

# MAINE STATE LEGISLATURE

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NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 978, L.D. 1387, Bill, "An Act to Amend the Underground Oil Storage Facilities and Groundwater Protection Laws"

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

Sec. 1. 38 MRSA §562-A, sub-§2, as amended by PL 1993, c. 363, §3 and affected by §21, is further amended to read:

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

Sec. 2. 38 MRSA §562-A, sub-§7-A is enacted to read:

7-A. Eligible clean-up costs. "Eligible clean-up costs" means those direct expenses including expenses for site investigation that:

A. Are necessary to clean up discharges of oil to the satisfaction of the commissioner;

B. Are cost-effective and technologically feasible and reliable;

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2 C. Effectively mitigate or minimize damages; and

4 D. Provide adequate protection of the public health and welfare and the environment.

6 "Eligible clean-up costs" does not include expenses for legal advice or services.

8  
10 **Sec. 3. 38 MRSA §562-A, sub-§15**, as enacted by PL 1989, c. 865, §2, is amended to read:

12 15. 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 other nonhazardous waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

18 **Sec. 4. 38 MRSA §568-A, sub-§1**, as amended by PL 1993, c. 363, §§8 and 9 and affected by §21, is further amended to read:

20 1. **Eligibility for fund coverage.** Eligibility for coverage by the fund of clean-up costs and eligible 3rd-party damage costs is governed by the following provisions.

24 A. The applicant must submit within 180 days of reporting the discharge a written request to the commissioner to be covered by the fund. The request must include:

26 (1) A description of the discharge and the locations threatened or affected by the discharge, to the extent known;

28 (2) An agreement that the applicant shall pay the deductible amount specified in subsection 2; and

30 (3) ~~Documentation that the applicant is in substantial~~ For underground storage facilities, documentation regarding the applicant's compliance with the requirements of subsection 2, paragraph B; and

32 (4) For aboveground facilities, documentation required by the Fund Insurance Review Board.

34  
36 The commissioner with respect to a claim involving an underground oil storage facility, or the State Fire Marshal with respect to a claim involving an aboveground oil storage facility, may waive the 180-day filing requirement for applicants for coverage of clean-up costs for discharges discovered after April 1, 1990 when the

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2 applicant has cooperated in a timely manner with the  
department in cleaning up the discharge.

4 Within--15--working--days--of--receipt--of--a--request--the  
6 commissioner--must--determine--whether--the--request--is  
8 complete.--If--the--commissioner--determines--that--the--request  
10 is--incomplete--the--commissioner--shall--within--the--15  
12 working--days--inform--the--applicant--of--the--additional  
14 information--required--to--complete--the--request.--Within--90  
16 days--of--receipt--of--an--applicant's--completed--request--for  
18 coverage--by--the--fund--submitted--pursuant--to--this--paragraph  
20 the--commissioner--must--issue--an--order--approving--or--denying  
22 the--applicant's--request.--Failure--to--issue--an--order--within  
24 this--period--constitutes--approval--of--the--applicant's--request  
26 for--coverage--by--the--fund.

18 When--the--commissioner--determines--that--a--site--previously  
20 remediated--to--the--commissioner's--satisfaction--requires  
22 further--remediation--the--owner--or--operator--of--the--site--may  
24 apply--for--coverage--of--eligible--clean-up--costs--and--3rd-party  
26 damages--claims--from--the--fund--notwithstanding--the--person's  
28 failure--to--meet--the--180-day--deadline--described--in--this  
30 paragraph.

