

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1603

S.P. 610

In Senate, December 18, 2009

An Act To Amend Laws Administered by the Department of Environmental Protection

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Received by the Secretary of the Senate on December 18, 2009. Referred to the Committee
on Natural Resources pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GOODALL of Sagadahoc.
Cosponsored by Senator: DAMON of Hancock, Representatives: BERRY of Bowdoinham,
BUTTERFIELD of Bangor, DUCHESNE of Hudson, HASKELL of Portland, HINCK of
Portland.

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

2 **Sec. 1. 23 MRSA §3105**, as repealed and replaced by PL 2009, c. 239, §4, is
3 repealed.

4 **Sec. 2. 23 MRSA §3105-A** is enacted to read:

5 **§3105-A. Use of town equipment**

6 The inhabitants of any town or village corporation at a legal town or village
7 corporation meeting may authorize the municipal officers of the town or assessors of the
8 village corporation to use its highway equipment on private ways within such town or
9 village corporation whenever such municipal officers or assessors consider it advisable in
10 the best interest of the town or village corporation for fire and police protection.

11 **Sec. 3. 23 MRSA §3106, sub-§1**, as enacted by PL 2009, c. 225, §1, is amended
12 to read:

13 **1. Repairs to a private road.** ~~A municipality may~~ For the purpose of protecting or
14 ~~restoring a great pond, as defined in Title 38, section 480-B, subsection 5, the inhabitants~~
15 ~~of any town or village corporation at a legal town or village corporation meeting may~~
16 appropriate funds to repair a private road, way or bridge to prevent storm water runoff
17 ~~pollution from reaching a great pond as defined in Title 38, section 480-B, subsection 5~~
18 ~~through the expenditure of public funds if:~~

- 19 A. The private road, way or bridge is within the watershed of the great pond;
20 B. The great pond:

21 (1) Is listed on the Department of Environmental Protection's list of bodies of
22 water most at risk pursuant to Title 38, section 420-D, subsection 3;

23 (2) Has been listed as impaired in an integrated water quality monitoring and
24 assessment report submitted by the Department of Environmental Protection to
25 the United States Environmental Protection Agency pursuant to the federal Clean
26 Water Act, 33 United States Code, Section 1315(b) at least once since 2002; or

27 (3) Is identified as having threats to water quality in a completed watershed
28 survey that uses a protocol accepted by the Department of Environmental
29 Protection;

30 C. The Department of Environmental Protection or the municipality determines that
31 the private road, way or bridge is contributing to the degradation of the water quality
32 of the great pond based upon an evaluation of the road, way or bridge using a
33 protocol accepted by the department;

34 D. The repair complies with best management practices required by the Department
35 of Environmental Protection; and

36 E. The private road, way or bridge is maintained by a road association organized
37 under this subchapter or Title 13-B.

1 **Sec. 4. 38 MRSA §548, first ¶**, as affected by PL 1989, c. 890, Pt. A, §40 and
2 amended by Pt. B, §114, is further amended to read:

3 Any person discharging or suffering the discharge of oil in the manner prohibited by
4 section 543 shall immediately undertake to remove that discharge to the commissioner's
5 satisfaction. Notwithstanding the above requirement, the commissioner may undertake
6 the removal or cleanup of that discharge and may retain agents and contractors for those
7 purposes who shall operate under the direction of the commissioner. The commissioner
8 may implement remedies to restore or replace water supplies contaminated by a discharge
9 of oil prohibited by section 543, including all discharges from interstate pipelines, using
10 the most cost-effective alternative that is technologically feasible and reliable and ~~which~~
11 that effectively mitigates or minimizes damages to, and provides adequate protection of,
12 the public health, welfare and the environment. The commissioner may investigate and
13 sample sites where an oil discharge has or may have occurred to identify the source and
14 extent of the discharge. During the course of the investigation, the commissioner may
15 require submission of information or documents that relate or may relate to the discharge
16 under investigation from any person who the commissioner has reason to believe may be
17 a responsible party. If the commissioner finds, after investigation, that a discharge of oil
18 has occurred and may create a threat to public health or the environment, the
19 commissioner may issue a clean-up order in accordance with section 568, subsection 3.

