

MAINE STATE LEGISLATURE

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No. 2072

H.P. 1456

House of Representatives, December 21, 2007

**An Act To Conform the Laws Governing Underground Oil Storage
Tanks to the Requirements of the Federal Energy Policy Act**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Received by the Clerk of the House on December 19, 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 BARTLETT of Cumberland and
Representatives: BLISS of South Portland, DUCHESNE of Hudson, EBERLE of South
Portland, HILL of York.

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

2 **Sec. 1. 38 MRSA §563, sub-§9**, as amended by PL 2005, c. 491, §1, is further
3 amended to read:

4 **9. Annual compliance inspection.** The owner of an underground oil storage facility
5 is responsible for ensuring that each underground oil storage tank and associated piping at
6 the facility are inspected annually for compliance with the requirements of this
7 subchapter and any rules adopted under this subchapter and the requirements for gasoline
8 vapor control in rules adopted under section 585-A. The owner shall correct or arrange
9 for correction of any deficiencies detected during the inspection as necessary to bring the
10 facility into compliance with these requirements.

11 A. The owner of an underground oil storage facility shall submit annual inspection
12 results to the department on or before July 1, 2003 and on or before July 1st annually
13 thereafter. The results must be recorded on a form provided by the department and
14 must include a certification statement, signed by an underground oil storage tank
15 inspector or underground oil storage tank installer certified by the Board of
16 Underground Oil Tank Installers under Title 32, chapter 104-A, that each tank and
17 associated piping have been inspected and any deficiencies discovered during the
18 inspection have been corrected. The owner shall submit the completed form to the
19 department no more than 30 days after the date on which the inspection was
20 completed.

21 ~~B. In addition to other enforcement actions allowed under state law, the~~
22 ~~commissioner may issue an administrative order after providing a notice of violation~~
23 ~~for failure to comply with the requirement of this subsection and after providing a~~
24 ~~reasonable opportunity to correct the violation. The administrative order may~~
25 ~~include, but is not limited to, a requirement that the owner or operator of an~~
26 ~~underground oil storage facility cease deliveries of oil to, and operation of, the~~
27 ~~underground oil storage tank and associated piping that are the subject of the~~
28 ~~violation until the violation has been corrected.~~

29 ~~C. Service of the commissioner's administrative order under paragraph B must be~~
30 ~~made by hand delivery by an authorized representative of the department or by~~
31 ~~certified mailing, return receipt requested.~~

32 ~~D. The person to whom the administrative order under paragraph B is directed shall~~
33 ~~comply immediately or within the time period specified in the order. That person~~
34 ~~may appeal the order to the board by filing a written petition within 5 working days~~
35 ~~after receipt of the order. Within 15 working days after receipt of the petition, the~~
36 ~~board shall hold a hearing on the matter. All witnesses at the hearing must be sworn.~~
37 ~~Within 7 working days after the hearing, the board shall make findings of fact and~~
38 ~~shall continue, revoke or modify the administrative order. The decision of the board~~
39 ~~may be appealed to the Superior Court in accordance with Title 5, chapter 375,~~
40 ~~subchapter 7.~~

41 E. Beginning July 1, 2010 and at least once every 3 years thereafter, the annual
42 inspection of each tank must be performed by a certified underground oil storage tank
43 inspector or underground oil storage tank installer who is not the tank owner or

1 operator, an employee of the tank owner or operator or a person having daily on-site
2 responsibility for the operation and maintenance of the tank.

3 **Sec. 2. 38 MRSA §563, sub-§10, ¶D**, as enacted by PL 2005, c. 491, §1, is
4 amended to read:

5 D. The owner of an aboveground oil storage tank used to store motor fuel shall
6 ensure that underground piping associated with the tank is inspected annually for
7 compliance with the requirements of this subchapter and the requirements for
8 gasoline vapor control in rules adopted under section 585-A. The owner shall submit
9 annual inspection results to the department on or before July 1, 2007 and on or before
10 July 1st annually thereafter. The results must be recorded on a form provided by the
11 department and must include a certification statement, signed by an underground oil
12 storage tank inspector or an underground oil storage tank installer certified by the
13 Board of Underground Oil Tank Installers under Title 32, chapter 104-A that the
14 piping has been inspected and any deficiencies discovered during the inspection have
15 been corrected. The owner shall submit the completed form to the department no
16 more than 30 days after the date on which the inspection was completed. The
17 requirements of this paragraph may be enforced in the same manner as is provided
18 for underground oil storage facilities under subsection 9.