26 B.--An--applicant--is--in--substantial--compliance--when--the  
28 commissioner--finds--considering--all--the--relevant  
30 circumstances--including--but--not--limited--to--all--reasons--for  
noncompliance--submitted--by--the--applicant--pursuant--to  
paragraph--A--that--the--following--requirements--are  
substantially--met:

32 (1)--The--compliance--schedule--in--section--563--A--for  
34 nonconforming--facilities--except--that--those--facilities  
36 or--tanks--required--to--be--removed--by--October--1--1989--  
have--until--October--1--1990--to--be--removed--before--they  
are--considered--out--of--compliance;

38 (2)--Any--outstanding--consent--agreement--or--clean-up  
40 order--issued--by--the--commissioner--under--section--568--  
subsection--3--regarding--violations--of--this--subchapter;

42 (3)--Any--outstanding--court--order--or--consent--decree  
44 regarding--violations--of--this--subchapter;

46 (4)--For--motor--fuel--storage--and--marketing--and--retail  
facilities--the--following--requirements:

48 (a)----Applicable--design--and--installation  
50 requirements--in--effect--at--the--time--of--the  
installation--or--retrofitting--requirements--for

# COMMITTEE AMENDMENT

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2                   leak--detection--as--covered--by--section--564,  
                  subsections-1-and-1-A;

4                   (b)--Section-564,--subsection-1-B,--overfill--and  
6                   spill-prevention-equipment,--and-any-rules-adopted  
                  pursuant-to-that-subsection;

8                   (e)--Section-564,--subsection-2-A,--paragraphs-B-to  
10                   I,--not--including--paragraph-G,--and--any--rules  
                  adopted-pursuant-to-that-subsection,--and

12                   (d)--Payment-of-any-fees-required-under-section  
14                   569,--subsection-4-A,--paragraph-C;

16                   (5)--For-consumptive-use-heating-oil-facilities;

18                   (a)--Section-565,--subsection-1,--if-applicable,--and

20                   (b)--Section-565,--subsection-2,--and

22                   (6)--For-waste-oil,--and-heavy-oil-and-airport-hydrant  
24                   facilities-with-discharges-that-are-not-contaminated  
                  with-hazardous-constituents,--compliance-with-rules  
                  adopted-by-the-board-regarding;

26                   (a)--Design--and--installation--requirements--in  
28                   effect--at--the--time--of--the--installation,--if  
                  applicable;

30                   (b)--Retrofitting-of-leak-detection-and-corrosion  
32                   protection,--if-applicable;

34                   (c)--Overfill-and-spill-prevention;

36                   (d)--Monitoring-of-cathodic-protection-systems;

38                   (e)--Testing-requirements-for-tanks-and-piping-on  
                  evidence-of-a-leak;

40                   (f)--Maintenance-of-a-leak-detection-system,--and

42                   (g)--Reporting-leaks.

44                   The-burden-of-proof-is-on-the-department-to-show-a-lack-of  
46                   substantial-compliance.---The-commissioner--shall--make  
48                   written-findings-of-fact-when-making-a-determination-under  
                  this-paragraph.---These-findings-are-subject-to-appeal-to  
                  the-Fund-Insurance-Review-Board-as-provided-in-subsection  
50                   3-A.

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2           ~~The requirements in subparagraphs (1) to (6) do not apply~~  
3           ~~to owners or operators of aboveground oil storage~~  
4           ~~facilities. The Fund Insurance Review Board shall develop,~~  
5           ~~in consultation with the State Fire Marshal, the~~  
6           ~~documentation requirements for claims submitted by owners~~  
7           ~~of aboveground oil storage facilities.~~

8           ~~A finding of lack of substantial compliance does not render~~  
9           ~~an applicant ineligible for coverage by the fund for any~~  
10           ~~future occurrence, if the applicant is in substantial~~  
11           ~~compliance at the time of the future application.~~

12           B-1. An applicant is not eligible for coverage for any  
13           discharge discovered on or before April 1, 1990.

14           ~~C. The facility for which the applicant is applying for~~  
15           ~~coverage is not~~ An applicant is not eligible for coverage  
16           for any discharge from a facility owned or operated by the  
17           Federal Government.