20 **Sec. 5. 38 MRSA §551, sub-§5, ¶E**, as amended by PL 1985, c. 496, Pt. A, §13,
21 is further amended to read:

22 E. Payment of costs of ~~arbitration and arbitrators~~ hearings, independent hearing
23 examiners and independent claims adjusters for 3rd-party damage claims;

24 **Sec. 6. 38 MRSA §551, sub-§6-A**, as enacted by PL 1997, c. 364, §28, is
25 amended to read:

26 **6-A. Lien.** All costs incurred by the State in the removal, abatement and
27 remediation of a prohibited discharge of oil and interest are a lien against the real estate
28 of the responsible party. The lien does not apply to the real estate of a licensee if the
29 discharge was caused or suffered by a carrier destined for the licensee's facilities.

30 A certificate of lien signed by the commissioner must be sent by certified mail to the
31 responsible party prior to being recorded and may be filed in the office of the clerk of the
32 municipality in which the real estate is located. The lien is effective when the certificate
33 is recorded with the registry of deeds for the county in which the real estate is located.
34 The certificate of lien must include a description of the real estate, the amount of the lien
35 and the name of the owner as grantor.

36 When the amount for which a lien has been recorded under this subsection has been paid
37 or reduced, the commissioner, upon request by any person of record holding interest in
38 the real estate that is the subject of the lien, shall issue a certificate discharging or
39 partially discharging the lien. The certificate must be recorded in the registry in which
40 the lien was recorded. Any action of foreclosure of the lien must be brought by the
41 Attorney General in the name of the State in the Superior Court for the judicial district in
42 which the real estate subject to the lien is located.

1 **Sec. 7. 38 MRSA §566-A, sub-§1**, as enacted by PL 1987, c. 491, §14, is
2 amended to read:

3 **1. Abandonment.** All underground oil storage facilities and tanks that have been, or
4 are intended to be, taken out of service for a period of more than 12 months ~~shall~~ must be
5 properly abandoned by the owner or operator of the facility or tank or, if the owner or
6 operator is unknown, dissolved or insolvent, by the current owner of the property where
7 the facility or tank is located. All abandoned facilities and tanks ~~shall~~ must be removed,
8 except where removal is not physically possible or practicable because the tank or other
9 component of the facility to be removed is:

- 10 A. Located beneath a building or other permanent structure;
11 B. Of a size and type of construction that it cannot be removed;
12 C. Otherwise inaccessible to heavy equipment necessary for removal; or
13 D. Positioned in such a manner that removal will endanger the structural integrity
14 of nearby tanks.

15 **Sec. 8. 38 MRSA §566-A, sub-§1-A**, as amended by PL 2007, c. 655, §5, is
16 further amended to read:

17 **1-A. Abandoned tanks brought back into service.** Underground oil storage tanks
18 and facilities that have been out of service for a period of more than 12 months may not
19 be brought back into service without the written approval of the commissioner. The
20 commissioner may approve the return to service if the owner demonstrates to the
21 commissioner's satisfaction that:

- 22 A. The facility is in compliance with this subchapter and rules adopted pursuant to
23 this subchapter;
24 B. The underground oil storage ~~tank~~ tanks and piping have successfully passed
25 testing as directed by the commissioner;
26 C. The underground oil storage ~~tank~~ tanks and piping are constructed of fiberglass,
27 cathodically protected steel or other equally noncorrosive material approved by the
28 commissioner;
29 D. The facility has conforming suction or double-walled pressurized piping; and
30 E. The return of the facility to service does not pose an unacceptable risk to
31 groundwater resources. In determining if the facility poses an unacceptable risk to
32 groundwater resources, the commissioner may consider the age and maintenance
33 history of the storage tanks and piping, the number and consequences of past oil
34 discharges from the tanks and piping, the proximity of the facility to drinking water
35 supplies and the proximity of the facility to sensitive geologic areas.

36 The commissioner may not approve the return to service of a single-walled underground
37 oil storage tank that has been out of service for more than 12 months.

