

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1313

H.P. 950

House of Representatives, March 4, 1997

**An Act to Amend Certain Laws Administered by the Department of
Environmental Protection.**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SHIAH of Bowdoinham.
Cosponsored by Representatives: BRENNAN of Portland, DEXTER of Kingfield, KONTOS
of Windham, Senator: NUTTING of Androscoggin.

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

Sec. 1. 32 MRSA c. 104-A, first 3 lines are repealed and the following enacted in their place:

CHAPTER 104-A

UNDERGROUND OIL STORAGE TANK INSTALLERS

Sec. 2. 32 MRSA §10001, as amended by PL 1987, c. 410, §2, is further amended to read:

§10001. Declaration of purpose

In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil ~~and--underground-hazardous--substane~~ storage tank installers and to assure the availability of underground oil ~~and--underground-hazardous--substane~~ storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil ~~and--underground--hazardous--substane~~ storage tank installation services.

Sec. 3. 32 MRSA §10002, sub-§§3-A, 5-A and 5-B, as enacted by PL 1987, c. 410, §3, are repealed.

Sec. 4. 32 MRSA §10003, sub-§1, as amended by PL 1989, c. 845, §5, is further amended to read:

1. **Establishment and membership.** There is established within the Department of Environmental Protection, the Board of Underground Storage Tank Installers. The board consists of 7 members appointed by the Governor as follows: one from the Department of Environmental Protection; one from either the Maine Oil Dealer's Association or the Maine Petroleum Association; one underground oil ~~ex--underground-hazardous--substane~~ storage tank installer; one from either the Oil and Solid Fuel Board, the Plumber's Examining Board or the State Board of Certification for Geologists and Soil Scientists; one from the Maine Chamber of Commerce and Industry; one from the Maine Fire Chiefs Association; and one public member.

Sec. 5. 32 MRSA §10004, sub-§2, as amended by PL 1989, c. 312, §2, is further amended to read:

2. **Rules.** The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this

chapter, including, but not limited to, rules relating to professional regulation and to the establishment of ethical standards of practice for persons certified to practice underground oil ~~or--underground-hazardous--substance~~ storage tank installation and removal and underground gasoline storage tank removal.

Sec. 6. 32 MRSA §10006, sub-§1, as amended by PL 1989, c. 312, §3, is further amended to read:

1. Certification required. No person may practice, or profess to practice, as an underground oil ~~or--underground-hazardous--substance~~ storage tank installer or underground gasoline storage tank remover in this State or use the words "underground oil storage tank installer," "~~underground-hazardous-substance-storage-tank-installer,~~" "underground gasoline storage tank remover" or other words or letters to indicate that the person using the words or letters is a certified underground oil ~~or--underground--hazardous--substance~~ storage tank installer practitioner or underground gasoline storage tank remover practitioner unless that person is certified in accordance with this chapter.

Sec. 7. 32 MRSA §10008, as amended by PL 1987, c. 410, §8, is further amended to read:

§10008. Reciprocity

A person who is a resident of the State and has been certified in another state as an underground oil ~~or--underground-hazardous--substance~~ storage tank installer may, upon payment of a fee as established under section 10012, obtain a certification as an underground oil ~~or--underground-hazardous--substance~~ storage tank installer, provided that a person submits satisfactory evidence of certification as an underground oil ~~or--underground-hazardous--substance~~ storage tank installer in another state under qualifications equivalent to those specified in this chapter.

Sec. 8. 32 MRSA §10010, first ¶, as amended by PL 1989, c. 312, §6, is further amended to read:

An applicant applying for certification as an underground oil storage tank installer, ~~--an--underground-hazardous--substance tank--installer~~ or an underground gasoline storage tank remover shall must file a written application provided by the board, showing to the satisfaction of the board that that person meets the following requirements.

Sec. 9. 32 MRSA §10010, sub-§4, as amended by PL 1989, c. 845, §9, is repealed.

2 **Sec. 10. 32 MRSA §10010, sub-§5, ¶B**, as amended by PL 1989, c.
3 845, §10, is further amended to read:

4
5 B. Completion of a successful removal of an underground oil
6 storage tank, ~~excluding a tank used for the storage of motor~~
7 ~~fuel-excluding~~ Class I liquids, under the supervision of a
8 designated representative of the Department of Environmental
9 Protection. The board may include in this requirement that
10 the applicant successfully demonstrate knowledge relative to
11 the use of equipment for monitoring gasoline vapors.