18           ~~D. In any one calendar year, an applicant may only apply~~  
19           ~~for coverage of clean-up costs and 3rd-party damage claims~~  
20           ~~that total less than \$2,000,000 aggregate per facility~~  
21           ~~owner. This limit includes claims made in subsequent years~~  
22           ~~on those discharges.~~

23           ~~E. An applicant is not eligible for coverage under this~~  
24           ~~section if the applicant has any one or combination of the~~  
25           ~~following relationships with an entity that owns or~~  
26           ~~operates an oil refinery:~~

- 27                   (1) Is owned directly by or directly owns that entity;
- 28                   (2) Is a franchisee of that entity;
- 29                   (3) Is a member of a partnership or limited
- 30                   partnership that includes that entity;
- 31                   (4) Is a subsidiary of that entity; or
- 32                   (5) Is a parent corporation of that entity.

33           ~~An applicant is not subject to this exclusion from coverage~~  
34           ~~if its sole relationship with the entity is a contractual~~  
35           ~~agreement to purchase oil from the entity exclusively for~~  
36           ~~retail sale or for the applicant's consumption.~~

37           F. Within 15 working days of receipt of a request under  
38           paragraph A, the commissioner in the case of an underground  
39           oil storage facility or the State Fire Marshal in the case  
40           of an underground oil storage facility.

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2 of an aboveground oil storage facility shall determine  
3 whether the request is complete. Failure to inform the  
4 applicant of the determination of completeness within 15  
5 working days constitutes acceptance as complete. If the  
6 application is not accepted, the commissioner or State Fire  
7 Marshal shall return the application to the applicant with  
8 the reasons for nonacceptance specified in writing. Within  
9 90 days of receipt of an applicant's completed request for  
10 coverage by the fund submitted pursuant to this subsection,  
11 the commissioner or State Fire Marshal shall issue an order  
12 determining eligibility and, if the applicant is eligible,  
13 specifying the amount of the deductible under subsection  
14 2. Failure to issue an order within this period  
15 constitutes a determination that the applicant is eligible,  
16 subject to the deductibles in subsection 2, paragraph A.

17 G. When the commissioner determines that a site previously  
18 remediated to the commissioner's satisfaction requires  
19 further remediation, the owner or operator of the site may  
20 apply for coverage of eligible clean-up costs and 3rd-party  
21 damage claims from the fund, notwithstanding the person's  
22 failure to meet the 180-day deadline described in paragraph  
23 A.

24 H. The Fund Insurance Review Board shall develop, in  
25 consultation with the State Fire Marshal, the documentation  
26 requirements for claims submitted under this section by  
27 owners of aboveground oil storage facilities.

30 Sec. 5. 38 MRSA §568-A, sub-§2, as amended by PL 1993, c.  
31 732, Pt. A, §4, is repealed and the following enacted in its  
32 place:

34 2. Deductibles. Except as provided in subsection 2-A,  
35 applicants eligible for coverage by the fund under subsection 1  
36 shall pay on a per occurrence basis the applicable standard  
37 deductible amount specified in paragraph A. In addition to the  
38 applicable standard deductible amount required under paragraph  
39 A, the applicant shall pay on a per occurrence basis one or more  
40 of the conditional deductible amounts specified in paragraphs B  
41 and C to the extent applicable.

42 A. Standard deductibles are as follows.

44 (1) For expenses related to a leaking underground oil  
45 storage facility, the deductible amount is determined  
46 in accordance with the following schedule:

48 <u>Number of underground</u>	<u>Deductible</u>
50 <u>storage facilities</u>	

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owned by the facility owner

2		
	<u>1</u>	<u>\$2,500</u>
4	<u>2 to 5</u>	<u>5,000</u>
	<u>6 to 10</u>	<u>10,000</u>
6	<u>11 to 20</u>	<u>25,000</u>
	<u>21 to 30</u>	<u>40,000</u>
8	<u>over 30</u>	<u>62,500</u>

