of~~ which
41 ~~shall--include~~ includes all funds credited under this section and
42 any funds loaned to the Ground Water Oil Clean-up Fund
43 established pursuant to subchapter II-B or the Inland Surface Oil
44 Clean-up Fund established pursuant to subchapter IV. The
45 Department of Environmental Protection shall collect fees in
46 accordance with subsection 4. To this fund shall be credited all
47 license fees, penalties, reimbursements and other fees and
48 charges related to this subchapter, and to this fund shall be
49 charged any and all expenses of the department related to this
50 subchapter, including administrative expenses, costs of removal

2 of discharges of pollutants, restoration of water supplies and
3rd-party 3rd-party damages covered by this subchapter.

4 **Sec. B-11. 38 MRSA §551**, as corrected by RR 1991, c. 2, §147,
6 is amended by adding after the first paragraph a new paragraph to
read:

8 The commissioner may authorize the borrowing of funds by and
10 among the Maine Coastal Surface Oil Clean-up Fund, the Ground
12 Water Oil Clean-up Fund and the Inland Surface Oil Clean-up Fund
14 to carry out the provisions of subchapters II-B and IV and this
16 subchapter. All funds borrowed 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.

18 **Sec. B-12. 38 MRSA §551, 2nd ¶**, as amended by PL 1985, c. 496,
20 Pt. A. §13, is further amended to read:

22 Money in the fund, not needed currently to meet the
24 obligations of the department in the exercise of its
26 responsibilities under this subchapter and not on loan to the
28 Ground Water Oil Clean-up Fund or the Inland Surface Oil Clean-up
30 Fund shall must be deposited with the Treasurer of State to the
credit of the fund, and may be invested in such manner as is
provided for by statute. Interest received on that investment
shall must be credited to the Maine Coastal and Inland Surface
Oil Clean-up Fund.

32 **Sec. B-13. 38 MRSA §551, sub-§2, ¶A**, as amended by PL 1991, c.
817, §11, is further amended to read:

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

2 the damage claim, the commissioner shall certify the amount
of the claim and the name of the claimant to the Treasurer
4 of State and the Treasurer of State shall pay the amount of
the claim from the Maine Coastal and--Inland Surface Oil
Clean-up Fund.

6
8 **Sec. B-14. 38 MRSA §551, sub-§4, ¶A,** as repealed and replaced
by PL 1991, c. 454, §9 and affected by §14, is amended to read:

10 A. License fees are determined on the basis of 4¢ ~~3¢~~ per
barrel ~~until July 1, 1994 and 3¢ per barrel after July 1,~~
12 ~~1994,~~ of unrefined crude oil and 1¢ per barrel for all other
refined oil, including #6 fuel oil, #2 fuel oil, kerosene,
14 gasoline, jet fuel and diesel fuel, transferred by the
licensee during the licensing period and must be paid
16 monthly by the licensee on the basis of records certified to
the commissioner. License fees must be paid to the
18 department and upon receipt by it credited to the Maine
Coastal and--Inland Surface Oil Clean-up Fund.

20
22 **Sec. B-15. 38 MRSA §551, sub-§4, ¶D,** as repealed and replaced
by PL 1991, c. 454, §9 and affected by §14, is repealed.

24 **Sec. B-16. 38 MRSA §551, sub-§5,** as amended by PL 1991, c.
817, §§17 and 18, is further amended by amending the first
26 paragraph to read:

28 **5. Disbursements from fund.** Money in the Maine Coastal and
Inland Surface Oil Clean-up Fund shall must be disbursed for the
30 following purposes and no others:

32 **Sec. B-17. 38 MRSA §551, sub-§5, ¶A,** as amended by PL 1991, c.
817, §7, is further amended to read:

34 A. Administrative expenses, personnel expenses and
36 equipment costs of the commissioner related to the
enforcement of this subchapter and any loans to the Ground
38 Water Oil Clean-up Fund made pursuant to section 569-A or
569-B or the Inland Surface Oil Clean-up Fund made pursuant
40 to section 578;

42 **Sec. B-18. 38 MRSA §551, sub-§6,** as repealed and replaced by
PL 1991, c. 454, §12, is amended by amending the first paragraph
44 to read:

46 **6. Reimbursements to Maine Coastal Surface Oil Clean-up**
Fund. For the use of the fund, the commissioner shall seek
48 recovery of all disbursements from the fund for the following
purposes, including overdrafts and interest computed at 15% a
50 year from the date of expenditure, unless the department finds
the amount involved too small or the likelihood of success too

2 uncertain, provided that recoveries resulting from damage due to
an oil pollution disaster declared by the Governor pursuant to
4 section 547 must be apportioned between the Maine Coastal and
Inland Surface Oil Clean-up Fund and the General Fund so as to
6 repay the full costs to the General Fund of any bonds issued as a
result of the disaster:

8 **Sec. B-19. 38 MRSA §551-A, sub-§8, ¶D**, as enacted by PL 1991,
c. 698, §12, is amended to read:

10 D. Review expenditures and the priority for expenditures of
12 the Maine Coastal and ~~Inland~~ Surface Oil Clean-up Fund and
make recommendations to the commissioner on how the fund
14 should be allocated;

16 **PART C**

18 **Sec. C-1. 38 MRSA §569-A, 2nd and 3rd ¶¶**, as enacted by PL
1991, c. 817, §26, are amended to read:

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

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

40 **Sec. C-2. 38 MRSA §569-A, 4th ¶**, as enacted by PL 1991, c.
42 817, §26, is repealed.

44 **Sec. C-3. 38 MRSA §569-A, sub-§5, ¶¶A and B**, as enacted by PL
1991, c. 817, §26, are amended to read:

46 A. Until January 1, 1994 and after January 1, 1998, a fee
48 is assessed of 44¢ 37¢ per barrel of gasoline; 25¢ 22¢ per
barrel of refined petroleum products and their by-products
50 other than gasoline, liquid asphalt and #6 fuel oil,
including #2 fuel oil, kerosene, jet fuel and diesel fuel;
52 and 10¢ 9¢ per barrel of #6 fuel oil. The fee is assessed

2 on the first transfer of those products by oil terminal
3 facility licensees, as defined in section 542, subsection 7,
4 and on a person required to register with the commissioner
5 under section 545-B 573 who first transports oil into the
6 State. The fee is not assessed on petroleum products that
7 are exported from this State. These fees must be paid
8 monthly on the basis of records certified to the
9 commissioner. This subsection does not apply to waste oil
10 transported into the State in any motor vehicle that has a
11 valid license issued by the department for the
12 transportation of waste oil pursuant to section 1319-0 and
13 is subject to fees established under section 1319-I.

14 B. After January 1, 1994, the fees assessed in paragraph A
15 increase to 48¢ 41¢ per barrel of gasoline and 27¢ 24¢ per
16 barrel of refined petroleum products and their by-products
17 other than gasoline, liquid asphalt and #6 fuel oil,
18 including #2 fuel oil, kerosene, jet fuel and diesel fuel.
19 The fee is not assessed on petroleum products that are
20 exported from this State. The fees assessed on #6 fuel oil
21 remain at 10¢ 9¢ per barrel. This paragraph is repealed on
22 January 1, 1998.

23 **Sec. C-4. 38 MRSA §569-B, 2nd and 3rd ¶¶, as enacted by PL**
24 **1991, c. 817, §26, are amended to read:**

25 The commissioner may authorize the borrowing of funds by and
26 between the Maine Coastal and ~~Inland~~ Surface Oil Clean-up Fund
27 and the Ground Water Oil Clean-up Fund and the Maine Inland
28 Surface Oil Clean-up Fund to carry out the provisions of
29 subchapters II-A and II-B IV and this subchapter. All funds
30 borrowed pursuant to this section must be repaid with interest to
31 the fund of origin in as prompt a manner as revenues allow at a
32 rate of interest determined by the Treasurer of State based on
33 the average rate of interest earned on funds invested during the
34 period of the loan.
35

36 Money in the fund not needed currently to meet the
37 obligations of the department in the exercise of its
38 responsibilities under this subchapter and not on loan to the
39 Maine Coastal and ~~Inland~~ Surface Oil Clean-up Fund or the Maine
40 Inland Surface Oil Clean-up Fund must be deposited with the
41 Treasurer of State to the credit of the fund and may be invested
42 as provided by law. Interest received on that investment must be
43 credited to the fund.
44

45 **Sec. C-5. Transition.** On the effective date of this Act, all
46 funds and positions in the Maine Coastal and Inland Surface Oil
47 Clean-up Fund must be transferred to the Maine Coastal Surface
48 Oil Clean-up Fund except that \$1,000,000 and 9 positions must be
49 transferred to the Maine Inland Surface Oil Clean-up Fund.
50

51

2 **Sec. C-6. Deallocation.** The following funds are deallocated
 4 from the Maine Coastal and Inland Surface Oil Clean-up Fund to
 6 carry out the purposes of this Act.