19 **Sec. 3. 38 MRSA §565-A** is enacted to read:

20 **§565-A. Authority to prohibit product delivery**

21 **1. Order to cease deliveries.** In addition to the enforcement actions allowed under
22 sections 347-A and 348, the commissioner may, after providing an owner or operator of
23 an underground oil storage tank with a notice of violation for failure to comply with a
24 requirement of this subchapter and after providing a reasonable opportunity for correction
25 of the violation, issue an administrative order requiring the owner or operator of the
26 underground oil storage tank that is the subject of the violation to cease deliveries of oil
27 to the tank and to cease operation of the tank and associated piping until the violation has
28 been corrected. The commissioner shall issue an administrative order to cease deliveries
29 to or operation of an underground oil storage tank subject to section 564 upon
30 determining that:

31 A. The tank is not equipped with the spill prevention, overfill protection, leak
32 detection or corrosion protection measures required under section 564 and applicable
33 department rules;

34 B. The tank is not being operated or maintained in compliance with section 564 and
35 applicable department rules and the owner or operator has failed to gain compliance
36 with the requirements within 30 days of being provided with a citation for or written
37 notice of the violation; or

38 C. There is evidence of an ongoing release of product from the tank or facility at
39 which the tank is located.

40 The commissioner may defer issuance of an administrative order to cease deliveries
41 pursuant to this subsection if the commissioner determines that a delivery prohibition

1 would jeopardize the availability of, or access to, oil in a remote area of the State. The
2 deferral may not exceed 180 days.

3 **2. Service.** Service of an administrative order under subsection 1 must be made by
4 hand delivery by an authorized representative of the department or by certified mail,
5 return receipt requested. The person to whom the order is directed shall comply
6 immediately or within the time period specified in the order or may appeal the order as
7 provided in subsection 3.

8 **3. Appeal.** An administrative order under subsection 1 may be appealed to the board
9 by filing a written petition within 5 working days after receipt of the order. Within 15
10 working days after receipt of the petition, the board shall hold a hearing on the matter.
11 All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the
12 board shall make findings of fact and shall continue, revoke or modify the administrative
13 order. The decision of the board may be appealed to the Superior Court in accordance
14 with Title 5, chapter 375, subchapter 7.

15 **4. Identification of tanks subject to delivery prohibition.** Whenever the
16 commissioner issues an administrative order under subsection 1, department staff shall
17 affix a red tag to the fill pipe of the underground oil storage tank or provide the tank
18 owner or operator with a red tag for that purpose. Immediately upon receipt of a red tag
19 from the department, the owner or operator shall affix the tag, in plain view, to the tank
20 fill pipe. The owner or operator may not allow the deposit of oil into the tank while a red
21 tag is affixed to the fill pipe.

22 As used in this section, "red tag" means a tag, device or mechanism devised by the
23 department for use in signifying that an underground oil storage tank is ineligible for
24 product delivery. The tag must be red in color and must bear words clearly conveying
25 that it is unlawful to deposit oil into the tank. The tag must be made of plastic or other
26 durable, damage-resistant material and must be designed to be easily affixed to the tank
27 fill pipe.

28 **5. Prohibition.** A person may not deposit oil into an underground oil storage tank
29 that has a red tag affixed to the fill pipe or tamper with the tag except to remove it as
30 authorized by the commissioner under subsection 6.

31 **6. Return to service.** A red tag affixed pursuant to this section may not be removed
32 until an underground oil storage tank inspector or underground oil storage tank installer
33 certifies in writing to the commissioner that the applicable violations have been corrected
34 and the commissioner authorizes removal of the tag. The commissioner shall remove or
35 authorize the removal of the tag as soon as practicable upon receipt of the certification.
36 The commissioner may remove or authorize the removal of the tag absent confirmation
37 that the violations have been corrected in emergency situations or when removal is
38 determined to be in the best interest of the public.