12 **Sec. 11. 32 MRSA §10010-A**, as amended by PL 1989, c. 845,
13 §11, is further amended to read:

14
15 **§10010-A. Certification requirements regarding on-site removal of**
16 **underground oil storage tank used for storage of motor**
17 **fuel under supervision of designated representative of**
18 **Department of Environmental Protection**

19
20 To provide for the completion of the on-site ~~installation-of~~
21 ~~an-underground-hazardous-substance-storage-tank-or~~ removal of an
22 underground oil storage tank used for the storage of motor fuel
23 under the supervision of a designated representative of the
24 Department of Environmental Protection, the Board of Underground
25 Storage Tank Installers may issue a provisional certificate valid
26 for no more than 6 months after issuance to tank ~~installers-and~~
27 ~~removers~~ who have successfully completed the examination
28 requirements pursuant to section 10010.

29
30 When the board determines that reasonable extenuating
31 circumstances prevent the administration or completion of an
32 on-site ~~installation-or~~ removal within the 6-month provisional
33 certification period, it may grant one renewal of a provisional
34 certificate for a specific limited time not to exceed 3 months.

35
36 The board shall establish a written set of criteria to be
37 used as a checklist by the representative of the Department of
38 Environmental Protection designated to supervise the on-site
39 ~~installation--or~~ removal to ensure that each ~~installation--or~~
40 removal is evaluated consistently and equitably.

41
42 **Sec. 12. 32 MRSA §10011, sub-§1**, as amended by PL 1991, c.
43 817, §7, is further amended to read:

44
45 **1. Requirements; fees.** Only a person satisfying the
46 requirements of section 10010, subsections 1 and 2 may apply for
47 examination in the manner prescribed by the board. The
48 application must be accompanied by the nonrefundable fee
49 prescribed by section 10012. A person who fails either part of
50

2 the applicable examination specified in section 10010, subsection
3,--4 or 5 may apply for reexamination upon payment of the
prescribed fee.

4
6 **Sec. 13. 32 MRSA §10011, sub-§2,** as amended by PL 1989, c.
312, §12, is further amended to read:

8 **2. Content.** The written examination shall must test the
applicant's knowledge of the skills and knowledge relating to
10 storage tank installation or removal and such other subjects as
the board requires to determine the applicant's fitness to
12 practice. The board shall approve examinations required by this
chapter for underground oil storage tank installers, ~~underground~~
14 ~~hazardous--substance--storage--tank--installers~~ and underground
gasoline storage tank removers and establish standards for an
16 acceptable performance.

18 **Sec. 14. 32 MRSA §10012, sub-§2,** as amended by PL 1991, c.
499, §8, is further amended to read:

20 **2. Disposal of fees and civil penalties.** All fees and
22 civil penalties as authorized by section 10015 received by the
board related to underground oil storage tank installers or
24 underground gasoline storage tank removers must be paid to the
Treasurer of State to be deposited into the Ground Water Oil
26 Clean-up Fund and used for the purpose of carrying out all
applicable provisions of this chapter. All ~~fees--and--civil~~
28 ~~penalties--as--authorized--by--section--10015--received--by--the--board~~
~~related--to--underground--hazardous--substance--storage--tank~~
30 ~~installers--must--be--paid--to--the--Treasurer--of--State--to--be--deposited~~
~~into--the--Hazardous--Waste--Fund--and--used--for--the--purpose--of~~
32 ~~carrying--out--all--applicable--provisions--of--this--chapter.~~ Any
balance of fees and civil penalties as authorized by section
34 10015 ~~in--the--respective--accounts~~ does not lapse but must be
carried forward as a continuing account to be expended for the
36 same purposes in the following fiscal years.

38 **Sec. 15. 32 MRSA §10014, sub-§2,** as amended by PL 1989, c.
312, §14, is further amended to read:

40 **2. Inactive status.** Upon request, the board shall grant
42 inactive status to certified persons who do not practice or
present themselves as underground oil tank installers,
44 ~~underground--hazardous--substance--storage--tank--installers~~ or
underground gasoline storage tank removers and maintain any
46 continuing competency requirements established by the board.

48 **Sec. 16. 32 MRSA §10015, sub-§2, ¶B,** as amended by PL 1989, c.
845, §12, is further amended to read:

50

2 B. Unprofessional conduct, including any gross negligence,
incompetency or misconduct in the certified person's
4 performance of the work of underground oil storage tank
installation or removal, ~~underground hazardous substance~~
6 ~~storage tank installation or removal~~, or underground
gasoline storage tank removal or violation of any standard
of professional behavior established by the board;

8
9 **Sec. 17. 38 MRSA §341-D, sub-§1-A**, as enacted by PL 1995, c.
10 347, §2, is amended to read:

