

# MAINE STATE LEGISLATURE

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NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 168, L.D. 179, Bill, "An Act to Protect Sensitive Geologic Areas from Oil Contamination"

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

Sec. 1. 38 MRSA §563-C is enacted to read:

§563-C. Prohibition on siting new underground oil storage facilities near drinking water supplies

1. Prohibition. Except as provided in this section, after September 30, 2001, a person may not register, install, or cause to be installed, a new underground oil storage facility, referred to in this section as a "facility," that is:

A. Within the source water protection area of a public drinking water supply mapped by the Department of Human Services prior to the registration or installation of the facility, or within 1,000 feet of the public water supply, whichever is greater; or

B. Within 300 feet of a private water supply in existence at the time the facility owner applied to register the facility.

The commissioner may grant a variance for all or any part of the prohibitions in this subsection as provided in this subsection, as provided in subsection 3. For the purposes of this section, "source water protection area" means an area that contributes recharge water to a public water supply well for a public

2 drinking water supply that is mapped by the Department of Human  
3 Services.

4 2. Exemptions. The prohibitions in subsection 1 do not  
5 apply to:

6 A. Replacement or expansion of a facility registered and  
7 installed on or before September 30, 2001, provided the  
8 replacement or expansion occurs on the same property and the  
9 owner or operator continues to pay the annual registration  
10 fee as required under section 563. Failure to pay the  
11 annual fee disqualifies a facility from being considered  
12 exempt under this section;

13 B. Conversion of an aboveground oil storage facility  
14 registered and installed on or before September 30, 2001 to  
15 an underground oil storage facility, provided the conversion  
16 occurs on the same property;

17 C. A facility used solely for the storage of heating oil  
18 that is consumed on site;

19 D. Underground piping associated with an aboveground oil  
20 storage facility; or

21 E. A well located on the same property as a facility and  
22 serving only users on that property.

23 3. Variances. The commissioner may grant a variance from  
24 the provisions of subsection 1 that involves a public drinking  
25 water supply serving a school or a community water supply system,  
26 or a private drinking water supply well, only if the applicant  
27 demonstrates that no hydrogeologic connection exists between the  
28 proposed facility and the water supply at issue. For other  
29 public drinking water supply systems, the commissioner may grant  
30 a variance from the provisions of subsection 1 if the  
31 commissioner determines that the engineering and monitoring  
32 measures proposed by the applicant exceed regulatory requirements  
33 and will effectively minimize releases of oil and the likelihood  
34 of drinking water contamination. In considering whether to grant  
35 a variance, the commissioner may consider the importance of the  
36 groundwater resource, any engineering or monitoring measures  
37 proposed by the applicant, the hydrogeology of the site and other  
38 relevant factors.

39 The commissioner may deny a variance request or approve a request  
40 with or without conditions.

41 The commissioner shall provide public notice and an opportunity  
42 for public comment on each variance request.

2 Decisions made by the commissioner under this subsection may be  
4 appealed to the board under section 341-D, subsection 4,  
paragraph A.

6 4. **Illegal facilities may be enjoined; eligibility from**  
8 **fund.** The commissioner may enjoin the operation of any facility  
10 installed in violation of this section. Clean-up costs and 3<sup>rd</sup>  
12 party damages resulting from discharges from a facility installed  
14 in violation of this section are not eligible for coverage under  
16 the Ground Water Clean-up Fund.

18 5. **Municipal authority.** Nothing in this section may be  
20 construed to prevent a municipality from imposing siting  
22 restrictions more stringent than the prohibitions in this section  
24 or in rules adopted by the Board of Environmental Protection.

26 **Sec. 2. 38 MRSA §568-A, sub-§1, ¶¶J and K** are enacted to read:

28 J. An applicant is not eligible for coverage for any  
30 underground oil storage facility installed in violation of  
32 the provisions of section 563-C.

34 K. An applicant whose facility is subject to the provisions  
36 of section 563-C is not eligible for coverage for costs  
38 related to providing treatment or temporary or permanent  
40 water supply replacement and 3<sup>rd</sup> party damage claim costs  
42 related to an oil discharge at a facility installed after  
44 September 30, 2001 and affecting that property's drinking  
46 water supply system.

