

# MAINE STATE LEGISLATURE

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# NATURAL RESOURCES

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## STATE OF MAINE HOUSE OF REPRESENTATIVES 123RD LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1457, L.D. 2073, Bill, "An Act To Prevent Contamination of Drinking Water Supplies"

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

**Sec. 1. 30-A MRSA §4452, sub-§7**, as amended by PL 1997, c. 296, §8, is further amended to read:

**7. Natural resources protection laws.** A code enforcement officer, authorized by a municipality to represent that municipality in District Court and certified by the State Planning Office under section 4453 as familiar with court procedures, may enforce the provisions of ~~the natural resources protection laws~~, Title 38, section 420-C, Title 38, chapter 3, subchapter 1, article 5-A and Title 38, ~~section 420-C~~, chapter 13-D by instituting injunctive proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2.

**Sec. 2. 38 MRSA §562-A, sub-§1-B**, as enacted by PL 1993, c. 363, §2 and affected by §21, is amended to read:

**1-B. Aboveground oil storage tank.** "Aboveground oil storage tank" also referred to as a "tank" means any aboveground container, less than 10% of the capacity of which is beneath the surface of the ground ~~and, that~~ is used or intended to be used for the storage or supply of oil. Included in this definition are any tanks situated upon or above the surface of a floor and in such a manner that they may be readily inspected. Drums or other storage containers that have a capacity of 60 gallons or less and oil-containing electrical equipment are not included in this definition.

**Sec. 3. 38 MRSA §563-C**, as amended by PL 2005, c. 561, §6, is repealed.

**Sec. 4. 38 MRSA §568-A, sub-§1, ¶J**, as enacted by PL 2001, c. 302, §2, is amended to read:

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COMMITTEE AMENDMENT "A" to H.P. 1457, L.D. 2073

1 J. An applicant is not eligible for coverage for any underground oil storage facility  
2 installed in violation of the provisions of ~~section 563-C~~ chapter 13-D.

3 **Sec. 5. 38 MRSA §568-A, sub-§1, ¶K**, as enacted by PL 2001, c. 302, §2, is  
4 amended to read:

5 K. An applicant whose facility is subject to the provisions of ~~section 563-C~~ chapter  
6 13-D is not eligible for coverage for costs related to providing treatment or temporary  
7 or permanent water supply replacement and 3rd-party damage claim costs related to  
8 an oil discharge at a facility installed after September 30, 2001 and affecting that  
9 property's drinking water supply system.

10 **Sec. 6. 38 MRSA c. 13-D** is enacted to read:

11 **CHAPTER 13-D**

12 **WELLHEAD PROTECTION**

13 **§1391. Declaration of policy**

14 The Legislature finds and declares it to be the policy of the State, consistent with its  
15 duty to protect the health, safety and welfare of its citizens, to establish a coordinated  
16 statewide program to protect drinking water wells from contamination by oil or hazardous  
17 waste. The Legislature further finds that spills of oil and hazardous waste pose a  
18 significant risk to groundwater quality and that the handling of those substances near  
19 drinking water wells should be restricted to reduce the risk of contamination.

20 **§1392. Definitions**

21 As used in this chapter, unless the context otherwise indicates, the following terms  
22 have the following meanings.

23 **1. Aboveground heating oil supply tank.** "Aboveground heating oil supply tank"  
24 means an aboveground oil storage tank that is connected directly to an oil-burning  
25 heating appliance and is used solely to store heating oil.

26 **2. Aboveground oil storage facility.** "Aboveground oil storage facility" has the  
27 meaning set out in section 562-A, subsection 1-A.

28 **3. Aboveground oil storage tank.** "Aboveground oil storage tank" has the meaning  
29 set out in section 562-A, subsection 1-B.

30 **4. Community drinking water well.** "Community drinking water well" means a  
31 public drinking water well that supplies a community water system as defined under Title  
32 22, section 2660-B, subsection 2.

