

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2016

H.P. 1513

House of Representatives, December 26, 2001

**An Act to Facilitate Compliance with Spill Prevention Requirements and
Authorize Reimbursement for Certain Oil Spill Remediation Expenses.**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Received by the Clerk of the House on December 19, 2001. Referred to the Committee on
Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative CRABTREE of Hope.
Cosponsored by Senator YOUNGBLOOD of Penobscot.

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

2 **Sec. 1. 37-B MRSA §797, sub-§7**, as enacted by PL 1989, c. 464,
4 §3 and amended by c. 929, §2, is further amended to read:

6 **7. Transportation.** A description of the manner in which
8 the substance is shipped to the facility; and

10 **Sec. 2. 37-B MRSA §797, sub-§8**, as enacted by PL 1989, c. 929,
12 §3, is amended to read:

14 **8. Progress toward toxics use reduction goals.** For those
16 persons required to submit a form under this section for
extremely hazardous substances, a report on the progress made by
the facility toward meeting the toxics use reduction goals
established in Title 38, section 2303,; and

18 **Sec. 3. 37-B MRSA §797, sub-§9** is enacted to read:

20 **9. Spill prevention and control.** If the facility is an
22 aboveground oil storage facility as defined under Title 38,
section 562-A, subsection 1-A, a statement certifying that
24 underground piping at the facility meets the requirements of
Title 38, section 570-K, subsection 3 and that a spill prevention
26 control and countermeasure plan has been prepared and implemented
for the facility if required under federal regulations
28 promulgated pursuant to the Federal Water Pollution Control Act,
33 United States Code, Sections 1321 and 1361.

30 **Sec. 4. 37-B MRSA §806, sub-§5** is enacted to read:

32 **5. Enforcement by Commissioner of Environmental
34 Protection.** The Commissioner of Environmental Protection may
take enforcement action under Title 38, section 347-A, whenever,
36 after investigation, it appears that a person has failed to
provide the certification required under section 797, subsection
9, or has made a false certification.

38 **Sec. 5. 38 MRSA §569-A, sub-§10**, as enacted by PL 1991, c.
40 817, §26, is repealed and the following enacted in its place:

42 **10. Reimbursement to fund.** The commissioner shall seek
44 recovery for the use of the fund of all sums expended from the
fund, including overdrafts, for the purposes described in
46 subsection 8, paragraphs B, D, E, H and J, or for other damage
incurred by the State in connection with a prohibited discharge,
48 including interest computed at 15% a year from the date of
expenditure, unless the commissioner determines that the amount
involved is too small or the likelihood of success is too
50 uncertain or unless the commissioner finds an applicant to be

2 eligible for fund coverage under section 568-A, subsection 1. If
3 an applicant is found to be eligible for fund coverage, the
4 commissioner shall seek recovery of sums exceeding \$1,000,000 and
5 sums expended for costs covered by insurance required under
6 federal regulations promulgated pursuant to the Motor Carrier
7 Act, 49 United States Code, Section 31139. If a request for
8 reimbursement to the fund is not paid within 30 days of demand,
9 the commissioner shall refer the request to the Attorney General
10 or to a collection agency, agent or attorney retained by the
11 department with the approval of the Attorney General in
12 conformance with Title 5, section 191 for collection.

13 **Sec. 6. 38 MRSA §570, first ¶,** as amended by PL 1999, c. 278,
14 §4, is further amended to read:

15 The intent of this subchapter is to provide the means for
16 rapid and effective cleanup and to minimize direct and indirect
17 damages and the proliferation of 3rd-party claims. Accordingly,
18 each responsible party is jointly and severally liable for all
19 disbursements made by the State pursuant to section 569-A,
20 subsection 8, paragraphs B, D, E, H and J, or other damage
21 incurred by the State, except for costs found by the commissioner
22 to be eligible for coverage under the fund. The term "other
23 damages," as used in this paragraph, includes interest computed
24 at 15% a year from the date of expenditure and damage for injury
25 to, destruction of, loss of or loss of use of natural resources
26 and the reasonable costs of assessing natural resources damage.
27 The commissioner shall demand reimbursement of costs and damages
28 paid by the department from state or federal funds except ~~for~~
29 ~~amounts that are eligible for coverage by the fund under this~~
30 ~~subchapter as provided under section 569-A, subsection 10.~~
31 Payment must be made promptly by the responsible party or parties
32 upon whom the demand is made. If payment is not received by the
33 State within 30 days of the demand, the Attorney General may file
34 suit in the Superior Court and, in addition to relief provided by
35 other law, may seek punitive damages as provided in section 568.
36 Notwithstanding the time limits stated in this paragraph, neither
37 a demand nor other recovery efforts against one responsible party
38 may relieve any other responsible party of liability.