12 **1-A. Stay.** Except to the extent the department determines
that a proposed rule implements a state law that is more
14 stringent than the corresponding federal statute or regulation,
any provision of the proposed rule that is determined by the
16 department to be more stringent than the corresponding federal
statute or regulation must be stayed for 60 days following
18 adoption. During this 60-day period, interested persons may
petition the board to have the Legislature review those
20 provisions of the proposed rule that have been determined to be
more stringent. The filing with the board of petitions from 5 or
22 more interested persons stays the effective date of those
provisions of the rule until 60 days after the filing, if the
24 Legislature is then in session. If the Legislature is not then
in session and is not scheduled to convene within the next 60
26 days, then those provisions of the rule that have been determined
to be more stringent are stayed for 60 days after filing of the
28 petitions to permit consultation between the legislative
committee of jurisdiction, the department and other interested
30 persons. Copies of the petitions that are filed, along with a
statement from the department outlining the provisions of the
32 rule that have been determined to be more stringent and the
accompanying basis statement, must be submitted by the department
34 to the Executive Director of the Legislative Council pursuant to
Title 5, section 8053-A, subsection 3 upon receipt of the
36 petitions. This subsection applies to new rules that are adopted
by the board after the effective date of this subsection. Any
38 major substantive rule that has been subject to legislative
review under Title 5, section 8072 after provisional adoption is
40 exempt from the stay and petition provisions under this
subsection.

42 This subsection is repealed January 1, 1998.

44 **Sec. 18. 38 MRSA §341-G, first ¶**, as enacted by PL 1989, c.
46 890, Pt. A, §13 and affected by §40, is amended to read:

48 There is established the Board of Environmental Protection
Fund to be used by the board as a nonlapsing fund to carry out
50 its duties under this Title. Notwithstanding any other provision

of law, the funds identified in subsection 1 shall transfer annually to the Board of Environmental Protection Fund an amount not to exceed \$150,000 \$250,000. Money in the Board of Environmental Protection Fund may only be expended in accordance with allocations approved by the Legislature.

Sec. 19. 38 MRSA §362-A, first ¶, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §19, is further amended to read:

Notwithstanding any other law administered or enforced by the department, the ~~board~~ commissioner is authorized to permit persons to discharge, emit or place any substances on the land or in the air or waters of the State, in limited quantities and under the strict control and supervision of the commissioner or the commissioner's designees, exclusively for the purpose of scientific research and experimentation in the field of pollution and pollution control. The research and experimentation conducted under this section ~~is~~ are subject to such terms and conditions as the ~~board~~ commissioner determines necessary in order to protect the public's health, safety and general welfare, and may be terminated by the board or commissioner at any time upon 24 hours' written notice.

Sec. 20. 38 MRSA §480-F, sub-§1, as amended by PL 1995, c. 267, §1, is repealed and the following enacted in its place:

1. Delegation. A municipality may apply to the board for authority to issue all permits under this article or for partial authority to process applications for permits involving activities in specified protected natural resources or for activities included in chapter 305 of the department's rules, addressing permit by rule. The board shall grant such authority if it finds that the municipality has:

A. Established a planning board and a board of appeals;

B. Adopted a comprehensive plan and related land use ordinances determined by the State Planning Office to be consistent with the criteria set forth in Title 30-A, chapter 187, subchapter II and determined by the commissioner to be at least as stringent as criteria set forth in section 480-D;

C. The financial, technical and legal resources to adequately review and analyze permit applications and oversee and enforce permit requirements;

D. Made provision by ordinance or rule for:

2 (1) Prompt notice to the commissioner of all
3 applications received except for those activities
4 included in chapter 305 of the department's rules,
5 addressing permit by rule; and

6 (2) Prompt notice to the public upon receipt of
7 application and written notification to the applicant
8 and the commissioner of the issuance or denial of a
9 permit stating the reasons for issuance or denial,
10 except for those applications for which no public
11 notice or written decision is required;

12 E. Provided an application form that is substantially the
13 same as that provided by the commissioner; and

14 F. Appointed a code enforcement officer, certified by the
15 Department of Economic and Community Development.

16 **Sec. 21. 38 MRSA §480-F, sub-§2,** as affected by PL 1989, c.
17 890, Pt. A, §40 and amended by Pt. B, §74, is repealed and the
18 following enacted in its place:

19 2. Procedure. The following procedures apply to
20 applications under this article processed by municipalities.

21 A. For applications processed by municipalities except
22 those described in chapter 305 of the department's rules, no
23 permit issued by a municipality may become effective until
24 30 days subsequent to its receipt by the commissioner, but,
25 if approved by the department in less than 30 days, the
26 effective date is the date of approval. A copy of the
27 application for the permit and the permit issued by the
28 municipality must be sent to the commissioner, immediately
29 upon its issuance, by registered mail. The department shall
30 review that permit and either approve, deny or modify it as
31 necessary. If the department does not act within 30 days of
32 its receipt of the permit by the municipality, this
33 constitutes its approval and the permit is effective as
34 issued, except that within this 30-day period the department
35 may extend the time for its review an additional 30 days.

