

MAINE STATE LEGISLATURE

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Legislative Document

No. 2073

H.P. 1457

House of Representatives, December 21, 2007

An Act To Prevent Contamination of Drinking Water Supplies

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 DUCHESNE of Hudson.
Cosponsored by Senator BARTLETT of Cumberland and
Representatives: EBERLE of South Portland, HILL of York, KOFFMAN of Bar Harbor,
McDONOUGH of Scarborough, WAGNER of Lewiston.

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

2 **Sec. 1. 30-A MRSA §4452, sub-§5, ¶S,** as amended by PL 2007, c. 112, §5, is
3 further amended to read:

4 S. Local ordinances and ordinance provisions regarding storm water, including, but
5 not limited to, ordinances and ordinance provisions regulating nonstorm water
6 discharges, construction site runoff and postconstruction storm water management,
7 enacted as required by the federal Clean Water Act and federal regulations and by
8 state permits and rules; ~~and~~

9 **Sec. 2. 30-A MRSA §4452, sub-§5, ¶T,** as enacted by PL 2007, c. 112, §6, is
10 amended to read:

11 T. Laws pertaining to limitations on construction and excavation near burial sites and
12 established cemeteries in Title 13, section 1371-A and local ordinances and
13 regulations adopted by municipalities in accordance with this section and section
14 3001 regarding those limitations; ~~and~~

15 **Sec. 3. 30-A MRSA §4452, sub-§5, ¶U** is enacted to read:

16 U. Laws pertaining to wellhead protection in Title 38, chapter 13-D.

17 **Sec. 4. 30-A MRSA §4452, sub-§7,** as amended by PL 1997, c. 296, §8, is
18 further amended to read:

19 **7. Natural resources protection laws.** A code enforcement officer, authorized by a
20 municipality to represent that municipality in District Court and certified by the State
21 Planning Office under section 4453 as familiar with court procedures, may enforce the
22 provisions of the natural resources protection laws, Title 38, section 420-C; Title 38,
23 chapter 3, subchapter 1, article 5-A; and Title 38, ~~section 420-C~~ chapter 13-D, by
24 instituting injunctive proceedings or by seeking civil penalties in accordance with Title
25 38, section 349, subsection 2.

26 **Sec. 5. 38 MRSA §563-C,** as amended by PL 2005, c. 561, §6, is repealed.

27 **Sec. 6. 38 MRSA §568-A, sub-§1, ¶J,** as enacted by PL 2001, c. 302, §2, is
28 amended to read:

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

31 **Sec. 7. 38 MRSA §568-A, sub-§1, ¶K,** as enacted by PL 2001, c. 302, §2, is
32 amended to read:

33 K. An applicant whose facility is subject to the provisions of ~~section 563-C~~ chapter
34 13-D is not eligible for coverage for costs related to providing treatment or temporary
35 or permanent water supply replacement and 3rd-party damage claim costs related to
36 an oil discharge at a facility installed after September 30, 2001 and affecting that
37 property's drinking water supply system.

1 9. Underground oil storage facility. "Underground oil storage facility" has the
2 meaning set out in section 562-A, subsection 21.

3 10. Wellhead protection zone. "Wellhead protection zone" means:

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

5 (1) The source water protection area if mapped by the Department of Health and
6 Human Services as described under Title 30-A, section 2001, subsection 20-A;
7 and

8 (2) The area within 1,000 feet of the wellhead; and

9 B. In the case of a private drinking water well, the area within 300 feet of the
10 wellhead.

11 §1393. Prohibited facilities in wellhead protection zones

12 1. Prohibition. A person may not install an underground oil storage facility in a
13 wellhead protection zone. After September 30, 2008, a person may not install in a
14 wellhead protection zone:

15 A. An aboveground oil storage facility;

16 B. An automobile graveyard as defined in Title 30-A, section 3752, subsection 1 or
17 an automobile recycling business as defined in Title 30-A, section 3752, subsection
18 1-A;

19 C. An automobile body shop or other commercial automobile maintenance and
20 repair facility;

21 D. A dry cleaning facility that uses perchloroethylene;

22 E. A metal finishing or plating facility; or

23 F. A commercial hazardous waste facility as defined under section 1303-C,
24 subsection 4.

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

26 A. A facility in existence or under construction on the effective date of the
27 prohibition;

28 B. The replacement or expansion of an underground oil storage facility in existence
29 on September 30, 2001 or other types of facilities in existence on September 30, 2008
30 as long as the replacement or expansion occurs on the same property and the facility
31 meets all applicable requirements of law;

32 C. The conversion of an aboveground oil storage facility in existence on September
33 30, 2001 to an underground oil storage facility or vice versa, as long as the
34 conversion occurs on the same property and the facility to be converted meets all
35 applicable requirements of law;

36 D. An oil storage facility used solely to store heating oil for consumption on the
37 premises; or

1 E. A well located on the same property as the facility and serving only users of that
2 property.

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

6 **§1394. Requirements for oil storage in a wellhead protection zone**

7 **1. Registration of aboveground tanks.** Effective July 1, 2009, a person may not
8 store oil in an aboveground oil storage facility located in a wellhead protection zone or
9 over a sand and gravel aquifer mapped by the Department of Conservation, Bureau of
10 Geology and Natural Areas, Maine Geological Survey unless the facility is registered
11 with the commissioner in the same manner as required of underground oil storage
12 facilities under section 563, subsections 2 to 5. This requirement does not apply to
13 facilities that are used solely to store heating oil for consumption on the premises and that
14 consist of an individual tank with a tank capacity of 660 gallons or less or multiple tanks
15 with an aggregate tank capacity of 1,320 gallons or less.