48 **Sec. 3. Rules.** The Board of Environmental Protection shall  
adopt rules setting forth standards for siting new underground  
oil storage facilities used to store motor fuels or used in the  
marketing or distribution of oil within sand and gravel aquifers  
and their recharge areas that are mapped by the Maine Geologic  
Survey. Those rules must provide for variances from those  
standards in appropriate instances, including when engineering  
and monitoring measures proposed by the applicant exceed  
regulatory requirements and will effectively minimize releases of  
oil and the likelihood of groundwater contamination. Rules  
adopted under this section are major substantive rules pursuant  
to the Maine Revised Statutes, Title 5, chapter 375, subchapter  
II-A. The board must provisionally adopt and submit these rules  
to the Legislature for its consideration prior to March 3, 2002.  
Notwithstanding Title 5, section 8072, subsections 7 and 8, if  
the Legislature fails to act on a major substantive rule  
submitted pursuant to this section, the board may not finally  
adopt or implement any part of that rule. The board may submit

2 that provisionally adopted rule, without the necessity of  
repeating the rulemaking process, to a subsequent Legislature for  
4 consideration according to the provisions of Title 5, chapter  
375, subchapter II-A.

6 **Sec. 4. Report.** The Commissioner of Environmental Protection  
shall submit a report to the Joint Standing Committee on Natural  
8 Resources on the variance criteria included in the Maine Revised  
Statutes, Title 38, section 563-C, subsection 3. That report  
10 must include an analysis of the Department of Environmental  
Protection's experience in administering the variance criteria  
12 and any recommendations on amending those criteria. The report  
must be submitted to the committee at the same time the major  
14 substantive rules required under section 3 are submitted to the  
Legislature.

16 **Sec. 5. Allocation.** The following funds are allocated from  
18 Other Special Revenue funds to carry out the purposes of this Act.

20 **2001-02**

22 **ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

24 **Remediation and Waste Management**

26 All Other \$3,000  
28 Allocates funds for the  
additional costs of adopting  
30 rules pertaining to the  
siting of certain underground  
32 oil storage facilities.'

34 Further amend the bill by inserting at the end before the  
summary the following:

36 **FISCAL NOTE**

38 **2001-02**

40 **APPROPRIATIONS/ALLOCATIONS**

42 Other Funds \$3,000

44 This bill includes an Other Special Revenue funds allocation  
46 of \$3,000 in fiscal year 2001-02 for the Department of  
Environmental Protection for the costs of adopting certain rules  
48 pertaining to the siting of underground oil storage tanks.'

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SUMMARY

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This amendment replaces the bill. The amendment proposes to prohibit the installation of new underground oil storage facilities within the source water protection area of a public drinking water supply or within 1000 feet of the public water supply, whichever is greater, and within 300 feet of a private water supply, except for a private water supply located on the same property as a facility and serving only that facility. The Commissioner of Environmental Protection is authorized to enjoin the operation of any facility installed in violation of those prohibitions. Clean-up costs and 3rd party damages caused by discharges from a facility installed in violation of those prohibitions are not eligible for reimbursement from the Ground Water Oil Clean-up Fund.

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The amendment allows the Commissioner of Environmental Protection to grant a variance from those prohibitions. For community public water systems and groundwater resources serving schools and private wells, a variance is available only when no hydrogeological connection between the proposed facility and the potentially affected water supply can be demonstrated. For other types of public drinking water supply systems, a variance may be issued if the commissioner determines that the engineering and monitoring measures proposed by the applicant go beyond current minimum regulatory requirements and will effectively minimize releases of oil and the likelihood of groundwater contamination. An opportunity for public comment is required on each request for a variance. The Commissioner of Environmental Protection is required to submit a report to the Joint Standing Committee on Natural Resources on the department's experience in administering the statutory variance criteria and any recommendations on amending those criteria.

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The amendment also requires the Board of Environmental Protection to adopt major substantive rules setting forth standards for siting new underground storage facilities used to store motor fuels or used in the marketing or distribution of oil within sand and gravel aquifers and their recharge areas that are mapped by the Maine Geological Survey. Those rules must be provisionally adopted and submitted to the Legislature for its consideration prior to March 3, 2002.