33 **5. Double-walled tank.** "Double-walled tank" means a tank with inner and outer  
34 walls separated by an interstitial space that allows detection and containment of leaks.

35 **6. Hazardous waste.** "Hazardous waste" means any substance identified as  
36 hazardous waste by the board pursuant to section 1319-O.

7. **Oil.** "Oil" has the meaning set out in section 562-A, subsection 15. "Oil" does not include liquefied natural gas or other liquefied petroleum that is a gas at ambient temperatures.

8. **Private drinking water well.** "Private drinking water well" means a well that is used to supply water for human consumption and that is not a public drinking water well.

9. **Public drinking water well.** "Public drinking water well" means a drinking water supply well for a public water system as defined in Title 22, section 2601, subsection 8.

10. **Underground oil storage facility.** "Underground oil storage facility" has the meaning set out in section 562-A, subsection 21.

11. **Wellhead protection zone.** "Wellhead protection zone" means:

A. In the case of a private drinking water well, the area within 300 feet of the well; and

B. In the case of a public drinking water well, the greater of:

(1) The area within 1,000 feet of the well; and

(2) The source water protection area of the well if mapped by the Department of Health and Human Services as described under Title 30-A, section 2001, subsection 20-A.

**§1393. Prohibition on installation of facilities in wellhead protection zones**

1. **Prohibition.** Unless otherwise exempted pursuant to subsection 2:

A. A person may not install an underground oil storage facility in a wellhead protection zone; and

B. After September 30, 2008, a person may not install in a wellhead protection zone:

(1) An aboveground oil storage facility;

(2) An automobile graveyard as defined in Title 30-A, section 3752, subsection 1 or an automobile recycling business as defined in Title 30-A, section 3752, subsection 1-A;

(3) An automobile body shop or other commercial automobile maintenance and repair facility;

(4) A dry cleaning facility that uses perchloroethylene;

(5) A metal finishing or plating facility; or

(6) A commercial hazardous waste facility as defined under section 1303-C, subsection 4.

2. **Exceptions.** Subsection 1 does not apply to:

A. A facility in existence or under construction on the effective date of the prohibition established under subsection 1. As used in this paragraph, "under construction" means that a substantial amount of money or effort has been expended

2018

COMMITTEE AMENDMENT "A" to H.P. 1457, L.D. 2073

1 toward completion of the facility as determined by the commissioner. The test of  
2 substantiality involves an assessment of the amount of money or effort expended in  
3 relation to the amount required to complete the facility;

4 B. The replacement or expansion of an underground oil storage facility in existence  
5 on September 30, 2001 or a facility identified in subsection 1, paragraph B in  
6 existence on September 30, 2008 as long as the replacement or expansion occurs on  
7 the same property and the facility meets all applicable requirements of law;

8 C. The conversion of an aboveground oil storage facility in existence on September  
9 30, 2001 to an underground oil storage facility or vice versa, as long as the  
10 conversion occurs on the same property and the facility to be converted meets all  
11 applicable requirements of law;

12 D. The installation of an oil storage facility used solely to store heating oil for  
13 consumption on the premises, including the installation of an aboveground heating oil  
14 supply tank; or

15 E. The installation of a facility located on the same property as a well serving only  
16 users of that property.

17 This subsection may not be interpreted to allow the conversion or expansion of an  
18 underground oil storage tank or underground oil storage facility subject to the  
19 abandonment requirement under section 566-A.

20 **§1394. Variances**

21 The provisions of this section govern the granting of a variance from the prohibitions  
22 under section 1393.

23 **1. Community drinking water well, private drinking water well or well that**  
24 **supplies school.** In the case of a community drinking water well, a private drinking  
25 water well or a well that supplies drinking water to a school, the commissioner may grant  
26 a variance from the prohibition of section 1393 if the applicant demonstrates that no  
27 hydrogeologic connection exists between the proposed facility and the water supply at  
28 issue.

