

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2002

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Legislative Document

No. 1964

S.P. 723

In Senate, December 17, 2001

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

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Received by the Secretary of the Senate on December 17, 2001. Referred to the Committee  
on Natural Resources and ordered printed pursuant to Joint Rule 308.2

A handwritten signature in cursive script that reads "Pamela L. Cahill".

PAMELA L. CAHILL  
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.  
Cosponsored by Representative COWGER of Hallowell.

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

2  
4       **Sec. 1. 32 MRSA §10003, sub-§1**, as amended by PL 2001, c. 231, §6, is further amended to read:

6           **1. Establishment and membership.** There is established  
8 within the Department of Environmental Protection, the Board of  
10 Underground Storage Tank Installers. The board consists of 7  
12 members appointed by the Governor as follows: one from the  
14 Department of Environmental Protection; one from either the Maine  
16 Oil Dealer's Association or the Maine Petroleum Association; one  
underground oil storage tank installer; one from the Maine  
Chamber of ~~Commerce and Industry~~ and Business Alliance or one  
municipal code enforcement officer or a 2nd underground oil  
storage tank installer; one from the Maine Fire Chiefs  
Association; and 2 public members.

18       **Sec. 2. 38 MRSA §420-A, sub-§6**, as amended by PL 1997, c. 179,  
20 §3, is further amended to read:

22           **6. Repeal.** This section is repealed December 31, ~~2002~~ 2007.

24       **Sec. 3. 38 MRSA §488, sub-§19**, as amended by PL 1999, c. 776,  
§15, is further amended to read:

26           **19. Municipal capacity.** A structure, as defined in section  
28 482, subsection 6, that is from 3 acres up to and including 7  
acres or a subdivision, as defined in section 482, subsection 5,  
30 that is made up of 15 or more lots for single-family, detached,  
residential housing, common areas or open space with an aggregate  
32 area of from 30 acres up to and including 100 acres is exempt  
from review under this article if it is located wholly within a  
34 municipality or municipalities meeting the criteria in paragraphs  
A to D as determined by the department and it is located wholly  
36 within a designated growth area as identified in a comprehensive  
plan adopted pursuant to Title 30-A, chapter 187, subchapter II.  
38 The planning board of the municipality in which the development  
is located or an adjacent municipality may petition if it has  
40 regional environmental impacts. This petition must be filed  
within 20 days of the receipt of the application by the  
42 municipality. State jurisdiction must be exerted, if at all,  
within 30 days of receipt of the completed project application by  
44 the commissioner from the municipality or within 30 days of  
receipt of any modification to that application from the  
46 municipality. Review by the department is limited to the  
identified regional environmental impacts. The criteria are as  
48 follows:

2 A. A municipal planning board or reviewing authority is  
3 established and the municipality has adequate resources to  
4 administer and enforce the provisions of its ordinances. In  
5 determining whether this criterion is met, the commissioner  
6 may consider any specific and adequate technical assistance  
7 that is provided by a regional council;

8 B. The municipality has adopted a site plan review  
9 ordinance. In determining the adequacy of the ordinance,  
10 the commissioner may consider model site plan review  
11 ordinances commonly used by municipalities in this State  
12 that address the issues reviewed under applicable provisions  
13 of this article prior to July 1, 1997;

14 C. The municipality has adopted subdivision regulations.  
15 In determining the adequacy of these regulations, the  
16 commissioner may consider model subdivision regulations  
17 commonly used by municipalities in this State; and

18 D. The State Planning Office has determined that the  
19 municipality has a comprehensive land use plan and land use  
20 ordinances or zoning ordinances that are consistent with  
21 Title 30-A, chapter 187 in providing for the protection of  
22 wildlife habitat, fisheries, unusual natural areas and  
23 archaeological and historic sites.

