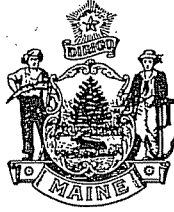


MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1332

H.P. 936

House of Representatives, March 31, 2009

An Act To Continue Coverage of Oil Clean-up Costs and Improve Administration of the Ground Water Oil Clean-up Fund

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DUCHESNE of Hudson.
Cosponsored by Representatives: BOLDUC of Auburn, MARTIN of Eagle Lake, WEBSTER
of Freeport.

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

2 **Sec. 1. 38 MRSA §341-G, sub-§1**, as amended by PL 1991, c. 817, §8, is further
3 amended to read:

4 **1. Transfer funds.** The amount transferred from each fund must be proportional to
5 that fund's contribution to the total special revenues received by the department under
6 chapter 2, subchapter 2; sections 551, ~~and 569-A and 569-B~~; and chapter 13, subchapter
7 4. Any funds received by the board from the General Fund must be credited towards the
8 amount owed by the Maine Environmental Protection Fund, chapter 2, subchapter 2.

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

11 **1-A. Aboveground oil storage facility.** "Aboveground oil storage facility" ~~also~~
12 ~~referred to as a "facility"~~ means any aboveground oil storage tank or tanks, together with
13 associated piping, transfer and dispensing facilities located over land or water of the State
14 at a single location for more than 4 months per year and used or intended to be used for
15 the storage or supply of oil. Oil terminal facilities, as defined in section 542, subsection 7
16 and propane facilities are not included in this definition and are not eligible for coverage
17 by the fund.

18 **Sec. 3. 38 MRSA §562-A, sub-§15-A** is enacted to read:

19 **15-A. Oil storage facility or facility.** "Oil storage facility" or "facility" means an
20 aboveground oil storage facility or an underground oil storage facility.

21 **Sec. 4. 38 MRSA §562-A, sub-§15-B** is enacted to read:

22 **15-B. Operator.** "Operator" means a person in control of, or having responsibility
23 for, the daily operation of an oil storage facility.

24 **Sec. 5. 38 MRSA §562-A, sub-§21**, as enacted by PL 1989, c. 865, §2, is
25 amended to read:

26 **21. Underground oil storage facility.** "Underground oil storage facility;" ~~also~~
27 ~~referred to as "facility,"~~ means any underground oil storage tank or tanks, as defined in
28 subsection 22, together with associated piping and dispensing facilities located under any
29 land at a single location and used, or intended to be used, for the storage or supply of oil,
30 as defined in this subchapter. Underground oil storage facility also includes piping
31 located under any land at a single location associated with above ground storage tanks
32 and containing 10% or more of the facility's overall volume capacity.

33 **Sec. 6. 38 MRSA §564, sub-§2-A, ¶J**, as amended by PL 1991, c. 494, §5, is
34 further amended to read:

35 J. Owners and operators, upon request by the commissioner, to sample their
36 underground oil tanks, to maintain records of all monitoring and sampling results at
37 the facility or the facility owner's place of business and to furnish records of all

1 monitoring and sampling results to the commissioner and to permit the commissioner
2 or the commissioner's representative to inspect and copy those records; ~~and~~

3 **Sec. 7. 38 MRSA §564, sub-§2-A, ¶K**, as enacted by PL 1991, c. 66, Pt. B, §5,
4 is amended to read:

5 K. Owners and operators to permit the commissioner or the commissioner's
6 designated representatives, including contractors, access to all underground oil
7 storage facilities for all purposes connected with administering this subchapter,
8 including, but not limited to, for sampling the contents of underground oil tanks and
9 monitoring wells. This right of access is ~~to be~~ in addition to any other granted by
10 law; and

11 **Sec. 8. 38 MRSA §564, sub-§2-A, ¶L** is enacted to read:

12 L. Operators to complete a department training program that meets the minimum
13 requirements specified by the United States Environmental Protection Agency under
14 42 United States Code, Section 6991i (2007).

15 **Sec. 9. 38 MRSA §565-B** is enacted to read:

16 **§565-B. Training of oil delivery personnel**

17 A person in the business of filling oil storage tanks shall ensure that any employee
18 whose responsibilities include onloading or offloading oil to or from a delivery vehicle
19 participates in a training program that includes, at a minimum:

20 **1. Prevention.** Overfill and spill prevention procedures;

21 **2. Reporting.** Spill reporting procedures;

22 **3. Containment.** Spill containment and clean-up procedures; and

23 **4. Inspection and maintenance.** Inspection and maintenance of spill prevention
24 and containment equipment.