38 **Sec. 9. 38 MRSA §568-A, sub-§2, ¶C**, as amended by PL 2005, c. 330, §21, is
39 further amended to read:

1 C. Conditional deductibles for aboveground facilities and tanks are as follows.

2 (1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal
3 pursuant to 16-219 CMR, chapter 34, the deductibles are:

4 (a) Five thousand dollars for failure to obtain a construction permit from the
5 Office of the State Fire Marshal, when required under Title 25, chapter 318
6 and 16-219 CMR, chapter 34 or under prior applicable law;

7 (b) Five thousand dollars for failure to design and install piping in
8 accordance with section 570-K and rules adopted by the department;

9 (c) Five thousand dollars for failure to comply with an existing consent
10 decree, court order or outstanding deficiency statement regarding violations
11 at the aboveground facility;

12 (d) Five thousand dollars for failure to implement a certified spill prevention
13 control and countermeasure plan, if required;

14 (e) Five thousand dollars for failure to install any required spill control
15 measures, such as dikes;

16 (f) Five thousand dollars for failure to install any required overfill
17 equipment;

18 (g) Five thousand dollars if the tank is not approved for aboveground use;
19 and

20 (h) Ten thousand dollars for failure to report any leaks at the facility.

21 (2) For aboveground tanks subject to the jurisdiction of the Oil and Solid Fuel
22 Board, the deductibles are:

23 (a) One hundred and fifty dollars for failure to install the facility in
24 accordance with rules adopted by the Oil and Solid Fuel Board and in effect
25 at the time of installation;

26 (b) Two hundred and fifty dollars for failure to ~~conform an upgraded facility~~
27 ~~to the requirements provided in~~ comply with the rules of the Oil and Solid
28 Fuel Board;

29 (c) Two hundred and fifty dollars for failure to make a good faith effort to
30 properly maintain the facility; and

31 (d) Five hundred dollars for failure to notify the department of a spill.

32 **Sec. 10. 38 MRSA §569-A, sub-§8, ¶B**, as amended by PL 1995, c. 399, §14
33 and affected by §21, is further amended to read:

34 B. All costs involved in the removal of a prohibited discharge, the abatement of
35 pollution and the implementation of remedial measures, including restoration of
36 water supplies, related to the discharge of oil ~~to ground water, whether~~ from an
37 ~~aboveground or underground oil~~ storage facility; not paid by a responsible party or an
38 applicant for coverage by the fund;

1 **Sec. 11. 38 MRSA §569-A, sub-§10-A**, as amended by PL 1999, c. 334, §4, is
2 further amended to read:

3 **10-A. Lien.** All costs incurred by the State in the removal, abatement and
4 remediation of a prohibited discharge of oil from an ~~aboveground or underground~~ oil
5 storage facility and all costs incurred by the State in the abandonment of an underground
6 oil storage facility or tank under section 566-A, subsection 4 and interest are a lien
7 against the real estate of the responsible party. For a responsible party determined
8 eligible for coverage under section 568-A, subsection 1, the lien is for the amount of any
9 unpaid deductible assigned under section 568-A, subsection 2 ~~or for~~ and any eligible
10 clean-up costs and 3rd-party damage claims above \$1,000,000.

11 A certificate of lien signed by the commissioner must be sent by certified mail to the
12 responsible party prior to being recorded and may be filed in the office of the clerk of the
13 municipality in which the real estate is located. The lien is effective when the certificate
14 is recorded with the registry of deeds for the county in which the real estate is located.
15 The certificate of lien must include a description of the real estate, the amount of the lien
16 and the name of the owner as grantor.

17 When the amount for which a lien has been recorded under this subsection has been paid
18 or reduced, the commissioner, upon request by any person of record holding interest in
19 the real estate that is the subject of the lien, shall issue a certificate discharging or
20 partially discharging the lien. The certificate must be recorded in the registry in which
21 the lien was recorded. Any action of foreclosure of the lien must be brought by the
22 Attorney General in the name of the State in the Superior Court for the judicial district in
23 which the real estate subject to the lien is located.

24 **Sec. 12. 38 MRSA §569-B, sub-§5, ¶B**, as amended by PL 1995, c. 399, §19
25 and affected by §21, is further amended to read:

26 B. All costs involved in the removal of a prohibited discharge, the abatement of
27 pollution and the implementation of remedial measures, including restoration of
28 water supplies, related to the discharge of oil, petroleum products and their by-
29 products ~~to ground water from an aboveground or underground oil~~ storage facility;

30 **Sec. 13. 38 MRSA §1296**, as amended by PL 2005, c. 330, §25, is further
31 amended by adding after the 4th paragraph a new paragraph to read:

32 The commissioner may initiate enforcement action under section 347-A in lieu of
33 issuing an order under this section.