36 B. For those applications for approval of activities
37 described in chapter 305 of the department's rules, a copy
38 of the municipality's action to approve or deny an
39 application must be sent to the commissioner within 14 days
40 of the municipality's decision.

41 **Sec. 22. 38 MRSA §490-D, sub-§6-B** is enacted to read:

6-B. Medium borrow pits unlicensed on October 1, 1993.

2 Notwithstanding subsection 6-A, the following provisions apply to
4 a medium borrow pit that on October 1, 1993 was not licensed
6 under article 6 and on which gravel had been extracted closer
8 than 50 feet to a public or private road.

10 A. The department may not require the owner or operator of
12 a medium borrow pit to reestablish the required natural
14 buffer strip as a condition of operation.

16 B. The owner or operator of a medium borrow pit shall
18 regrade and seed the sideslopes to a slope no steeper than 2
20 horizontal feet for each vertical foot unless otherwise
22 approved by the department.

24 The owner or operator of a medium borrow pit shall install
26 visual screening and safety measures as required by the
28 department.

30 **Sec. 23. 38 MRSA §490-Y, first ¶,** as enacted by PL 1995, c.
32 700, §35, is amended to read:

34 Except as provided in section 484-A, a person intending to
36 create or operate a quarry under this article must file a notice
38 of intent to comply before the total area of excavation of rock
40 or overburden on the parcel exceeds one acre. Both reclaimed and
42 unreclaimed areas are added together in determining whether this
44 one-acre threshold is exceeded. A notice filed under this
section must be complete, submitted on forms approved by the
department and mailed to the municipality where the quarry is
located, the department, the Maine Historic Preservation
Commission and each abutting property owner. The notice that is
mailed to the municipality and each abutting property owner must
be mailed at least 7 days before the notice of intent to comply
is filed with the regulator. The notice that is mailed to the
department must be sent by certified mail, return receipt
requested. Upon receiving the postal receipt, the owner or
operator may commence operation of the quarry. The municipality
where the proposed quarry is located may submit comments to the
department if the proposed quarry may pose an unreasonable
adverse impact under the standards in section 490-Z. Within 30
days of receipt of the notice of intent to comply, the department
shall respond to the comments made by the municipality.

46 **Sec. 24. 38 MRSA §490-Z, sub-§13, ¶B,** as enacted by PL 1995,
48 c. 700, §35, is amended to read:

50 B. A vegetative cover must be established by seeding or
planting within one year of the completion of excavation.
Vegetative cover must be established on all affected land,

2 including safety benches, except for quarry walls and
flooded areas. A vegetative cover must be established on
4 safety benches, unless otherwise approved by the
department. Topsoil must be placed, seeded and mulched
6 within 30 days of final grading. Vegetative cover is
acceptable if within one year of seeding:

8 (1) The planting of trees and shrubs results in a
permanent stand or a stand capable of regeneration and
10 succession sufficient to ensure a 75% survival rate; and

12 (2) The planting of all material results in permanent
90% ground cover.

14 Vegetative cover used in reclamation must consist of
16 grasses, legumes, herbaceous or woody plants, shrubs, trees
or a mixture of these.

18 **Sec. 25. 38 MRSA §490-EE, sub-§3, ¶C**, as enacted by PL 1995,
20 c. 700, §35, is amended to read:

22 C. A fee of \$250 for each variance requested under section
490-CC, except for the following:

24 (1) A fee of \$500 for a variance to excavate below the
26 seasonal high water table;

28 (2) A fee of \$500 for a variance to create an
externally drained quarry;

30 (3) A fee of \$125 for a variance to waive the topsoil
32 salvage requirement; and

34 (4) A fee of \$125 for a variance to waive the
36 monitoring requirements for airblasts and ground
vibration; and

38 ~~(5) A fee of \$250 upon filing a notice of intent to
expand under section 490-EE; and~~

40 **Sec. 26. 38 MRSA §551, sub-§4, ¶A**, as repealed and replaced by
42 PL 1991, c. 454, §9 and affected by §14, is amended to read:

44 A. License fees are determined ~~on the basis of 4¢ per~~
46 ~~barrel until July 1, 1994 and 3¢ per barrel after July 1,~~
48 ~~1994,~~ of unrefined crude oil and all other refined oil,
including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet
fuel and diesel fuel, transferred by the licensee during the
licensing period and must be paid monthly by the licensee on
50 the basis of records certified to the commissioner. License

2 fees must be paid to the department and upon receipt by it
3 credited to the Maine Coastal and Inland Surface Oil
4 Clean-up Fund.