39 **Sec. 7. 38 MRSA §570, first ¶,** as amended by PL 1999, c. 278,
40 §5, is further amended to read:

41 The intent of this subchapter is to provide the means for
42 rapid and effective cleanup and to minimize direct and indirect
43 damages and the proliferation of 3rd-party claims. Accordingly,
44 each responsible party is jointly and severally liable for all
45 disbursements made by the State pursuant to section 569-B,
46 subsection 5, paragraphs B, D, E and G or other damage incurred
47 by the State, including interest computed at 15% a year from the
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2 date of expenditure, and damage for injury to, destruction of,
3 loss of or loss of use of natural resources and the reasonable
4 costs of assessing natural resources damage. The commissioner
5 shall demand reimbursement of costs and payment of damages paid
6 by the department from state or federal funds ~~to be recovered~~
7 under this section as provided under section 569-A, subsection 10
8 and payment must be made promptly by the responsible party or
9 parties upon whom the demand is made. If payment is not received
10 by the State within 30 days of the demand, the Attorney General
11 may file suit in the Superior Court and, in addition to relief
12 provided by other law, may seek punitive damages as provided in
13 section 568. Notwithstanding the time limits stated in this
14 paragraph, neither a demand nor other recovery efforts against
15 one responsible party may relieve any other responsible party of
16 liability.

17 **Sec. 8. 38 MRSA §570-K, sub-§4**, as enacted by PL 1993, c. 363,
18 §17 and affected by §21, is amended to read:

19 **4. Exemption.** The following aboveground oil storage
20 facilities are exempt from the requirements of ~~this section~~
21 subsections 2 and 3:

22
23 A. Facilities or portions of facilities that are used
24 exclusively for the storage of #2 and other home heating oil
25 and consist of an individual tank of 660 gallons or less
26 capacity or an aggregate tank capacity of 1320 gallons or
27 less; and

28
29 B. Facilities containing only liquefied petroleum gas or
30 liquefied natural gas.

31
32 **Sec. 9. 38 MRSA §570-K, sub-§5** is enacted to read:

33
34 **5. Spill prevention and control.** An aboveground oil
35 storage facility must be operated in compliance with the federal
36 requirements for preparation and implementation of spill
37 prevention control and countermeasure plans, 40 Code of Federal
38 Regulations, 112 (2001). Failure to comply with these federal
39 regulations or with the certification requirement under Title
40 37-B, section 797, subsection 9, constitutes a violation of this
41 Title. When the department proposes to require an amendment to a
42 plan pursuant to 40 Code of Federal Regulations, 112.4(e) (2001)
43 that the owner or operator believes is not required under federal
44 law, the department shall consult with the United States
45 Environmental Protection Agency regarding the applicable federal
46 requirement.

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SUMMARY

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4 The purpose of this bill is to eliminate avoidable and
inappropriate disbursements from the state Ground Water Oil
Clean-up Fund by:

6

8 1. Improving compliance with state and federal regulatory
requirements that reduce the risk of spills from aboveground oil
storage tanks; and

10

12 2. Authorizing reimbursement to the Ground Water Oil
Clean-up Fund of spill clean-up costs that are covered by private
insurance required under the federal Motor Carrier Act.

14

16 Under this bill, owners of aboveground oil storage
facilities are required to certify, on the annual chemical
inventory reporting form submitted to the Maine Emergency
18 Response Commission, that underground piping at the facility
meets existing state regulatory requirements and that the
20 facility meets existing federal regulatory requirements for
preparation and maintenance of a spill prevention control and
22 countermeasure plan. The latter requirements are incorporated
into state law so that they can be enforced by the Department of
24 Environmental Protection.

26

28 This bill also requires the Department of Environmental
Protection to consult with the United States Environmental
Protection Agency when requiring the owner or operator of an
aboveground oil storage facility to amend its spill prevention
30 control and countermeasure plan if the owner or operator believes
that the amendment is not required by federal law.