29 **2. Public drinking water well that is not community drinking water well or does**  
30 **not supply school.** In the case of a public drinking water well other than a community  
31 drinking water well or a drinking water well supplying drinking water to a school, the  
32 commissioner may grant a variance from the prohibition of section 1393 if the  
33 commissioner determines that the engineering and monitoring measures proposed by the  
34 applicant exceed regulatory requirements and will effectively minimize the likelihood of  
35 drinking water contamination due to the discharge of oil or hazardous waste.

36 **3. Determination.** In considering whether to grant a variance under this section, the  
37 commissioner may consider the importance of the groundwater resource, the  
38 hydrogeology of the site and other relevant factors.

39 **4. Procedure.** The commissioner shall provide public notice and an opportunity for  
40 public comment on each variance request. The commissioner may deny a variance  
41 request or approve the request with or without conditions. The decision must be in

1 writing with findings sufficient to explain the basis of the decision. The decision may be  
2 appealed to the board under section 341-D, subsection 4, paragraph A.

3 **§1395. Installation requirements for aboveground heating oil supply tanks in the**  
4 **wellhead protection zone of a community drinking water well**

5 Effective July 1, 2009, a person may not install an aboveground heating oil supply  
6 tank in the wellhead protection zone of a community drinking water well unless the tank:

7 **1. Double-walled or secondary containment.** Is a double-walled tank or has  
8 secondary containment approved by the commissioner;

9 **2. Independent testing authority.** And any secondary containment are listed and  
10 approved by a nationally recognized, independent testing authority; and

11 **3. Licensed professional.** Is installed by a journeyman or master oil burner  
12 technician licensed by the Oil and Solid Fuel Board under Title 32, section 2401-B or, in  
13 the case of an outside tank serving manufactured housing, by any person licensed by the  
14 Oil and Solid Fuel Board under Title 32, section 2401 to install such tanks.

15 The requirements of this section do not apply to tanks with a capacity of more than  
16 660 gallons or to tanks at an aboveground oil storage facility with an aggregate tank  
17 capacity of more than 1,320 gallons. The requirements of this section are in addition to  
18 any other installation standards provided for in law or rule.

19 **§1396. Financial assistance for upgrading aboveground oil storage tanks or facilities**

20 The commissioner may disburse money from the Ground Water Oil Clean-up Fund to  
21 retrofit, repair or replace aboveground oil storage tanks or aboveground oil storage  
22 facilities in a wellhead protection zone when the commissioner determines that action is  
23 necessary to abate an imminent threat to the well. Disbursements must be made in the  
24 manner provided under section 569-A, subsection 8, paragraphs M and N and are subject  
25 to the annual disbursement limitations of those paragraphs.

26 **§1397. Enforcement**

27 In addition to other enforcement actions allowed under state law, the commissioner  
28 may issue an administrative order after providing a notice of violation for failure to  
29 comply with the requirements of this chapter and after providing a reasonable opportunity  
30 to correct the violation. The administrative order may include, but is not limited to, a  
31 requirement that the owner or operator of the facility cease operation of the facility that is  
32 the subject of the violation until the violation has been corrected.

33 **1. Service.** Service of the commissioner's administrative order under this section  
34 must be made by hand delivery by an authorized representative of the department or by  
35 certified mailing, return receipt requested.

36 **2. Appeal.** The person to whom the commissioner's administrative order under this  
37 section is directed shall comply immediately or within the time period specified in the  
38 order. That person may appeal the order to the board by filing a written petition within 5  
39 working days after receipt of the order. Within 15 working days after receipt of the  
40 petition, the board shall hold a hearing on the matter. All witnesses at the hearing must  
41 be sworn. Within 7 working days after the hearing, the board shall make findings of fact

R.886

COMMITTEE AMENDMENT "A" to H.P. 1457, L.D. 2073

1 and shall continue, revoke or modify the administrative order. The decision of the board  
2 may be appealed to the Superior Court in accordance with Title 5, chapter 375,  
3 subchapter 7.

