

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 1946

H.P. 1382

House of Representatives, December 18, 2007

### **An Act To Address Uncertified Practice of Underground Oil Storage Tank Installation and Inspection**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 17, 2007. 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 KOFFMAN of Bar Harbor.  
Cosponsored by Senator MARTIN of Aroostook.

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

2 **Sec. 1. 32 MRSA §10012, sub-§2**, as amended by PL 2001, c. 231, §14, is  
3 further amended to read:

4 **2. Disposal of fees and civil penalties.** All fees received by the board under  
5 subsection 1 and civil penalties as authorized by section 10015 received by the board  
6 related to underground oil storage tank installers, underground gasoline storage tank  
7 removers or underground oil storage tank inspectors imposed under sections 10015 or  
8 10016 must be paid to the Treasurer of State to be deposited into the Ground Water Oil  
9 Clean-up Fund and used for the purpose of carrying out all applicable provisions of this  
10 chapter. Any balance of fees and civil penalties as authorized by section 10015 does not  
11 lapse but must be carried forward as a continuing account to be expended for the same  
12 purposes in the following fiscal years.

13 **Sec. 2. 32 MRSA §10016** is enacted to read:

14 **§10016. Uncertified practice**

15 **1. Complaints.** The board may receive or initiate complaints of uncertified practice  
16 as an underground oil storage tank installer or inspector.

17 **2. Investigation.** Complaints of uncertified practice under subsection 1 may be  
18 investigated by the board, the department or the Attorney General. If sufficient evidence  
19 of uncertified practice is uncovered, the evidence must be compiled and presented to the  
20 Attorney General or the local district attorney's office for prosecution.

21 **3. Criminal penalties.** Notwithstanding any other provision of law:

22 A. A person who practices or represents to the public that the person is authorized to  
23 practice as an underground oil storage tank installer or inspector and intentionally,  
24 knowingly or recklessly fails to obtain certification as required by this chapter or  
25 intentionally, knowingly or recklessly practices or represents to the public that the  
26 person is authorized to practice after the certification required by this chapter has  
27 expired or been suspended or revoked commits a Class E crime; and

28 B. A person who violates paragraph A when the person has a prior conviction under  
29 this subsection commits a Class D crime. Title 17-A, section 9-A governs the use of  
30 prior convictions when determining a sentence, except that, for purposes of this  
31 paragraph, the date of the prior conviction must precede the commission of the  
32 offense being enhanced by no more than 3 years.

33 **4. Civil violations.** A person who practices or represents to the public that the  
34 person is authorized to practice as an underground oil storage tank installer or inspector  
35 without first obtaining certification as required by this chapter or after the certification  
36 has expired or has been suspended or revoked commits a civil violation for which a fine  
37 of not less than \$100 and not more than \$2,000 for each violation may be adjudged. An  
38 action under this subsection may be brought in District Court or Superior Court.

1 **5. Injunctions.** The Attorney General may bring an action in District Court or  
2 Superior Court to enjoin a person from violating subsection 4 and to restore to a person  
3 who has suffered any ascertainable loss by reason of that violation any money or personal  
4 or real property that may have been acquired by means of that violation and to compel the  
5 return of compensation received for engaging in that unlawful conduct.

6 A person who violates the terms of an injunction issued under this subsection shall pay to  
7 the State a fine of not more than \$10,000 for each violation. In an action under this  
8 subsection, when a permanent injunction has been issued, the court may order the person  
9 against whom the permanent injunction is issued to pay to the Ground Water Oil Clean-  
10 up Fund under Title 38, chapter 3, subchapter 2-B the costs of the investigation of that  
11 person by the Attorney General and the costs of suit, including attorney's fees. In an  
12 action by the Attorney General brought against a person for violating the terms of an  
13 injunction issued under this subsection, the court may make the necessary orders or  
14 judgments to restore to a person who has suffered any ascertainable loss any money or  
15 personal or real property or to compel the return of compensation received by reason of  
16 such conduct found to be in violation of an injunction.

17 **SUMMARY**

18 The bill amends the law governing certification of underground oil storage tank  
19 installers and inspectors by the Board of Underground Oil Storage Tank Installers to  
20 provide a process, consistent with that of other state boards and commissions under the  
21 Maine Revised Statutes, Title 10, section 8003-C, to investigate allegations of uncertified  
22 practice and take appropriate action.