24  
25 The department, in consultation with the State Planning Office,  
26 shall publish a list of those municipalities determined to have  
27 capacity pursuant to this subsection. This list need not be  
28 established by rule and must be published by January 1, 1997 1st  
29 of each year. The list must specify whether a municipality has  
30 capacity to review structures or subdivisions of lots for  
31 single-family, detached, residential housing, common areas or  
32 open space or both types of development. The department may  
33 recognize joint arrangements among municipalities and regional  
34 organizations in determining whether the requirements of this  
35 subsection are met. ~~On and after January 1, 2003, the department~~  
36 ~~shall presume and publish that each municipality with a~~  
37 ~~population of 5,000 or more, as measured by the United States~~  
38 ~~Census of the year 2000, has capacity as provided in this~~  
39 ~~subsection.~~ The department may review municipalities that are  
40 determined ~~or presumed~~ to have capacity pursuant to this  
41 subsection for compliance with the criteria in paragraphs A to D,  
42 and if the department determines that a municipality does not  
43 meet the criteria, the department may modify or remove the  
44 determination of capacity.

45 A modification to a development that was reviewed by a  
46 municipality and exempted pursuant to this subsection is exempt  
47 as long as the modification will not cause the total area of the  
48  
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2 development to exceed the maximum acreage specified in this  
3 subsection for that type of development or, based upon  
4 information submitted by the municipality concerning the  
5 development and modification, the department determines that the  
6 modification may be adequately reviewed by the municipality.

7 **Sec. 4. 38 MRSA §563, sub-§1, ¶A,** as affected by PL 1989, c.  
8 890, Pt. A, §40 and as amended by Pt. B, §131, is further amended  
9 to read:

10 A. No A person may not install, or cause to be installed, a  
11 new or replacement underground oil storage facility without  
12 first having registered the facility with the commissioner  
13 in accordance with the requirements of subsection 2, and  
14 having paid the registration fee in accordance with the  
15 requirements of subsection 4, at least 5 10 business days  
16 prior to installation. If compliance with this time  
17 requirement is impossible due to an emergency situation, the  
18 owner or operator of the facility at which the new or  
19 replacement facility is to be installed shall inform the  
20 commissioner as soon as the emergency becomes known.

21 ~~The owner or operator of the facility shall also promptly~~  
22 ~~submit upon completion a copy of the registration form to~~  
23 ~~the fire department in whose jurisdiction the underground~~  
24 ~~tank will be located.~~

25 The owner or operator shall make available a copy of the  
26 facility's registration at that facility for inspection by  
27 the commissioner and authorized municipal officials.

28 **Sec. 5. 38 MRSA §563, sub-§2,** as repealed and replaced by PL  
29 1991, c. 66, Pt. A, §22, is amended to read:

30 **2. Information required for registration.** The owner or  
31 operator of an underground oil storage facility shall provide the  
32 commissioner with the following information on a form in  
33 triplicate to be developed and provided by the commissioner; one  
34 copy to be submitted to the commissioner, one copy to be promptly  
35 submitted upon completion to the ~~fire department in whose~~  
36 ~~jurisdiction the underground tank is located~~ municipality and one  
37 copy to be retained by the owner or operator:

38 A. The name, address and telephone number of the owner of  
39 the underground oil storage tank to be registered;

40 B. The name, address and telephone number of the person  
41 having responsibility for the operation of the tank to be  
42 registered;

2 C. The location of the facility ~~shown on a United States~~  
3 ~~Geological Survey topographic map for facilities located in~~  
4 ~~rural areas or in relation to the nearest intersection for~~  
5 ~~facilities located in urban areas and the location of the~~  
6 ~~tank or tanks at that facility as necessary to determine if~~  
7 ~~the facility meets the siting restrictions under section~~  
8 ~~563-C;~~

9  
10 D. ~~Whether the location of any tank at the facility is~~  
11 ~~within 1,000 feet of a public drinking water supply or~~  
12 ~~within 300 feet of a private drinking water supply;~~

13 E. The size of the tank to be registered;

14 F. The type of tank or tanks and piping at the facility and  
15 the type of product stored or contained in the tank or tanks  
16 and piping;