16 **2. Installation requirements for aboveground heating oil tanks.** The installation
17 of aboveground heating oil tanks is governed by this subsection.

18 A. Effective October 1, 2008, a person may not install an aboveground oil storage
19 facility in a wellhead protection zone unless the facility is used solely to store heating
20 oil for consumption on the premises and meets the requirements of Title 32, chapter
21 33, subchapter 3.

22 B. Effective July 1, 2009, a person may not install an aboveground oil storage
23 facility in the wellhead protection zone of a community drinking water well unless
24 the facility meets the requirements of paragraph A and each aboveground oil storage
25 tank at the facility meets the requirements of this paragraph.

26 (1) The tank must be a double-walled tank or other type of tank approved by the
27 commissioner.

28 (2) The tank must meet the testing requirements of a nationally recognized,
29 independent testing authority.

30 (3) The tank must be installed by a journeyman or master oil burner technician
31 licensed by the Oil and Solid Fuel Board under Title 32, section 2401-B or, in the
32 case of an outside tank serving manufactured housing, by any person licensed by
33 the Oil and Solid Fuel Board under Title 32, section 2401 to install such tanks.

34 This paragraph applies only to aboveground oil storage facilities that consist of an
35 individual tank with a tank capacity of 660 gallons or less or multiple tanks with an
36 aggregate tank capacity of 1,320 gallons or less.

37 **3. Financial assistance for upgrading tanks.** The commissioner may disburse
38 money from the Ground Water Oil Clean-up Fund to retrofit, repair or replace
39 aboveground oil storage tanks or aboveground oil storage facilities in a wellhead
40 protection zone when the commissioner determines that action is necessary to abate an
41 imminent threat to the well. Disbursements must be made in the manner provided under

1 section 569-A, subsection 8, paragraphs M and N and are subject to the annual
2 disbursement limitations of those paragraphs.

3 **§1395. Variances**

4 In the case of a community drinking water well, a private drinking water well or a
5 well that supplies drinking water to a school, the commissioner may grant a variance
6 from the prohibition of section 1393 if the applicant demonstrates that no hydrogeologic
7 connection exists between the proposed facility and the water supply at issue. In the case
8 of a public drinking water well other than one supplying drinking water to schools, the
9 commissioner may grant a variance if the commissioner determines that the engineering
10 and monitoring measures proposed by the applicant exceed regulatory requirements and
11 will effectively minimize the likelihood of drinking water contamination due to the
12 discharge of oil or hazardous waste. In considering whether to grant a variance, the
13 commissioner may consider the importance of the groundwater resource, the
14 hydrogeology of the site and other relevant factors.

15 The commissioner shall provide public notice and an opportunity for public comment
16 on each variance request.

17 The commissioner may deny a variance request or approve the request with or
18 without conditions. The decision must be in writing with findings sufficient to explain
19 the basis of the decision. The decision may be appealed to the board under section 341-
20 D, subsection 4, paragraph A.

21 **§1396. Enjoiner; eligibility for coverage of oil clean-up costs**

22 The commissioner may enjoin the operation of any facility described under section
23 1393, subsection 1 installed in violation of this chapter. Clean-up costs and 3rd-party
24 damages resulting from discharges of oil from an aboveground or underground oil storage
25 facility installed in violation of section 1393 are not eligible for coverage under the
26 Ground Water Oil Clean-up Fund.

27 **§1397. Municipal authority**

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

31 **Sec. 9. Rules.** The Board of Environmental Protection shall adopt rules that restrict
32 the siting of the facilities listed in the Maine Revised Statutes, Title 38, section 1393,
33 subsection 1 within sand and gravel aquifers mapped by the Department of Conservation,
34 Bureau of Geology and Natural Areas, Maine Geological Survey. The rules must provide
35 for variance from the restrictions in appropriate instances, including when engineering
36 and monitoring that exceed regulatory requirements are determined to effectively reduce
37 the risk of oil and hazardous waste discharges, and must be otherwise consistent with the
38 rules for siting underground oil storage tanks adopted pursuant to Public Law 2001,
39 chapter 302, section 3. Rules adopted under this section are major substantive rules
40 pursuant to Title 5, chapter 375, subchapter 2-A.

1

SUMMARY

2 The bill restricts certain types of development near drinking water wells to prevent
3 contamination by oil and hazardous matter. The bill gives municipal code enforcement
4 officers the authority to enforce the restrictions.