5 **Sec. 27. 38 MRSA §551, sub-§4, ¶D**, as repealed and replaced by
6 PL 1991, c. 454, §10 and affected by §14, is amended to read:

8 D. Any person ~~who--is~~ required to register with ~~--the~~
9 ~~commissioner--pursuant--to~~ under section 545-B and who first
10 transports oil in Maine shall pay fees ~~--that--are--determined~~
11 ~~on--the--basis--of--4¢--per--barrel--until--July--1--1994--and~~ 3¢ per
12 barrel ~~after--July--1--1994~~, for all refined oil, including #6
13 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel, diesel
14 fuel and liquid asphalt transported by the registrant during
15 the period of registration. Fees must be paid monthly by
16 the registrant on the basis of records certified to the
17 commissioner. Fees must be paid to the department and upon
18 receipt by it credited to the Maine Coastal and Inland
19 Surface Oil Clean-up Fund. The registrant shall make
20 available to the commissioner and the commissioner's
21 authorized representatives all documents relating to the oil
22 transported by the registrant during the period of
23 registration. This paragraph does not apply to waste oil
24 transported into Maine in any motor vehicle that has a valid
25 license issued by the department for the transportation of
26 waste oil pursuant to section 1319-O and is subject to fees
27 established under section 1319-I.

28 **Sec. 28. 38 MRSA §552, sub-§2**, as amended by PL 1991, c. 698,
29 §13, is further amended to read:

32 **2. State need not plead or prove negligence.** ~~Because--it--is~~
33 ~~the~~ The intent of this subchapter is to provide the means for
34 rapid and effective cleanup and to minimize direct and indirect
35 ~~damages as--well--as--indirect--damages~~ and the proliferation of ~~3rd~~
36 ~~party~~ 3rd-party claims. Accordingly, any person, vessel,
37 licensee, agent or servant, including ~~carriers~~ a carrier destined
38 for or leaving a licensee's facility while within state waters,
39 who permits or suffers a prohibited discharge or other polluting
40 condition to take place is liable to the State for all
41 disbursements made by it pursuant to section 551, subsection 5,
42 paragraphs B, D, E, H and I, or other damage incurred by the
43 State, including damage for injury to, destruction of, loss of,
44 or loss of use of natural resources and the reasonable costs of
45 assessing natural resources damage. In any suit to enforce
46 claims of the State under this section, to establish liability,
47 it is not necessary for the State to plead or prove negligence in
48 any form or manner on the part of the person causing or suffering
49 the discharge or licensee responsible for the discharge. The
50 State need only plead and prove the fact of the prohibited

2 discharge or other polluting condition and that the discharge
3 occurred at facilities under the control of the licensee or was
4 attributable to carriers or others for whom the licensee is
5 responsible as provided in this subchapter or occurred at or
6 involved any real property, structure, equipment or conveyance
7 under the custody or control of the person causing or suffering
8 the discharge.

9 **Sec. 29. 38 MRSA §552, sub-§5** is enacted to read:

10 **5. Lien.** All costs incurred by the State in the removal,
11 abatement and remediation of a prohibited discharge, including
12 restoration of water supplies related to that prohibited
13 discharge of oil, are a lien against the responsible party in the
14 same manner and priority as provided in section 1371.

15 **Sec. 30. 38 MRSA §569-A, sub-§8, ¶A,** as amended by PL 1995, c.
16 399, §13 and affected by §21, is further amended to read:

17 **A.** Administrative expenses, personnel--expenses personal
18 services and equipment costs of the department related to
19 the administration and enforcement of this subchapter and
20 any--loans--to--the--Maine--Coastal--and--Inland--Surface--Oil
21 Clean-up Fund made prior to June 30, 1995 pursuant to this
22 section,--Except for disbursements for capital costs related
23 to--paragraph B--or--C,--administrative--expenses,--personnel
24 expenses--and--equipment--costs--may--not--exceed--\$1,734,000--per
25 fiscal year, except that total disbursements for personal
26 services may not exceed \$2,000,000 per fiscal year,
27 multiplied by an annual adjustment factor of 4% beginning in
28 fiscal year 1999;

29 **Sec. 31. 38 MRSA §569-A, sub-§8, ¶A-1** is enacted to read:

30 **A-1.** Repayment of loans made to the Ground Water Oil
31 Clean-up Fund from the Maine Coastal and Inland Surface Oil
32 Clean-up Fund;

33 **Sec. 32. 38 MRSA §570, first ¶,** as amended by PL 1991, c. 817,
34 §29 and affected by §30, is further amended to read:

35 ~~Because--it--is--the~~ The intent of this subchapter is to
36 provide the means for rapid and effective cleanup and to minimize
37 direct and indirect damages ~~as well as indirect damages~~ and the
38 proliferation of 3rd-party claims. Accordingly, each responsible
39 party is jointly and severally liable for all disbursements made
40 by the State pursuant to section 569-A, subsection 8, paragraphs
41 B, D, E, H and J, or other damage incurred by the State,
42 including interest computed at 15% a year from the date of
43 expenditure, ~~except for costs found by the commissioner to be~~

2 ~~eligible for coverage under the fund~~ and damage for injury to,
3 ~~destruction of, loss of, or loss of use of natural resources and~~
4 ~~the reasonable costs of assessing natural resources damage.~~ The
5 commissioner shall demand reimbursement of costs and payment of
6 damages that are not eligible for coverage by the fund to be
7 recovered under this section and payment must be made promptly by
8 the responsible party or parties upon whom the demand is made.
9 If payment is not received by the State within 30 days of the
10 demand, the Attorney General may file suit in the Superior Court
11 and, in addition to relief provided by other law, may seek
12 punitive damages as provided in section 568. Notwithstanding the
13 time limits stated in this paragraph, neither a demand nor other
14 recovery efforts against one responsible party may relieve any
15 other responsible party of liability.

16 **Sec. 33. 38 MRSA §570**, as amended by PL 1993, c. 355, §23, is
17 further amended by adding a new 4th paragraph to read:

18 All costs, except costs found by the commissioner to be
19 eligible for coverage under the fund, incurred by the State in
20 the removal, abatement and remediation of a prohibited discharge,
21 including restoration of water supplies related to the discharge
22 of oil from an aboveground or underground storage facility are a
23 lien against the responsible party in the same manner and
24 priority as provided in section 1371.

25 **Sec. 34. 38 MRSA §585-D**, as enacted by PL 1993, c. 358, §1,
26 is further amended to read:

27 **§585-D. New motor vehicle emission standards**

28 Subject to the provisions of this section, the Board may
29 adopt and enforce standards that meet the requirements of the
30 federal Clean Air Act, Section 177, 42 United States Code,
31 Section 7507 and 40 Code of Federal Regulations, 51.120(1996)
32 relating to control of emissions from new motor vehicles or new
33 motor vehicle engines. These standards, known as a "low-emission
34 vehicle program" must be designed to prevent air pollution and
35 achieve and maintain ambient air quality standards within the
36 State. The board may implement a low-emission vehicle program
37 only when:

38 **1. New England states adoption.** Massachusetts, Connecticut
39 and at least one other New England state, excluding this State,
40 have adopted a low-emission vehicle program that meets the
41 requirements of the federal Clean Air Act, Section 177, 42 United
42 States Code, Section 7507 and 40 Code of Federal Regulations,
43 51.120(1996) and the first motor vehicle model year that is
44 required to meet standards under the low-emission vehicle program
45 in Maine is not an earlier model year than the first model year
46

2 required to meet standards under a low-emission vehicle program
3 in any of those 3 New England states; and

4 **2. Ozone transport region adoption.** Jurisdictions
5 comprising more than 60% of the total registrations of new
6 passenger cars and light-duty trucks in the ozone transport
7 region have adopted a low-emission vehicle program that meets the
8 requirements of the federal Clean Air Act, Section 177, 42 United
9 States Code, Section 7507 and 40 Code of Federal Regulations,
10 51.120(1996) and the first model year required to meet standards
11 under the low-emission vehicle program in any of those states is
12 not later than motor vehicle model year 1998 2000. For purposes
13 of this paragraph, "ozone transport region" means the states of
14 Connecticut, Delaware, Maine, Maryland, Massachusetts, New
15 Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and
16 Vermont, and the consolidated metropolitan statistical area that
17 includes the District of Columbia.

18
19 The department may not implement the low-emission vehicle
20 program if the implementation of that program includes the
21 adoption, sale, or use of any type of reformulated gasoline other
22 than the federal reformulated gasoline that is certified by the
23 United States Environmental Protection Agency under 42 United
24 States Code, Section 7545(k) for sale and use in states other
25 than California.

26 **Sec. 35. 38 MRSA §1310-F, sub-§1-B,** as amended by PL 1995, c.
27 665, Pt. HH, §1, is repealed and the following enacted in its
28 place:

29 1-B. Closure cost-share fraction. Subject to the
30 availability of funds, the commissioner shall issue grants or
31 payments for the following percentages of landfill closure costs
32 incurred by municipalities.

33 A. The state cost share is 75% of closure costs incurred
34 before July 1, 1994.

35 B. The state cost share is 50% of landfill cover costs and
36 75% of other closure costs incurred on or after July 1, 1994
37 and before January 1, 1996.

38 C. The state cost share is 30% of landfill cover costs and
39 75% of other closure costs incurred on or after January 1,
40 1996 and before January 1, 1998.