39 **Sec. 4. 38 MRSA §568, sub-§3,** as amended by PL 2005, c. 330, §22, is further
40 amended to read:

41 **3. Issuance of clean-up orders.** The commissioner may investigate and sample
42 sites where an oil discharge has or may have occurred to identify the source and extent of

1 the discharge. During the course of the investigation, the commissioner may require
2 submission of information or documents that relate or may relate to the discharge under
3 investigation from any person who the commissioner has reason to believe may be a
4 responsible party under this subchapter or subchapter 2-A. If the commissioner finds,
5 after investigation, that a discharge of oil has occurred and may create a threat to public
6 health or the environment, including, but not limited to, contamination of a water supply,
7 the commissioner may issue a clean-up order requiring the responsible party to cease the
8 discharge immediately and to take action to prevent further discharge and to mitigate or
9 terminate the threat of human exposure to contamination or to explosive vapors. In
10 addition to other actions, including an action to prohibit product delivery under section
11 565-A, the commissioner may, as part of any clean-up order, require the responsible party
12 to provide temporary drinking water and water treatment systems approved by the
13 commissioner, to sample and analyze wells and to compensate 3rd-party damages
14 resulting from the discharge. The commissioner may also order that the responsible party
15 take temporary and permanent remedial actions at locations threatened or affected by the
16 discharge of oil, including a requirement that the responsible party restore or replace
17 water supplies contaminated with oil with water supplies the commissioner finds are cost
18 effective, technologically feasible and reliable and that effectively mitigate or minimize
19 damage to, and provide adequate protection of, the public health, welfare and the
20 environment. Clean-up orders may be issued only in compliance with the following
21 procedures.

22 A. Any orders issued under this section must contain findings of fact describing the
23 manner and extent of oil contamination, the site of the discharge and the threat to the
24 public health or environment. Service of a copy of the commissioner's findings and
25 order must be made by the sheriff or deputy sheriff or by hand delivery by an
26 authorized representative of the department in accordance with the Maine Rules of
27 Civil Procedure.

28 B. A responsible party to whom such an order is directed may apply to the board
29 for a hearing on the order if the application is made within 10 working days after
30 receipt of the order by a responsible party. Within 15 working days after receipt of
31 the application, the board shall hold a hearing, make findings of fact and vote on a
32 decision that continues, revokes or modifies the order. That decision must be in
33 writing and signed by the board chair using any means for signature authorized in the
34 department's rules and published within 2 working days after the hearing and vote.
35 The nature of the hearing is an appeal. At the hearing, all witnesses must be sworn
36 and the commissioner shall first establish the basis for the order and for naming the
37 person to whom the order was directed. The burden of going forward then shifts to
38 the person appealing to demonstrate, based upon a preponderance of the evidence,
39 that the order should be modified or rescinded. The decision of the board may be
40 appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

41 C. Upon completion of the clean-up activity, the commissioner shall issue a letter to
42 the responsible party or parties indicating that the clean-up order has been complied
43 with for one or more parcels.

44 **Sec. 5. Operator training.** By August 8, 2009, the Department of Environmental
45 Protection shall develop a program to train owners and operators of federally regulated

1 underground oil storage tanks on how to properly operate and maintain the tank systems.
2 The program must meet the minimum requirements specified by the United States
3 Environmental Protection Agency pursuant to 42 United States Code, Section
4 6991(i)(2007).

5 **SUMMARY**

6 This bill conforms the laws governing underground oil storage tanks to the
7 requirements of the federal Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594
8 (2005), by:

9 1. Requiring owners and operators of federally regulated underground oil storage
10 tanks to have the tanks inspected by a disinterested certified underground oil storage tank
11 inspector or installer at least once every 3 years;

12 2. Directing the Department of Environmental Protection to develop a training
13 program for owners and operators of federally regulated underground oil storage tanks;
14 and

15 3. Giving the Department of Environmental Protection authority to prohibit the
16 delivery of oil to underground oil storage tanks that are not inspected, operated and
17 maintained in compliance with the law.