

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

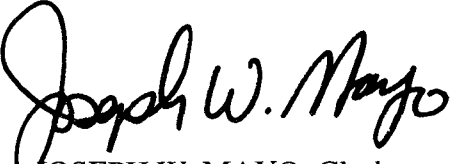
No. 1711

H.P. 1201

House of Representatives, March 9, 1999

**An Act to Clarify the Law Governing Disbursements from the
Groundwater Oil Clean-up Fund.**

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


JOSEPH W. MAYO, Clerk

Presented by Representative McKEE of Wayne.
Cosponsored by Representative TOBIN of Windham.

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

2
3 **Sec. 1. 38 MRSA §568-A, sub-§1, ¶A**, as amended by PL 1995, c.
4 361, §4, is further amended to read:

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

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

14 (2) An agreement that the applicant shall will pay the
15 deductible amount specified in subsection 2;

16 (3) For underground storage facilities, documentation
17 regarding ~~the---applicant's~~ compliance with the
18 requirements of subsection 2, paragraph B; and

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

24 The commissioner with respect to a claim involving an
25 underground oil storage facility, or the State Fire Marshal
26 with respect to a claim involving an aboveground oil storage
27 facility, may waive the 180-day filing requirement for
28 applicants for coverage of clean-up costs for discharges
29 discovered after April 1, 1990 when the applicant has
30 cooperated in a timely manner with the department in
31 cleaning up the discharge.

32 **Sec. 2. 38 MRSA §568-A, sub-§1, ¶I** is enacted to read:

34 I. An applicant is not eligible for coverage of costs
35 recovered by settlement with or judgment against another
36 responsible party, the responsible party's representative or
37 the applicant's insurer. Applicants who recover costs by
38 such a settlement or judgment shall reimburse the fund to
39 the extent the amount recovered duplicates payments from the
40 fund.

42 **Sec. 3. 38 MRSA §568-A, sub-§2**, as repealed and replaced by PL
43 1995, c. 361, §5, is amended by amending the first paragraph to
44 read:

46 **2. Deductibles.** Except as provided in subsection 2-A,
47 applicants eligible for coverage by the fund under subsection 1
48 shall pay on a per occurrence basis the applicable standard
49 deductible amount specified in paragraph A. ~~In addition to the~~

2 ~~applicable-standard-deductible-amount-required-under-paragraph-A,~~
3 ~~the-applicant-shall-pay-on-a-per-occurrence-basis-one-or-more-of~~
4 ~~the and all applicable conditional deductible amounts specified~~
5 ~~in paragraphs B and C to-the-extent-applicable. Conditional~~
6 ~~deductibles must be paid by the applicant regardless of whether~~
7 ~~the applicant owned or operated the facility or tank at the time~~
8 ~~of the failure to comply with a requirement specified in~~
9 ~~paragraph B.~~

10 **Sec. 4. 38 MRSA §569-A, sub-§8, ¶A**, as amended by PL 1997, c.
11 364, §32, is further amended to read:

12
13 A. Administrative expenses, personal services and equipment
14 costs of the department related to the administration and
15 enforcement of this subchapter, except that total
16 disbursements for personal services may not exceed
17 ~~\$2,000,000~~ \$2,250,000 per fiscal year, multiplied by an
18 annual adjustment factor of 4% beginning in fiscal year 1999;

19
20 **Sec. 5. 38 MRSA §569-A, sub-§8, ¶N**, as enacted by PL 1997, c.
21 613, §3, is amended to read:

22
23 N. Sums up to ~~\$750,000~~ \$1,250,000 annually ~~in-fiscal-years~~
24 ~~1998-99--and--1999-2000--only,~~ during the 2-year period
25 commencing July 1, 1998 and ending June 30, 2000 to
26 distribute to community action agencies as defined in Title
27 22, section 5321 ~~to-be-used~~ for loans and grants to
28 retrofit, repair or replace aboveground and underground oil
29 storage tanks and associated piping at single-family
30 residences. Money may not be disbursed from the fund for
31 the purposes of this paragraph until the department has
32 presented a plan for such disbursements to the Fund
33 Insurance Review Board. A community action agency shall
34 administer the funds in accordance with program operating
35 standards, including the allocation formula established by
36 the Maine State Housing Authority for its weatherization
37 program.

38
39 **Sec. 6. 38 MRSA §570, first ¶**, as amended by PL 1997, c. 624,
40 §5, is further amended to read:

41
42 The intent of this subchapter is to provide the means for
43 rapid and effective cleanup and to minimize direct and indirect
44 damages and the proliferation of 3rd-party claims. Accordingly,
45 each responsible party is jointly and severally liable for all
46 disbursements made by the State pursuant to section 569-A,
47 subsection 8, paragraphs B, D, E, H and J, or other damage
48 incurred by the State, except for costs found by the commissioner
49 to be eligible for coverage under the fund. The term "other
50 damages," as used in this paragraph, includes interest computed

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

16 **Sec. 7. 38 MRSA §570, first ¶**, as amended by PL 1997, c. 624,
18 §6, is further amended to read:

20 The intent of this subchapter is to provide the means for
rapid and effective cleanup and to minimize direct and indirect
22 damages and the proliferation of 3rd-party claims. Accordingly,
each responsible party is jointly and severally liable for all
24 disbursements made by the State pursuant to section 569-B,
subsection 5, paragraphs B, D, E and G or other damage incurred
26 by the State, including interest computed at 15% a year from the
date of expenditure, and damage for injury to, destruction of,
28 loss of or loss of use of natural resources and the reasonable
costs of assessing natural resources damage. The commissioner
30 shall demand reimbursement of costs and payment of damages paid
by the department from state or federal funds to be recovered
32 under this section and payment must be made promptly by the
responsible party or parties upon whom the demand is made. If
34 payment is not received by the State within 30 days of the
demand, the Attorney General may file suit in the Superior Court
36 and, in addition to relief provided by other law, may seek
punitive damages as provided in section 568. Notwithstanding the
38 time limits stated in this paragraph, neither a demand nor other
recovery efforts against one responsible party may relieve any
40 other responsible party of liability.

42 SUMMARY

44 This bill:

46
48 1. Makes it clear that storage tank owners who apply to the
Groundwater Oil Clean-up Fund for coverage of oil clean-up costs
are subject to conditional deductibles based on the failure of a
50 prior owner to meet regulatory requirements. Conditional

2 deductibles are amounts deducted from the total costs eligible
for fund coverage.

4 2. Makes an applicant to the Groundwater Oil Clean-up Fund
ineligible for coverage of oil clean-up costs that the applicant
6 already has recovered or subsequently recovers by court judgment
or settlement with other responsible parties.

8
10 3. Increases from \$2,000,000 to \$2,250,000 the cap on
disbursements from the Groundwater Oil Clean-up Fund for personal
services in anticipation of hiring 3 to 4 employees to do oil
12 remediation work that currently is being done by private
contractors.

14
16 4. Authorizes an additional \$1,000,000 in disbursements
from the Groundwater Oil Clean-up Fund to help low-income
families remove nonconforming underground heating oil tanks and
18 replace them with aboveground tanks that meet regulatory
requirements.

20
22 5. Makes it clear that the commissioner shall seek
reimbursement of all department clean-up costs that are not
eligible for coverage by the fund, including costs paid from
24 federal grant money.