10 (2) For expenses related to a leaking aboveground oil  
12 storage facility, the deductible amount is determined  
in accordance with the following schedule:

14	<u>Total aboveground oil storage</u>	<u>Deductible</u>
16	<u>capacity in gallons owned by</u>	
	<u>the facility owner</u>	
18	<u>Less than 1,320</u>	<u>\$500</u>
	<u>1,321 to 50,000</u>	<u>2,500</u>
20	<u>50,001 to 250,000</u>	<u>5,000</u>
	<u>250,001 to 500,000</u>	<u>10,000</u>
22	<u>500,001 to 1,000,000</u>	<u>25,000</u>
	<u>1,000,001 to 1,500,000</u>	<u>40,000</u>
24	<u>greater than 1,500,000</u>	<u>62,500</u>

26 (3) For facilities with both aboveground and  
28 underground tanks when the source of the discharge can  
not be determined or when the discharge is from both  
30 types of tanks, the standard deductible is the  
applicable amount under subparagraph (1) or (2),  
32 whichever is greater.

34 B. Conditional deductibles for underground facilities and  
tanks are as follows.

36 (1) For nonconforming facilities and tanks, the  
38 deductible is \$10,000 for failure to meet the  
compliance schedule in section 563-A, except that  
40 those facilities or tanks required to be removed by  
October 1, 1989 have until October 1, 1990 to be  
42 removed before they are considered out of compliance.

44 (2) For failure to pay registration fees under  
section 563, subsection 4, the deductible is the total  
46 of all past due fees.

48 (3) For motor fuel storage and marketing and retail  
facilities, the deductibles are:



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2           (a) Five thousand dollars for failure to comply  
3           with applicable design and installation  
4           requirements in effect at the time of the  
5           installation or retrofitting requirements for  
6           leak detection pursuant to section 564,  
7           subsections 1 and 1-A;

8           (b) Five thousand dollars for failure to comply  
9           with section 564, subsection 1-B and any rules  
10           adopted pursuant to that subsection;

12           (c) Five thousand dollars for failure to comply  
13           with section 564, subsection 2-A, paragraphs B to  
14           F and I, and any rules adopted pursuant to that  
15           subsection; and

16           (d) Ten thousand dollars for failure to comply  
17           with section 564, subsection 2-A, paragraph H,  
18           and any rules adopted pursuant to that subsection.

20           (4) For consumptive use heating oil facilities with  
21           an aggregate storage capacity of less than 2,000  
22           gallons, the deductibles are:

24                   (a) Two thousand dollars for failure to comply  
25                   with section 565, subsection 1, if applicable;

26                   (b) Two thousand dollars for failure to comply  
27                   with section 565, subsection 2, regarding  
28                   monitoring; and

29                   (c) Two thousand dollars for failure to comply  
30                   with section 565, subsection 2, regarding any  
31                   requirement to report evidence of a possible leak  
32                   or discharge.

33           (5) For consumptive use heating oil facilities with  
34           an aggregate storage capacity of 2,000 gallons or  
35           greater, the deductibles are:

36                   (a) Five thousand dollars for failure to comply  
37                   with section 565, subsection 1, if applicable;

38                   (b) Five thousand dollars for failure to comply  
39                   with section 565, subsection 2, regarding  
40                   monitoring; and

41                   (c) Ten thousand dollars for failure to comply  
42                   with section 565, subsection 2, regarding any

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2 requirement to report evidence of a possible leak  
or discharge.

4 (6) For waste oil and heavy oil and airport hydrant  
facilities with discharges that are not contaminated  
6 with hazardous constituents, the deductibles for  
failure to comply with rules adopted by the board are:

8  
10 (a) Five thousand dollars for rules regarding  
design and installation requirements in effect at  
12 the time of the installation;

14 (b) Five thousand dollars for rules regarding  
retrofitting of leak detection and corrosion  
16 protection, if applicable;

18 (c) Five thousand dollars for rules regarding  
overflow and spill prevention;

20 (d) Five thousand dollars for rules regarding  
the monitoring of cathodic protection systems;

22 (e) Five thousand dollars for rules regarding  
24 testing requirements for tanks and piping on  
26 evidence of a leak;

28 (f) Five thousand dollars for rules regarding  
maintenance of a leak detection system; and

30 (g) Ten thousand dollars for rules regarding the  
32 reporting of leaks.