25 A written copy of the training program and a training log must be kept at the person's
26 primary place of business and made available for inspection upon request by department
27 staff. The log must list the name of each employee trained and the date or dates on which
28 each participated in the training.

29 **Sec. 10. 38 MRSA §566-A, sub-§4**, as amended by PL 1999, c. 334, §2, is
30 further amended to read:

31 **4. Commissioner role.** If the owner of an ~~underground~~ oil storage facility or tank
32 fails to properly abandon the facility or tank within a reasonable time period, the
33 commissioner may undertake the abandonment. The commissioner shall collect any
34 reimbursement due the Ground Water Oil Clean-up Fund in accordance with section
35 569-A ~~or 569-B~~. Costs incurred by the commissioner to undertake the abandonment are a
36 lien against the real estate of the owner as provided under section 569-A, subsection 10-A
37 and ~~section 569-B, subsection 6-A.~~

1 **Sec. 11. 38 MRSA §568, sub-§1**, as amended by PL 2007, c. 655, §6, is further
2 amended to read:

3 **1. Removal.** Any person discharging or suffering a discharge of oil to groundwater
4 in the manner prohibited by section 543 and any other responsible party shall
5 immediately undertake to remove that discharge to the commissioner's satisfaction.
6 Notwithstanding this requirement, the commissioner may order the removal of that
7 discharge pursuant to subsection 3 or may undertake the removal of that discharge and
8 retain agents and contractors for that purpose, who shall operate under the direction of the
9 commissioner. Any unexplained discharge of oil to groundwater within state jurisdiction
10 must be removed by or under the direction of the commissioner. Any expenses involved
11 in the removal of discharges, whether by the person causing the discharge, the person
12 reporting the discharge, the commissioner or the commissioner's agents or contractors;
13 may be paid in the first instance from the Ground Water Oil Clean-up Fund, including
14 any expenses incurred by the State under subsection 3, and any reimbursements due that
15 fund must be collected in accordance with section 569-A ~~or 569-B~~.

16 **Sec. 12. 38 MRSA §568, sub-§3**, as amended by PL 2007, c. 534, §4, is further
17 amended to read:

18 **3. Issuance of clean-up orders.** The commissioner may investigate and sample
19 sites where an oil discharge has or may have occurred to identify the source and extent of
20 the discharge. During the course of the investigation, the commissioner may require
21 submission of information or documents that relate or may relate to the discharge under
22 investigation from any person who the commissioner has reason to believe may be a
23 responsible party under this subchapter or subchapter 2-A. If the commissioner finds,
24 after investigation, that a discharge of oil has occurred and may create a threat to public
25 health or the environment, including, but not limited to, contamination of a water supply,
26 the commissioner may issue a clean-up order requiring the responsible party to cease the
27 discharge immediately and to take action to prevent further discharge and to mitigate or
28 terminate the threat of human exposure to contamination or to explosive vapors. In
29 addition to other actions, including an action to prohibit product delivery under section
30 565-A, the commissioner may, as part of any clean-up order, require the responsible party
31 to provide temporary drinking water and water treatment systems approved by the
32 commissioner, to sample and analyze wells ~~and~~, to compensate 3rd-party damages
33 resulting from the discharge and to impose restrictions by deed covenant or other means
34 on the use of the real property where the discharge occurred. The commissioner may also
35 order that the responsible party take temporary and permanent remedial actions at
36 locations threatened or affected by the discharge of oil, including a requirement that the
37 responsible party restore or replace water supplies contaminated with oil with water
38 supplies the commissioner finds are cost effective, technologically feasible and reliable
39 and that effectively mitigate or minimize damage to, and provide adequate protection of,
40 the public health, welfare and the environment. Clean-up orders may be issued only in
41 compliance with the following procedures.

42 A. Any orders issued under this section must contain findings of fact describing the
43 manner and extent of oil contamination, the site of the discharge and the threat to the
44 public health or environment. Service of a copy of the commissioner's findings and

1 order must be made by the sheriff or deputy sheriff or by hand delivery by an
2 authorized representative of the department in accordance with the Maine Rules of
3 Civil Procedure.