4 **§1398. Eligibility for clean-up funds**

5 Clean-up costs and 3rd-party damages resulting from discharges from an  
6 aboveground oil storage facility or an underground oil storage facility installed in  
7 violation of section 1393 are not eligible for coverage by the Ground Water Oil Clean-up  
8 Fund under sections 568-A and 569-A.

9 **§1399. Municipal authority**

10 This chapter may not be construed to prevent a municipality from imposing siting  
11 restrictions more stringent than the prohibitions in this chapter or in rules adopted by the  
12 board.

13 **Sec. 7. Rules.** The Board of Environmental Protection shall adopt rules that restrict  
14 the siting of the facilities listed in the Maine Revised Statutes, Title 38, section 1393,  
15 subsection 1 within significant sand and gravel aquifers mapped by the Department of  
16 Conservation, Bureau of Geology and Natural Areas, Maine Geological Survey. The rules  
17 must provide for variance from the restrictions in appropriate instances, including when  
18 engineering and monitoring that exceed regulatory requirements are determined to  
19 effectively reduce the risk of oil and hazardous waste discharges, and must be otherwise  
20 consistent with the rules for siting underground oil storage tanks adopted pursuant to  
21 Public Law 2001, chapter 302, section 3. Rules adopted under this section are major  
22 substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

23 **Sec. 8. Aboveground oil storage tank registration; review.** The Department  
24 of Defense, Veterans and Emergency Management, Maine Emergency Management  
25 Agency, in coordination with the Department of Public Safety, Office of the State Fire  
26 Marshal and the Department of Environmental Protection, referred to in this section as  
27 "the departments," shall review the current framework for registering aboveground oil  
28 storage facilities. The departments shall invite the regulated community to participate in  
29 the review. The departments shall evaluate and make recommendations on a plan for  
30 coordinating among the departments the registration of aboveground oil storage facilities.  
31 Where appropriate, the plan must facilitate the use of geographic information system  
32 data. By January 15, 2009, the departments shall submit to the joint standing committee  
33 of the Legislature having jurisdiction over natural resources matters a report detailing  
34 their findings and recommendations. The report must include draft legislation necessary  
35 to implement the recommendations, and the joint standing committee of the Legislature  
36 having jurisdiction over natural resources matters may report out to the First Regular  
37 Session of the 124th Legislature a bill relating to the report.'

38 **SUMMARY**

39 This amendment strikes the provisions in the bill that call for the new wellhead  
40 protection requirements to be administered and enforced primarily at the local level. It  
41 amends the definition of "aboveground oil storage tank," adds a definition of the term  
42 "aboveground heating oil supply tank" and clarifies the definition of "double-walled

258  
COMMITTEE AMENDMENT "A" to H.P. 1457, L.D. 2073

1 tank." It amends the provisions regarding installation requirements for aboveground  
2 heating oil supply tanks. It strikes the provision in the bill that requires the registration of  
3 aboveground oil storage facilities in wellhead protection zones and over sand and gravel  
4 aquifers. It eliminates language authorizing the Commissioner of Environmental  
5 Protection to enjoin the operation of a facility installed in violation of the new siting  
6 restrictions and replaces it with more comprehensive enforcement language. It requires  
7 the Department of Defense, Veterans and Emergency Management, Maine Emergency  
8 Management Agency, in coordination with the Department of Public Safety, Office of the  
9 State Fire Marshal and the Department of Environmental Protection, to review and make  
10 recommendations on improving the current framework for registering aboveground oil  
11 storage facilities.

12 **FISCAL NOTE REQUIRED**  
13 **(See attached)**

**COMMITTEE AMENDMENT**





Approved: 03/20/08 *mac*

# 123rd MAINE LEGISLATURE

LD 2073

LR 3077(02)

**An Act To Prevent Contamination of Drinking Water Supplies**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Natural Resources**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Costs associated with this legislation can be absorbed by the Department of Environmental Protection, the Maine Emergency Management Association and the Office of the State Fire Marshal utilizing existing budgeted resources.