34 C. Conditional deductibles for aboveground facilities and  
tanks are as follows.

36 (1) For aboveground tanks subject to the jurisdiction  
38 of the State Fire Marshal pursuant to 16-219 CMR,  
chapter 317, the deductibles are:

40 (a) Five thousand dollars for failure to obtain  
a construction permit from the Office of the  
42 State Fire Marshal, when required under Title 25,  
44 section 2441 and 16-219 CMR, chapter 317;

46 (b) Five thousand dollars for failure to design  
and install piping in accordance with section  
48 570-K and rules adopted by the department;

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(c) Five thousand dollars for failure to comply with an existing consent decree, court order or outstanding deficiency statement regarding violations at the aboveground facility;

(d) Five thousand dollars for failure to implement a certified spill prevention control and countermeasure plan, if required;

(e) Five thousand dollars for failure to install any required spill control measures, such as dikes;

(f) Five thousand dollars for failure to install any required overfill equipment;

(g) Five thousand dollars if the tank is not approved for aboveground use; and

(h) Ten thousand dollars for failure to report any leaks at the facility as required by law.

(2) For aboveground tanks subject to the jurisdiction of the Oil and Solid Fuel Board, the deductibles are:

(a) One hundred and fifty dollars for failure to install the facility in accordance with rules adopted by the Oil and Solid Fuel Board and in effect at the time of installation;

(b) Two hundred and fifty dollars for failure to conform an upgraded facility to the requirements provided in rules of the Oil and Solid Fuel Board;

(c) Two hundred and fifty dollars for failure to make a good faith effort to properly maintain the facility; and

(d) Five hundred dollars for failure to notify the department of a spill.

The commissioner shall make written findings of fact when making a determination of deductible amounts under this subsection. The commissioner's findings may be appealed to the Fund Insurance Review Board, as provided in subsection 3-A. On appeal, the burden of proof is on the commissioner as to which deductibles apply.

After determining the deductible amount to be paid by the applicant, the commissioner shall pay from the fund any

2 additional eligible clean-up costs and 3rd-party damage claims  
3 up to \$1,000,000 associated with activities under section 569-A,  
4 subsection 8, paragraphs B, D and J. The commissioner shall pay  
5 the expenses directly, unless the applicant chooses to pay the  
6 expenses and seek reimbursement from the fund. The commissioner  
7 may pay from the fund any eligible costs above \$1,000,000, but  
8 the commissioner shall recover these expenditures from the  
9 responsible party pursuant to section 569-A.

10 An applicant found ineligible for fund coverage for failure to  
11 achieve substantial compliance under former subsection 1,  
12 paragraph B or failure to apply within 180 days of reporting the  
13 discharge may, on or before July 1, 1996, make a new application  
14 for fund coverage of any discharge discovered after April 1,  
15 1990, if the applicant agrees to pay all applicable deductible  
16 amounts in this subsection and the commissioner waives the  
17 180-day filing requirement pursuant to subsection 1.

18 **Sec. 6. 38 MRSA §568-A, sub-§2-A,** as enacted by PL 1993, c.  
19 732, Pt. A, §5, is repealed and the following enacted in its  
20 place:

21 2-A. Limit on deductible. The applicant shall pay the  
22 total deductible amount or the total eligible clean-up costs and  
23 3rd-party damages, whichever is less.

