

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

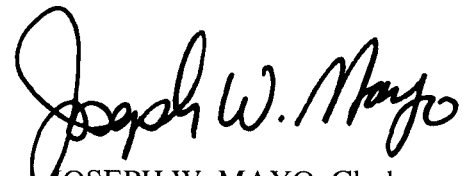
No. 1387

H.P. 978

House of Representatives, April 19, 1995

**An Act to Amend the Underground Oil Storage Facilities and
Groundwater Protection Laws.**

Received by the Clerk of the House on April 14, 1995. Referred to the Committee on Natural Resources and ordered printed pursuant to Joint Rule 14.


JOSEPH W. MAYO, Clerk

Presented by Representative JACQUES of Waterville.

Cosponsored by Representatives: AHEARNE of Madawaska, WHEELER of Bridgewater.

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

4 **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:

6 **2. Applicant.** "Applicant" means the owner or operator of
an underground oil storage facility or an aboveground oil storage
8 facility that ~~may-have~~ has suffered a discharge of oil and, or
the person or persons named as the responsible party or parties
10 for such a discharge, who is seeking coverage of eligible
clean-up costs and 3rd-party damage claims from the fund.

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

14 **7-A. Eligible clean-up costs.** "Eligible clean-up costs"
16 means those direct expenses that:

18 A. Are necessary to clean up discharges of oil;

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

22 C. Effectively mitigate or minimize damages;

24 D. Provide adequate protection of the public health and
26 welfare and the environment; and

28 E. Result from the services of professional consultants,
unrelated to legal advice, used in the furtherance of the
30 clean-up activities.

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

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

40 **Sec. 4. 38 MRSA §568-A, sub-§1**, as amended by PL 1993, c. 363,
42 §§8 and 9 and affected by §21, is further amended to read:

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

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

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

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

8
10 (3) ~~Documentation that the applicant is in
substantial compliance with the requirements of
paragraph B.~~

12
14 The commissioner may waive the 180-day filing requirement
for applicants for coverage of clean-up costs for
16 discharges discovered after April 1, 1990 when the
applicant has cooperated in a timely manner with the
department in cleaning up the discharge.

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

32
34 ~~When the commissioner determines that a site previously
remediated to the commissioner's satisfaction requires
further remediation, the owner or operator of the site may
36 apply for coverage of eligible clean-up costs and 3rd party
damages claims from the fund, notwithstanding the person's
failure to meet the 180-day deadline described in this
38 paragraph.~~

40
42 ~~B. An applicant is in substantial compliance when the
commissioner finds, considering all the relevant
circumstances, including but not limited to all reasons for
44 noncompliance submitted by the applicant pursuant to
paragraph A, that the following requirements are
substantially met:~~

46
48 ~~(1) The compliance schedule, in section 563 A, for
nonconforming facilities except that those facilities
or tanks required to be removed by October 1, 1989,~~

2 have-until-October-1,-1990,-to-be-removed-before-they
are-considered-out-of-compliance;

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

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

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

14 (a)----Applicable---design---and---installation
16 requirements---in---effect---at---the---time---of---the
18 installation---or---retrofitting---requirements---for
leak---detection---as---covered---by---section---564,
subsections-1-and-1-A;

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

24 (c)--Section-564,-subsection-2-A,-paragraphs-B-to
26 I,-not-including-paragraph-G,-and-any-rules
adopted-pursuant-to-that-subsection;-and

28 (d)--Payment-of-any-fees-required-under-section
30 569,-subsection-4-A,-paragraph-C;

32 (5)--For-consumptive-use-heating-oil-facilities:

34 (a)--Section-565,-subsection-1,-if-applicable;-and
36 (b)--Section-565,-subsection-2;-and

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

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

46 (b)--Retrofitting-of-leak-detection-and-corrosion
48 protection,-if-applicable;

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

- 2 (d) ~~--Monitoring-of-cathodic-protection-systems;~~
- 4 (e) ~~--Testing-requirements-for-tanks-and-piping-on~~
 ~~evidence-of-a-leak;~~
- 6 (f) ~~--Maintenance-of-a-leak-detection-system;-and~~
- 8 (g) ~~--Reporting-leaks.~~

10 The burden of proof is on the department to show a lack of
12 substantial compliance. The commissioner shall make
14 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
 3-A.

16 The requirements in subparagraphs (1) to (6) do not apply
18 to owners or operators of aboveground oil storage
20 facilities. The Fund Insurance Review Board shall develop,
 in consultation with the State Fire Marshal, the
22 documentation requirements for claims submitted by owners
 of aboveground oil storage facilities.

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

28 C. The facility for which the applicant is applying for
30 coverage is not owned or operated by the Federal Government.

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

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

- 42 (1) Is owned directly by or directly owns that entity;
- 44 (2) Is a franchisee of that entity;
- 46 (3) Is a member of a partnership or limited
48 partnership that includes that entity;
- 50 (4) Is a subsidiary of that entity; or

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

4 An applicant is not subject to this exclusion from coverage
6 if its sole relationship with the entity is a contractual
8 agreement to purchase oil from the entity exclusively for
10 retail sale or for the applicant's consumption.