34 **Sec. 14. 38 MRSA §1298, sub-§3**, as enacted by PL 2007, c. 628, Pt. B, §4, is
35 amended to read:

36 **3. Application.** The application under subsection 2 must be submitted together with
37 a report by a lead inspector that indicates that the leased residential dwelling has been
38 tested for the presence of lead-based paint and lead-contaminated dust ~~and or a report by~~
39 a lead dust sampling technician that indicates the leased residential dwelling has been
40 tested for lead-contaminated dust. The report must indicate that the dwelling meets the
41 requirements for ~~certification as lead-safe~~ inclusion on the registry in accordance with the

standards and procedures established by ~~rules adopted by the commissioner the~~
department.

Sec. 15. 38 MRSA §1319-C, sub-§3 is enacted to read:

3. Responsible party. "Responsible party" means any person who could be held
liable under section 1319-J.

Sec. 16. 38 MRSA §1319-G, sub-§1-A is enacted to read:

1-A. Lien. All costs incurred by the State in the removal, abatement and
remediation of an unlicensed discharge or threatened discharge of hazardous waste, waste
oil or biomedical waste under this subchapter and interest are a lien against the real estate
of the responsible party.

A certificate of lien signed by the commissioner must be sent by certified mail to the
responsible party prior to being recorded and may be filed in the office of the clerk of the
municipality in which the real estate is located. The lien is effective when the certificate
is recorded with the registry of deeds for the county in which the real estate is located.
The certificate of lien must include a description of the real estate, the amount of the lien
and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid
or reduced, the commissioner, upon request by any person of record holding interest in
the real estate that is the subject of the lien, shall issue a certificate discharging or
partially discharging the lien. The certificate must be recorded in the registry in which
the lien was recorded. Any action of foreclosure of the lien must be brought by the
Attorney General in the name of the State in the Superior Court for the judicial district in
which the real estate subject to the lien is located.

Sec. 17. 38 MRSA §1393, sub-§2, as enacted by PL 2007, c. 569, §6, is amended
to read:

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

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

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

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

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

6 This subsection may not be interpreted to allow the conversion, replacement or expansion
7 of an underground oil storage tank or underground oil storage facility subject to the
8 abandonment requirement under section 566-A.

9 **Sec. 18. 38 MRSA §1661-C, sub-§1**, as enacted by PL 2001, c. 373, §3, is
10 repealed.

11 **Sec. 19. 38 MRSA §1661-C, sub-§2**, as enacted by PL 2001, c. 373, §3, is
12 repealed.

13 **Sec. 20. 38 MRSA §1661-C, sub-§6, ¶F**, as enacted by PL 2003, c. 221, §4, is
14 amended to read:

15 F. A manometer ~~other than a manometer prohibited from sale under subsection 2;~~

16 **Sec. 21. 38 MRSA §1661-C, sub-§6, ¶I**, as enacted by PL 2003, c. 221, §4, is
17 amended to read:

18 I. A thermometer ~~other than a thermometer prohibited from sale under subsection 1.~~

19 **Sec. 22. 38 MRSA §1661-C, sub-§9, ¶A**, as enacted by PL 2009, c. 86, §1, is
20 amended to read:

21 A. After June 30, 2011, a person may not sell or offer to sell or distribute for
22 promotional purposes a mercury-added button cell battery identified in this paragraph
23 or a product that contains a mercury-added button cell battery identified in this
24 paragraph:

25 (1) A zinc-air button cell battery;

26 (2) An alkaline manganese button cell battery; or

27 (3) A silver oxide button cell battery stamped with the designation SR357,
28 SR364, SR371, SR377 or SR395 357, 364, 371, 377, 395, SR44W, SR621SW,
29 SR626SW, SR920SW or SR927SW or a silver oxide button cell battery that is
30 interchangeable with a battery that is stamped with one of those designations; and

31 **Sec. 23. 38 MRSA §1664, sub-§2**, as repealed and replaced by PL 2003, c. 640,
32 §1, is repealed.

33 **Sec. 24. 38 MRSA §1665-B, sub-§2-A**, as enacted by PL 2009, c. 277, §10, is
34 amended to read:

35 **2-A. Wholesaler responsibility.** A wholesaler may not sell a thermostat in the State
36 unless the wholesaler acts as a collection site for thermostats that contain mercury. A
37 wholesaler may meet the requirements of this subsection by participating as a collection

1 site in a manufacturer collection and recycling program under subsection 2. A wholesaler
2 shall post in a prominent location open to public view a notice about the financial
3 incentive plan developed pursuant to subsection 4. The notice must be approved by the
4 department and supplied by the manufacturer at no cost to the wholesaler.