17 G. For new, replacement or retrofitted facilities, the name  
18 of the installer, the expected date of installation or  
19 retrofit, the nature of any emergency pursuant to subsection  
20 1, paragraph A, if applicable, and a description or plan  
21 showing the layout of the facility or tank, including the  
22 form of secondary containment, other forms of leak detection  
23 or equipment to be installed pursuant to section 564,  
24 subsection 1, paragraph A and, when applicable, the method  
25 of retrofitting leak detection pursuant to section 564,  
26 subsection 1 or 1-A;

27 H. For existing facilities and tanks, the best estimate of  
28 the age and type of tank or tanks at the facility; and

29 I. Expiration date of tank manufacturer's warranty.

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36 ~~The owner or operator shall comply with the requirements of~~  
37 ~~paragraph C by January 1, 1991.~~

38 **Sec. 6. 38 MRSA §566-A, sub-§5**, as amended by PL 1991, c. 817,  
39 §21, is further amended to read:

40  
41 **5. Qualified personnel.** All abandoned facilities and tanks  
42 used for the storage of Class 1 liquids that require removal must  
43 be removed under the direct, on-site supervision of an  
44 underground oil storage tank installer certified pursuant to  
45 Title 32, chapter 104-A, or of certified fire-fighting personnel,  
46 except for underground gasoline storage tanks removed pursuant to  
47 subsection 6. The Board of Underground Oil Storage Tank  
48 Installers may examine and ~~upon passage of the examination~~  
49 the commissioner may certify fire-fighting personnel to supervise the  
50 removal of Class 1 underground oil storage facilities upon

2 passage of the examination for an underground gasoline storage  
3 tank remover. Fire-fighting personnel may only supervise the  
4 removal of an underground facility or tank:

5 A. Within the municipality with which they are affiliated  
6 or within the jurisdiction that the municipality with which  
7 they are affiliated has a compact; and

8 B. If the fire-fighting personnel have written  
9 authorization from the municipality with which they are  
10 affiliated.

11 **Sec. 7. 38 MRSA §1310-E, sub-§4**, as enacted by PL 1993, c.  
12 732, Pt. C, §12, is amended to read:

13 **4. Subsequent landfill closure activity.** Any municipality  
14 that closes a landfill pursuant to subsection 1, 2 or 3 and that  
15 inspects, monitors and maintains the closure measures required  
16 pursuant to those subsections as necessary to ensure the closure  
17 measures remain effective is entitled to an assurance from the  
18 department that the municipality has met its closure obligations  
19 and that no further closure action other than inspection,  
20 monitoring and maintenance is required of the municipality by the  
21 department with regard to that landfill unless one or more of the  
22 following circumstances arises:

23 A. The commissioner finds that the landfill, although  
24 closed, is nonetheless a high-risk landfill and orders  
25 further closure or remediation activities;

26 B. Additional closure or remediation activities are needed  
27 and the department's cost share of the additionally required  
28 activity is immediately available; or

29 C. Additional closure or remediation activities are required  
30 as a result of an existing or pending formal department  
31 enforcement action with respect to the violation of the  
32 license conditions under which a landfill was operated.

33 Nothing with regard to this assurance is construed to limit the  
34 department's authority to act using its own resources as that  
35 activity may be otherwise authorized by law.

36 **Sec. 8. 38 MRSA §1319-I, sub-§11** is enacted to read:

37 **11. Waiver.** The commissioner may waive payment of fees  
38 under this section if the commissioner finds the amount involved  
39 is too small in relation to the cost of collection.





2           8. It clarifies municipal responsibility for post-closure  
maintenance of closed landfills.

4  
6           9. It allows the Commissioner of Environmental Protection  
to waive the fees on transport of hazardous waste when the fee is  
too small in relation to the cost of collecting it.

8  
10          10. It exempts manufacturers of products that contain one  
or more mercury-added components from the need to notify the  
Department of Environmental Protection as to the amount of  
12 mercury in the components if that information is provided by the  
component manufacturer.