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

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

20 **Sec. 13. 38 MRSA §568-A, sub-§1, ¶F**, as enacted by PL 1995, c. 361, §4, is
21 amended to read:

22 F. Within 15 working days of receipt of a request under paragraph A, the
23 commissioner in the case of an underground oil storage facility or the State Fire
24 Marshal in the case of an aboveground oil storage facility shall determine whether the
25 request is complete. Failure to inform the applicant of the determination of
26 completeness within 15 working days constitutes acceptance as complete. If the
27 application is not accepted, the commissioner or State Fire Marshal shall return the
28 application to the applicant with the reasons for nonacceptance specified in writing.
29 ~~Within 90 days of receipt of an applicant's completed request for coverage by the~~
30 ~~fund submitted pursuant to this subsection, the commissioner or State Fire Marshal~~
31 ~~shall issue an order determining eligibility and, if the applicant is eligible, specifying~~
32 ~~the amount of the deductible under subsection 2. Failure to issue an order within this~~
33 ~~period constitutes a determination that the applicant is eligible, subject to the~~
34 ~~deductibles in subsection 2, paragraph A.~~

35 **Sec. 14. 38 MRSA §568-A, sub-§1, ¶F-1** is enacted to read:

36 F-1. Within 90 days of receipt of an applicant's completed request for coverage by
37 the fund submitted pursuant to this subsection, the commissioner or State Fire
38 Marshal shall issue an order determining eligibility and, if the applicant is eligible,
39 specifying the amount of the deductible under subsection 2. Failure to issue an order
40 within this period constitutes a determination that the applicant is eligible, subject to
41 the deductibles in subsection 2, paragraph A. An order issued under this paragraph
42 may be conditioned on any reasonable terms determined necessary by the
43 commissioner or State Fire Marshal to prevent or limit human exposure to
44 contamination from the discharge, including a requirement that the applicant impose

1 restrictions by deed covenant or other means on the use of the real property where the
2 discharge occurred.

3 **Sec. 15. 38 MRSA §568-A, sub-§1, ¶L** is enacted to read:

4 L. Costs incurred to implement a voluntary response action plan under section 343-E
5 are not eligible for coverage under this section.

6 **Sec. 16. 38 MRSA §568-A, sub-§1, ¶M** is enacted to read:

7 M. An applicant is not eligible for coverage under this section if the applicant is a
8 motor carrier under the Motor Carrier Act, 49 United States Code, Section 31139 and
9 the discharge for which coverage is sought occurred during the offloading or
10 onloading of oil from or to a motor vehicle used to transport oil.

11 **Sec. 17. 38 MRSA §568-A, sub-§7,** as amended by PL 2003, c. 245, §10, is
12 repealed.

13 **Sec. 18. 38 MRSA §568-B, sub-§3,** as enacted by PL 2003, c. 245, §11, is
14 repealed.

15 **Sec. 19. 38 MRSA §569-A, sub-§8, ¶B,** as amended by PL 1995, c. 399, §14
16 and affected by §21, is further amended to read:

17 B. All costs, including personnel and equipment expenses, involved in the response
18 to and removal of a prohibited discharge, the abatement of pollution and the
19 implementation of remedial measures, including restoration of water supplies, related
20 to the discharge or threatened discharge of oil to ground water, whether from an
21 aboveground or underground oil storage facility, if the costs are not paid by a
22 responsible party or an applicant for coverage by the fund;

23 **Sec. 20. 38 MRSA §569-A, sub-§10,** as enacted by PL 1991, c. 817, §26, is
24 repealed and the following enacted in its place:

25 10. Reimbursements to fund. The commissioner shall seek recovery from
26 responsible parties of all sums expended from the fund, including overdrafts, for the
27 purposes described in subsection 8, paragraphs B, D, E, H and J or for other damage
28 incurred by the State in connection with a prohibited discharge, including interest
29 computed at 15% a year from the date of expenditure, unless the commissioner finds the
30 amount involved too small or the likelihood of success too uncertain or unless the
31 responsible party is found to be eligible for coverage of the sum under section 568-A. If
32 payment is not received by the State within 30 days of the demand, the Attorney General
33 may file suit in Superior Court or the department may file suit in District Court and, in
34 addition to relief provided by other law, may seek punitive damages as provided in
35 section 568. Notwithstanding the time limits stated in this subsection, neither a demand
36 nor other recovery efforts against one responsible party may relieve any other responsible
37 party of liability.