5 **Sec. 25. PL 1995, c. 704, Pt. A, §24, 2nd ¶** is amended to read:

6 Unless a transfer of the permit-granting authority to the Department of Transportation
7 occurs earlier, and notwithstanding any other provision of law, beginning June 30, 1999,
8 the Department of Transportation has permit-granting authority relating to traffic. In the
9 event of a transfer, a proposed development subject to review under the Maine Revised
10 Statutes, Title 38, chapter 3, subchapter I, article 6, solely because it meets the traffic
11 threshold provisions of Title 38, section 482, subsection 2, is subject only to the
12 jurisdiction of the Maine Department of Transportation. ~~Projects subject to review under~~
13 ~~Title 38, chapter 3, subchapter I, article 6 on grounds including, but not limited to, the~~
14 ~~traffic threshold are subject to the joint jurisdiction of the Department of Environmental~~
15 ~~Protection and the Department of Transportation and this joint jurisdiction must be~~
16 ~~exercised through a consolidated proceeding.~~

17 SUMMARY

18 This bill changes the description of where a town may use its highway equipment for
19 fire and police protection from "private roads, private ways or bridges" to "private ways."
20 With respect to fire and police protection, it restores the laws governing the use of the
21 highway equipment of a town on private ways to substantially the form they had before
22 the enactment of Public Law 2009, chapter 239. The bill also specifies that the residents
23 of a town or village corporation at a town or village corporation meeting may appropriate
24 funds to repair a private road, way or bridge for the purpose of protecting or restoring a
25 great pond.

26 It amends the laws governing oil discharges to make it clear that the authority of the
27 Commissioner of Environmental Protection to issue clean-up orders extends to all oil
28 discharges and is not limited to discharges that emanate from a storage tank.

29 It updates language regarding 3rd-party damage claims arising from oil discharges.

30 It amends the laws governing oil discharges to authorize the Department of
31 Environment Protection, consistent with current authority under the law governing
32 uncontrolled hazardous substance sites, to include interest when placing liens to recover
33 costs incurred by the department in response to an oil discharge.

34 It clarifies the circumstances under which the owner of a parcel of land on which an
35 out-of-service oil storage facility is located may be held responsible for properly
36 abandoning the facility.

37 It prohibits the return to service of a single-walled underground oil storage tank that
38 has been out of service for more than 12 months.

1 It clarifies the applicability of the deductible amount that must be paid by the owner
2 or operator of a leaking oil storage tank when seeking coverage of clean-up costs from
3 the Ground Water Oil Clean-up Fund when the owner has failed to comply with the
4 requirement to obtain a construction permit from the Office of the State Fire Marshal.

5 It clarifies applicability of the deductible amount that must be paid by the owner or
6 operator of a leaking oil storage tank when seeking coverage of clean-up costs from the
7 Ground Water Oil Clean-up Fund if the tank fails to conform to the requirements of the
8 Oil and Solid Fuel Board.

9 It expands the enforcement options available to the Commissioner of Environmental
10 Protection when addressing violations of the lead abatement laws.

11 It allows a landlord to employ a lead dust sampling technician to show that a dwelling
12 unit qualifies for listing on the registry of leased lead-safe residential dwellings. Under
13 current law, a landlord must use a lead inspector.

14 It authorizes the Department of Environmental Protection to recover costs incurred in
15 responding to a discharge of hazardous waste, waste oil and biomedical waste by placing
16 a lien against the real estate of the responsible party.

17 It amends the laws governing mercury-added products to consolidate provisions
18 prohibiting the sale of mercury manometers and thermometers.

19 It amends the laws governing mercury thermostats to consolidate requirements for
20 thermostat wholesalers.

21 It deletes language in unallocated law that requires the Department of Environmental
22 Protection to hold consolidated proceedings with the Department of Transportation in
23 certain situations.

24 It amends the laws governing the Ground Water Oil Clean-up Fund to authorize
25 disbursements for the cleanup of discharges from oil storage facilities whether or not the
26 oil reaches ground water.

27 It amends the laws governing wellhead protection to make it clear that an abandoned
28 underground oil storage facility located within a wellhead protection zone may not be
29 replaced.

30 It clarifies the prohibition on the sale of mercury-added silver oxide button cell
31 batteries.