41 D. Notwithstanding paragraphs B and C, the state cost share
42 is 75% of closure costs, including landfill cover costs,
43 incurred on or after July 1, 1994 and before January 1,
44 1998, if the costs are:

2 (1) Pursuant to a written landfill closure agreement
4 between the municipality and the department executed
 before July 1, 1994; or

6 (2) Approved in writing by the department.

8 "Landfill cover costs," as used in this subsection, means the
10 cost of materials and the cost of placement of materials
12 associated with the physical construction of that portion of a
14 cover over a landfill that meets the minimum landfill cover
 permeability of 1×10^{-5} cm./sec. and the thickness standards of
 40 Code of Federal Regulations, 258.60(a).

16 The commissioner may not issue grants or payments for landfill
18 closure costs incurred on or after January 1, 1998, unless the
20 costs are identified in and incurred pursuant to an alternate
 closure schedule agreed to by the department in a department
 order or license, schedule of compliance or consent agreement
 executed before January 1, 1998.

22 **Sec. 36. 38 MRSA §1318-B, sub-§1**, as amended by PL 1995, c.
24 642, §10, is further amended to read:

26 **1. Reporting.** Except as provided in this subsection, the
28 responsible party or person causing the discharge shall report a
30 discharge immediately to the Department of Public Safety, which
32 shall immediately notify the Commissioner of Environmental
34 Protection and the public safety agency of the municipality in
36 which the discharge takes place. Upon submission to the
38 commissioner of a written spill prevention control and clean-up
40 plan that meets the criteria of section 1318-C, subsection 1, a
 discharge containing a hazardous matter that is covered by the
 plan must be reported only if the discharge equals or exceeds the
 applicable reportable quantity for that particular hazardous
 matter as specified in Code of Federal Regulations, Title 40,
 Parts 302.4, 302.5 and 302.6 (b)(1)}, revised as of July 1, 1994
 1996, or when the discharge extends or spreads beyond the area on
 the site covered by the spill prevention control and clean-up
 plan.

42 **Sec. 37. 38 MRSA §1319, sub-§1, ¶A**, as enacted by PL 1979, c.
44 730, §2, is amended to read:

46 A. Any substance ~~which has been~~ designated as hazardous by
48 the United States Environmental Protection Agency in
50 proposed or final regulations under the ~~United States Clean~~
 ~~Water Act, Section 311, Public Law 92-500~~ federal
 Comprehensive Environmental Response, Compensation and
 Liability Act, 42 United States Code, Section 9602, and any

2 substance identified as hazardous waste under section 1319-0
may be identified by rule as hazardous matter by the board.

4 **Sec. 38. 38 MRSA §1319-U, sub-§4**, as reallocated by PL 1987,
c. 517, §20, is amended to read:

6 **4. Procedure.** The Attorney General may seek forfeiture of a
8 conveyance according to the procedure set forth in Title 22 15,
10 section 2387 5822, ~~subsections 4, 5 and 6~~ with the following
exceptions.

12 A. A final order issued by the court under that procedure
shall must provide for disposition of the conveyance by the
14 Department of ~~Administration~~ Administrative and Financial
Services, including official use by a public agency or sale
16 at public auction or by competitive bidding.

18 B. The proceeds of a sale shall must be used to pay the
costs of cleanup, abatement or mitigation of any threats or
20 hazards to public health or safety or to the environment,
the costs of any removal, storage, treatment, disposal or
22 other handling of hazardous waste or hazardous substances,
as defined in section 1362, reasonable expenses for the
24 forfeiture proceedings, seizure, storage, maintenance of
custody, advertising and notice, and to pay any bona fide
26 mortgage thereon, and the balance, if any, shall be
deposited in the General Fund.

28 C. Records, required by Title 22 15, section 2387 5825,
30 ~~subsection 5~~, shall must be open to inspection by all
federal and state officers charged with enforcement of
32 federal and state laws relating to the handling of hazardous
waste.

36 SUMMARY

38 This bill eliminates separate certification of underground
hazardous substance tank installers. Current law provides for
40 certification of both underground oil storage tank installers and
underground hazardous substance storage tank installers. Over
42 150 people currently are certified to install oil tanks, but no
one has applied for certification to install hazardous substance
44 tanks since the law became effective in 1987. Under new rules
adopted by the Board of Environmental Protection, certified oil
46 tank installers will be allowed to install or remove underground
hazardous substance storage tanks if the work is supervised by a
48 professional engineer. In addition, this bill makes a change to
facilitate certification of persons as underground gasoline
50 storage tank removers. To be certified under current law, an

2 applicant must complete a supervised removal of a motor fuel
storage tank. Only tanks used to store diesel or aviation fuel
4 may be used to meet this requirement. Tanks used to store Class
I liquid such as gasoline are excluded due to the explosion
6 hazard. The limited availability of eligible tank removals is a
barrier to certification. This provision allows the supervised
8 removal to be conducted using fuel oil tanks, increasing
significantly the opportunities to satisfy the requirement and
become certified.