24 **Sec. 7. 38 MRSA §568-A, sub-§3-A,** as enacted by PL 1993, c.  
25 363, §11 and affected by §21, is amended to read:

26 **3-A. Appeals to review board.** An applicant aggrieved by  
27 an insurance claims-related decision of the commissioner,  
28 including but not limited to decisions on eligibility for  
29 coverage, eligibility of costs and waiver and amount of  
30 deductible, may appeal that decision to the Fund Insurance  
31 Review Board. The public members of the review board shall hear  
32 and render a decision on the appeal. Except as provided in  
33 review board rules, the appeal must be filed within 30 days  
34 after the applicant receives the commissioner's decision on the  
35 matter. The appeals panel must hear an appeal at its next  
36 meeting following receipt of the appeal, unless the appeals  
37 panel and the aggrieved applicant agree to hear the appeal at a  
38 different time. If the appeals panel overturns the  
39 commissioner's decision, reasonable costs, including reasonable  
40 attorney fees, incurred by the aggrieved applicant in pursuing  
41 the appeal to the review board must be paid from the fund.  
42 Reasonable attorney fees include only those fees incurred from  
43 the time of a claims-related decision forward. Decisions of the  
44 appeals panel are subject to judicial review pursuant to Title  
45 5, chapter 375, subchapter VII. The review board may adopt

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2 rules determining the timing of filing appeals on questions of  
eligibility of costs for payment by the fund.'

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

6  
8 **FISCAL NOTE**

10 Allowing certain waivers that will permit coverage under  
the Ground Water Oil Clean-up Fund will result in increased  
12 annual costs to the fund. The Department of Environmental  
Protection estimates that the increased annual costs will be at  
14 least \$15,000. The exact amounts can not be determined at this  
time.

16 The State Fire Marshal's office within the Department of  
Public Safety and the Fund Insurance Review Board will incur  
18 some minor additional costs to develop certain documentation  
requirements. These costs can be absorbed within the agencies'  
20 existing budgeted resources.'

22  
24 **STATEMENT OF FACT**

26 The amendment makes several technical amendments to the  
bill. It rewrites certain provisions to improve clarity and  
adds language to clarify the State Fire Marshal's authority with  
28 regard to discharges from aboveground oil storage tanks.

30 The amendment also specifies that legal expenses are not  
eligible clean-up costs and that an applicant must pay the  
32 lesser of the deductible amount or the total clean-up costs.  
The amendment strikes language authorizing the Fund Insurance  
34 Review Board to hire separate legal counsel and clarifies that  
applicants who appeal to the Fund Insurance Review Board may  
36 have their attorney fees paid from the fund only for fees  
incurred from the time of a claim-related decision forward.

38 The amendment strikes language lowering the cap on the  
40 Groundwater Oil Clean-up Fund, and strikes language making all  
responsible parties eligible for coverage by the fund  
42 retroactive to April 1, 1990.

44 The amendment adds language specifying that applicants are  
eligible for coverage only for discharges discovered after April  
46 1, 1990, allows persons who were denied coverage for failure to  
meet the substantial compliance requirements or the application  
48 deadline to reapply not later than July 1, 1996 and provides  
that reapplication is only for discharges discovered after April  
50 1, 1990 and limits it to applicants for whom the Commissioner of

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2 Environmental Protection waives the 180-day filing deadline.  
3 Language relating to the date of the discharge does not affect  
4 applications pending before the Department of Environmental  
5 Protection or the State Fire Marshal or appeals pending before  
6 the Fund Insurance Review Board on the date the law is amended.

7 The amendment adds a category of deductibles for  
8 aboveground tanks subject to jurisdiction of the Oil and Solid  
9 Fuel Board, and splits the category of deductibles for  
10 consumptive use heating oil facilities so that facilities with  
11 an aggregate storage capacity of 2,000 gallons or more pay a  
12 higher deductible than the smaller facilities, and provides for  
13 a deductible when a facility has both aboveground and  
14 underground tanks and both have leaked or it cannot be  
15 determined which leaked.

16 The amendment also adds a fiscal note to the bill.