1993-94

8 **ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

10 **Maine Coastal and Inland Surface Oil
 Clean-up Fund**

12	Positions	(-9)
	Personal Services	(\$334,710)
14	All Other	(665,290)

16 Provides for the elimination of 2 ES II
 18 positions, 2 OHMS I positions, one OHMS III
 20 position, one Data Control Specialist
 22 position, one Data Control Clerk position,
 24 one Clerk Typist III position and one
 Conservation Aide position. These positions
 will be transferred to the Maine Inland
 Surface Oil Clean-up Fund along with the
 transfer of \$1,000,000 to the Maine Inland
 Surface Oil Clean-up Fund.

26 **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

28	<u>TOTAL</u>	(\$1,000,000)
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30 **Sec. C-7. Allocation.** The following funds are allocated to the
 32 Maine Inland Surface Oil Clean-up Fund to carry out the purposes
 of this Act.

	1993-1994	1994-1995
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36 **ENVIRONMENTAL PROTECTION,**
 38 **DEPARTMENT OF**

40 **Maine Inland Surface Oil
 Clean-up Fund**

42	Positions	(14)	(17)
44	Personal Services	\$490,429	\$636,735
	All Other	2,602,935	3,045,897
46	Capital Expenditures	42,000	17,200

48 Provides for the transfer of
 50 9 positions from the Maine
 Coastal and Inland Surface
 Oil Clean-up Fund to the
 52 Maine Inland Surface Oil
 Clean-up Fund including: 2

2 ES II positions, 2 OHMS I
 4 positions, one OHMS III
 6 position, one Data Control
 8 Specialist position, one Data
 10 Control Clerk position, one
 12 Clerk Typist III position and
 14 one Conservation Aide
 16 position. Provides funds in
 18 fiscal year 1993-94 for 5 new
 20 positions including: one ES
 22 III position, one ES II
 24 position, one Data Entry
 26 Specialist, one OHMS I
 28 position and one Assistant
 Engineer position as well as
 general operating expenses
 and funds to start a
 registration program, fund
 cleanups and write rules.
 Provides funds in fiscal year
 1994-95 for the positions
 listed above plus one
 Geologist position and one
 OHMS I position and general
 operating expenses to
 supervise cleanups and
 conduct enforcement
 inspections.

30 **DEPARTMENT OF ENVIRONMENTAL**
 32 **PROTECTION**

32	TOTAL	<u>\$3,135,364</u>	<u>\$3,699,832</u>
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34

36 **STATEMENT OF FACT**

38 The bill requires the registration of aboveground oil
 40 storage facilities, establishes a compliance schedule for
 42 upgrading or removing nonconforming tanks, establishes a
 44 3rd-party damage claims process and divides the Maine Coastal and
 Inland Surface Oil Clean-up Fund into 2 funds: the Maine Coastal
 Surface Oil Clean-up Fund and the Maine Inland Surface Oil
 Clean-up Fund.

46 This bill gives the Maine Board of Environmental Protection
 48 the authority to adopt regulations to prevent oil pollution of
 50 ground water and surface water from Maine's 2,000 aboveground oil
 52 storage facilities by requiring installation standards for new
 and replacement aboveground oil storage facilities, an upgrading
 schedule for existing facilities and minimum operating standards
 for all facilities. This bill also addresses the significant

2 public safety and environmental threat posed by the increasing
number of aboveground gasoline storage tanks at gasoline retail
facilities.

4

6 The bill provides the Department of Environmental Protection
with the authority to conduct remediation activities including
replacing water supplies and ordering parties responsible for oil
8 discharges to conduct cleanups.