38 **Sec. 21. 38 MRSA §569-A, sub-§13,** as amended by PL 2003, c. 245, §13, is
39 repealed.

1 **Sec. 22. 38 MRSA §569-B**, as amended by PL 2003, c. 245, §14, is repealed.

2 **Sec. 23. 38 MRSA §570, first ¶**, as amended by PL 2007, c. 292, §35, is further
3 amended to read:

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

25 **Sec. 24. 38 MRSA §570, first ¶**, as amended by PL 2007, c. 292, §36, is
26 repealed.

27 **Sec. 25. 38 MRSA §570-A, last ¶**, as amended by PL 2003, c. 245, §15, is
28 repealed.

29 **Sec. 26. 38 MRSA §570-B, last ¶**, as amended by PL 2003, c. 245, §16, is
30 repealed.

31 **Sec. 27. 38 MRSA §570-I**, as amended by PL 2003, c. 245, §17, is repealed.

32 **Sec. 28. 38 MRSA §570-J**, as amended by PL 2003, c. 245, §18, is repealed.

33 **Sec. 29. 38 MRSA §570-K, sub-§3-A** is enacted to read:

34 **3-A. Abandonment; closure.** An aboveground oil storage facility or tank that has
35 been or is intended to be taken out of service for a period of more than 12 months must be
36 abandoned in accordance with rules adopted by the board. The board, in consultation
37 with the Department of Public Safety, Office of the State Fire Marshal, shall adopt
38 routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A setting forth the
39 proper procedures for abandonment, including, but not limited to, requirements and
40 procedures for conducting a site assessment to determine if the facility or tank has

1 suffered oil discharges, requirements for removal of discharges discovered during the site
2 assessment and acceptable methods for emptying and disposing of tanks and piping. The
3 rules must specify the circumstances under which a closed facility or tank may be
4 returned to service and must be consistent with the rules governing abandonment of
5 underground oil storage facilities and tanks, as adopted by the board pursuant to section
6 566-A, subsection 3.

7 **Sec. 30. 38 MRSA §570-K, sub-§4**, as amended by PL 2001, c. 605, §2, is
8 further amended to read:

9 **4. Exemption.** The following aboveground oil storage facilities are exempt from the
10 requirements of subsections 2 and 3 and 3-A:

11 A. Facilities or portions of facilities that are used exclusively for the storage of #2
12 and other home heating oil and consist of an individual tank of 660 gallons or less
13 capacity or an aggregate tank capacity of 1320 gallons or less; and

14 B. Facilities containing only liquefied petroleum gas or liquefied natural gas.

15 **Sec. 31. PL 1991, c. 817, §30**, as amended by PL 2003, c. 245, §21, is repealed.

16 SUMMARY

17 This bill does the following.

18 1. It eliminates the December 31, 2010 sunset date on the provisions of law that
19 insure owners and operators of oil storage tanks against the costs of cleaning up tank
20 leaks and authorize the department to pay those costs, up to \$1,000,000 per incident, from
21 the Ground Water Oil Clean-up Fund.

22 2. It repeals the provisions of law that are due to take effect on the sunset date of the
23 Ground Water Oil Clean-up Fund.

24 3. It requires the Board of Environmental Protection to adopt rules establishing a
25 training program for operators of underground oil storage facilities used to store motor
26 fuel or used in the marketing and distribution of oil.

27 4. It requires persons in the business of delivering oil to storage tanks to conduct
28 employee training.

29 5. It authorizes the use of restrictive covenants and other land use controls to
30 minimize the risk of human exposure to residual contamination on property that has
31 suffered an oil discharge.

32 6. It makes costs incurred to implement a voluntary response action plan, in which a
33 person agrees to clean up oil contamination at that person's own expense in exchange for
34 protection from liability, ineligible for coverage by the Ground Water Oil Clean-up Fund.

1 7. It requires the Commissioner of Environmental Protection to seek repayment of
2 disbursements from the Ground Water Oil Clean-up Fund from responsible parties who
3 are not eligible for coverage under the fund.

4 8. It authorizes the Department of Environmental Protection to seek recovery of
5 personnel and equipment costs incurred by the department in responding to a discharge of
6 oil.

7 9. It requires aboveground oil storage facilities that have been out of service for more
8 than 12 months to be abandoned in accordance with rules adopted by the Board of
9 Environmental Protection.