12 Within 15 working days of receipt of a request, the
14 commissioner shall determine whether the request is
16 complete. Failure to inform the applicant of acceptance
18 within 15 working days constitutes acceptance as complete.
20 If the application is not accepted, the commissioner shall
22 return the application to the applicant with the reasons
for nonacceptance specified in writing. Within 90 days of
receipt of an applicant's completed request for coverage by
the fund submitted pursuant to this subsection, the
commissioner shall issue an order determining eligibility
and, if eligible, specifying the amount of the deductible.
Failure to issue an order within this period constitutes a
determination that the applicant is eligible, subject to
the deductibles in subsection 2.

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

32 **Sec. 5. 38 MRSA §568-A, sub-§2,** as amended by PL 1993, c.
732, Pt. A, §4, is further amended to read:

34 **2. Deductibles.** Except as provided in subsection 2-A,
36 applicants eligible for coverage by the fund under subsection 1
38 shall pay up--to the deductible amount specified below for
40 expenses resulting from cleaning up and compensating eligible
3rd-party damages from a discharge prohibited under section 543
on a per occurrence basis according to the following schedule:

42	Number of <u>underground</u>	Costs-paid-by
44	<u>storage facilities</u>	<u>applicant</u>
	owned by facility owner	<u>Deductible</u>
46	1	\$2,500
	2 to 5	5,000
48	6 to 10	10,000
	11 to 20	25,000
50	21 to 30	40,000

2	over 30	62,500
4	<u>Total company aboveground storage facilities volume capacity in gallons</u>	<u>Deductible</u>
6	<u>Less than 1,320</u>	<u>\$500</u>
	<u>1,321 to 50,000</u>	<u>2,500</u>
8	<u>50,001 to 250,000</u>	<u>5,000</u>
	<u>250,001 to 500,000</u>	<u>10,000</u>
10	<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>
12	<u>greater than 1,500,000</u>	<u>62,500</u>
14	<u>A. For failure to meet the compliance schedule in section 563-A for nonconforming facilities, except that those facilities 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, the deductible is \$10,000.</u>	
16		
18		
20	<u>B. For motor fuel storage and marketing and retail facilities, failure to comply with the following requirements results in the following deductibles:</u>	
22		
24	<u>(1) Applicable design and installation requirements in effect at the time of the installation or retrofitting requirements for leak detection as pursuant to section 564, subsections 1 and 1-A, \$5,000;</u>	
26		
28	<u>(2) Section 564, subsection 1-B, overfill and spill prevention equipment, and any rules adopted pursuant to that subsection, \$5,000;</u>	
30		
32	<u>(3) Section 564, subsection 2-A, paragraphs B to F and I, and any rules adopted pursuant to that subsection, \$5,000; and</u>	
34		
36	<u>(4) Section 564, subsection 2-A, paragraph H, and any rules adopted pursuant to that subsection, \$10,000.</u>	
38		
40	<u>C. For consumptive use heating oil facilities, failure to comply with the following requirements results in the following deductibles:</u>	
42		
44	<u>(1) Section 565, subsection 1, if applicable, \$2,000;</u>	
46	<u>(2) Section 565, subsection 2, regarding monitoring, \$2,000; and</u>	
48		

2 (3) Section 565, subsection 2, regarding any
requirement to report evidence of a possible leak or
4 discharge, \$2,000.

6 D. For waste oil and heavy oil and airport hydrant
facilities with discharges that are not contaminated with
8 hazardous constituents, the following deductibles apply for
noncompliance with rules adopted by the board regarding:

10 (1) Design and installation requirements in effect at
the time of the installation, if applicable, \$5,000;

12 (2) Retrofitting of leak detection and corrosion
14 protection, if applicable, \$5,000;

16 (3) Overfill and spill prevention, \$5,000;

18 (4) Monitoring of cathodic protection systems, \$5,000;

20 (5) Testing requirements for tanks and piping on
evidence of a leak, \$5,000;

22 (6) Maintenance of a leak detection system, \$5,000;
24 and

26 (7) Reporting leaks, \$10,000.

28 E. The following deductibles apply for aboveground tanks
subject to the jurisdiction of the State Fire Marshal
30 pursuant to 16-219 CMR, chapter 317 that fail to meet the
following requirements:

32 (1) An applicant has received a permit for
34 construction from the Office of the State Fire
36 Marshal, when applicable in accordance with Title 25,
section 2441 and 16-219 CMR, chapter 317, \$5,000;

38 (2) The piping is designed pursuant to and installed
in accordance with rules adopted by the Department of
40 Environmental Protection and section 570-K, \$5,000;

42 (3) The applicant is complying with an existing
consent decree, court order or outstanding deficiency
44 statement regarding violations at the aboveground
facility, \$5,000;

46 (4) The facility has implemented a certified spill
48 prevention control and countermeasure plan, if
required, \$5,000;

50

- 2 (5) The facility has installed any required spill control measures, such as dikes, \$5,000;
- 4 (6) The facility has installed any required overfill equipment, \$5,000;
- 6 (7) The tank is approved for aboveground use, \$5,000;
- 8 and
- 10 (8) The applicant has reported any leaks at the facility as required by law, \$10,000.