10
12 The bill amends the rule-making laws of the Department of
Environmental Protection to exempt rules from petitions to the
14 Board of Environmental Protection and from potential legislative
review where the rule has already been reviewed as a major
16 substantive rule under provisions contained in the Maine Revised
Statutes, Title 5, section 8072. This modification avoids
18 duplicative legislative review of rules containing provisions
that are more stringent than corresponding federal requirements.

20 The bill increases the ceiling on the Board of Environmental
Protection Fund. Expenditures are expected to exceed the current
22 ceiling in fiscal year 1997 due to funding of the Deputy
Commissioner position off the General Fund and onto this fund, as
24 approved in 1996 legislative session.

26 The bill intends to streamline processing of permit
applications for scientific research and experimentation by
28 delegating decision-making authority to the Commissioner of
Environmental Protection. Currently, only the Board of
30 Environmental Protection may issue such permits.

32 The bill clarifies the requirements in order to receive
delegated authority under the State's natural resources
34 protection laws. It further clarifies the types of activities or
resources that delegated authority may be applied to. In
36 addition, this bill limits the individual oversight authority of
the Department of Environmental Protection for those activities
38 covered under chapter 305 of the department's rules for which
permits are issued by a delegated municipality under the natural
40 resources protection laws. These changes are intended to provide
an increased incentive for municipalities to seek delegation and
42 reduce the regulatory burden for certain activities.

44 The bill makes changes to the laws governing performance
standards for quarries and for excavations.

46
48 The changes to the performance standards for quarries are as
follows:

2 1. Requirements for public notification are amended by
4 allowing a municipality, in which the proposed quarry is located,
6 which believes that the quarry may cause unreasonable adverse
8 impacts, to submit comments to the Department of Environmental
Protection and requires the department to respond to the
comments. It also requires an owner or operator of a quarry to
mail notice at least 7 days prior to mailing notice to the
department and commencing excavation activity.

10 2. The requirement to establish a vegetative cover on
12 safety benches of quarries is amended.

14 3. The fee structure is clarified by eliminating a
16 duplicative requirement.

18 The performance standards for excavation are changed by
20 amending the requirement for an owner or operator to reestablish
22 a natural buffer strip as a condition of operation. This change
also requires an owner or operator to regrade the side slopes of
a medium borrow pit to no steeper than 2 horizontal feet for each
vertical foot and the owner or operator must install visual
screening and safety measures as required by the department.

24 The bill contains a nonsubstantive change eliminating
26 obsolete fee language from the laws governing the Maine Coastal
and Inland Surface Oil Clean-up Fund.

28 The bill establishes liens on the property of persons
30 responsible for oil spills. The proposed language is consistent
with current law governing spills of hazardous substances.

32 The bill raises the cap on disbursements for administrative
34 costs from the Ground Water Oil Clean-up Fund. The cap is raised
36 from \$1,734,000 to \$2,000,000 to reflect increased personnel
38 costs since the cap was enacted in 1990, and provision is made
for an annual upward adjustment of 4% to cover future increases
in personnel costs. These changes will allow the department to
maintain current staff levels. The fund now supports 40.5
positions. No new positions will be hired.

40 The bill clarifies that persons responsible for oil spills
42 are liable for damages to natural resources. The proposed
44 language is derived from and consistent with the federal Oil
Pollution Control Act of 1990.

46 The bill allows the State to move forward with a regional
48 low-emission vehicle program to meet the federal requirements in
the event that the federal Environmental Protection Agency does
not enact a national low-emission vehicle program. Maine is
50 required by federal law to either participate in a National Low

2 Emission Vehicle Program or adopt the Ozone Transport Commission
3 Low Emission Vehicle Program. A low-emission vehicle program
4 provides for cleaner emissions from new motor vehicles than
5 vehicles manufactured under federal emission standards.

6 The bill repeals and replaces the law governing state cost
7 share for landfill closure. The purpose is to make the law
8 easier to understand without making a substantive change.

10 The bill amends the law governing reporting of hazardous
11 substance spills to update the reference to federal reportable
12 quantities.

14 The bill allows the Board of Environmental Protection to
15 identify as hazardous matter any substance that has been
16 designated as hazardous by the federal Environmental Protection
17 Agency in regulations under the Comprehensive Environmental
18 Response, Compensation and Liability Act.

20 The bill corrects a statutory reference governing forfeiture
of conveyances used to transport hazardous waste.