12 F. For facilities at a site that is the subject of an application for coverage of clean-up costs, the deductible is all past due registration fees required pursuant to section 569-A, subsection 5.

18 The commissioner shall make written findings of fact when making a determination of deductible amounts under this section. The burden of proof for making determinations of this type rests solely on the department. The findings are subject to appeal to the Fund Insurance Review Board as provided in subsection 3-A.

24 The requirements in paragraphs A to D do not apply to owners or operators of aboveground oil storage facilities. The Fund Insurance Review Board shall develop, in consultation with the State Fire Marshal, the documentation requirements for claims submitted by owners of aboveground oil storage facilities.

30 The commissioner shall pay any eligible additional costs up to \$1,000,000 associated with activities under section 569-A, subsection 8, paragraphs B, D and J resulting from a discharge from the fund. The commissioner shall pay the expenses directly, unless the applicant chooses to pay the expenses and seek reimbursement from the fund. The commissioner may pay any costs eligible for coverage by the fund above \$1,000,000 from the fund but the commissioner shall recover these expenditures from the responsible party pursuant to section 569-A.

40 An applicant found ineligible for fund coverage for failure to achieve substantial compliance may make a new application for fund coverage, retroactive to April 1, 1990, if the applicant agrees to abide by the new schedule of deductibles for each element of failure to abide by maintenance and operating standards for which there are additional deductibles as outlined in this subsection.

48 **Sec. 6. 38 MRSA §568-B, sub-§2, ¶¶B and C, as enacted by PL 1993, c. 363, §12 and affected by §21, are amended to read:**

50

2 B. To adopt rules in accordance with Title 5, chapter 375,
subchapter II establishing criteria for determining
4 substantial compliance for aboveground oil storage
facilities; and

6 C. To contract with the Finance Authority of Maine for
such assistance in fulfilling the board's duties as the
8 board may require; and

10 **Sec. 7. 38 MRSA §568-B, sub-§2, ¶D** is enacted to read:

12 D. To contract for other services that the board may
require, including but not limited to the provision of
14 legal services and legal counsel to the board, whenever and
within whatever circumstances the board determines such a
16 contract to be necessary and appropriate for the carrying
out of its duties.

18 **Sec. 8. 38 MRSA §569-A, first ¶,** as enacted by PL 1991, c.
20 817, §26, is amended to read:

22 The Ground Water Oil Clean-up Fund is established to be
used by the department as a nonlapsing, revolving fund for
24 carrying out the purposes of this subchapter. The balance in
the fund is limited to ~~\$15,000,000~~ \$12,500,000. When the fund
26 balance reaches \$12,500,000 the collection of fees abates until
the fund balance is reduced to \$10,000,000, at which point those
28 fees are reimposed. To this fund are credited all registration
fees, fees for late payment or failure to register, penalties,
30 transfer fees, reimbursements, assessments and other fees and
charges related to this subchapter. To this fund are charged
32 any and all expenses of the department related to this
subchapter, including administrative expenses, payment of
34 3rd-party damages covered by this subchapter, costs of removal
of discharges of oil and costs of cleanup of discharges,
36 including, but not limited to, restoration of water supplies and
any obligations of the State pursuant to Title 10, section 1024,
38 subsection 1.

40 **Sec. 9. Retroactivity.** That section of this Act that amends
the Maine Revised Statutes, Title 38, section 562-A, subsection
42 2 applies retroactively to April 1, 1990.

44
46 **STATEMENT OF FACT**

48 The bill makes the following changes to the laws governing
underground oil storage facilities and groundwater protection.

2 1. It adds persons named as responsible parties to the
definition of "applicant" to allow those who have sold or
4 otherwise transferred their facilities to other ownership, but
who may still be named as responsible parties to clean-up
6 actions, to make claims against the fund. This provision is
made retroactive to April 1, 1990.

8 2. It incorporates the concept of cost-effective
remediation in the Maine Revised Statutes, Title 38, sections
10 548 and 568 into a definition of eligible clean-up costs. The
existing statute does not contain a definition of eligible
12 clean-up costs.

14 3. It clarifies that the definition of oil does not
include oil mixed with hazardous waste. This bill clarifies
16 that the Ground Water Oil Clean-up Fund may not be used to fund
the clean-up of hazardous wastes.

18 4. It provides the Commissioner of Environmental
20 Protection with the authority to waive the 180-day filing
requirement when the applicant has cooperated in clean up of a
22 discharge but has not filed a timely application. The bill also
removes the requirement that applicants must be found to be in
24 substantial compliance in order to be eligible for Ground Water
Oil Clean-up Fund coverage. All applicants will be eligible for
26 fund coverage; however, applicants must pay an additional
deductible for each instance of noncompliance.

28 5. It reduces the size of the Ground Water Oil Clean-up
30 Fund from 15,000,000 to \$12,500,000.

32 6. It clarifies the powers of the Fund Insurance Review
Board with respect to the services for which they may contract.